

OCT 25 2022

STATE CLEARINGHOUSE

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10 FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO – CENTRAL DIVISION

13 CLIMATE ACTION CAMPAIGN, a California
14 non-profit public benefit corporation, COASTAL
15 ENVIRONMENTAL RIGHTS FOUNDATION,
16 a California non-profit public benefit corporation

17 Petitioners,

18 v.

19 CITY OF SAN DIEGO, a California municipal
20 corporation; and DOES 1 through 20, inclusive,

21 Respondents,

22 DOES 21 through 40, inclusive,

23 Real Parties in Interest.

Case No.: 37-2022-00036430-CU-TT-CLT

**NOTICE TO RESPONSIBLE
AGENCIES, FILING OF CEQA
PETITION
(PRC § 21167.6.5)**

Dept: C-71
Judge: Hon. Gregory W Pollack

Date Filed: September 12, 2022
Trial Date: Not yet set

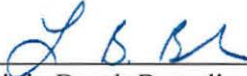
24 **To Responsible and Trustee Agencies Identified by Lead Agency, City of San Diego:**

25 **PLEASE TAKE NOTICE**, pursuant to Public Resources Code section 21167.6.5(c),
26 that on September 12, 2022, Climate Action Campaign and Coastal Environmental Rights
27 Foundation filed a Petition for Writ of Mandate under the California Environmental Quality Act
28 (“CEQA”) against the City of San Diego for the City’s failure to comply with the requirements

1 of CEQA, Public Resources Code section 21000 *et seq.*, and the CEQA guidelines, California
2 Code of Regulations section 15000 *et seq.*, in connection with the City's August 2, 2022 and
3 September 11, 2022 decision to approve the 2022 Climate Action Plan and Addendum to the
4 Final Program Environmental Impact Report No. 416603, as well as Climate Action Plan Update
5 Package including the CAP Consistency Regulations, Urban Tree Canopy Fee, and amendment
6 to the Land Development Manual Greenhouse Gas Emissions CEQA Thresholds of Significance.
7 A copy of the petition is attached to this notice.

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10 Dated: October 21, 2022

COAST LAW GROUP, LLP

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13 Livia Borak Beaudin
14 Attorneys for Petitioners,
15 CLIMATE ACTION CAMPAIGN and
16 COASTAL ENVIRONMENTAL RIGHTS
17 FOUNDATION
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/21/2022 at 09:58:00 AM
Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

Case No.: 37-2022-00036430-CU-TT-CTL

**FIRST AMENDED VERIFIED
PETITION FOR WRIT OF MANDATE**

[IMAGED FILE]

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

Petitioners CLIMATE ACTION CAMPAIGN (“CAC”) and COASTAL ENVIRONMENTAL RIGHTS FOUNDATION (“CERF”) (collectively “Petitioners”) hereby request relief as follows:

INTRODUCTION

1. The Intergovernmental Panel on Climate Change (IPCC) is the United Nations body for assessing the science related to climate change. The IPCC’s 2022 Climate Change Sixth Assessment Report (“IPCC Sixth Assessment Report”) finds:

Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability. Some development and adaptation efforts have reduced vulnerability. Across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected. The rise in weather and climate extremes has led to some irreversible impacts as natural and human systems are pushed beyond their ability to adapt. (IPCC Sixth Assessment Report, Summary for Policymakers, p. 9).

2. The IPCC also warns global warming of 1.5 degrees Celsius in the near-term (2021-2040), would cause unavoidable increases in multiple climate hazards and present multiple risks to ecosystems and humans. “Near-term actions that limit global warming to close to 1.5°C would substantially reduce projected losses and damages related to climate change in human systems and ecosystems, compared to higher warming levels, but cannot eliminate them all.”(Id. at p. 13; City of San Diego 2022 Climate Action Plan, p. 10).

3. “Just as the evidence of its adverse impacts across the globe is irrefutable, climate change is fundamentally altering California. It is no longer a distant threat that lies somewhere beyond the horizon. It is right here, right now, with growing intensity that is already adversely affecting our communities and our environment.” (California Air Resources Control Board (“CARB”) 2022 Draft Scoping Plan, p. 1).

4. Likewise, the City of San Diego already suffers from the impacts of climate change in the form of drought, air pollution, extreme heat, species stress, negative health effects, wildfires, and floods. These disasters will only become more severe as global greenhouse gas emissions continue to poison the atmosphere. (City of San Diego, Resolution Number 312891:

1 Declaring a Climate Emergency and the Need for Accelerated Action to Address the Climate
2 Crisis, dated March 25, 2020).

3 5. Local action by cities can support and amplify statewide and global efforts to
4 reduce greenhouse gas emissions (“GHGs”). (CARB 2022 Draft Scoping Plan, p. 217).
5 “Multiple legal tools are open to local jurisdictions to support this approach, including a climate
6 action plan (CAP), sustainability plan, or inclusion of a plan for reduction of GHG emissions and
7 climate actions within a jurisdiction’s general plan. Any of these can help align zoning,
8 permitting, and other local tools with climate action.” (Id. at p. 218).

9 6. To address its contribution to GHG emissions, Respondent City of San Diego
10 (“Respondent” or “City”) adopted a Climate Action Plan (“CAP”) and certified a programmatic
11 Environmental Impact Report (“EIR”) in 2015.

12 7. The following year, the City adopted a “checklist” to assess individual project
13 compliance with the CAP and allow for California Environmental Quality Act (“CEQA”)
14 streamlining.

15 8. Since that time, the City has made little progress toward achieving its GHG
16 reduction goals – 90 percent of the City’s 2015 CAP strategies were never implemented. The
17 City achieved less than half of its 2020 target to reduce residential and municipal energy use. It
18 likewise barely made a dent in its zero emission vehicle (“ZEV”) municipal fleet goal and fell far
19 short of its land use and transportation goals.¹ The City has also consistently failed to adopt
20 Community Plan Updates which help it achieve its mode share goals.²

21 9. Year after year, the City has delayed implementation of the majority of CAP
22 strategies and refused to provide a detailed funding analysis of implementation and/or 5-year
23 budget outlooks, resulting in minimal local GHG reduction outcomes.

24 10. Recognizing the urgency of the climate crisis, the City adopted even more
25 ambitious emission reduction targets in its 2022 CAP Update with a goal of net-zero GHG

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27 ¹ <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

28 ² *Politics Report: The Climate Action Farce*, Voice of San Diego, Andrew Keatts and Scott
Lewis, Nov. 13, 2021

1 emissions by 2035 and an interim 2030 goal of an approximately 60 percent reduction in GHG
2 emissions from the baseline year (2019).

