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**July 9, 2019**

Mayor Wells and Councilmembers  
City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020

**Via Electronic Mail**

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**Re: City of El Cajon Climate Action Plan  
Climate Action Campaign Comments**

Dear Mayor Wells and Councilmembers:

Please accept the following comments on behalf of our client Climate Action Campaign (CAC) regarding the City of El Cajon's (City) Climate Action Plan (CAP or Project) and supporting Environmental Impact Report (EIR). CAC's aim is to make climate action a number one priority for policymakers everywhere until its mission of stopping climate change is achieved. Unfortunately, the City's CAP and EIR fail to adequately address climate change and fall far short of this goal.

The CAP presents an opportunity for the City to show leadership on climate issues and develop a tool to streamline further review of individual projects. However, the City's environmental review has fallen short in many respects. CAC has serious concerns regarding the City's analysis of greenhouse gas (GHG) emissions associated with the Project, as well as the City's failure to include measures that would achieve the specified emissions levels. As detailed below, the City's approach is inconsistent with the California Environmental Quality Act (CEQA).

**A. The EIR Fails to Address the Project's GHG Impacts to the Horizon Year**

CEQA Guideline Section 15064.4 requires an EIR to assess a project's GHG emissions based on a "good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." Further, "[t]he agency's analysis should consider a timeframe that is appropriate for the project." (CEQA Guidelines §15064.4(b)). Despite these clear mandates, both the CAP and EIR fail to assess the CAP's ability to meet California's 2050 GHG reduction target.<sup>1</sup> Without support, and despite admitting compliance with the 2050 goal will require "significant improvements in the availability and/or cost of near-zero and zero-emissions technology, as well as potential increased reductions from ongoing State and Federal legislative actions that are currently unknown," the EIR finds the associated GHG impact would be less than significant. (EIR, p. 3.6-9). The EIR's pure speculation in this regard and complete failure to even attempt to assess the CAP's trajectory to 2050 constitutes an abuse of discretion.<sup>2</sup>

The California Supreme Court reaffirmed the need to address the more stringent longer term targets during CEQA review. In *Center for Biological Diversity v. Department of Fish & Wildlife*, (2015) 62 Cal. 4th 204 ("Newhall Ranch"), the California Supreme Court reviewed the Department

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<sup>1</sup> Executive Order S-3-05 requires reduction of greenhouse gas emissions to 2000 levels by 2010, to 1990 levels by 2020, and to 80 percent below 1990 levels by 2050

<sup>2</sup> Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines §15384(b)).

of Fish and Wildlife’s (“DFW”) EIR for a large development project (Newhall Ranch). (*Newhall Ranch*, 62 Cal. 4th at 213-214). The Supreme Court noted “consistency with year 2020 goals will become a less definitive guide, especially for long-term projects that will not begin operations for several years. An EIR taking a goal-consistency approach to CEQA significance may in the near future need to consider the project’s effects on meeting longer term emissions reduction targets.” (*Newhall Ranch*, 62 Cal. 4th. at 223).

The future articulated in *Newhall Ranch* is now. Admittedly, the CAP is intended to act as a CEQA tiering document in order to streamline future development.

This CAP was prepared in accordance with CEQA Guidelines Section 15183.5 and is, therefore, considered a “qualified” plan for the reduction of GHG emissions. As a CEQA Section 15183.5-qualified plan, the CAP affords development applicants the opportunity to use CEQA streamlining tools for analysis of GHG emissions and related impacts for projects that are consistent with the City’s CAP. (CAP, p. 1-7).

...

The CAP has been designed to be a CEQA-qualified CAP; strategies and actions are proposed that are projected to meet state targets for GHG reductions. This means that the City can streamline CEQA review for development or city projects (discretionary actions) and assume no cumulative GHG impact because El Cajon will have a plan to meet the target. Without a CEQA-qualified CAP, small projects such as a 1,500 square foot drive through restaurant, would have to analyze GHG emissions and mitigate to net zero, which could stifle future growth and development in El Cajon. (Agenda Item 102, Staff Report, p. 2).

Because future individual projects which intend to rely on the CAP for GHG CEQA analysis will endure well past 2030, the City must assess the Project’s compliance with Executive Order S-3-05’s more stringent reduction target. Moreover, the Supreme Court’s emphasis on assessment of longer term emission reduction targets is particularly relevant in the context of programmatic CEQA review for a CAP. Indeed, current GHG emission models amortize construction emissions over an assumed 30-year life of new development projects. Therefore, most – if not all – projects approved using the CAP will continue past the interim 2030 target without any additional mitigation measures to achieve the necessary reductions beyond 2030. Thus, all projects which tier from the EIR and rely on the CAP to mitigate greenhouse gas emissions will likewise result in a significant impact to greenhouse gas emissions beyond 2030.<sup>3</sup>

In light of the CAP and EIR’s failure to assess and disclose the Project’s significant GHG impacts beyond 2050, the CAP cannot constitute a qualified greenhouse gas reduction plan pursuant to CEQA Guidelines Section 15183.5(b). Because the CAP will result in significant greenhouse gas impacts post-2030, it fails to: (1) establish a level below which contribution to greenhouse gas emissions would not be cumulatively considerable; and (2) specify measures that if implemented would collectively achieve the specified emissions level.

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<sup>3</sup> Such projects will also result in significant GHG impacts prior to 2030, as detailed below.

## **B. The EIR's Significance Findings Are Not Supported by Substantial Evidence and the CAP's Mitigation Measures are Impermissibly Vague and Unenforceable**

"Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Pub. Resources Code § 21082.2(c); see also, CEQA Guidelines §15384).

