No. S180720
(Court of Appeal, Second Appellate Dist., Div. Five. No. B215788)
(Court of Los Angeles Super. Ct. No. BS116362)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SAVE THE PLASTIC BAG COALITION,
an unincorporated association,
PLAINTIFF AND RESPONDENT

vs.

CITY OF MANHATTAN BEACH,
a municipal corporation,
DEFENDANT AND APPELLANT

After a Decision by the Court of Appeal, Second Appellate District, Division 5, Case No. B215788; Appeal from the Superior Court for Los Angeles County, Hon. David P. Yaffe, Judge, LASC No. BS116362

Application to File Amicus Curiae Brief of HEAL THE BAY in support of Petitioner, CITY OF MANHATTAN BEACH

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[California Rules of Court, Rule 8.520(f)]

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.520(f)(1) of the California Rules of the Court, *amicus curiae*, HEAL THE BAY, respectfully requests permission of the Chief Justice to file the attached brief in support of petitioner City of Manhattan Beach and the other parties that urge reversal of the decision of the Court of Appeal, Second Appellate District. Pursuant to California Rules of Court Rule 8.520(f)(2), this application is timely made, as it is being filed within (thirty) 30 days after the final reply brief was filed by the Respondents on July 7, 2010.

Amicus Curiae, HEAL THE BAY, determined that the decision of the Court of Appeal in this case (the "Plastic Bag Decision") has introduced an absurd standard into the law governing the proper determination what constitutes a "fair argument" and what is the relevant "environment" for purposes of California environmental Quality Act ("CEQA") review. The Court below and the Parties have failed to discuss important limitations in the statutory definitions found in CEQA which we believe the court will find dispositive if applied correctly in this case. For this reason, HEAL THE BAY requests that it be permitted to file its amicus curiae brief in support of petitioner, City of Manhattan Beach.

I

INTEREST AND STANDING OF AMICUS CURIAE, HEAL THE BAY

HEAL THE BAY is a nonprofit organization founded over twenty-five years ago by concerned citizens to restore the marine environment in Santa Monica Bay to a healthy condition. The changes brought about in whole or in part by the organization and its citizen-volunteers over the course of its existence are summarized on its website:

TWENTY FIVE YEARS

Twenty five years ago, multi-million gallon raw sewage spills to Santa Monica Bay were commonplace.

Twenty five years ago, there was a square mile dead zone in the Bay where the ocean floor was nearly devoid of marine life.

Twenty five years ago, bottom dwelling fish from the Bay often had tumors and fin rot.

Twenty five years ago, coastal sewage treatment plants did not comply with the requirements of the Clean Water Act.

Twenty five years ago, few people knew that markets were selling locally caught bottom-fish with health threatening levels of DDT and PCBs.

Twenty five years ago, there were no educational programs targeting the numerous diverse populations that were catching contaminated fish from our local piers.

Twelve years ago, the Tapia Wastewater Treatment Plant discharged to Malibu Creek and Surfrider Beach on a year round basis.

Over twenty years ago, there was no California Beach Report Card or beach water quality standards.

Over twenty years ago, there were no multibillion-dollar environmental and water quality protection efforts like Propositions 12, 13, 40, 50, the Los Angeles City sewer, Hyperion Treatment Plant and Measure O bond measures.

Over twenty years ago, swimmers and surfers had no idea about the health risks from swimming in runoff polluted waters.

Over twenty years ago, there were no storm water permits, polluted runoff education programs, or catch basin stencils in the region.

Over twenty years ago, developers in the region didn't need to even consider the storm water quality impacts from new development.

Over twenty years ago, none of the polluted runoff from storm drains was diverted from the beaches to treatment plants.

Over twenty years ago, Ahmanson Ranch was privately owned and under the threat of massive development that would have destroyed the headwaters of Las Virgenes Creek.

Over twenty years ago, there was no Stream Team monitoring water quality, restoring habitat, and acting as a watchdog to protect the Malibu Creek watershed.

Over twenty years ago, there were no requirements with enforceable deadlines to make local beaches safe for swimming, to keep the trash and toxic metals out of the Los Angeles River and Ballona Creek, and restore water quality in Malibu Creek.