3 11. Upon adoption of the 2022 CAP, Mayor Todd Gloria aptly acknowledged the
4 scale of the climate crisis:

5 “The window to reverse the dangerous trends of climate change is rapidly closing, and
6 this moment demands aggressive action...Implementing this more ambitious plan won’t
7 be easy, but the financial cost and human consequences of inaction are almost
8 unimaginable. We must act now.”³

9 12. The 2022 CAP is truly an aspirational policy document. But to achieve its 2030
10 and 2035 emission targets, and to comply with CEQA, the City must do more than adopt lofty
11 goals. It must begin implementation and funding of the CAP now.

12 13. Unfortunately, the City’s 2022 CAP does not include the detail or mechanisms to
13 ensure its success. In order to achieve its purpose as Plan for the Reduction of Greenhouse Gas
14 Emissions pursuant to CEQA, more is required.

15 14. As a result, the City abused its discretion in adopting the 2022 CAP, supporting
16 Addendum to the EIR, revised CEQA Thresholds of Significance, and supporting ordinances.

17 15. Petitioners accordingly request that this Court issue a writ of mandate under Cal.
18 Code of Civil Procedure sections 1085 and 1094.5 directing Respondent to vacate and set aside
19 its approvals thereof.

20 JURISDICTION AND VENUE

21 16. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5, and
22 187 of the California Code of Civil Procedure and sections 21168 and 21168.5 of the Public
23 Resources Code.

24 17. Venue for this action properly lies in the San Diego County Superior Court
25 because Respondent CITY OF SAN DIEGO and the Project are located in San Diego County.

26
27 ³ August 2, 2022 Media Release, San Diego’s Landmark 2022 Climate Action Plan Unanimously
28 Approved by City Council, available at https://www.sandiego.gov/sites/default/files/08-02-22_climate_action_plan_approved_by_city_council_news_release.pdf

PARTIES

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

19. Petitioner CERF is, and at all times herein mentioned has been, a non-profit public benefit corporation, organized and existing under the laws of the State of California, with its principal place of business in Encinitas, California.

20. Petitioners meets all organizational standing requirements for prosecuting this action.

21. CAC's mission is to stop the climate crisis. CAC is unique in the San Diego and southern California region in that it is solely focused on stopping the climate crisis through policy action. CAC is a small organization with big goals and the ingenuity, creativity, and courage to build change from the ground up, shift our culture, fight powerful institutions, and stop the climate crisis. CAC believes change happens when communities come together to pursue big ideas. The interests CAC seeks to protect in this action are therefore germane to its fundamental purpose; and CAC has a geographical nexus with the affected environment of San Diego.

22. CERF was founded by surfers in North San Diego County and is active throughout California's coastal communities. CERF was established to advocate for the protection and enhancement of coastal natural resources and the quality of life for coastal residents. The interests CERF seeks to protect in this action are therefore germane to its fundamental purpose; and CERF has a geographical nexus with the affected environment of San Diego.

23. CERF and CAC submitted written comments to the City objecting to and commenting on the Project and related approvals.

24. CAC and CERF further meet all associational standing requirements for prosecuting this action. Petitioners and their members are beneficially interested in the subject matter of this petition and adversely affected by Respondent City's unlawful conduct as more

1 fully alleged below. The injuries of CAC, CERF, and their members are actual, concrete injuries
2 which will be redressed by the relief sought herein. Petitioners bring this action on their own
3 behalf, and on behalf of their members who live in the City and San Diego County. The claims
4 asserted and the relief sought in this petition do not require that Petitioners' individual members
5 directly participate as parties to this lawsuit.

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

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

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

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

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STATEMENT OF FACTS

29. The City of San Diego is the eighth most populous city in the United States and second most populous in California (after Los Angeles), with an estimated 2020 population of 1,386,932.

30. As a statewide leader on climate issues, in 2020 the City adopted a resolution declaring a climate emergency that poses a threat to the well-being of San Diego, its inhabitants, economy, and environment.

City's Approval of the 2022 CAP Update Package

31. On August 2, 2022, the City adopted the 2022 Climate Action Plan and Addendum to Final Program EIR No. 416603, SCH No. 2015021053 for the Climate Action Plan Update and adopting the MMRP ("Addendum"), items 330a and 330b on the August 2, 2022 Agenda respectively.

32. That same day, the City also adopted the Urban Tree Canopy Fee and amendment to the Land Development Manual, Appendix A, California Environmental Quality Act Significance Thresholds to Amend the Greenhouse Gas Emissions Threshold ("CEQA Thresholds of Significance"), Items 331a and 331b on the Agenda respectively.

33. On August 2, 2022, the City also introduced an Ordinance, O-2023-4, amending the San Diego Municipal Code relating to Climate Action Plan Consistency Regulations ("Consistency Regulations"), Item 331c on the Agenda. The new Consistency Regulations replace the 2015 CAP Checklist.

34. On August 12, 2022, the City filed a Notice of Determination pursuant to CEQA for its approval of the 2022 CAP and Addendum.

35. On September 2, 2022, Petitioners sent the City a Notice of Intent to Sue in connection with the City's approval of the 2022 CAP, Addendum, Consistency Regulations, Urban Tree Canopy Fee, and amendment to the CEQA Thresholds of Significance for alleged CEQA violations.

36. On September 13, 2022, the City approved Ordinance O-2023-4 upon second reading.

1 37. The City filed a Notice of Determination for its approval of the Ordinance on
2 September 16, 2022.

3 38. The 2022 CAP, Addendum, Urban Tree Canopy Fee, CEQA Thresholds of
4 Significance, and Consistency Regulations are collectively referred to as the 2022 CAP Update
5 Package ("Project").

6 **CEQA Plans for the Reduction of Greenhouse Gas Emissions**

7 39. 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 Guidelines⁴ Section 15183.5(b)). The City's 2022 CAP is intended to serve as such a plan.

10 40. The 2022 CAP modeled City GHG emissions for 2019 and projected future GHG
11 emissions to 2030 and 2035. To meet emission targets in 2030 the City will have to reduce
12 emissions by 6,309,000 metric tons. The City's 2035 target is net zero emissions.

13 41. The CAP identified six strategies to reduce its emissions: (1) Decarbonization of
14 the Built Environment; (2) Access to Clean & Renewable Energy; (3) Mobility & Land Use; (4)
15 Circular Economy & Clean Communities; (5) Resilient Infrastructure and Healthy Ecosystems;
16 and (6) Emerging Climate Actions.

