

## **City of San Diego Required to Further Analyze Underground Utilities Projects’ Consistency with City’s Climate Action Plan**

The Court of Appeal for the Fourth Appellate District recently decided a California Environmental Quality Act (“CEQA”) case, *McCann v. City of San Diego* (Oct. 8, 2021, No. D077568) \_\_\_ Cal.App.5th \_\_\_ [2021 Cal. App. LEXIS 839], that clarifies the standards for considering the significance of greenhouse gas emissions in the context of a broader greenhouse gas reduction plan.

The City of San Diego began converting its overhead utility systems to an underground system in the 1970’s and adopted a Utilities Undergrounding Program Master Plan in 2017. The City determined that, based on location, some sets of undergrounding projects were exempt from CEQA and others required a mitigated negative declaration (“MND”) to be prepared. The plaintiff expressed concerns throughout the City’s administrative process and eventually petitioned for a writ of mandate alleging, among other issues, that the City’s determination on the MND projects was not supported by substantial evidence.

The court noted that while the City may use its Climate Action Plan, a city-wide greenhouse gas reduction plan, to evaluate its project emissions under CEQA, the City failed to properly conduct the analysis. Specifically, the City erred by first using an inapplicable checklist to determine consistency with the Climate Action Plan and then conducting no further review. Accordingly, the court held that the City’s MND was incomplete because it failed to properly analyze whether the MND projects were consistent with the City’s Climate Action Plan.

The City was required to set aside its adoption of the MND, the mitigation monitoring and reporting program, and the utility undergrounding districts so that it may proceed with the analysis required to determine whether the MND projects are consistent with the Climate Action Plan. The court specified that its decision is merely requiring an analysis rather than a specific result, and the City may still avoid the need to prepare an EIR if the required analysis determines the projects are consistent with the Climate Action Plan.

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