

LAW REVIEW

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IS AN EIR NECESSARY TO ANSWER “PAPER OR PLASTIC?”

Sometimes the California Environmental Quality Act (CEQA) is abused. Take the case of *Save the Plastic Bag Coalition v. City of Manhattan Beach* issued by the Court of Appeal last month.

Plastic Bag Ban

Manhattan Beach passed an ordinance prohibiting retailers like supermarkets from providing plastic bags to customers. The ordinance encouraged reusable bags and mandated that paper bags be recyclable. Seems fairly benign.

The City’s rationale discussed the “Great Pacific Garbage Patch,” a massive floating, largely-plastic accumulation of debris in the Pacific Ocean which makes its way into the food chain. Fortunately this floating “Plastic Soup” as it is sometimes called, is coming into public awareness.

Manhattan Beach’s Initial Study concluded that the ordinance may result in greater paper bag use which would include a modest increase in paper mill use and shipping paper bags, but the study found there would be no significant adverse environmental impacts. So rather than prepare an environmental impact report (EIR), the City prepared what’s called a Negative Declaration, a significantly lesser analysis of potential impacts on the environment.

Save the Plastic Bag Coalition

A group of plastic bag manufacturers and distributors calling itself Save the Plastic Bag Coalition challenged the Manhattan Beach ordinance claiming a full EIR would let the public know the “true facts about paper versus plastic.”

The Plastic Bag Coalition presented the City with five studies, most done by plastic bag associations, showing there are negative environmental effects from use of paper bags which should be fully studied. The Plastic Bag Coalition went to trial and won—voiding the ordinance. The City appealed.

Standing

The City argued that the Plastic Bag Coalition had no standing to sue under CEQA because its interest was not in protecting the environment but purely commercial and competitive, which was obviously the case; however the trial court granted standing and the Court of Appeal agreed. (In fact, the Coalition is challenging anti-plastic bag ordinances all over the country, true environmentalists that they are).

Neg. Dec. v. EIR

Under CEQA, any project approved in California must undergo environmental review. If the Initial Study about a proposed project finds that there is “no substantial evidence that the project may have a significant effect on the environment,” then a Negative Declaration may be used rather than a more comprehensive EIR.

If a “fair argument” can be made that a project *may* have a significant effect on the environment, a full EIR is required. With this low standard the trial

court found that four of the five reports on the use of paper versus plastic constituted such evidence, thus requiring a full EIR. The Court of Appeal agreed.

The Manhattan Beach environmental ordinance was thrown out—by a plastic bag association—using California’s main environmental law. Something disturbing about that.

Dissent

Justice Mosk dissented, stating that “Requiring the small city of Manhattan Beach...to expend public resources to prepare an EIR for enacting what the City believes is an environmentally friendly ordinance phasing out the retail distribution (not use) of plastic carry-out bags within the City...just because of some hypothetical, de minimis effect of an ordinance...stretches CEQA...and the requirement for an EIR to an absurdity...this action to require an EIR was generated by the plastic bag industry for its economic interests.”

Justice Mosk facetiously wrote, “Perhaps an EIR is necessary for all the paper used by petitioner (the Plastic Bag Coalition) to obtain favorable reports and to institute litigation to challenge ordinances restricting plastic bags, and for the paper to be used in the EIR’s demanded by petitioner.”

Paper v. Plastic

There is a wealth of information on the paper v. plastic topic in this case, which I will send if you are interested.

DEDICATION OF COLUMN

TODAY’S COLUMN IS DEDICATED TO THE MEMORY OF FIVE

REMARKABLE INDIVIDUALS WHO DEDICATED THEIR LIVES TO FAMILY

AND FRIENDS AND WHO GAVE BACK TO THEIR COMMUNITIES: MARK STEARNS, PAT SUTTON, ALBERTA STEELE, JIMMY HUEGA AND PAULA PORTER.

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