Over twenty years ago, there were no tidewater gobies in Malibu Lagoon.

Over twenty years ago, there was little hope for making environmental education a requirement for all public school students in California.

Over twenty years ago, there was no Santa Monica Pier Aquarium or Key to the Sea educational program.

Over twenty five years ago, there were no Adopt a Beach or Coastal Cleanup Day programs that cleaned up trash at the region's most polluted beaches, rivers and lakes.

Over twenty five years ago, there was no Heal the Bay.
(http://www.healthebay.org/aboutus/20years/intro.asp)

The instant lawsuit involves a project by the City of Manhattan Beach promoting the health of Santa Monica Bay and addressing the threat to the marine environment posed by plastic bag litter as identified in the record. Heal the Bay has worked tirelessly and exceptionally well to accomplish the single-minded goal of restoring the marine environment to a naturally healthy condition, and is keenly interested in the subject at hand. In its letter asking this court to accept the City's petition for review, Heal the Bay detailed the amount of plastic bag debris collected by its volunteers at the beaches in the area. Heal the Bay is vitally interested in this legal proceeding because it is painfully obvious that Respondents are manipulating CEQA's "low threshold" for EIRs in an unabashed effort to prolong and maintain commercial practices that are known to degrade the marine environment.

Respondent "Save the Plastic Bag Coalition" makes the outrageous statement that this Court should see "how the Coalition has protected the environmental values enshrined in CEQA". (RB p.2). One has to wonder, precisely what "environmental values" is the coalition protecting? This Court is being asked to take seriously the idea that the plastic bag manufacturers' use of the low threshold for environmental review under CEQA in this case is a "protection" of the environmental values

enshrined in CEQA. To the contrary, Heal the Bay asks this court to curb the manipulation and misapplication of CEQA by carefully examining and applying the statutory language pertinent to the facts before us.

II

ARGUMENT

A. THE COURT BELOW FAILED TO ANALYZE THE STATUTORY DEFINITION OF THE **ENVIRONMENT** BEING IMPACTED BY THIS **PROJECT**

1. This Case Concerns A Claim of Adverse Effects on the Environment.

The dispute in this case involves the application of the following provision found in Public Resources Code section 21082.2(d), in determining whether to require an EIR:

> (d) If there is substantial evidence, in light of the whole record before the lead agency, that a project **may have a significant effect on the environment,** an environmental impact report shall be prepared. (emph. added)

In *Communities For A Better Environment v. South Coast Regional Air Quality Board* (2010) 48 Cal. 4th 310, 319, this court pointed out that "significant effect" means "adverse" change in the environment, summarizing the relevant standards as follows:

> As noted in the introduction, a public agency pursuing or approving a project need not prepare an EIR unless the project may result in a "significant effect on the environment" (§§ 21100, subd. (a), 21151, subd. (a)), defined as a "substantial, or potentially substantial, **adverse change in the environment**" (§ 21068). If the agency's initial study of a project produces substantial evidence supporting a fair argument the project may have significant adverse effects, the agency must (assuming the project is not exempt from CEQA) prepare an EIR. (Cal.Code Regs., tit. 14, § 15064, subd.

(f)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 118 Cal.Rptr. 34, 529 P.2d 66.) If the initial study instead indicates the project will have no significant environmental effects, the agency may, as the District did here, so state in a negative declaration. (Cal.Code Regs., tit. 14, § 15064, subd. (f)(3).)

(*Id.*, emph. added, fn. omitted).

In searching for the existence of this required "adverse effect", Respondent Plastic Bag Coalition cast a wide net, arguing for a study of global warming impacts, acid rain, and other disasters allegedly caused by the use of paper, instead of plastic, to carry groceries and take-out food. The Coalition's position is summarized as follows in the opinion below, *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 181 Cal.App.4th 521, 105 Cal.Rptr.3d 41 (rev. granted):

