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11 CLIMATE ACTION CAMPAIGN

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO – CENTRAL DIVISION

14 CLIMATE ACTION CAMPAIGN, a California
15 non-profit public benefit corporation,

16 Petitioner,

17 v.

18 CITY OF EL CAJON, a California municipal
19 corporation; and DOES 1 through 20, inclusive,

20 Respondents,

21 DOES 21 through 40, inclusive,

22 Real Parties in Interest.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/08/2019 at 12:41:44 PM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

Case No.: 37-2019-00041565-CU-TT-CTL

**VERIFIED PETITION FOR WRIT OF
MANDATE**

[IMAGED FILE]

(CALIFORNIA ENVIRONMENTAL
QUALITY ACT: PUB. RES. CODE
§§21168, 21168.5)

1 Petitioner CLIMATE ACTION CAMPAIGN (“CAC” or “Petitioner”) hereby requests relief as
2 follows:

3 INTRODUCTION

4 1. Climate change, and the contribution of GHG emissions to that change, is a
5 serious and urgent problem. According to the California Climate Change Center’s 2006 First
6 Climate Change Assessment, entitled “Scenarios of Climate Change in California: An
7 Overview” (“Assessment”): “Climate change impacts will affect . . . sea-level rise, agriculture,
8 snowpack and water supply, forestry, wildfire risk, public health, and electricity demand and
9 supply. The more that greenhouse gases (GHGs) accumulate in the Earth's atmosphere over the
10 next century, the greater the warming and the more severe and costly the impacts will
11 be....Increases in temperature alone would impact the California hydrological cycle, with
12 consequences upon the state's water supply, hydroelectric power supply, agriculture, recreation,
13 and ecosystems. Climate change could produce compounding impacts—for instance, in the San
14 Francisco Bay Delta, heightened sea levels and high river inflows from warmer storms would
15 place levee systems in greater jeopardy of flooding. Some of the most dramatic climate change
16 impacts will be experienced as increased frequency and severity of extreme events, such as heat
17 waves, wildfires, flooding, and conditions conducive to air pollution formation.” (Assessment,
18 Summary, p.1.)

19 2. Ostensibly to address its contribution to climate change, Respondent City of El
20 Cajon (“Respondent” or “City”) prepared a Climate Action Plan (“CAP” or “Project”). However,
21 Respondent’s CAP amounts to no more than a mechanism to evade meaningful California
22 Environmental Quality Act (CEQA) review and streamline approval for future discretionary
23 projects.

24 3. Instead of adopting meaningful GHG reduction measures and thoughtfully
25 analyzing potential environmental impacts of the CAP (a discretionary project subject to CEQA),
26 the City prepared an unambitious, unenforceable CAP and failed to disclose the resultant
27 environmental impacts in the associated Environmental Impact Report. CEQA requires more.

28 4. Respondent’s failure to take its obligation to reduce GHG emissions seriously, as

1 well as its failure to comply with CEQA in adopting the CAP constitute an abuse of discretion.

2 5. Petitioner accordingly requests that this Court issue a writ of mandate under Cal.
3 Code of Civil Procedure sections 1085 and 1094.5 directing Respondent to vacate and set aside
4 its approvals of the Project.

5 **JURISDICTION AND VENUE**

6 6. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5, and
7 187 of the California Code of Civil Procedure and sections 21168 and 21168.5 of the Public
8 Resources Code.

9 7. Venue for this action properly lies in the San Diego County Superior Court
10 because Respondent CITY OF EL CAJON and the Project are located in San Diego County.

11 **PARTIES**

12 8. Petitioner CAC is, and at all times herein mentioned has been, a non-profit public
13 benefit corporation, organized and existing under the laws of the State of California, with its
14 principal place of business in San Diego, California.

15 9. Petitioner meets all organizational standing requirements for prosecuting this
16 action. CAC's mission is to stop the climate crisis. CAC is unique in the San Diego and southern
17 California region in that it is solely focused on stopping the climate crisis through policy action.
18 CAC is a small organization with big goals and the ingenuity, creativity, and courage to build
19 change from the ground up, shift our culture, fight powerful institutions, and stop the climate
20 crisis. CAC believes change happens when communities come together to pursue big ideas. The
21 interests CAC seeks to protect in this action are therefore germane to its fundamental purpose;
22 and CAC has a geographical nexus with the affected environment of El Cajon. CAC further
23 meets all associational standing requirements for prosecuting this action. CAC's members are
24 within the class of persons beneficially interested in the subject matter of this action. CAC is
25 beneficially interested in the subject matter of this complaint and is adversely affected by
26 Respondent City's unlawful conduct as more fully alleged below. The injuries of CAC, its
27 members and their families and children are actual, concrete injuries which will be redressed by
28 the relief sought herein. CAC brings this action on its own behalf, and on behalf of its members

1 who live in El Cajon and San Diego County. The claims asserted and the relief sought in this
2 Complaint do not require that CAC's individual members directly participate as parties to this
3 lawsuit.