17 42. "These strategies are comprised of associated targets, measures, actions
18 (quantified) and supporting actions (qualitative; not yet quantifiable) that the City can use to
19 avoid or mitigate (reduce) future GHG emissions." (2022 CAP, p. 41).

20 43. Of these six strategies, the biggest emission reduction will come from Strategy 1,
21 Decarbonization of the Built Environment. In 2030, reductions from Strategy 1 are projected to
22 be 1,012,139 metric tons of carbon dioxide equivalent ("MTCO_{2e}"). Five years later, in 2035,
23 reductions from Strategy 1 double (to 2,056,488 MTCO_{2e}).

24 44. The City is far from reaching its ambitious 2022 CAP goal of 35 percent active
25 transportation by 2035. Active transportation currently only comprises seven percent of Citywide
26 trips.

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⁴ 14 Cal. Code Regs §§15000 *et. seq.*

1 45. In order to ensure the necessary reductions are achieved by 2030 and 2035 and
2 establish a mechanism to monitor the CAP's progress, the City must adopt interim goals.

3 46. As a purported qualified greenhouse gas reduction plan, the CAP must meet the
4 requirements for all first-tier CEQA documents and impose effectively enforceable requirements
5 and measures with defined performance standards.

6 47. Because future discretionary projects will rely on the CAP, and any "group of
7 measures, including performance standards" to achieve the specified reductions and forgo further
8 CEQA GHG emissions analysis, the CAP's reduction measures must be considered mitigation
9 measures for purposes of CEQA and must therefore comply with CEQA requirements.

10 48. CEQA Guidelines Section 15183.5(b)(2) requires an environmental document
11 that relies on the CAP for a cumulative impacts analysis to identify those requirements specified
12 in the plan that apply to the project, and, if those requirements are not otherwise binding and
13 enforceable, incorporate those requirements as mitigation measures applicable to the project.

14 49. To enable such analysis, the City updated its CEQA Thresholds of Significance
15 and created the CAP Consistency Regulations. The new CEQA Thresholds of Significance
16 create a presumption of consistency with the CAP where a project complies with the CAP
17 Consistency Regulations. However, these Consistency Regulations fail to ensure new
18 development will in fact comply with the CAP and make applicable CAP requirements
19 enforceable.

20 50. The 2022 CAP Consistency Regulations do not incorporate most of the CAP
21 measures or actions, including those implementing Strategy 1 – which results in the biggest
22 emission reductions.

23 51. Further, because many requirements for new development projects have not been
24 translated into implementation measures or actions, they are clearly not enforceable. Instead of
25 requiring projects to conduct such analysis on a project-by-project basis, the Consistency
26 Regulations simply omit these requirements altogether.

27 52. The City's "Consistency Regulation Technical Support Document" confirms
28 some of the most ambitious aspects of the CAP, including building decarbonization, are absent

1 from the Consistency Regulations: “To avoid conflicts with these ongoing efforts, the CAP
2 Consistency Regulations do not include requirements for building decarbonization.” (CAP
3 Consistency Regulations Technical Support Documentation, p. 8).

4 53. To purportedly avoid conflict with ongoing efforts, the Consistency Regulations
5 simply exempt new development from those efforts altogether.

6 54. The CAP and Consistency Regulations therefore do not include measures and
7 performance standards that substantial evidence demonstrates, if implemented on a project-by-
8 project basis, would collectively achieve the specified emissions level. (CEQA Guidelines
9 Section 15183.5(b)(1)(D)).

10 55. In addition, the 2022 CAP goals, strategies, and measures themselves are not
11 supported by defined actions and performance measures. Many of the 2022 CAP measures
12 require future planning efforts with no deadline for compliance (such as the Master Mobility
13 Plan). A comprehensive Implementation Plan that will detail the milestones, responsible entities
14 and City Departments, associated costs with possible funding sources and planned timing for
15 implementation has not been prepared. (2022 CAP, p. 41). Therefore, evidence supporting the
16 feasibility of achieving the CAP goals is lacking.

17 56. The 2022 CAP Update also serves as mitigation for the General Plan. Because the
18 CAP’s measures and actions are not supported by substantial evidence, the City cannot ensure
19 the General Plan’s climate change impacts are in fact mitigated.

20 57. Petitioners have exhausted all administrative remedies by providing verbal and
21 written comments to City staff and elected officials prior to Project approval, requesting
22 compliance with CEQA, and the completion of full and adequate environmental review and
23 mitigation. On information and belief, all issues raised in this petition were raised in a timely
24 manner before Respondent by Petitioners, other members of the public or public agencies.

25 58. Petitioners have a beneficial right to, and a beneficial interest in, Respondent’s
26 fulfillment of all its legal duties, as alleged herein.

27 59. Petitioners have no plain, speedy, or adequate remedy at law. Unless this Court
28 enjoins and sets aside its action, the City will approve projects with climate change impacts

1 without an adequate, science-based environmental analysis of those impacts, and without
2 adequate, science-based mitigation for those impacts. The climate-altering GHG emissions from
3 these and future such projects, emissions that will remain in the atmosphere and destabilize the
4 climate for decades or centuries, will have lasting and adverse effects on the climate, to the
5 detriment of all residents of San Diego County and the State of California.

6 60. This petition is timely filed in accordance with Public Resources Code section
7 21167 and CEQA Guidelines section 15112.

8 61. On September 2, 2022, Petitioners sent the City a Notice of Intent to Sue in
9 compliance with Public Resources Code Section 21167.5. A true and correct copy of this Notice
10 is attached hereto as Exhibit A.

11 62. Respondent has abused its discretion and failed to proceed in the manner required
12 by law in the following ways:

13 **FIRST CAUSE OF ACTION**

14 **Violation of CEQA**

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

16 63. Petitioners incorporate by reference all preceding paragraphs.

17 64. CEQA requires the City to conduct adequate environmental review prior to
18 making any formal decision regarding projects. (CEQA Guidelines § 15004).

19 65. CEQA requires that an agency prepare an EIR when it proposes to approve or
20 carry out a discretionary project that may have a significant impact on the environment, and to
21 mitigate or avoid those significant impacts whenever feasible to do so. (Pub. Res. Code §§
22 21002.1, 21061, 21080(a)).

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

28 67. The City did not adequately analyze or mitigate the significant impacts of the

1 2022 CAP Update Package.

