



McCann v. City of San Diego

2023 WL 5082495

Filed: July 19, 2023

Fourth District Court of Appeal

Category: Remedies

Summary by Tina Wallis, Founder/President of Wallis Law Group, Inc.

Overview: *This case talks about what happens when an opponent successfully challenges the CEQA document and how the lead agency complies with the court's order, which is called a writ. The case demonstrates the importance of drafting a writ so that it can be successfully discharged later.*

Several years ago, Margaret McCann challenged the city of San Diego's plan to convert overhead wires to an underground system in various neighborhoods throughout the city. Miss McCann's reason to challenge was that there was no substantial evidence supporting the city's findings that undergrounding utilities would not significantly impact greenhouse gas emissions. The trial entered upon a peremptory writ of mandate ordering the city to set aside resolutions approving the undergrounding project. The court's order did not direct the city to exercise its discretion in any particular way, and the court retains jurisdiction over the matter until the court determines that the city had complied with CEQA.

The city then vacated its resolutions approving the undergrounding project and filed a return for a writ with the court. McCann challenged the return to writ, claiming that the city had not yet complied with CEQA, therefore, could not discharge the writ.

The Court of Appeal applied Public Resources Code section 21168.9, which gives the court discretion to require the lead agency to avoid (partially or wholly) the approvals at issue, to suspend all or specific project activities if certain criteria are satisfied, or to take a specific action to comply with CEQA. The Court of Appeal noted that in this instance, the trial court only directed the city to avoid the project approvals. The trial court did not order the city to perform any remedial action other than rescinding the resolutions approving the undergrounding project. Because the city had vacated its resolutions approving the undergrounding project, the city had complied with the trial court's order, and discharging the writ was required. The Court of Appeal quickly dispatched McCann's argument that the trial court had to retain jurisdiction until the city complied with CEQA. The court noted that the city exercised its discretion not to move forward with the project at that time and that rescinding the approvals complied with the trial court's order.

Pro Tip:

CEQA's legislative policies intend a court specifically address each ground of noncompliance when ruling that agency failed to comply with CEQA. (Pub. Res. Code, §21005, subd. (c).)

When drafting an order, carefully review Public Resources Code section 21168.9 which lists three compliance options for orders, the findings required for part of a project to move forward, and a prohibition on ordering a lead agency to exercise its discretion in a particular way.

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October 2023