4 10. Petitioner brings this action, not just on its own behalf and behalf of its members,
5 but also to enforce important public rights and to compel compliance with public duties that arise
6 under CEQA. Other beneficially interested persons would find it difficult or impossible to seek
7 vindication of the rights asserted. Petitioner has a continuing interest in, and a well-established
8 commitment to, the public rights asserted.

9 11. Respondent CITY OF EL CAJON , a California Municipal Corporation, is a local
10 governmental agency and political subdivision of the State of California charged with the
11 authority to regulate and administer land use activities within its boundaries, subject at all times
12 to the obligations and limitations of all applicable state, federal, and other laws, including CEQA
13 and the CEQA Guidelines. As the CEQA lead agency for the Project, the City approved the
14 CEQA environmental determination and associated approvals for the Project.

15 12. Petitioner is currently unaware of the true names and capacities of Respondents,
16 Does 1 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1
17 through 20, inclusive, are agents of the City, state, or federal government who are responsible in
18 some manner for the conduct described in this petition, or other persons or entities presently
19 unknown to Petitioner who claim some legal or equitable interest in the Project that is the subject
20 of this action. Petitioner will amend this petition to show the true names and capacities of Does 1
21 through 20 when such names and capacities become known.

22 13. Petitioner is currently unaware of the true names and capacities of Real Parties in
23 Interest, Does 21 through 40, inclusive. Does 21 through 40, inclusive, are persons or entities
24 presently unknown to Petitioner who claim some legal or equitable interest in the Project that is
25 the subject of this action. Petitioner will amend this petition to show the true names and
26 capacities of Does 21 through 40 when such names and capacities become known.

27 **STATEMENT OF FACTS**

28 14. The City of El Cajon is in eastern San Diego County, east of the cities of San

1 Diego and La Mesa, south of the City of Santee and about 15 miles inland. The planning area for
2 the CAP is the entire City of El Cajon, which encompasses approximately 14.4 square miles.

3 15. The City’s CAP is a self-described comprehensive policy-document that outlines
4 the actions of a jurisdiction at the local-level to align with the statewide targets intended to
5 reduce GHG emissions. The CAP includes an inventory of emissions, future emission
6 projections, reduction targets and measures, and implementation and monitoring tools.

7 16. Pursuant to CEQA, an agency may prepare a plan for the reduction of greenhouse
8 gas emissions and use such a plan to analyze cumulate impacts of later projects. (CEQA
9 Guidelines¹ Section 15183.5(b)). The City’s CAP (the Project) is intended to serve as such a
10 plan.

11 17. The CAP modeled City GHG emissions for 2012 and projected future GHG
12 emissions to 2020 and 2030. To meet state emission targets in 2020 the City would not have to
13 take any action. To meet 2030 targets, the City would have to reduce emissions by 33,000 metric
14 tons.

15 18. The CAP identified eight strategies to reduce emissions by 2030. Of these eight
16 strategies, the biggest reduction would come from Action RE-2.1, which would purportedly
17 result in a reduction of 14,900 metric tons of carbon dioxide equivalent (MTCO₂) by 2030.

18 19. Action RE-2.1 states the “City will initiate research on methods to increase the
19 supply of renewable and zero-carbon electricity to 80 percent, resulting in an emissions reduction
20 of 14,900 MTCO₂e by 2030.”

21 20. As a purported qualified greenhouse gas reduction plan, the CAP must meet the
22 requirements for all first-tier CEQA documents and impose effectively enforceable requirements
23 and measures with defined performance standards.

24 21. Because future discretionary projects will rely on the CAP, and any “group of
25 measures, including performance standards” to achieve the specified reductions and forgo further
26 CEQA GHG emissions analysis, the CAP’s reduction measures must be considered mitigation
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¹ 14 Cal. Code Regs §§15000 *et. seq.*

1 measures for purposes of CEQA and must therefore comply with CEQA requirements.

2 22. However, action RE-2.1 contains no enforceable requirements or measures with
3 defined performance standards.

4 23. A program Environmental Impact Report (EIR) was prepared for the CAP. The
5 EIR concluded there were no potentially significant impacts from the adoption of the Project.

6 24. On July 9, 2019, after a public hearing, the City approved the Project and the
7 associated EIR.

8 25. The staff report for the Project hearing indicated the CAP would be used to
9 streamline CEQA review for later projects and the City could “assume no cumulative GHG
10 impact because El Cajon will have a plan to meet the target.”

