

## THE SUPREME COURT OPENS THE DOOR TO CEQA SUITS BY CORPORATIONS BUT FINDS THAT SOME PROJECTS ARE JUST TOO SMALL TO HAVE SIGNIFICANT ENVIRONMENTAL IMPACTS

A unanimous decision issued today by the California Supreme Court, *Save the Plastic Bag Coalition v. City of Manhattan Beach*, contains two important rulings. First, overturning an earlier Court of Appeal opinion, *Waste Management of Alameda County, Inc. v. County of Alameda*, it held that corporations are not subject to heightened scrutiny when filing a CEQA suits and, further, that CEQA petitioners need not be affected by the environmental impacts of a project in order to have standing. Second, reversing the Court of Appeal, the Supreme Court held that common sense dictates that, given the small size of Manhattan Beach, the City's ban on plastic bags would not have significant environmental impacts, despite evidence presented by the Save the Plastic Bag Coalition about the environmental impacts of using paper bags.

The Supreme Court rejected *Waste Management's* holding that corporations should be required to demonstrate, for instance, that they have continuing interest in, or commitment to, the public rights being asserted in their CEQA lawsuits, or that they represent beneficially interested individuals. Instead, the Supreme Court ruled that "corporate entities should be as free as natural persons to litigate in the public interest." In fact, the Court went further, finding that CEQA petitioners need only show that they are "adversely affected" by the governmental action, and not that those affects are environmental in nature.

In its second, and more nuanced holding, the Supreme Court found that the "generic" life-cycle studies presented by the Coalition regarding the negative environmental impacts of the manufacture, transportation, recycling and landfill disposal of paper bags failed to provide substantial evidence to support a fair argument that the City's ban on plastic bags would result in a significant impact to the environment related to increased use of paper bags. Instead, the Court found the City properly concluded that, given the small size of the City, the ban "would have only a miniscule contributive effect on the broader environmental impacts detailed in the paper bag 'life cycle' studies," and its indirect impacts would be "uncertain" and "difficult to predict." The Court, however, cautioned that "the analysis would be different for a ban on plastic bags by a larger governmental body, which might precipitate a significant increase in paper bag consumption." Ultimately, it held that "common sense" supported the conclusion that the City's ban would not result in significant environmental impacts requiring the preparation of an environmental impact report.

The practical effect of the Court's first holding may be expected to be relatively minor – corporations that bring citizens suits today, and that frequently hide behind the names of hastily assembled and bizarrely acronymed "concerned citizens" groups, are likely to continue to do so in order to present themselves to courts as environmentally concerned underdogs. However, the second holding may have far broader consequences. This is because, while the Supreme Court advised that "product 'life-cycle' studies must be kept in proper perspective and not allowed to swamp the evaluation of actual impacts attributable to the project at hand," it also stated that "such studies, when properly conducted may well be a useful guide for the decisionmaker when a project entails substantial production or consumption of a product." This leaves open the question – what is a "substantial

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production or consumption of a product?” When is a retailer’s consumption of gasoline for its delivery trucks, or a builder’s use of timber “substantial” enough to warrant consideration of a project’s indirect impacts via a “life-cycle” study? Further, could the CEQA analysis for an individual development project conclude, for instance, that it would not result in significant impacts related to climate change because the project – much like Manhattan Beach – was just too small to have any significant impact on the global climate? Is the rule now that a court can consider the amount of a cumulative impact and find no need for an EIR if the percentage contribution is small?

The Supreme Court’s decision on the environmental review required for a single, environmentally-minded, ordinance may very well have ripple effects across all projects evaluated under CEQA.

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