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December 29, 2021

All Projects—including Non-Occupancy Structures—Require Climate Action Plan Consistency Analysis to Benefit from Streamlined GHG Review under CEQA

The City of San Diego's approval of underground utility lines was incomplete because its Climate Action Plan checklist improperly allowed certain non-occupancy projects to avoid greenhouse gas emission (GHG) consistency analysis. To take advantage of streamlined GHG review, CEQA requires lead agencies analyze each project's consistency with the Climate Action Plan, regardless of occupancy. *McCann v. City of San Diego*, 70 Cal. App. 5th 51 (2021). Each year, the San Diego City Council approves plans to underground approximately 15 miles of utility lines. The selected areas are divided into groups based on city blocks, and then submitted for



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with respect to the Exempt Project, the court held McCann's CEQA claims were barred because she failed to exhaust administrative remedies. The San Diego Municipal Code provides that a party wishing to challenge an "environmental determination," which includes a project exemption, must file an appeal within 10 business days. McCann conceded that no appeal was filed, and the court therefore concluded her challenge to the project exemption was barred. Second, with respect to the MND Project, the court ruled that the City did not improperly segment the undergrounding projects and that the project description and consideration of aesthetic impacts were proper. However, the City's GHG determination was not supported by substantial evidence. CEQA requires lead agencies to analyze the amount of GHGs a project will emit. To ease the burden of calculating individualized emissions for every project, a lead agency may adopt a Climate Action Plan which, if detailed and adequately supported, may be used to evaluate a specific project's contribution to cumulative GHGs. A finding of consistency with the Climate Action Plan provides sufficient evidence for an agency to conclude the project has

no significant GHG impact under CEQA. Here, the City of San Diego's overarching process—making a Climate Action Plan consistency determination to fulfill its obligation to evaluate GHG impacts under CEQA—was acceptable. However, the City erred by relying on an inadequate checklist to determine that the undergrounding project would have no significant GHG impact. The City's checklist expressly stated that the Climate Action Plan consistency evaluation did not apply to certain projects, including those that did not require a certificate of occupancy, like the infrastructure project at issue, but the court found no rational basis for this exemption. The Climate Action Plan itself contemplated the GHG impact of many non-occupancy structures and these projects could have significant GHG impacts, too. Therefore, to avail itself of the streamlined GHG review a Climate Action Plan provides, the City was required to make a consistency determination for each project, whether within the scope of the checklist as written or not. Without this required consistency analysis, the City's determination that undergrounding would have no significant impact on GHGs was not supported by substantial evidence and the City abused its discretion in approving the mitigated negative declaration.

## **Authors**

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