> Plaintiff averred: ... the ordinance will inevitably result in increased use of paper bags, which have greater significant negative environmental effects than plastic bags; the use of paper bags increases consumption of nonrenewable primary energy and water; greater paper bag use increases emission of climate changing greenhouse gases, acid rain, negative air quality, water body eutrophication and solid waste production; and paper bags degrade in landfills while plastic bags do not, but decomposing paper produces methane, a potent greenhouse gas. Plaintiff concluded that if the city were required to prepare an environmental impact report, the city council and the public would know the true facts about the ways in which and the extent to which paper bags are worse for the environment and that banning plastic bags would not have any material effect on the environment.
>
> (181 Cal. App. 4th at ____, 105 Cal. Rptr. 3d at 46, fn omitted)

This scope of analysis, however, goes far beyond what the Legislature requires under CEQA. While there is extensive discussion in the

parties' briefs of the case law regarding the "fair argument" standard under CEQA, the parties fail to focus on the critical language of the statute providing the definition of "environment", found in 21060.5.

2. The "Environment" is Defined by CEQA As the Area Affected By the Project. The statute requires analysis of the impacts of a "project" on the "**environment**", but with a very specific, and limiting, definition of the term "environment" which does **not** include worldwide, statewide, or even countywide geographic boundaries. Rather, the relevant boundary for analysis of "adverse impacts on the environment" is circumscribed by the definition of "environment" found in Public Resources Code § 21060.5:

> "Environment" means the physical conditions which exist **within the area which will be affected by a proposed project,** including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance. (Emph. added).

3. The Statute Also Defines "Project" With Reference To the Defined Term "Environment", Which Is Within the Area Affected By the Project. The definition of "project" is equally instructive, because it, too, is limited to a specific area by the use of the *defined term,* "environment" within the definition of "project" found in PRC § 21065:

> "Project" means an activity which may cause **either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment**...."

Thus, under the statutory scheme, the city must do an EIR if it can be fairly argued that its "project", *i.e.*, the regulation of plastic bag

distribution, may have a **significant adverse impact** on "the conditions that exist **within the area which will be affected by [the] proposed project**".

4. The Relevant "Area Which Will be Affected by the Project" is the City of Manhattan Beach. Applying the definitions in the statute, the relevant area of impact is Manhattan Beach and possibly any spill-over to adjacent areas where its effects might be felt by mere proximity to the city boundaries. It is not the entire nation. It is not Scotland. It is not Sweden. It is not The Bay Area near San Francisco. It is not even the County of Los Angeles. Most of all, it is not the entire Globe which, according to plaintiff, might possibly feel a minute impact in climate change if billions of people in coastal wetlands adopt similar ordinances to protect their adjacent marine life. The "project" in question is a city ordinance regulating business activity of approximately 217 retailers within the city boundaries, and by law can go no further. The city of Manhattan Beach cannot regulate the distribution of plastic bags anywhere outside the city limits, nor does the ordinance purport to do so. Therefore, the question under CEQA is whether the project may have a significant **adverse impact on the physical conditions *within Manhattan Beach and environs.***

The City did an Initial Study and properly concluded that the project would have a beneficial impact on the conditions within the area affected by the project. Despite known debates over plastic v paper on a global scale, it would not have a "significant" adverse effect on the environment, on "the physical conditions within the area affected by the project". The City adopted a Negative Declaration,

as *required* by law:

> (c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency *shall adopt* a negative declaration to that effect. ...
> (Pub. Res. Code 21080(c), emph. added).

The city was not required to speculate on the countywide, statewide, or worldwide impacts that might follow if *every city* did the same thing as Manhattan Beach. Regulations of that magnitude might have interstate implications involving the Commerce Clause and NEPA, but CEQA has limited its reach, sensibly, to the area affected by the project in question. The city studied that area and reached a sensible conclusion, which should be upheld as a matter of simple statutory construction.

Of course, it has been recognized by this Court, in *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 387-88, 60 Cal.Rptr.3d 247, that the reach of CEQA is not necessarily circumscribed by strict geographic boundaries:

> [N]o statute (in CEQA or elsewhere) imposes any per se geographical limit on otherwise appropriate CEQA evaluation of a project's environmental impacts. To the contrary, CEQA broadly defines the relevant geographical environment as "the area which will be affected by a proposed project." (Pub. Resources Code, § 21060.5.) Consequently, "the project area does not define the relevant environment for purposes of CEQA when a project's environmental **effects will be felt outside the project area**." (*County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1582-1583, 27 Cal.Rptr.3d 28.) Indeed, "the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91

Cal.App.4th 342, 369, 110 Cal.Rptr.2d 579 (*Napa Citizens*).) Thus, the Commission is mistaken in its suggestion that agencies have no obligation under CEQA to consider geographically distant environmental impacts of their activities.
(*Id.*, fn omitted, emph. added).