As a purported qualified greenhouse gas reduction plan, the CAP must meet the requirements for all first-tier documents and impose effectively enforceable requirements and measures with defined performance standards. (See, *California Riverwatch v. County of Sonoma et. al.*, Superior Court for the County of Sonoma Case No. SCV-259242, Order Granting Writ, p. 11 [enclosed herewith]). Because future discretionary projects will rely on the CAP, and any "group of measures, including performance standards" to achieve the specified reductions and forgo further CEQA GHG emissions analysis, the CAP's reduction measures must be considered mitigation measures for purposes of CEQA and must therefore comply with CEQA requirements. (See, *Id.* at p. 20). However, the CAP's reduction measures are not only vague and unenforceable, they fail to set forth any real performance standards.

For example, the CAP's single largest reduction measure is RE-2.1: "Research methods to increase grid-supply of renewable and zero-carbon electricity." Nothing in the CAP, EIR or supporting documents reflects a commitment or enforceable mechanism to achieve the goal of 80 percent renewable energy and zero-carbon electricity supply by 2030. (CAP, p. 3-11). In fact, Appendix B, GHG Emissions Reduction Targets and Measures admits the emission reduction estimate is based on a mere assumption: "It is assumed a program would be implemented ant that it would supply 90% of the electricity load (not including the behind-the-meter PV generation) in 2030." (CAP, Appendix B, p. 52).

Therefore, the EIR's finding that the CAP will result in the City's attainment of the 2030 emission targets and a less than significant GHG impact is not supported by substantial evidence.

## **C. The Alternatives Findings are not Supported by Substantial Evidence**

If a project will result in a significant impact,<sup>4</sup> an agency must consider the environmentally superior alternative identified in the EIR and find that it is infeasible before approving the project. (Pub. Resources Code § 21081(a)(3); CEQA Guidelines §15091(a)(3)). An infeasibility finding must "describe the specific reasons" for the agency's decision to reject the mitigation measure or alternative." (CEQA Guidelines §15091(c)). A finding of economic infeasibility must be supported by relevant economic evidence. (See, *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 955 [agency's infeasibility finding was inadequate when based on mere anticipation of state legislature's refusal to make earmarked appropriation for mitigation and no other funding source considered]).

Here, the City rejected the environmentally superior alternative, Rooftop Solar for Commercial Properties Alternative purportedly because:

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<sup>4</sup> As noted above, the Project will result in a significant GHG impacts because of its failure to assess compliance with the 2050 reduction target and to impose verifiable, enforceable mitigation measures.

The Rooftop Solar for Commercial Properties Alternative has been rejected because it would place a significant economic burden on commercial property owners and would serve a disincentive to future commercial development or redevelopment contrary to city goals to develop a strong economic base. Therefore, the Rooftop Solar for Commercial Properties Alternative has been rejected because specific economic, legal, social, technological or other considerations make the alternative infeasible.

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The Rooftop Solar for Commercial Properties Alternative would be contrary to the General Plan goals and objectives by discouraging investment in commercial properties by requiring rooftop solar on new projects or modified rooftops regardless of financial feasibility which could deter property owners from investing in new buildings or improving existing ones. Therefore, the Rooftop Solar for Commercial Properties alternative has been rejected because specific economic viability factors and inconsistency with the General Plan make the alternative infeasible. (Findings, p. 12).

The Staff Report similarly states: “this alternative would place a significant economic burden on commercial property owners and would serve a disincentive to future commercial development or redevelopment contrary to city goals to develop a strong economic base.” (Agenda Item 102, Staff Report, p. 6).

Nothing in the record supports the City’s assumption that commercial property owners would face a significant economic burden or that a rooftop solar requirement would discourage commercial investment. The City fails to provide or cite any data regarding the purported “significant economic burden,” to consider alternative funding mechanisms to encourage or incentivize commercial solar, or to substantiate its claim that solar would be a disincentive. Likewise, the City has failed to articulate how regulation of commercial property owners – especially coupled with CEQA streamlining via the CAP – would affect the City’s “economic base.” As a result, the EIR’s finding of infeasibility fails to comply with CEQA.

**D. The EIR Fails to Analyze Existing GHG Emissions and Assess the Extent to Which the Project May Increase GHG Emissions Compared to the Existing Environmental Setting**

The EIR fails to provide existing baseline emissions despite the fact that such quantitative analysis is extremely informative. Indeed, in *Friends of Oroville*, the Court found that in order to assess a project’s impacts based on an AB 32 threshold of significance, existing emissions must be calculated. (*Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 842-843). Likewise, the CEQA Guidelines suggest an agency should consider the extent to which a project may increase or reduce GHG emissions “as compared to the existing environmental setting.” (CEQA Guidelines §15064.4(b)(1)). Because existing emissions are not provided, the public and decision-makers are unable to accurately assess the increase in emissions attributable to the Project.

## E. Conclusion

The EIR must be updated to include an estimate of existing emissions, a forecast of emissions to 2050, and an analysis of the Project's GHG impacts. The CAP must also be amended to include enforceable, verifiable measures to meet the reduction targets and ensure consistency with CEQA Guidelines Section 15183.5. In light of the City's goal to tier from the EIR for future, specific developments, enforceable mitigation measures must be incorporated into the approval process.

CAC believes the law requires the City as a local entity with land-use authority to reduce GHG emissions and update its CAP to achieve meaningful reductions beyond 2030. Unless the City updates its EIR with the aforementioned analysis and incorporates adequate mitigation measures, the Project's CEQA analysis will not withstand judicial scrutiny.

Thank you in advance for your consideration of our comments.

Sincerely,

**COAST LAW GROUP LLP**



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