2 68. The City failed to specify criteria or adequate standards to ensure the 2022 CAP's
3 emission reductions will be achieved and the reduction "strategies" represent real, additional
4 reduction of GHGs, enforceable as project conditions at the time of discretionary approval.
5 Absent such standards and criteria, the use of the CAP for analysis and/or mitigation for
6 increases in GHG emissions from future projects violates CEQA's requirement that mitigation
7 measures be additional to any other legal requirement or existing program and be fully
8 enforceable. (CEQA Guidelines, §§ 15126.4(a) and (c), 15183.5(b)(1)(D)).

9 69. Substantial evidence does not support the City's findings that the 2022 CAP
10 strategies and measures will result in the specified reductions in the appropriate timeframe, if at
11 all.

12 70. The CAP's lack of detail, defined performance standards, and enforceability
13 therefore results in the deferral of mitigation or complete lack thereof for the General Plan, the
14 CAP and future projects which tier from the CAP. (CEQA Guidelines Section 15126.4(a)(1)(B)).

15 71. CEQA Guideline Section 15064.4 requires an EIR to assess a project's GHG
16 emissions based on a "good-faith effort, based to the extent possible on scientific and factual
17 data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a
18 project." Further, "[t]he agency's analysis should consider a timeframe that is appropriate for the
19 project." (CEQA Guidelines §15064.4(b)). Despite these clear mandates, both the CAP and
20 Addendum fail to assess the CAP's ability to meet its 2030 and 2035 reduction targets.

21 72. The City's finding that the CAP's GHG impact would be less than significant is
22 not supported by substantial evidence.

23 73. All projects which tier from the CAP and rely on the Consistency Regulations to
24 mitigate greenhouse gas emissions will likewise result in a significant impact to GHG emissions.

25 74. In light of the CAP and Addendum's failure to assess and disclose the Project's
26 significant GHG impacts, including those beyond 2035, the CAP cannot constitute a qualified
27 greenhouse gas reduction plan pursuant to CEQA Guidelines Section 15183.5(b).

28 75. The 2022 CAP fails to establish a level below which contribution to GHG

emissions would not be cumulatively considerable.

76. The 2022 CAP Update Package further fails to 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.

77. As a result of the foregoing defects, Respondent City prejudicially abused its discretion. Accordingly, Respondent City's CEQA determination and Project approvals must be set aside.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

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

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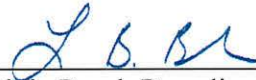
1 5. Such other and further relief as the Court deems just and proper.

2 Dated: September 21, 2022

COAST LAW GROUP, LLP

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Livia Borak Beaudin

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Attorneys for Petitioners,

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CLIMATE ACTION CAMPAIGN and
COASTAL ENVIRONMENTAL RIGHTS
FOUNDATION

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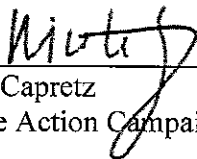
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VERIFICATION

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 September 20, 2022 in San Diego, California.



Nicole Capretz
Climate Action Campaign

1 VERIFICATION

2 I, Sara Ochoa, declare:

3 I am the Programs Director of Petitioner Coastal Environmental Rights Foundation and
4 am authorized to make this verification on its behalf. I have read the foregoing Petition and know
5 the contents thereof. The facts alleged therein are true of my own personal knowledge, except as
6 to those stated on information and belief, and as to those matters I believe them to be true. I
7 declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9 Executed on September 20, 2022 in Chula Vista, California.

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10 FOUNDATION

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 COUNTY OF SAN DIEGO – CENTRAL DIVISION

15 CLIMATE ACTION CAMPAIGN, a California
16 non-profit public benefit corporation, COASTAL
17 ENVIRONMENTAL RIGHTS FOUNDATION,
18 a California non-profit public benefit corporation

19 Petitioners,

20 v.

21 CITY OF SAN DIEGO, a California municipal
22 corporation; and DOES 1 through 20, inclusive,

23 Respondents,

24
25 DOES 21 through 40, inclusive,

26 Real Parties in Interest.
27
28

Case No.:37-2022-00036430-CU-TT-CLT

PROOF OF SERVICE

29 At the time of service, I was over 18 years of age and not a party to this action. I am
30 employed in the County of San Diego, State of California. My business address is 1140 South
31 Coast Highway 101, Encinitas, California, 92024:

On October 21, 2022, I caused to be served the following document(s):

- NOTICE TO RESPONSIBLE AGENCIES PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT

- FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE

on all interested parties in this action as follows:

- | | |
|---|--------------------|
| 1. US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460 | Responsible Agency |
| 2. US Fish and Wildlife Service
1849 C Street, N.W.
Washington, DC 20240 | Responsible Agency |
| 3. US Fish and Wildlife Service
610 W Ash Street #1103
San Diego, California 92101 | Responsible Agency |
| 4. Caltrans, District 11
4050 Taylor Street
San Diego, California 92110 | Responsible Agency |
| 5. California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, California 94244 | Responsible Agency |
| 6. Department of Water Resources
P.O. Box 942836
Sacramento, California 94236 | Responsible Agency |
| 7. Regional Water Quality Control Board
Region 9
2375 Northside Drive, Suite 100
San Diego, California 92108 | Responsible Agency |
| 8. California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, California 95814 | Responsible Agency |
| 9. State Clearinghouse
1400 10 th Street
Sacramento, California 95814 | Responsible Agency |
| 10. California Coastal Commission
455 Market Street, Suite 300
San Francisco, California 94105 | Responsible Agency |

- 1 11. State Water Resources Control Board Responsible Agency
2 P.O. Box 100
3 Sacramento, California 95912
 - 4 12. Native American Heritage Commission Responsible Agency
5 1550 Harbor Blvd, Suite 100
6 West Sacramento, California 95619
 - 7 13. Office of Planning and Research Responsible Agency
8 1400 10th Street
9 Sacramento, California 95814
 - 10 14. Air Pollution Control District Responsible Agency
11 10124 Old Grove Road
12 San Diego, California 92131
 - 13 15. Department of Environmental Health Responsible Agency
14 P.O. Box 129261
15 San Diego, California 92112
 - 16 16. Department of Planning and Land Use Responsible Agency
17 5510 Overland Avenue
18 San Diego, California 92123
 - 19 17. County Water Authority Responsible Agency
20 4677 Overland Ave.
21 San Diego, California 92123
- 22 ☒ **(BY MAIL)** As follows:
23 ☒ I placed such envelope with postage thereon prepaid in the United States mail at Encinitas, CA.
24 ☒ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Encinitas, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation or postage meter date is more than one day after date of deposit for mailing in affidavit.
25 ☐ **(BY ELECTRONIC MAIL)** I emailed such document(s) via PDF to the email address(es) noted above.
26 ☐ **(BY FACSIMILE)** I sent such document(s) via facsimile to the number(s) noted above.
27 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