Therefore the question becomes whether this project, banning distribution of plastic bags by 217 retailers in Manhattan Beach, will have "geographically distant environmental impacts". Of course, it can always be argued that a project's effects will be felt somehow, somewhere in the world (as in the "Butterfly Effect" discussed in Amicus' March 17th letter to this court supporting review), but the court in *Muzzy* added the caveat that one would have to ascertain that the effects could be felt in some identifiable area outside the project area. It did not conclude that the whole world becomes the relevant "environment". It is rank speculation whether the Manhattan Beach ban will ever be felt on climate change anywhere, whereas it is a known, observable *fact* that plastic bags contribute significantly to the marine debris in the Pacific Gyre and pose a threat to marine environs in the vicinity of Manhattan Beach. There's no mention about the irony of claiming global impacts when the most clearly demonstrated, far-reaching, environmental impact in the paper versus plastic bag debate, is the presence of plastic bags hundreds of miles off shore in the remote Pacific. Locally, not only are these bags one of the most frequently found marine debris items in Heal the Bay's beach cleanups (see Heal The Bay's Amicus Letter on file herein), they also cause clogging of street catch basins and catch basin screens, which can lead to increased flood risk and increased maintenance costs.

5. The Statutorily Relevant Environment Does Not Encompass the Entire World. The opinion below adopts the conclusion that there may be a significant adverse effect on the environment, by adopting the world as its affected area, because it justifies its conclusion of potential adverse impacts by reference to the 4 studies of potentially global impacts summarized in the opinion:

> "We conclude it can be fairly argued based on substantial evidence in light of the whole record that the plastic bag distribution ban *may* have a significant effect on the environment. The four reports cited by the parties and summarized above-the Scottish, Boustead, ULS and Franklin reports-support the conclusions: a plastic bag ban is likely to 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. (105 Cal.Rptr.3d at 58; emphasis in original).

The opinion discussed and rejected the city's conclusion that the impacts of the project would not be significant because of the small size of the city, but in doing so, the Court did not cite or analyze in any way the relevant statutory definition of the "environment", *supra*. Instead, the court first conceded that "it may be that the city's population and the number of its retail establishments using plastic bags is so small and public concern for the environment so high that there will be little or no increased use of paper bags" (*id*); but then went on to conclude:

> There is no statutory exemption from compliance with [CEQA] based on a city's geographical or population size.

> Nor have we found any decisional authority to the effect that a small city should not be required to expend its resources to comply with [CEQA] when it believes its actions will have a positive effect on the environment.
> (*Id*).

The Court failed to discuss, or evidence any awareness of, the meaning and importance of the statute's definition of "environment" in addressing the size of the relevant environment. Since the statute limits the area of inquiry to the conditions "within" the area affected by the project, size of the area *does* matter. The words chosen by the Legislature each have meaning, and cannot be omitted by the court in such a way as to change the meaning of the definition. If the Legislature chose the word "within", the courts are required to construe the definition by recognizing that word and determining what it means. To require the examination, in a full-blown EIR, of the worldwide impacts which might result from using less plastic and more paper, would be to delete the entire phrase "within the area affected by the proposed project" and simply leave the word "environment" to be defined as the "conditions that exist", anywhere in the world. For example, the court below, in support of its conclusion, cited potential "deforestation" from increased use of paper. This Court may judicially notice that there are no forests or logging camps *within* or anywhere near Manhattan Beach that will be "deforested" if a grand total of 217 retailers distribute paper bags or reusable bags rather than plastic bags. The court also cites the potential for "acid rain", yet there is no evidence anywhere in the record that acid rain poses a threat within Manhattan Beach or

surrounding areas that will be triggered by the replacement of disposable plastic bags by paper or reusable bags.

