



CEQA Writ Simple: Fourth District Holds Trial Court Erred In Retaining Continuing Jurisdiction And Not Discharging Peremptory Writ That Ordered Only Set Aside Remedy Where Lead Agency’s Return Demonstrated Full Compliance

By [Arthur F. Coon](#) on August 14, 2023

In an opinion filed July 19, and ordered published on August 9, 2023, the Fourth District Court of Appeal (Div. 1) reversed a trial court order denying the City of San Diego’s (City) request to discharge a peremptory writ of mandate issued under CEQA that ordered the City to set aside three resolutions approving a set of neighborhood utility wire undergrounding projects. Because the writ did nothing more than order the approvals set aside, and the City’s return demonstrated full compliance with that CEQA mandate, the trial court exceeded its jurisdiction and abused its discretion in retaining continuing jurisdiction and failing to discharge the writ. *McCann v. City of San Diego* (2023) ___ Cal.App.5th ___ (“*McCann II*”).

Brief Background and the Court of Appeal’s Opinion

The Court of Appeal’s straightforward opinion resolved the second of two appeals in this litigation; the case’s underlying facts are discussed and the Court’s lengthy first opinion is analyzed in my October 21, 2021 post, which can be found [here](#). The gist of the first opinion is that all of petitioner McCann’s CEQA challenges to a number of City’s utility undergrounding projects were rejected for various reasons except for her challenge to a set of projects approved through a Mitigated Negative Declaration (MND). As to the “MND projects,” the Court of Appeal reversed the trial court and ordered the City’s approvals of them to be set aside because the City had failed to analyze whether they were consistent with its Climate Action Plan (CAP) and thus whether their impacts from GHG emissions might be significant. On remand, the trial court issued the peremptory writ as directed, ordering the City to set aside the resolutions that approved the MND projects, but not directing it to take any other action. After the City rescinded the approval resolutions and returned to the trial court requesting that it discharge the writ, McCann objected

to the return on the basis that the City had not performed the relevant environmental analysis or affirmatively indicated it had abandoned the MND projects. The trial court sustained the objection and refused to discharge the writ, and the City timely appealed that post-judgment order.

The Court of Appeal sided with the City and held that since its return had demonstrated full compliance with the writ's remedial mandate through its rescission of the MND project approvals, the writ should have been discharged. The Court observed that CEQA's remedies statute (Pub. Resources Code, § 21168.9) provides three types of mandate that may issue via a peremptory writ of mandate to correct CEQA violations: "(1) to void, in whole or in part, a determination, finding or decision, (2) to 'suspend any or all specific project activity or activities' if certain conditions exist, or (3) to take specific action necessary to bring the determination, finding or decision tainted by the CEQA violation into compliance with CEQA." (Quoting *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 757, my 7/23/13 post on which can be found [here](#).) The Court noted that the issuing court has discretion to choose which mandate is appropriate under the circumstances and may impose more than one. It further observed that the issuing court should order the agency to file a return by a date certain informing the court of the agency's actions taken to comply with the writ, and that Public Resources Code § 21168.9(b) provides that the "trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with [CEQA]." Per the Court: "This statutory provision for the retention of jurisdiction reflects the rule that a court issuing a peremptory writ of mandate retains jurisdiction to determine the adequacy of the return and ensure full compliance with the writ." (Quoting *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 479.)

Interpreting the terms of the writ as a question of law, and the adequacy of the City's return under an abuse of discretion standard (since an attempt to comply with the writ is essentially an attempt to comply with CEQA, see *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App.5th 52, 62), the Court noted that the trial court had complied with its earlier order and issued a writ directing the City to "set aside" the resolutions approving the MND projects. Per the Court:

"The writ did *not* direct the City to perform any other remedial action aside from rescinding the resolutions approving the MND projects and halting any further activity on the projects that may alter the environment – nor did we direct the trial court to order any further remedial action in *McCann I*. [¶] Accordingly, because the City complied with the trial court's writ of mandate, as directed in our disposition in *McCann I*, we perceive no abuse of discretion by the City."