28 Executed: October 21, 2022


Kristen Northrop

1 Marco A. Gonzalez (SBN 190832)
2 Livia B. Beaudin (SBN 259434)
3 COAST LAW GROUP, LLP
4 1140 South Coast Highway 101
5 Encinitas, CA 92024
6 Telephone: 760-942-8505
7 livia@coastlaw.com

8 Attorneys for Petitioners,
9 CLIMATE ACTION CAMPAIGN and COASTAL ENVIRONMENTAL RIGHTS
10 FOUNDATION

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Governor's Office of Planning & Research

OCT 25 2022

STATE CLEARINGHOUSE

Case No.:37-2022-00036430-CU-TT-CLT

**NOTICE TO RESPONSIBLE
AGENCIES, FILING OF CEQA
PETITION
(PRC § 21167.6.5)**

Dept: C-71
Judge: Hon. Gregory W Pollack

Date Filed: September 12, 2022
Trial Date: Not yet set

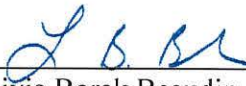
To Responsible and Trustee Agencies Identified by Lead Agency, City of San Diego:

PLEASE TAKE NOTICE, pursuant to Public Resources Code section 21167.6.5(c),
that on September 12, 2022, Climate Action Campaign and Coastal Environmental Rights
Foundation filed a Petition for Writ of Mandate under the California Environmental Quality Act
("CEQA") against the City of San Diego for the City's failure to comply with the requirements

1 of CEQA, Public Resources Code section 21000 *et seq.*, and the CEQA guidelines, California
2 Code of Regulations section 15000 *et seq.*, in connection with the City's August 2, 2022 and
3 September 11, 2022 decision to approve the 2022 Climate Action Plan and Addendum to the
4 Final Program Environmental Impact Report No. 416603, as well as Climate Action Plan Update
5 Package including the CAP Consistency Regulations, Urban Tree Canopy Fee, and amendment
6 to the Land Development Manual Greenhouse Gas Emissions CEQA Thresholds of Significance.
7 A copy of the petition is attached to this notice.

8
9
10 Dated: October 21, 2022

COAST LAW GROUP, LLP

11
12 
13 Livia Borak Beaudin
14 Attorneys for Petitioners,
15 CLIMATE ACTION CAMPAIGN and
16 COASTAL ENVIRONMENTAL RIGHTS
17 FOUNDATION
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14 COUNTY OF SAN DIEGO – CENTRAL DIVISION

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16 non-profit public benefit corporation, COASTAL)
17 ENVIRONMENTAL RIGHTS FOUNDATION, a)
18 California non-profit public benefit corporation)

19 Petitioners,

20 v.

21 CITY OF SAN DIEGO, a California municipal)
22 corporation; and DOES 1 through 20, inclusive,)

23 Respondents,

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25 DOES 21 through 40, inclusive,)
26)
27)
28)

Real Parties in Interest.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/21/2022 at 09:58:00 AM
Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

Case No.: 37-2022-00036430-CU-TT-CTL

**FIRST AMENDED VERIFIED
PETITION FOR WRIT OF MANDATE**

[IMAGED FILE]

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

1 Petitioners CLIMATE ACTION CAMPAIGN (“CAC”) and COASTAL ENVIRONMENTAL
2 RIGHTS FOUNDATION (“CERF”) (collectively “Petitioners”) hereby request relief as follows:

3 INTRODUCTION

4 1. The Intergovernmental Panel on Climate Change (IPCC) is the United Nations
5 body for assessing the science related to climate change. The IPCC’s 2022 Climate Change Sixth
6 Assessment Report (“IPCC Sixth Assessment Report”) finds:

7 Human-induced climate change, including more frequent and intense extreme events,
8 has caused widespread adverse impacts and related losses and damages to nature and
9 people, beyond natural climate variability. Some development and adaptation efforts have
10 reduced vulnerability. Across sectors and regions the most vulnerable people and systems
11 are observed to be disproportionately affected. The rise in weather and climate extremes
12 has led to some irreversible impacts as natural and human systems are pushed beyond
13 their ability to adapt. (IPCC Sixth Assessment Report, Summary for Policymakers, p. 9).

14 2. The IPCC also warns global warming of 1.5 degrees Celsius in the near-term
15 (2021-2040), would cause unavoidable increases in multiple climate hazards and present
16 multiple risks to ecosystems and humans. “Near-term actions that limit global warming to close
17 to 1.5°C would substantially reduce projected losses and damages related to climate change in
18 human systems and ecosystems, compared to higher warming levels, but cannot eliminate them
19 all.”(Id. at p. 13; City of San Diego 2022 Climate Action Plan, p. 10).

20 3. “Just as the evidence of its adverse impacts across the globe is irrefutable, climate
21 change is fundamentally altering California. It is no longer a distant threat that lies somewhere
22 beyond the horizon. It is right here, right now, with growing intensity that is already adversely
23 affecting our communities and our environment.” (California Air Resources Control Board
24 (“CARB”) 2022 Draft Scoping Plan, p. 1).

25 4. Likewise, the City of San Diego already suffers from the impacts of climate
26 change in the form of drought, air pollution, extreme heat, species stress, negative health effects,
27 wildfires, and floods. These disasters will only become more severe as global greenhouse gas
28 emissions continue to poison the atmosphere. (City of San Diego, Resolution Number 312891:

1 Declaring a Climate Emergency and the Need for Accelerated Action to Address the Climate
2 Crisis, dated March 25, 2020).

3 5. Local action by cities can support and amplify statewide and global efforts to
4 reduce greenhouse gas emissions (“GHGs”). (CARB 2022 Draft Scoping Plan, p. 217).
5 “Multiple legal tools are open to local jurisdictions to support this approach, including a climate
6 action plan (CAP), sustainability plan, or inclusion of a plan for reduction of GHG emissions and
7 climate actions within a jurisdiction’s general plan. Any of these can help align zoning,
8 permitting, and other local tools with climate action.” (Id. at p. 218).

9 6. To address its contribution to GHG emissions, Respondent City of San Diego
10 (“Respondent” or “City”) adopted a Climate Action Plan (“CAP”) and certified a programmatic
11 Environmental Impact Report (“EIR”) in 2015.