11 26. Petitioner has exhausted all administrative remedies by providing verbal and
12 written comments to City staff and elected officials prior to Project approval, requesting
13 compliance with CEQA, and the completion of full and adequate environmental review and
14 mitigation. On information and belief, all issues raised in this petition were raised in a timely
15 manner before Respondent by Petitioner, other members of the public or public agencies.

16 27. Petitioner has a beneficial right to, and a beneficial interest in, Respondent’s
17 fulfillment of all its legal duties, as alleged herein.

18 28. Petitioner has no plain, speedy, or adequate remedy at law. Unless this Court
19 enjoins and sets aside its action, the City will approve projects with climate change impacts
20 without an adequate, science-based environmental analysis of those impacts, and without
21 adequate, science-based mitigation for those impacts. The climate-altering GHG emissions from
22 these and future such projects, emissions that will remain in the atmosphere and destabilize the
23 climate for decades or centuries, will have lasting and adverse effects on the climate, to the
24 detriment of all residents of San Diego County and the State of California.

25 29. This petition is timely filed in accordance with Public Resources Code section
26 21167 and CEQA Guidelines section 15112.

27 30. On August 5, 2019, Petitioner CAC sent the City a Notice of Intent to Sue in
28 compliance with Public Resources Code Section 21167.5. A true and correct copy of this Notice

1 is attached hereto as Exhibit A.

2 31. Respondent has abused its discretion and failed to proceed in the manner required
3 by law in the following ways:

4 **FIRST CAUSE OF ACTION**

5 **Violation of CEQA**

6 **(Public Resources Code § 21000, *et seq.*)**

7 32. Petitioner incorporates by reference all preceding paragraphs.

8 33. CEQA requires the City to conduct adequate environmental review prior to
9 making any formal decision regarding projects. (CEQA Guidelines § 15004).

10 34. CEQA requires that an agency prepare an EIR when it proposes to approve or
11 carry out a discretionary project that may have a significant impact on the environment, and to
12 mitigate or avoid those significant impacts whenever feasible to do so. (Pub. Res. Code §§
13 21002.1, 21061, 21080(a)).

14 35. A fundamental purpose of CEQA is to “[p]revent significant, avoidable damage to
15 the environment by requiring changes in projects through the use of alternatives or mitigation
16 measures.” (CEQA Guidelines § 15002(a)(3)). Consequently, an EIR must identify feasible
17 mitigation measures in order to substantially lessen or avoid otherwise significant environmental
18 effects. (Pub. Res. Code §§ 21002, 21081(a); CEQA Guidelines § 15126.4(a)).

19 36. The City did not adequately analyze or mitigate the significant impacts of the
20 CAP.

21 37. The CAP EIR further failed to provide existing baseline emissions, contrary to
22 CEQA Guidelines Section 15064.4(b)(1).

23 38. The City failed to specify criteria or adequate standards to ensure the CAP’s
24 emission reductions will be achieved and the reduction “strategies” represent real, additional
25 reduction of GHGs, enforceable as project conditions at the time of discretionary approval.
26 Absent such standards and criteria, the use of the CAP for analysis and/or mitigation for
27 increases in GHG emissions from future projects violates CEQA’s requirement that mitigation
28 measures be additional to any other legal requirement or existing program and be fully

1 enforceable. (CEQA Guidelines, §§ 15126.4(a) and (c), 15183.5(b)(1)(D)).

2 39. No substantial evidence supports the City’s finding that City Action RE-2.1 to
3 “Research methods to increase grid-supply of renewable and zero-carbon electricity” will result
4 in the specified reductions in the appropriate timeframe, if at all.

5 40. The CAP’s lack of detail, defined performance standards, and enforceability
6 therefore results in the deferral of mitigation or complete lack thereof for both the CAP and
7 future projects which tier from the CAP. (CEQA Guidelines Section 15126.4(a)(1)(B)).

8 41. CEQA Guideline Section 15064.4 requires an EIR to assess a project’s GHG
9 emissions based on a “good-faith effort, based to the extent possible on scientific and factual
10 data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a
11 project.” Further, “[t]he agency’s analysis should consider a timeframe that is appropriate for the
12 project.” (CEQA Guidelines §15064.4(b)). Despite these clear mandates, both the CAP and EIR
13 fail to assess the CAP’s ability to meet California’s 2050 GHG reduction target.

14 42. Without support, and despite admitting compliance with the 2050 goal will
15 require “significant improvements in the availability and/or cost of near-zero and zero-emissions
16 technology, as well as potential increased reductions from ongoing State and Federal legislative
17 actions that are currently unknown,” the EIR finds the associated GHG impact would be less
18 than significant. The City’s failure to accurately and adequately assess the CAP’s trajectory to
19 2050 in the EIR constitutes an abuse of discretion. The City’s finding that the CAP’s GHG
20 impact would be less than significant is not supported by substantial evidence.

