

We've got you covered.

Through our nationally recognized **Land Use Practice**, we create value and help you navigate the public development process.

Los Angeles

[Patrick A. Perry](#), Partner
[Patrick E. Breen](#), Partner
[Chris Safarian](#), Partner
[Michael Gonzales](#), Sr. Counsel
[Emily Murray](#), Sr. Counsel
[Kavlynn L. Kim](#), Associate
[Eleanor M. Ord](#), Associate

Orange County

[William R. Devine](#), Partner
[John C. Condas](#), Partner
[Michael Joyce](#), Partner
[Shanda M. Beltran](#), Sr. Counsel
[Steven B. Imhoof](#), Sr. Counsel
[Matthew R. Fogt](#), Associate
[Suzanne E. Skov](#), Associate

San Diego

[Jeffrey A. Ching](#), Partner
[Jan S. Driscoll](#), Partner
[David L. Osias](#), Partner
[Ellen B. Spellman](#), Partner
[Heather S. Riley](#), Sr. Counsel

San Francisco

[Sonia J. Ransom](#), Partner
[James T. Burroughs](#), Partner
[David D. Cooke](#), Partner
[James L. Meeder](#), Partner
[Sandi L. Nichols](#), Partner

Walnut Creek

[Michael Patrick Durkee](#), Partner
[David H. Blackwell](#), Partner
[Thomas P. Tunny](#), Partner

Prohibiting Plastic Shopping Bags May Require an EIR

On January 27, 2010, in *Save the Plastic Bag Coalition v. City of Manhattan Beach* (B215788), the Second District Court of Appeal held that the petitioners had raised a "fair argument" that a City of Manhattan Beach prohibition against the use of plastic bags at point of sale

This aggressive application of CEQA allows a plastic bag trade group to challenge a local plastic bag ban that was intended to protect the environment.

might lead to a significant environmental impact, and that therefore the City should have prepared an environmental impact report (EIR) before it adopted the ordinance containing the prohibition. Even though the clear purpose of the ordinance was to avoid negative effects on the marine environment caused by plastic refuse, this did not excuse the City's failure to first prepare an EIR before adopting the plastic bag prohibition.

When the City adopted the ordinance in July 2008, it relied on an Initial Study under CEQA to determine that the plastic bag prohibition would not have a significant effect on the environment. Save the Plastic Bag Coalition, an association of plastic bag manufacturers and distributors, filed suit, claiming that there was no evidence that plastic bags were a continuing significant problem to the marine environment, and claiming that the ordinance would increase the use of paper bags, which would have greater adverse environmental impacts.

The Coalition provided numerous reports in support, which concluded:

- a plastic bag ban would likely lead to increased use of paper as well as reusable bags;
- paper bags have greater negative environmental effects as compared to plastic bags; and
- the negative environmental effects include greater nonrenewable energy and water consumption, greenhouse gas emissions, solid waste production, and acid rain.

The trial court found substantial evidence supporting the Coalition's argument, and vacated the ordinance pending the City's preparation of an EIR.

Affirming, the court of appeal disavowed making any judgment regarding the merits of the plastic bag ban. Instead, it explained how the "fair argument" test under CEQA sets a low threshold for requiring preparation of an EIR and reflects a preference for resolving doubts in favor of more thorough environmental review.

Even though the issue was not raised by the parties, the appellate court examined whether the City's adoption of the plastic ban ordinance was a "project" under CEQA, and found that the



Allen Matkins
#1 Real Estate Law Firm
in California
Chambers and Partners
2002 - 2009

Allen Matkins'
Construction Law Group
is recognized by Chambers
& Partners *as one of the*
best in California.

Connect with
Allen Matkins on:



[LinkedIn](#)



[Facebook](#)

About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with over 230 attorneys practicing out of seven offices in Orange County, Los Angeles, Century City, Del Mar Heights, San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include real estate, construction, real estate finance, taxation, corporate, employment and labor law, business litigation, land use, bankruptcy and creditors' rights, intellectual property and environmental. [more...](#)

ordinance adoption may cause a direct or reasonably foreseeable indirect adverse physical change in the environment due to the potential increased use of paper bags.

The Second District then engaged in a detailed analysis of the "fair argument" test before concluding that the Coalition met its burden of demonstrating the existence of substantial evidence supporting a fair argument that the ordinance may have a significant adverse environmental impact. Particularly important were the reports mentioned above, and the City's admission that the ordinance may lead to increased paper bag use.

This decision is also useful for its extended discussion of standing in CEQA cases. Although a writ petitioner must ordinarily satisfy the "beneficial interest test," the court applied the "public right/duty" exception because it determined that the Coalition's interest in this case was "not a commercial one" (despite the fact that the challenge to the plastic bag ban was brought by plastic bag manufacturers), but was instead brought to enforce the environmental protections inherent in CEQA. This case underscores the relative ease with which a petitioner may establish standing in a CEQA case.

Finally, this decision is notable for Justice Mosk's dissent, wherein he claims that the decision "stretches [CEQA] and the requirements for an EIR to an absurdity" and that in "this day of limits, we must interpret statutes reasonably so as not to require the unnecessary expenditure of public monies for no corresponding benefit." Justice Mosk also takes issue with: the Coalition's standing due to its business interests; whether the ordinance was a "project" under CEQA; and whether the Coalition's reports constituted substantial evidence.

A link to the complete decision is found [here](#).

Please contact us with any questions.

[David Blackwell](#) (415) 273-7463 or dblackwell@allenmatkins.com

[Michael Durkee](#) (415) 273-7455 or mdurkee@allenmatkins.com

Allen Matkins

[Century City](#)

(310) 788-2400

[Del Mar Heights](#)

(858) 481-5055

[Los Angeles](#)

(213) 622-5555

[Orange County](#)

(949) 553-1313

[San Francisco](#)

(415) 837-1515

[San Diego](#)

(619) 233-1155

[Walnut Creek](#)

(925) 943-5551

© 2010 Allen Matkins Leck Gamble Mallory & Natsis LLP. All rights reserved.

This email is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. This email was sent by: Allen Matkins Leck Gamble Mallory & Natsis LLP, 515 S. Figueroa Street, 7th Floor, Los Angeles, California 90071. To stop receiving this publication, just reply and enter "unsubscribe" in the subject line.