12 7. The following year, the City adopted a “checklist” to assess individual project
13 compliance with the CAP and allow for California Environmental Quality Act (“CEQA”) streamlining.
14

15 8. Since that time, the City has made little progress toward achieving its GHG
16 reduction goals – 90 percent of the City’s 2015 CAP strategies were never implemented. The
17 City achieved less than half of its 2020 target to reduce residential and municipal energy use. It
18 likewise barely made a dent in its zero emission vehicle (“ZEV”) municipal fleet goal and fell far
19 short of its land use and transportation goals.¹ The City has also consistently failed to adopt
20 Community Plan Updates which help it achieve its mode share goals.²

21 9. Year after year, the City has delayed implementation of the majority of CAP
22 strategies and refused to provide a detailed funding analysis of implementation and/or 5-year
23 budget outlooks, resulting in minimal local GHG reduction outcomes.

24 10. Recognizing the urgency of the climate crisis, the City adopted even more
25 ambitious emission reduction targets in its 2022 CAP Update with a goal of net-zero GHG
26

27 ¹ <https://www.sandiego.gov/2020cap>; see also, Performance Audit of City’s CAP, p. 16,
28 https://www.sandiego.gov/sites/default/files/21-009_cap.pdf

² *Politics Report: The Climate Action Farce*, Voice of San Diego, Andrew Keatts and Scott Lewis, Nov. 13, 2021

1 emissions by 2035 and an interim 2030 goal of an approximately 60 percent reduction in GHG
2 emissions from the baseline year (2019).

3 11. Upon adoption of the 2022 CAP, Mayor Todd Gloria aptly acknowledged the
4 scale of the climate crisis:

5 “The window to reverse the dangerous trends of climate change is rapidly closing, and
6 this moment demands aggressive action...Implementing this more ambitious plan won’t
7 be easy, but the financial cost and human consequences of inaction are almost
8 unimaginable. We must act now.”³

9 12. The 2022 CAP is truly an aspirational policy document. But to achieve its 2030
10 and 2035 emission targets, and to comply with CEQA, the City must do more than adopt lofty
11 goals. It must begin implementation and funding of the CAP now.

12 13. Unfortunately, the City’s 2022 CAP does not include the detail or mechanisms to
13 ensure its success. In order to achieve its purpose as Plan for the Reduction of Greenhouse Gas
14 Emissions pursuant to CEQA, more is required.

15 14. As a result, the City abused its discretion in adopting the 2022 CAP, supporting
16 Addendum to the EIR, revised CEQA Thresholds of Significance, and supporting ordinances.

17 15. Petitioners accordingly request that this Court issue a writ of mandate under Cal.
18 Code of Civil Procedure sections 1085 and 1094.5 directing Respondent to vacate and set aside
19 its approvals thereof.

20 JURISDICTION AND VENUE

21 16. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5, and
22 187 of the California Code of Civil Procedure and sections 21168 and 21168.5 of the Public
23 Resources Code.

24 17. Venue for this action properly lies in the San Diego County Superior Court
25 because Respondent CITY OF SAN DIEGO and the Project are located in San Diego County.

26
27 ³ August 2, 2022 Media Release, San Diego’s Landmark 2022 Climate Action Plan Unanimously
28 Approved by City Council, available at https://www.sandiego.gov/sites/default/files/08-02-22_climate_action_plan_approved_by_city_council_news_release.pdf

PARTIES

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

19. Petitioner CERF is, and at all times herein mentioned has been, a non-profit public benefit corporation, organized and existing under the laws of the State of California, with its principal place of business in Encinitas, California.

20. Petitioners meets all organizational standing requirements for prosecuting this action.

21. CAC's mission is to stop the climate crisis. CAC is unique in the San Diego and southern California region in that it is solely focused on stopping the climate crisis through policy action. CAC is a small organization with big goals and the ingenuity, creativity, and courage to build change from the ground up, shift our culture, fight powerful institutions, and stop the climate crisis. CAC believes change happens when communities come together to pursue big ideas. The interests CAC seeks to protect in this action are therefore germane to its fundamental purpose; and CAC has a geographical nexus with the affected environment of San Diego.

22. CERF was founded by surfers in North San Diego County and is active throughout California's coastal communities. CERF was established to advocate for the protection and enhancement of coastal natural resources and the quality of life for coastal residents. The interests CERF seeks to protect in this action are therefore germane to its fundamental purpose; and CERF has a geographical nexus with the affected environment of San Diego.

23. CERF and CAC submitted written comments to the City objecting to and commenting on the Project and related approvals.

24. CAC and CERF further meet all associational standing requirements for prosecuting this action. Petitioners and their members are beneficially interested in the subject matter of this petition and adversely affected by Respondent City's unlawful conduct as more

1 fully alleged below. The injuries of CAC, CERF, and their members are actual, concrete injuries
2 which will be redressed by the relief sought herein. Petitioners bring this action on their own
3 behalf, and on behalf of their members who live in the City and San Diego County. The claims
4 asserted and the relief sought in this petition do not require that Petitioners' individual members
5 directly participate as parties to this lawsuit.

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

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

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

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

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1 37. The City filed a Notice of Determination for its approval of the Ordinance on
2 September 16, 2022.

3 38. The 2022 CAP, Addendum, Urban Tree Canopy Fee, CEQA Thresholds of
4 Significance, and Consistency Regulations are collectively referred to as the 2022 CAP Update
5 Package (“Project”).

6 **CEQA Plans for the Reduction of Greenhouse Gas Emissions**

7 39. 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 Guidelines⁴ Section 15183.5(b)). The City’s 2022 CAP is intended to serve as such a plan.

10 40. The 2022 CAP modeled City GHG emissions for 2019 and projected future GHG
11 emissions to 2030 and 2035. To meet emission targets in 2030 the City will have to reduce
12 emissions by 6,309,000 metric tons. The City’s 2035 target is net zero emissions.

13 41. The CAP identified six strategies to reduce its emissions: (1) Decarbonization of
14 the Built Environment; (2) Access to Clean & Renewable Energy; (3) Mobility & Land Use; (4)
15 Circular Economy & Clean Communities; (5) Resilient Infrastructure and Healthy Ecosystems;
16 and (6) Emerging Climate Actions.

17 42. “These strategies are comprised of associated targets, measures, actions
18 (quantified) and supporting actions (qualitative; not yet quantifiable) that the City can use to
19 avoid or mitigate (reduce) future GHG emissions.” (2022 CAP, p. 41).

