



The City of San Diego

Staff Report

DATE ISSUED: January 25, 2024

TO: City Council

FROM: City Attorney

SUBJECT: Settlement of *Climate Action Campaign, et al. v. City of San Diego*, San Diego Superior Court Case. No 37-2022-00036430-CU-TT-CTL and *Coastal Environmental Rights Foundation v. City of San Diego*, San Diego Superior Court Case No. 37-2023-00006754-CU-TT-CTL, Risk Claim Nos. 30636 & 31798

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Council District(s): Citywide

OVERVIEW:

This is a proposed settlement of two cases that are significantly delaying development in San Diego. The first case, *Climate Action Campaign, et al. v. City of San Diego*, San Diego Superior Court Case. No. 37-2022-00036430-CU-TT-CTL (CAP Case) challenges the City's adoption of the 2022 Climate Action Plan Update Package under the California Environmental Quality Act (CEQA). The second case, *Coastal Environmental Rights Foundation v. City of San Diego*, San Diego Superior Court Case No. 37-2023-00006754-CU-TT-CTL (Mira Mesa Case), challenges the City's approval of the Mira Mesa Community Plan update. The CAP Case and Mira Mesa Case are collectively referred to as "the Litigation." The parties have reached a settlement of the Litigation for \$120,000.00 as well as additional Greenhouse Gas (GHG) emission data reporting by City staff detailed in the settlement agreement (Agreement). Nothing in the Agreement binds any future City Council discretion and Petitioners waive similar CEQA claims against future projects.

PROPOSED ACTIONS:

- 1) Authorize the Mayor or his designee to pay the sum of \$120,000.00 from Public Liability Fund No. 720045, in settlement of each and every claim including all attorneys' fees, costs, any interest of any type, against the City of San Diego, its agents and employees, arising from the Litigation.
- 2) Authorize the Chief Financial Officer to expend an amount not to exceed \$120,000.00 from Public Liability Fund No. 720045, for the purpose of settling these claims.

DISCUSSION OF ITEM:

In 2015, the City adopted its initial Climate Action Plan (CAP) to address GHG emissions. In 2022, the City adopted a CAP Update and set a goal of achieving net zero GHG emissions by 2035 with updated strategies, measures, and actions. The CAP Update Package consists of the (1) 2022 Climate Action Plan; (2) Addendum to the Final Program Environmental Impact Report for the CAP and Mitigation Monitoring and Reporting Program; (3) Urban Tree Canopy Fee and amendment to the Land Development Manual, Appendix A, CEQA Thresholds of Significance; and (4) an amendment to the San Diego Municipal Code (Ordinance O-2023-4) relating to the CAP Consistency Regulations to replace the 2015 CAP Checklist. Petitioners Climate Action Campaign and Coastal Environmental Rights Foundation challenged the CAP Update by writ of mandate in the CAP Case.

On December 5, 2022, the City approved the Mira Mesa Community Plan Update. The Mira Mesa Community Plan Update is the first community plan update to come before the City Council for approval since the City adopted the 2022 CAP Update. Petitioner Coastal Environmental Rights Foundation timely challenged the Mira Mesa Community Plan Update by writ of mandate in the Mira Mesa Case.

The Litigation has caused significant delay in development and would continue to delay projects through appeal. To avoid such delay, and without any concession of wrongdoing or liability, the City Council approved the settlement terms in Closed Session on January 22, 2024.

Under the Agreement, the City shall pay Petitioners \$120,000 in costs and attorneys' fees. City staff shall also report GHG emissions data to the City Council and public as detailed in the Agreement. The items and terms in the Agreement include many of the requirements for CAP monitoring adopted by the City Council and planned for by the Sustainability and Mobility Department as part of, and since the adoption of, the 2022 CAP. This includes the Climate Action Implementation Plan, integration of the CAP into the department work plans and budget process, and annual monitoring and reporting. The terms include additional emissions data reporting when available, between now and 2027, when the next update to the CAP has been proposed. This will provide greater transparency of information to the Council, Mayor, and public to make adjustments through additional CAP actions or budgeting in the years prior to the next comprehensive update in 2027.

The agreed upon commitments generally reflect already planned items in the Sustainability and Mobility Department's Work Plan. Nothing in the Agreement shall bind the City Council's future discretion in any manner. In exchange, Petitioners shall dismiss the Litigation with prejudice, and waive any challenge to any future projects that tier off the 2022 CAP on grounds that the 2022 CAP does not comply with CEQA.

City of San Diego Strategic Plan:

N/A

Fiscal Considerations:

Settlement amount of \$120,000.00 will be paid from Public Liability Fund No. 720045.

Charter Section 225 Disclosure of Business Interests:

N/A

Environmental Impact:

This activity is not a project pursuant to CEQA Guidelines Section 15378(b)(4), as it is a government fiscal activity which does not involve any commitment to any specific project which may result in a potentially

significant physical impact on the environment. Therefore, this activity is not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

Climate Action Plan Implementation:

N/A

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

The item was heard in closed session on January 22, 2023.

Planning Commission Action:

N/A

Key Stakeholders and Community Outreach Efforts:

N/A

M. TRAVIS PHELPS

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