While it is true, as the court notes below, there is no stated "statutory exemption" based upon size, there is a statutory limitation on the obligation to analyze impacts within a defined area, thus the size and location and physical conditions of that area are relevant in determining the extent of the potential adverse impacts.

6. The Dissenting Opinion Implicitly and Correctly Recognized The Statutory Limits Under CEQA. The only recognition of the limits imposed by the definition of "environment" as the conditions which exist "within the area" impacted by the project, is found in the following statement by Justice Mosk, in his dissent: "I do not consider these reports [cited by Respondents] to constitute substantial evidence that a distribution ban **within this small city** will impact the environment." (*Save the Plastic Bag Coalition,* 181 Cal.App.4th at 549, emph. added). If, instead of using the word "environment", Justice Mosk had substituted the definition for that word in the statute, he would have stated, "I do not consider these reports [cited by Respondents] to constitute substantial evidence that a distribution ban within this small city will impact the **conditions within the area which will be affected by the project.**"

Examining the litany of alleged impacts cited in Respondents' Brief and adopted by the majority, to wit, "increased greenhouse gases, increased water consumption, increased acid rain, increased ground level ozone formation, increased water body eutrophication, increased solid waste production, or increased logging operations, all of which were addressed in the Scottish and ULS Reports" (RB at 12),

one finds no analysis or evidence demonstrating that these are impacts from *this project* that will affect the physical conditions *within the legally relevant environment.*

In order to affirm the decision below, this court would have to read the statutory phrase "the area which will be affected by the project" to encompass the whole world, and then re-define "project" to include, on a theoretical basis, all possible laws throughout the world which might be passed in the future to limit plastic bags in favor of paper bags.

As noted above, the word "project" is a defined term, and it is limited to the activity that will affect a "physical change in the environment", *i.e.*, a physical change in the physical conditions "within the area affected by the project". The City is only required to answer for the impacts of *this project* within its own city limits and surrounding areas, not for all possible projects, *i.e.*, unidentified future regulations or laws throughout the nation or the world that might lead to greater production of paper than plastic. This straightforward statutory construction leads to the conclusion that the city was correct to approve the negative declaration, a conclusion which is complemented by an exemption from the EIR requirement based upon the notion of common sense, discussed next.

B. STATE LEGISLATIVE FINDINGS CONCERNING THE KNOWN ADVERSE IMPACTS OF PLASTIC BAGS COMPEL THE USE OF THE COMMON SENSE EXEMPTION IN THE INSTANT CASE

1. CEQA Has A "Common Sense" Exemption From the Need To

Prepare An EIR. This court has noted the existence of a common sense exemption from EIR requirements under CEQA, stating in *Muzzy Ranch:*

> A project that qualifies for neither a statutory nor a categorical exemption may nonetheless be found exempt under what is sometimes called the "common sense" exemption, which applies "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment" (CEQA Guidelines, § 15061, SUBD. (B)(3)).
> (*Muzzy Ranch, supra,* 41 Cal.4th 372 at 380)

2. The Common Sense Exemption Is Designed To Avoid Absurd Results, Such As the Butterfly Effect Presented by This Case. Every activity undertaken by man, beast, or insect can have an impact on the environment if we accept chain-of-causation analysis in the "Butterfly Effect" hypothesis, discussed in the letter submitted by Amicus on file herein. However, under the common sense standard supplied by CEQA, one must recognize without hesitation or extensive debate that not every activity has a *significant adverse effect* on the environment. Not every butterfly wing-flap in Brazil will actually cause a tornado in Texas, although an eminent scientist has written that it "may" have that effect. If it "may have" that "effect" according to at least one reputable report, does that mean an EIR is *required*, even if the local agency acknowledges the report and determines formally that the potential impact is an acceptable level of risk that does *not require further study*?