20 43. Of these six strategies, the biggest emission reduction will come from Strategy 1,
21 Decarbonization of the Built Environment. In 2030, reductions from Strategy 1 are projected to
22 be 1,012,139 metric tons of carbon dioxide equivalent (“MTCO_{2e}”). Five years later, in 2035,
23 reductions from Strategy 1 double (to 2,056,488 MTCO_{2e}).

24 44. The City is far from reaching its ambitious 2022 CAP goal of 35 percent active
25 transportation by 2035. Active transportation currently only comprises seven percent of Citywide
26 trips.

27
28

⁴ 14 Cal. Code Regs §§15000 *et. seq.*

1 45. In order to ensure the necessary reductions are achieved by 2030 and 2035 and
2 establish a mechanism to monitor the CAP's progress, the City must adopt interim goals.

3 46. As a purported qualified greenhouse gas reduction plan, the CAP must meet the
4 requirements for all first-tier CEQA documents and impose effectively enforceable requirements
5 and measures with defined performance standards.

6 47. Because future discretionary projects will rely on the CAP, and any "group of
7 measures, including performance standards" to achieve the specified reductions and forgo further
8 CEQA GHG emissions analysis, the CAP's reduction measures must be considered mitigation
9 measures for purposes of CEQA and must therefore comply with CEQA requirements.

10 48. CEQA Guidelines Section 15183.5(b)(2) requires an environmental document
11 that relies on the CAP for a cumulative impacts analysis to identify those requirements specified
12 in the plan that apply to the project, and, if those requirements are not otherwise binding and
13 enforceable, incorporate those requirements as mitigation measures applicable to the project.

14 49. To enable such analysis, the City updated its CEQA Thresholds of Significance
15 and created the CAP Consistency Regulations. The new CEQA Thresholds of Significance
16 create a presumption of consistency with the CAP where a project complies with the CAP
17 Consistency Regulations. However, these Consistency Regulations fail to ensure new
18 development will in fact comply with the CAP and make applicable CAP requirements
19 enforceable.

20 50. The 2022 CAP Consistency Regulations do not incorporate most of the CAP
21 measures or actions, including those implementing Strategy 1 – which results in the biggest
22 emission reductions.

23 51. Further, because many requirements for new development projects have not been
24 translated into implementation measures or actions, they are clearly not enforceable. Instead of
25 requiring projects to conduct such analysis on a project-by-project basis, the Consistency
26 Regulations simply omit these requirements altogether.

27 52. The City's "Consistency Regulation Technical Support Document" confirms
28 some of the most ambitious aspects of the CAP, including building decarbonization, are absent

1 from the Consistency Regulations: “To avoid conflicts with these ongoing efforts, the CAP
2 Consistency Regulations do not include requirements for building decarbonization.” (CAP
3 Consistency Regulations Technical Support Documentation, p. 8).

4 53. To purportedly avoid conflict with ongoing efforts, the Consistency Regulations
5 simply exempt new development from those efforts altogether.

6 54. The CAP and Consistency Regulations therefore do not include measures and
7 performance standards that substantial evidence demonstrates, if implemented on a project-by-
8 project basis, would collectively achieve the specified emissions level. (CEQA Guidelines
9 Section 15183.5(b)(1)(D)).

10 55. In addition, the 2022 CAP goals, strategies, and measures themselves are not
11 supported by defined actions and performance measures. Many of the 2022 CAP measures
12 require future planning efforts with no deadline for compliance (such as the Master Mobility
13 Plan). A comprehensive Implementation Plan that will detail the milestones, responsible entities
14 and City Departments, associated costs with possible funding sources and planned timing for
15 implementation has not been prepared. (2022 CAP, p. 41). Therefore, evidence supporting the
16 feasibility of achieving the CAP goals is lacking.

17 56. The 2022 CAP Update also serves as mitigation for the General Plan. Because the
18 CAP’s measures and actions are not supported by substantial evidence, the City cannot ensure
19 the General Plan’s climate change impacts are in fact mitigated.

20 57. Petitioners have exhausted all administrative remedies by providing verbal and
21 written comments to City staff and elected officials prior to Project approval, requesting
22 compliance with CEQA, and the completion of full and adequate environmental review and
23 mitigation. On information and belief, all issues raised in this petition were raised in a timely
24 manner before Respondent by Petitioners, other members of the public or public agencies.

25 58. Petitioners have a beneficial right to, and a beneficial interest in, Respondent’s
26 fulfillment of all its legal duties, as alleged herein.

27 59. Petitioners have no plain, speedy, or adequate remedy at law. Unless this Court
28 enjoins and sets aside its action, the City will approve projects with climate change impacts

1 without an adequate, science-based environmental analysis of those impacts, and without
2 adequate, science-based mitigation for those impacts. The climate-altering GHG emissions from
3 these and future such projects, emissions that will remain in the atmosphere and destabilize the
4 climate for decades or centuries, will have lasting and adverse effects on the climate, to the
5 detriment of all residents of San Diego County and the State of California.

6 60. This petition is timely filed in accordance with Public Resources Code section
7 21167 and CEQA Guidelines section 15112.

8 61. On September 2, 2022, Petitioners sent the City a Notice of Intent to Sue in
9 compliance with Public Resources Code Section 21167.5. A true and correct copy of this Notice
10 is attached hereto as Exhibit A.

11 62. Respondent has abused its discretion and failed to proceed in the manner required
12 by law in the following ways:

13 **FIRST CAUSE OF ACTION**

14 **Violation of CEQA**

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

16 63. Petitioners incorporate by reference all preceding paragraphs.

17 64. CEQA requires the City to conduct adequate environmental review prior to
18 making any formal decision regarding projects. (CEQA Guidelines § 15004).

19 65. CEQA requires that an agency prepare an EIR when it proposes to approve or
20 carry out a discretionary project that may have a significant impact on the environment, and to
21 mitigate or avoid those significant impacts whenever feasible to do so. (Pub. Res. Code §§
22 21002.1, 21061, 21080(a)).

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

28 67. The City did not adequately analyze or mitigate the significant impacts of the

1 2022 CAP Update Package.

2 68. The City failed to specify criteria or adequate standards to ensure the 2022 CAP's
3 emission reductions will be achieved and the reduction "strategies" represent real, additional
4 reduction of GHGs, enforceable as project conditions at the time of discretionary approval.
5 Absent such standards and criteria, the use of the CAP for analysis and/or mitigation for
6 increases in GHG emissions from future projects violates CEQA's requirement that mitigation
7 measures be additional to any other legal requirement or existing program and be fully
8 enforceable. (CEQA Guidelines, §§ 15126.4(a) and (c), 15183.5(b)(1)(D)).