While CEQA's remedies statute confers equitable powers on the trial court to issue orders compelling compliance with a peremptory writ (Pub. Resources Code, § 21168.9(e)), "once an agency has fully satisfied the writ, the trial court no longer has continuing jurisdiction over the matter. [citations omitted]." Because the City fully satisfied the writ here by rescinding the MND project approvals as directed, the trial abused its discretion by "fail[ing] to discharge the writ and terminate its jurisdiction[.]"

In resolving the parties' related arguments, the Court *rejected* both (1) the City's argument that a trial court's continuing jurisdiction under section 21168.9(b) is limited to cases where the court severs invalid from valid agency actions and leaves the latter in place, and (2) McCann's argument "that the trial court retains jurisdiction in perpetuity based on the hypothetical possibility that the City moves forward with the same projects in the future."

The Court also brushed aside McCann's concern that potential future challenges to the City's projects would be barred by res judicata if the writ is discharged:

“We decline to conjecture about the ways in which res judicata may or may not affect a hypothetical future project.The City has exercised its discretion not to move forward with the projects and perform this [CAP consistency] analysis at this time – rather it has simply rescinded the project approvals as mandated by the writ. Whether the City will choose to move forward with the same or substantially [the] same projects in the future is a matter we cannot predict. Nor may we predict, based on the facts before us, the application of res judicata on future claims relating to the environmental reviews already performed on the MND Projects.”

However, the Court also indicated that McCann’s fears were misplaced, noting that res judicata applies to prior decisions that are “final and on the merits” and observing that *McCann I* did not adjudicate the adequacy of the City’s GHG analysis (because no such analysis had been performed) or whether an EIR would be required for the MND projects under CEQA on the merits. Per the Court: “The discharge of the writ in this case does not suggest that the City has completed the requisite environmental analysis of the MND Projects, but merely reflects that the City has complied with the mandates of the writ by rescinding the project approvals.”

Key Takeaways

A trial court always retains continuing jurisdiction to enforce an agency’s compliance with a peremptory writ that the court has issued. But that jurisdiction ends and the writ must be discharged when the writ has been fully complied with, and what agency actions are required for full compliance is determined by the terms of the writ itself, interpreted as a matter of law by a reviewing court. Here, the trial court’s error consisted in retaining jurisdiction after the City filed a return demonstrating full compliance with the terms of the writ, such that nothing the City was specifically ordered to do by the writ remained to be done i.e., the “set aside” directive was the writ’s sole remedial mandate and the City’s return demonstrating all project approvals ordered to be set aside had been rescinded evidenced complete compliance with the writ. The situation could have been different if the writ had contained a different mandate – e.g., one specifically directing action to reconsider a project and correct identified deficiencies in an EIR before proceeding to again approve it – but the writ here was not of such a nature.

OLDIn an opinion filed June 28, 2023, and later ordered published on July 25, 2023, the Second District Court of Appeal (Div. 5) affirmed a judgment granting a writ of mandate setting aside (1) the City of Los Angeles’ (City) approval of a 10-story hotel project (with three levels of subterranean parking) to be located on a half-acre site in the Hollywood Community Plan area, and (2) the City’s accompanying determination that the hotel project was exempt under CEQA’s Class 32 categorical exemption for infill projects. Because the hotel project would result in the demolition of 40 apartments subject to the City’s rent stabilization ordinance (RSO), and the City failed to consider whether it was consistent with “all applicable general plan policies” – including Housing Element policies to preserve affordable housing – the record failed to contain substantial evidence supporting City’s use of the exemption. *United Neighborhoods for Los Angeles v. City of Los Angeles (Fariborz Moshfegh, et al., Real Parties in Interest)* (2023) ___ Cal.App.5th ___.



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