3. The Lower Court's Ruling Leads To Absurd Results When Applied To Regulatory "Projects". Let us examine the common sense

approach to regulatory bans as "projects" under CEQA. Suppose a small city proposes a ban on gas-powered leaf blowers because the noise from these infernal machines used by gardeners everywhere creates a nuisance in residential areas. Suppose further that leaf blower manufacturers and landscape gardeners see this proposed ban as a growing threat to business, therefore they commission a report or reports by eminent scientists discussing the worldwide implications of using alternatives to gas-powered blowers on a global scale. Faced with these reports and the opinion of the Second District Court of Appeal in the *Plastic Bag* case, the city would first have to do an EIR to study the amount of energy that might be consumed by alternate methods of gathering leaves, such as electric blowers, or rakes and brooms, or "no project". How much global warming would be caused by the consumption of electricity, and all the elements necessary to produce electricity, *vs.* the consumption of a few ounces of petroleum in the different models of leaf blowers? Alternatively, if brooms are used instead of blowers, how many plants will be destroyed and how will that impact oxygen production if there is a surge in the worldwide use of broomcorn (*Sorghum bicolor*), straw, yucca, or other natural-fiber brooms to replace blowers? If the brooms and rakes are made of plastic instead of natural materials, how much global warming and acid rain will be created in producing ***these*** alternatives? Perhaps even more significant, how many *trees* will be felled in order to make wooden broom handles needed to accommodate the worldwide demand for brooms and rakes to replace banned blowers? Will this result in deforestation and logging impacts? How much diesel fuel will be needed to accommodate the increased truck traffic necessary

first to haul the logs and then to haul the broom handles? Oh, but wait — how do we actually know whether *other* cities around the world will adopt similar bans? How do we know, and how can we measure, the number of broom handles that will actually be ***needed*** as a result of the proposed ban in this one small city? Is this a growing trend, or just an aberration? Will other cities around the world think it is silly, and continue to allow gardeners to use gas-powered blowers, because local councils are mercilessly pressured to do so not only by gas blower manufacturers but by members of the local gardeners and landscapers unions, who depend on gas blowers to do ten jobs in the time it would take to do one with a broom? Lest we think this imagined fear of an EIR is mere poppycock, consider the fact that in the city of Orinda, a proposed leaf-blower ban was actually criticized in a letter to the editor ***arguing that an EIR was necessary***. In an absurd statement eerily similar to that used by the Plastic Bag people and the author of the Butterfly Effect, the writer argued the city must prepare an EIR to study the impact of fires that ***may*** result if the writer and others were not allowed to use blowers and were *too lazy to use alternatives*![1] Certainly we don't know all the answers to these types

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1. *See*, http://www.lamorindaweekly.com/archive/issue0402/Letters-to-the-Editor.html: "...About 80% of my weed blower use is in keeping my roof cleaned. Others in our subdivision use leaf blowers for the same purpose. Doing this by hand is tedious, time consuming and more dangerous than using a blower. Using a blower is a simple ten minute walk around my roof and gutters. Putting a large impediment in front of this process means people simply won't do it, with possible disastrous results. Think here of the Law of Unintended Consequences, which might be phrased as Ban Leaf Blowers – Burn Southwestern Orinda to the Ground. Clearly an EIR would be needed here before putting the ban in place. Peer reviewed studies using scientifically accepted protocols should be obtained that show the relative harm caused by leaf blowers is greater than that caused by the permitted uses of weed whackers, chain saws and chippers and how this compares to the harm caused by an Oakland hills type of fire. I have no desire to make the history books by being part of a neighborhood that disappears into ashes.

of questions, but do we need an EIR to discuss the *theoretical* impacts of every unintended consequence? No. Fortunately, common sense tells us not to spend $100,000 of scarce taxpayer dollars on an EIR trying to predict the impacts and devise mitigation measures for a leaf-blower ban, which in turn will lead to another $200,000 in litigation costs over the EIR's conclusion because, no matter what the conclusion is, one side in the dispute will most assuredly not be happy. Common sense intervenes, and justice prevails, when cities decline to dignify every whimsical notion of the impacts that "may" occur as a "fair argument."

4. Common Sense Tells Us That A Ban On Distribution Of Plastic Bags in 217 Retail Stores Will Not Have A Measureable Adverse Impact On the Global Environment, Much Less The Legally Relevant Environment Of Manhattan Beach. As in the leaf blower example, common sense informs our conclusion that banning the distribution of plastic bags at 217 retail outlets in Manhattan Beach will not have a "significant adverse effect" on the environment in and around Manhattan Beach. Common sense informs us that we will not experience acid rain, deforestation, water body eutrophication, depletion of the ozone, or global warming in Manhattan Beach or anywhere within a reasonable distance of Manhattan Beach as a result of this activity. And common sense tells us that without a huge number of other cities doing the same thing everywhere around the world, the ban at 217 retail outlets in Manhattan Beach will have no adverse impact whatsoever on the rest of the world.