9 69. Substantial evidence does not support the City's findings that the 2022 CAP
10 strategies and measures will result in the specified reductions in the appropriate timeframe, if at
11 all.

12 70. The CAP's lack of detail, defined performance standards, and enforceability
13 therefore results in the deferral of mitigation or complete lack thereof for the General Plan, the
14 CAP and future projects which tier from the CAP. (CEQA Guidelines Section 15126.4(a)(1)(B)).

15 71. CEQA Guideline Section 15064.4 requires an EIR to assess a project's GHG
16 emissions based on a "good-faith effort, based to the extent possible on scientific and factual
17 data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a
18 project." Further, "[t]he agency's analysis should consider a timeframe that is appropriate for the
19 project." (CEQA Guidelines §15064.4(b)). Despite these clear mandates, both the CAP and
20 Addendum fail to assess the CAP's ability to meet its 2030 and 2035 reduction targets.

21 72. The City's finding that the CAP's GHG impact would be less than significant is
22 not supported by substantial evidence.

23 73. All projects which tier from the CAP and rely on the Consistency Regulations to
24 mitigate greenhouse gas emissions will likewise result in a significant impact to GHG emissions.

25 74. In light of the CAP and Addendum's failure to assess and disclose the Project's
26 significant GHG impacts, including those beyond 2035, the CAP cannot constitute a qualified
27 greenhouse gas reduction plan pursuant to CEQA Guidelines Section 15183.5(b).

28 75. The 2022 CAP fails to establish a level below which contribution to GHG

emissions would not be cumulatively considerable.

76. The 2022 CAP Update Package further fails to 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.

77. As a result of the foregoing defects, Respondent City prejudicially abused its discretion. Accordingly, Respondent City's CEQA determination and Project approvals must be set aside.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

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

///

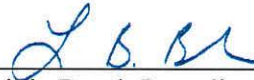
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1 5. Such other and further relief as the Court deems just and proper.

2 Dated: September 21, 2022

COAST LAW GROUP, LLP

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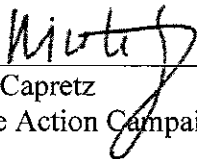
5 Livia Borak Beaudin
6 Attorneys for Petitioners,
7 CLIMATE ACTION CAMPAIGN and
8 COASTAL ENVIRONMENTAL RIGHTS
9 FOUNDATION
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VERIFICATION

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 September 20, 2022 in San Diego, California.



Nicole Capretz
Climate Action Campaign

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I am the Programs Director of Petitioner Coastal Environmental Rights Foundation 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.

John Ochoa

Sara Ochoa
Coastal Environmental Rights Foundation

1 Marco A. Gonzalez (SBN 190832)
2 Livia B. Beaudin (SBN 259434)
3 COAST LAW GROUP, LLP
4 1140 South Coast Highway 101
5 Encinitas, CA 92024
6 Telephone: 760-942-8505
7 livia@coastlaw.com

8 Attorneys for Petitioners,
9 CLIMATE ACTION CAMPAIGN and COASTAL ENVIRONMENTAL RIGHTS
10 FOUNDATION

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 COUNTY OF SAN DIEGO – CENTRAL DIVISION

15 CLIMATE ACTION CAMPAIGN, a California
16 non-profit public benefit corporation, COASTAL
17 ENVIRONMENTAL RIGHTS FOUNDATION,
18 a California non-profit public benefit corporation

19 Petitioners,

20 v.

21 CITY OF SAN DIEGO, a California municipal
22 corporation; and DOES 1 through 20, inclusive,

23 Respondents,

24
25 DOES 21 through 40, inclusive,

26 Real Parties in Interest.
27
28

Case No.:37-2022-00036430-CU-TT-CLT

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 1140 South Coast Highway 101, Encinitas, California, 92024:

On October 21, 2022, I caused to be served the following document(s):

- NOTICE TO RESPONSIBLE AGENCIES PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT

- FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE

on all interested parties in this action as follows:

- | | |
|---|--------------------|
| 1. US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460 | Responsible Agency |
| 2. US Fish and Wildlife Service
1849 C Street, N.W.
Washington, DC 20240 | Responsible Agency |
| 3. US Fish and Wildlife Service
610 W Ash Street #1103
San Diego, California 92101 | Responsible Agency |
| 4. Caltrans, District 11
4050 Taylor Street
San Diego, California 92110 | Responsible Agency |
| 5. California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, California 94244 | Responsible Agency |
| 6. Department of Water Resources
P.O. Box 942836
Sacramento, California 94236 | Responsible Agency |
| 7. Regional Water Quality Control Board
Region 9
2375 Northside Drive, Suite 100
San Diego, California 92108 | Responsible Agency |
| 8. California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, California 95814 | Responsible Agency |
| 9. State Clearinghouse
1400 10 th Street
Sacramento, California 95814 | Responsible Agency |
| 10. California Coastal Commission
455 Market Street, Suite 300
San Francisco, California 94105 | Responsible Agency |

- 1 11. State Water Resources Control Board Responsible Agency
2 P.O. Box 100
3 Sacramento, California 95912
- 4 12. Native American Heritage Commission Responsible Agency
5 1550 Harbor Blvd, Suite 100
6 West Sacramento, California 95619
- 7 13. Office of Planning and Research Responsible Agency
8 1400 10th Street
9 Sacramento, California 95814
- 10 14. Air Pollution Control District Responsible Agency
11 10124 Old Grove Road
12 San Diego, California 92131
- 13 15. Department of Environmental Health Responsible Agency
14 P.O. Box 129261
15 San Diego, California 92112
- 16 16. Department of Planning and Land Use Responsible Agency
17 5510 Overland Avenue
18 San Diego, California 92123
- 19 17. County Water Authority Responsible Agency
20 4677 Overland Ave.
21 San Diego, California 92123

- 22 ☒ **(BY MAIL)** As follows:
- 23 ☒ I placed such envelope with postage thereon prepaid in the United States mail at Encinitas, CA.
- 24 ☒ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Encinitas, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation or postage meter date is more than one day after date of deposit for mailing in affidavit.
- 25 ☐ **(BY ELECTRONIC MAIL)** I emailed such document(s) via PDF to the email address(es) noted above.
- 26 ☐ **(BY FACSIMILE)** I sent such document(s) via facsimile to the number(s) noted above.
- 27 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

28 Executed: October 21, 2022


Kristen Northrop

