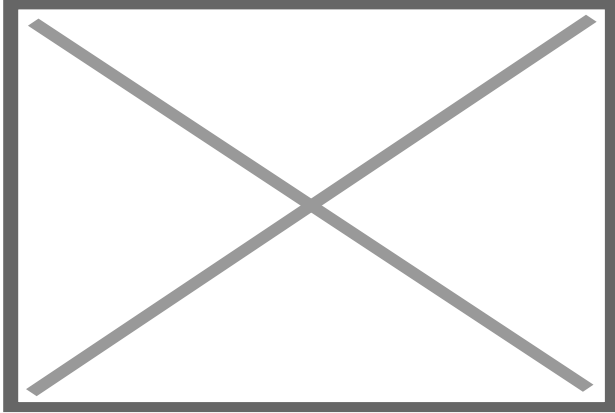


California Supreme Court Applies "Common Sense" to Plastic Bag Ban



The California Supreme Court has held that simple common

sense -- "an important consideration at all levels of CEQA review" -- indicated that the City of Manhattan Beach and its retail sector were too small for the City's ban on plastic bags to cause any significant environmental impact or make any significant cumulative contribution to similar bans in other jurisdictions. Because common sense showed that the impact of the proposed ban would be insignificant, the City was not required to prepare an EIR to evaluate environmental impacts before adopting the ban. The [City of Manhattan Beach](#) adopted an ordinance prohibiting retail establishments, restaurants and vendors from providing customers with carry-out plastic bags at the point of sale. To comply with the California Environmental Quality Act (CEQA), the city adopted a negative declaration rather than preparing an environmental impact report (EIR), concluding that the ordinance would not cause significant environmental impacts. [A coalition of plastic bag manufacturers and distributors](#) sued under CEQA, alleging that the city was required to prepare an EIR because comparative "life cycle" evidence supported a fair argument that using paper rather than plastic bags would cause significant environmental impacts. The court of appeal agreed with the coalition; the California Supreme Court granted review and reversed in a unanimous decision. The coalition alleged that it had "public interest" standing to bring its action as a citizen suit under CEQA. Relying on an appellate court decision holding that a corporation asserting a competitive interest rather than an environmental interest did not have standing to demand CEQA review of a competitor's project, the city argued that the coalition was not a "citizen" and had not demonstrated a genuine environmental concern sufficient to support public interest standing. The supreme court ruled that the coalition's CEQA arguments were appropriate for a citizen suit. The court disapproved the earlier appellate decision to the extent it held that corporate parties are routinely subject to heightened scrutiny when they assert public interest standing. The court further held that in this case it was unnecessary to resort to public interest standing. The coalition had satisfied the general rule of "beneficial interest" standing because the plastic bag ban would have a severe and immediate effect on the business of the coalition's members in the city. The court rejected the argument that a petitioner must be affected by a particular adverse *environmental* impact to qualify as a beneficially interested party in a CEQA suit. On the merits, CEQA generally requires a public agency to prepare an EIR if the evidence in the record shows a fair argument that a project – including the enactment of an ordinance – may cause significant environmental impacts. Therefore, although the city's intent in enacting the ordinance was to avoid the negative environmental effects of discarded plastic bags that reach the ocean, the question under CEQA was whether the plastic bag ban itself could cause significant negative environmental effects. The city conceded that "life cycle" studies showed that the manufacture, transportation, recycling, and

landfill disposal of paper bags cause greater environmental harm than the same processes for plastic bags, including "greater nonrenewable energy and water consumption, greenhouse gas emissions, solid waste production, and acid rain." The court concluded, however, that this life cycle comparison was not determinative. The city and its retail sector were simply too small for the city's ban to cause a significant impact or even make a significant contribution to the cumulative impacts of similar bans in other jurisdictions. Cautioning against overreliance on studies of "life cycle" impacts associated with particular products – especially when the scale of a project is such that the impact is plainly insignificant – the court noted that common sense "is an important consideration at all levels of CEQA review." © 2011 Perkins Coie LLP

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. [View posts by topic](#). [Subscribe ?](#)

[View the blog](#)