Exclude or exempt us from this meddlesome and dangerous ban. [name of writer], Orinda". (Lamorinda Weekly, Mar. 30, 2010).

5. The State Legislature Has Provided Formal Findings That Support the Application Of Common Sense In this Particular Case.

Common sense tells us that the results of the city's proposed ban cannot be deemed an "adverse effect", within the State Legislature's understanding and intent under CEQA, when that same Legislature has made the following solemn findings in enacting Public Resource Code Section 42250 et seq.:

> "SECTION 1. (a) The Legislature **finds and declares** all of the following:
>
> "(1) On a global level, the production of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil, and the deaths of thousands of marine animals through ingestion and entanglement.
>
> "(2) Each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, and of which billions of bags end up as litter each year.
>
> "(3) Most plastic carryout bags do not biodegrade which means that the bags break down into smaller and smaller toxic bits that contaminate soil and waterways and enter into the food web when animals accidentally ingest those materials.
>
> "(b) It is the intent of the Legislature, in enacting Chapter 5.1 (commencing with Section 42250) Part 3 of Division 30 of the Public Resources Code, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags."
> (Legislative findings and declarations relating to Stats.2006, c. 845 (A.B.2449), emph. added)

The Plastic Bag Coalition apparently disputes these conclusions, but

it should have directed its fire at Sacramento, and sued to challenge the state's potential impact on interstate commerce. It has not done so, and therefore the findings stand uncontested. Given these findings, it seems beyond debate that a city which adheres to the express, possibly preemptive, intent of the state legislature by passing an ordinance the very purpose of which is to "encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use [plastic] bags", is *not* engaged in an activity that the legislature thinks would have a *significant adverse effect* on the environment. If doing so were deemed to have a significant adverse effect, it would not be in the state's interest to make the findings that the state has formally made.

Even if we take seriously the 4 famous plastic bag studies and impose the lower court's "macro" view of the need to study the worldwide consumption of paper *vs.* plastic caused by this one little city, it is clear the State of California has made the determination that *reducing the adverse impacts of plastic bags* resulting from the non-biodegradable "toxic bits that contaminate soil and waterways and enter into the food web when animals accidentally ingest those materials" has benefits that outweigh the *already-known* negatives of using more paper. Why, then, should the city of Manhattan Beach be required to shoulder the task of re-studying the global impacts of 500 billion to 1 trillion plastic bags used annually word wide, when the state legislature has investigated the subject and determined that the adverse impacts of plastic outweigh the adverse impacts of the alternatives? Even if the worldwide impacts of replacing billions of plastic bags with paper bags---which is not what the Manhattan Beach ordinance requires---were deemed significant and adverse, a

conclusion to require an EIR that would inevitably result in a Statement of Overriding Considerations (when the city reaches the same conclusion as the State) is wasteful, irresponsible, and completely nonsensical.

III

CONCLUSION

Amicus Curiae Heal the Bay respectfully suggests that this Court should take this opportunity to refine its *Muzzy Ranch* discussion of the geographic reach of a project, and decide whether or not Section 21060.5 has direct and controlling relevance to the issues posed by this case. We respectfully urge this court to conclude that the analysis of impacts was properly limited by the City to the foreseeable impacts on the physical conditions within the area affected by the ordinance, all of which impacts were found to be beneficial, benign, or insignificant. Such a result is consistent with the State Legislature's formal findings regarding the known adverse impacts of plastic bags, and is consistent with the common sense exemption from EIR requirements under CEQA. Any other result subjects the well-deserved reputation and dignity of the state's leadership in environmental regulation under CEQA to ridicule, demonstrating that the law may be manipulated at will by those with sufficient economic motivation and the resources to do so.

Respectfully submitted,

Dated: August 3, 2010

John B. Murdock
Attorney For Amicus Curiae
HEAL THE BAY