21 43. All projects which tier from the CAP EIR and rely on the CAP to mitigate
22 greenhouse gas emissions will likewise result in a significant impact to GHG emissions.

23 44. In light of the CAP and EIR’s failure to assess and disclose the Project’s
24 significant GHG impacts, including those beyond 2030, the CAP cannot constitute a qualified
25 greenhouse gas reduction plan pursuant to CEQA Guidelines Section 15183.5(b).

26 45. Because the CAP will result in significant GHG impacts, it fails to: (1) establish a
27 level below which contribution to GHG emissions would not be cumulatively considerable; and
28 (2) specify measures that if implemented would collectively achieve the specified emissions

1 level.

2 46. If a project will result in a significant impact, an agency must consider the
3 environmentally superior alternative identified in the EIR and find that it is infeasible before
4 approving the project. (Pub. Resources Code § 21081(a)(3); CEQA Guidelines §15091(a)(3)).
5 An infeasibility finding must “describe the specific reasons” for the agency’s decision to reject
6 the mitigation measure or alternative. (CEQA Guidelines §15091(c)).

7 47. The City improperly rejected the environmentally superior alternative based on
8 “specific economic factors” and purported inconsistency with the General Plan. The City’s
9 findings rejecting the environmentally superior alternative fail to comply with CEQA Guidelines
10 Section 15091 and are not supported by substantial evidence.

11 48. As a result of the foregoing defects, Respondent City prejudicially abused its
12 discretion. Accordingly, Respondent City’s CEQA determination and approvals must be set
13 aside.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioner prays for relief as follows:

- 16 1. Alternative and peremptory writs of mandate, commanding Respondent:
- 17 A. To vacate and set aside approvals of the Project, EIR, and all related approvals;
- 18 B. To prepare and certify a legally adequate EIR for the project so that Respondent
19 will have a complete disclosure document before it that identifies for the decision-
20 makers and public the potential significant impacts of the Project, and that enables
21 them to formulate alternatives and mitigation measures to avoid those impacts;
- 22 2. For an order enjoining Respondent from taking any action to tier from or rely on the CAP
23 for future discretionary review of projects subject to CEQA unless and until Respondent
24 complies with applicable CEQA provisions and adopts a lawful plan for the reduction of
25 greenhouse gas emissions pursuant to CEQA Guidelines Section 15183.5;
- 26 3. Costs of suit;
- 27 4. Attorneys’ fees as allowed by law, including under to the Code of Civil Procedure section
28 1021.5; and

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5. Such other and further relief as the Court deems just and proper.

Dated: August 8, 2019

COAST LAW GROUP, LLP



Chris Polychron
Attorneys for Petitioner,
CLIMATE ACTION CAMPAIGN

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VERIFICATION

I, Nicole Capretz, declare:

I am the Executive Director of Petitioner Climate Action Campaign and am authorized to make this verification on its behalf. I have read the foregoing Petition and know the contents thereof. The facts alleged therein are true of my own personal knowledge, except as to those stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 8, 2019 in San Diego, California.

DocuSigned by:

3BDA7D804FB34B9...
Nicole Capretz
Climate Action Campaign



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August 5, 2019

City of El Cajon
City Attorney's Office
Morgan Foley
200 Civic Center Way
El Cajon, CA 92020

Via Electronic Mail
hsavage@cityofelcajon.us
acortez@cityofelcajon.us

Re: Notice of Intent to Sue/Settlement Offer

Dear Mr. Foley:

Coast Law Group LLP represents Climate Action Campaign. Please accept this correspondence as formal notification that Climate Action Campaign intends to file suit against the City of El Cajon (City) for its adoption of the Climate Action Plan and supporting Environmental Impact Report (EIR). This letter is further sent in an effort to resolve the matter without litigation.

Climate Action Campaign's anticipated lawsuit will allege the City failed to comply with the California Environmental Quality Act (CEQA) in approving the Climate Action Plan and EIR. The petition will be brought on the grounds articulated in Climate Action Campaign's comments to the City, specifically that the City failed to include concrete, verifiable and enforceable mitigation measures; adequately evaluate and analyze alternatives; and sufficiently analyze the Climate Action Plan's greenhouse gas emissions.

The petition will also seek an award of attorneys' fees under Code of Civil Procedure section 1021.5. This letter is to provide notice of the same pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 577.

Climate Action Campaign recognizes the public interest would be best served if the City were to voluntarily comply with its statutory duties in order to avoid the unnecessary expenses of litigation. If the City is interested in resolving this matter, please contact me immediately.

Sincerely,

COAST LAW GROUP LLP

A handwritten signature in black ink, appearing to read 'CP', is written over a faint, circular watermark or stamp.

Chris Polychron
Attorneys for
Climate Action Campaign