



Real Estate & Land Use

Paper or Plastic? Common Sense Prevails in High Court's CEQA Decision

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In a closely watched decision, the California Supreme Court upheld Manhattan Beach's ordinance banning the use of plastic bags. The decision is significant because it changes the standing requirements for corporations bringing California Environmental Quality Act (CEQA) lawsuits and applies a refreshing common sense approach to analyzing the environmental impacts of the City's ban.

In terms of standing, the Supreme Court held that (1) corporations – both for-profit and nonprofit – are *not* subject to heightened standing requirements when filing CEQA challenges; and (2) corporations can achieve “beneficial interest” standing even when the claimed adverse impact on the corporation relates to its business interests, not environmental concerns. In terms of environmental impacts, the Court held that the City of Manhattan Beach was *not* required to prepare an Environmental Impact Report (EIR) before approving a citywide ban on plastic bags because the environmental impacts of that ban were plainly insignificant.

Ultimately, *Save the Plastic Bag Coalition* could have three lasting impacts. First, it could increase the frequency of CEQA litigation between businesses, which no longer have to pretend to care about the environmental impacts of a competitor's development when they bring CEQA lawsuits. Second, it may reduce the

frequency of EIRs prepared for very small projects, which had been a trend when those projects were controversial and litigation was anticipated. Finally, it is possible that future litigants will now reevaluate their reliance on “life cycle” analyses, particularly where the project involves a limited increase in the production of a product like a paper bag.

Background

This case stems from a 2008 ordinance banning the use of point-of-sale plastic carry out bags in the City. The City initially asserted that the Ordinance was exempt from CEQA; however, facing opposition by Save the Plastic Bag Coalition—a loose group consisting of plastic bag manufacturers and distributors, some of which supplied businesses in the City—the City agreed to prepare an Initial Study under CEQA. The Initial Study concluded that the Ordinance’s environmental impacts would be less than significant, and that preparation of a negative declaration would be appropriate. The Coalition again objected, arguing that an EIR should be prepared. Litigation ensued.

The trial court decided in favor of the Coalition, holding that not only did the Coalition have standing to sue, but also an EIR should have been prepared. The Court of Appeal affirmed with an opinion that gave CEQA practitioners great concern because, in deciding that an EIR should have been prepared, the Court of Appeal relied on “life cycle” studies on the global environmental effects of paper bag production. These expansive “life cycle” studies invoked greenhouse gas, acid rain and energy impacts, and triggered concerns among CEQA practitioners about whether such analyses would be required in future EIRs for even small projects. Although the Supreme Court agreed that the Coalition had standing to sue, citing “common sense” the Court reversed the Court of Appeal’s judgment and upheld the City’s decision to prepare a negative declaration.

A New Standard for Corporate Standing

The first question answered by the Supreme Court relates to the Coalition's standing as a corporation whose primary interest was economic, not environmental. Generally speaking, only those with a "beneficial interest" have standing to file CEQA challenges. Such a beneficial interest exists when, for instance, the litigant has a particular right to be preserved or protected over and above the interest held in common with the public at large. However, there is a "public interest" exception to this "beneficial interest" standard where the question is one of public right and the object of the litigation is to procure the enforcement of a public duty (e.g., the City's alleged duty to prepare an EIR weighing the Ordinance's environmental impacts). The Coalition based its standing on such a public interest, notwithstanding its obvious economic motivation.

The Court determined that the Coalition's commercial interest in opposing the Ordinance was not an impediment to its standing. In so holding, the Court explicitly rejected the decision in *Waste Management of Alameda County, Inc. v. County of Alameda*¹ that corporations claiming public interest standing are held to a higher standard (e.g., they must demonstrate that they have a continuing interest in or commitment to the public right being asserted, represent individuals beneficially interested in the action, and other similar factors).

As a result of *Save the Plastic Bag Coalition*, corporate parties will no longer be subject to heightened scrutiny when asserting public interest standing. Although they will still be required to demonstrate a beneficial interest in the litigation, that interest need not be an environmental one. In this case, the Court observed that the Coalition's beneficial interest was simply that the Ordinance would negatively affect its business. This private, competitive, and nonenvironmental interest was deemed sufficient to sue under CEQA.

Common Sense Prevails in Deciding Whether an EIR is Required

The second key holding in *Save the Plastic Bag Coalition* allows common sense to guide environmental impact significance determinations. The underlying facts of the case were not in dispute: namely, that the manufacture, transportation, recycling, and disposal of paper bags entail more negative environmental consequences than do the same aspects of the plastic bag “life cycle.” Petitioner contended that these facts established a fair argument that increased use of paper bags as a result of the Ordinance would have a significant negative effect on the environment, requiring the preparation of an EIR. The Court disagreed, finding that the Ordinance’s limited applicability in a small town like Manhattan Beach meant that such impacts would be clearly insignificant.

The Court’s rejection of the Coalition’s claim is notable because it reflects a pragmatic, common sense approach to CEQA. Central to the analysis was the fact that the universe of plastic and paper bags affected by the Ordinance would be very small. Specifically, there are just 217 existing retail establishments within the City that might use plastic bags, only five of which are large users, like a supermarket. With so few stores, the Court determined that any increase in paper bag production—and therefore any environmental impacts—could “only be described as insubstantial.”