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Chair Hofman and Commissioners
Planning Commission
1222 First Avenue MS 501
San Diego, CA 92101

Via Electronic Mail
planningcommission@sandiego.gov

**Re: Agenda Item 4: Climate Action Plan Update Package
Comments on behalf of CERF and CAC**

Dear Chair Hofman and Commissioners:

Coast Law Group LLP represents Coastal Environmental Rights Foundation (CERF) and Climate Action Campaign (CAC). Please accept these comments on behalf of CERF and CAC regarding the City of San Diego's (City) Climate Action Plan Update (CAP Update) Package (Project). While the City's goal of achieving net zero greenhouse gas (GHG) emissions by 2035 is laudable, the Project and the lack of specificity in the CAP Update are problematic. The piecemeal approach to the City's approval process also raises concerns about the feasibility of many of the proposed strategies, achievability of the targets, and commitment to early, concrete action in the race to zero. In short, as proposed, the Project does not comply with the California Environmental Quality Act (CEQA) Guidelines and therefore cannot be used as greenhouse gas reduction plan.

As noted in the staff report, the CAP Update relies on six strategies to help the City achieve its GHG reduction goals: Decarbonization of the Built Environment; Access to Clean & Renewable Energy; Mobility & Land Use; Circular Economy & Clean Communities; Resilient Infrastructure and Healthy Ecosystems; and Emerging Climate Actions.¹ The first five strategies are not new to the City and its track record with many of them is cause for concern. For example, the most recent annual report (2020) reveals the City fell short in many areas. The City achieved less than half of its 2020 Target for reduction of residential and municipal energy use. It likewise barely made a dent in its ZEV municipal fleet goal and fell far short of its land use and transit goals.² The City has also been called out publicly for failing to adopt Community Plan Updates which help it achieve its mode share goals.³

¹ PC Report, p. 3.

² <https://www.sandiego.gov/2020cap>; see also, Performance Audit of City's CAP, p. 16, https://www.sandiego.gov/sites/default/files/21-009_cap.pdf

³ *Politics Report: The Climate Action Farce*, Voice of San Diego, Andrew Keatts and Scott Lewis, Nov. 13, 2021

The CAP Update sets even more ambitious goals for most of these strategies. In light of the City's failure to meet its current, less stringent goals, the lack of detail, implementation measures, and funding mechanisms in the CAP Update is all the more troubling.

Notably, the City once again intends to use the CAP Update as a CEQA streamlining tool. As a plan for the reduction of GHG emissions, the CAP Update must comply with CEQA Guidelines Section 15183.5:

(b) Plans for the Reduction of Greenhouse Gas Emissions. Public agencies may choose to analyze and mitigate significant greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or similar document. A plan to reduce greenhouse gas emissions may be used in a cumulative impacts analysis as set forth below. Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.

(1) Plan Elements. A plan for the reduction of greenhouse gas emissions should:

(A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels;

(F) Be adopted in a public process following environmental review.

(2) Use with Later Activities. A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later

projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for the reduction of greenhouse gas emissions, an EIR must be prepared for the project. [emphasis added]

This language unambiguously conveys the intent of the GHG reduction plan is to analyze the proposed actions therein and translate them into project-specific measures that will help the City achieve its goals. However, the lack of detail and specificity in the CAP Update, coupled with a lack of substantial evidence that the goals are achievable through the vaguely-defined measures, ensure the CAP Update cannot meet these Section 15183.5 requirements.

The Project's CEQA streamlining framework spotlights this lack of detail and substance in the CAP Update. The Project envisions a transition from a CAP consistency checklist to a Municipal Code based CAP consistency analysis. However, the CAP Consistency Regulations drafted and available for Planning Commission review are extremely limited and only require urban tree canopy, electrical charging at bicycle parking spaces, and pedestrian paths.⁴ Clearly more is necessary to meet the CAP Update's ambitious GHG reduction targets. Nonetheless, Projects tiering from the CAP Update would ostensibly be able to determine their contributions to cumulative GHG impacts are less than significant by merely demonstrating compliance with these few regulations. This is nonsensical.

The Project lacks: deadlines for development of additional CAP Consistency Regulations; Technical Support Documentation;⁵ an implementation plan; a funding mechanism; and specific, detailed measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level. As reflected in CEQA Guidelines Section 15183.5(b)(2), project-level CEQA documents will be required to identify those aspects of the CAP Update applicable to the individual development projects. Because the CAP Consistency Regulations are so poorly defined, if the Project is approved, the City will either be forced to approve individual development projects that frustrate the City's GHG reduction goals (making future achievement that much harder), or the Project will be of minimal value as a CEQA tiering mechanism.

The City cannot lawfully allow individual projects to tier from the Project for the indeterminate future while it develops a true GHG reduction plan. A plan that complies with CEQA Guidelines Section 15183.5 must come first. The City may approve the CAP Update as an aspirational document and develop the implementation plan (the real GHG reduction plan)

⁴ PC Report, p. 4.

⁵ PC Report, Attachment 2, Draft Amendments to CEQA Significance Thresholds of the Land Development Manual

later as envisioned. But the Project cannot be approved as proposed: the CAP Update and Consistency Regulations are not supported by substantial evidence which (1) identifies specific measures to reduce GHG emissions; or (2) establishes such measures are achievable.

Lastly, the Planning Commission report also fails to mention the 2015 CAP serves as mitigation for the General Plan. As noted in the accompanying City Attorney Memorandum, mitigation measures must be enforceable and supported by evidence that the envisioned GHG reductions are achievable.⁶ The CAP Update is so vague that it necessarily fails both of these standards. Therefore, unless and until the CAP Update implementation plan (and funding mechanism) are adopted, the City cannot rely on the Project for CEQA tiering purposes or to ensure the General Plan's impacts are mitigated. Thus, projects tiering from the General Plan's CEQA document will be especially vulnerable to attack.

The CAP Update presents an opportunity to develop bold, progressive, and meaningful measures that will enable the City to secure state and federal funding, achieve real GHG reductions, and streamline project-level CEQA review for individual projects. As presented to the Planning Commission, the Project fails in all these respects.

If the City relies upon the Project for future project-specific analysis, significant impacts to GHG emissions will result. Should the City approve the CAP Update and Consistency Regulations in their current form, CAC and CERF urge the City to (1) suspend adoption of the updated CEQA thresholds of significance until the implementation plan is adopted and the Consistency Regulations incorporate meaningful project-level GHG reductions; and (2) immediately develop an implementation plan and funding mechanism to ensure the CAP Update 2030 and 2035 goals are met. Anything less will ensure the Project fails to meet judicial scrutiny.

Thank you in advance for your consideration.

Sincerely,

COAST LAW GROUP LLP



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Enclosures: Office of the City Attorney Memorandum MS 59, May 17, 2016

⁶ City Attorney Memo MS 59, p. 2 (enclosed herewith).