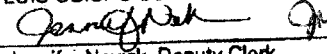


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**FILED**

**OCT 01 2012**

SAN LUIS OBISPO SUPERIOR COURT

BY:   
Jennifer Novick, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

SAVE THE PLASTIC BAG COALITION,  
an unincorporated association,

Petitioner,

v.

SAN LUIS OBISPO INTEGRATED  
WASTE MANAGEMENT  
AUTHORITY, a joint powers agency;  
and DOES 1 – 100, inclusive,

Respondents.

CASE NO. CV 120078

**RULING AND ORDER DENYING  
PEREMPTORY WRIT OF MANDATE**

**I. INTRODUCTION AND SUMMARY**

Californians use approximately 19 billion plastic bags each year, out of which San Luis Obispo County residents use about 130 million. More than 80% of these bags wind up in landfills or as litter. At last count, there were 247,000,000 pounds of plastic bags buried in landfills across California, generating annual disposal costs of approximately \$51 million.

1           Aside from generating direct economic costs through landfill disposal, many of these  
2 plastic bags find their way as litter into the Pacific Ocean. In the marine environment, plastic  
3 bags have entangled, or have been ingested by, approximately 257 different marine species.  
4 Plastic fragments become highly contaminated and cause hormone disruption in fish, as well  
5 as in humans that ingest the fish.

6           Paper bags, as well, generate significant environmental costs. While about 20% of  
7 paper bags are recycled, the remaining 80% wind up in landfills, littered, or composted. Over  
8 their lifetime, single-use paper bags produce larger greenhouse gas emissions, and cause  
9 greater atmosphere acidification, water consumption, and ozone production than plastic bags.

10           Faced with this and other daunting information regarding the economic and  
11 environmental costs of single-use plastic and paper bags, earlier this year the San Luis  
12 Obispo County Integrated Waste Management Authority adopted the Reusable Bag  
13 Ordinance, which goes into effect today. The Ordinance is a comprehensive plan to increase  
14 consumer use of reusable bags by banning the use of single-use plastic bags and placing a  
15 \$.10 fee on single-use paper bags, thereby enhancing and protecting the environment. In  
16 other areas of the world, fees on single-use bags and bag bans have resulted in dramatic  
17 drops in consumption.

18           The Save the Plastic Bag Coalition, an unincorporated association of plastic bag  
19 manufacturers and distributors, challenges the Reusable Bag Ordinance on the basis that the  
20 Waste Management Authority did not comply with the landmark California Environmental  
21 Quality Act when it adopted the Reusable Bag Ordinance. The Coalition claims it submitted  
22 considerable proof that there may well be significant negative environmental impacts caused  
23 by San Luis Obispo's Reusable Bag Ordinance, and that greater use of paper bags will  
24 actually cause far worse environmental damage than single-use plastic bags.

25           Under the California Environmental Quality Act, the Coalition was required to submit  
26 specific evidence showing that, even though it is designed to confer considerable  
27 environmental and economic *benefits*, the unusual nature of San Luis Obispo's Reusable Bag  
28 Ordinance might nevertheless cause environmental harm.



1 The Notice of Exemption also concluded that the Reusable Bag Ordinance was  
2 “categorically exempt” from environmental review under CEQA based upon the Class 7  
3 (actions taken by regulatory agencies to maintain, restore, enhance, or protect natural  
4 resources) and Class 8 (actions taken by regulatory agencies, to assure the maintenance,  
5 restoration, enhancement, or protection of the environment) exemptions. (See Public  
6 Resources Code §§21083-20184; Guideline §§15307 and 15308.)

7 On February 2, 2012, the Save the Plastic Bags Coalition (hereafter “Industry  
8 Coalition” or “Coalition”) filed this writ challenging the Waste Management Authority’s  
9 determinations. In brief, the Industry Coalition claims that the Waste Management  
10 Authority should have done an Environmental Impact Report (“EIR”) to address the  
11 significant environmental effects that will flow from adoption of the Reusable Bag  
12 Ordinance.

13 On August 30, 2012, the Court heard argument on the merits of the case and took the  
14 matter under submission. Having considered the briefs, arguments, evidence, and requests for  
15 judicial notice, the Court’s ruling now follows.<sup>2</sup>

### 16 17 **III. STANDARD OF REVIEW**

18 Under CEQA, there is a strong presumption in favor of requiring an EIR. (*Friends of*  
19 *Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; Kostka, Zischke, *CEB*  
20 *California Environmental Quality Act, 2<sup>nd</sup> Ed.* §6.37) Generally speaking, an agency must

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22 <sup>2</sup> Earlier today, the Coalition advised the Court that it had filed a dismissal of the petition without prejudice  
23 due to the timing of the Court’s ruling and in order to save judicial resources. However, a petitioner has no  
24 ability unilaterally to dismiss a case without prejudice once the matter is finally submitted for decision.  
25 (See, e.g., Code Civ. Proc., § 581 (d) and (e); *Bank of America, N.A. v. Mitchell* (2012) 204 Cal.App.4th  
26 1199, 1212.) This matter was finally submitted for decision once supplemental briefing was concluded on  
27 September 7, 2012. The Court was asked to expedite its ruling, and it has done so, expending considerable  
28 resources in the process. A unilateral dismissal without prejudice at this late date will not save judicial or  
litigant resources. The dismissal is hereby set aside as void.

1 prepare an EIR whenever substantial evidence in the record supports a fair argument that a  
2 project may have a substantial effect on the environment. (*See, e.g., Porterville Citizens for*  
3 *Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885.)

4 A "significant effect on the environment" is defined as "a substantial or potentially  
5 substantial adverse change in the environment." (Pub. Res. Code §21068.) The CEQA  
6 Guidelines (14 Cal. Code Regs §15382) expand on the statute, defining "significant effect on  
7 the environment" as:

8 a substantial, or potentially substantial, adverse change in any of the physical  
9 conditions within the area affected by the project including land, air, water,  
10 minerals, flora, fauna, ambient noise, and objects of historic and aesthetic  
11 significance.

12 "Substantial evidence" means "fact, a reasonable assumption predicated upon fact, or  
13 expert opinion supported by fact" (*Porterville*, 157 Cal.App.4th at 900), but does not include  
14 argument, speculation, unsubstantiated opinion, narrative or rumor. (*Id.* at 900; *Lighthouse*  
15 *Field v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1206.) "In the absence of a  
16 specific factual foundation in the record, dire predictions by non-experts regarding the  
17 consequences of a project do not constitute substantial evidence." (*Id.* at 901, citing *Gentry*  
18 *v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.) Further, the "[u]nsubstantiated fears  
19 and desires of project opponents do not constitute substantial evidence." (*Porterville*, 157  
20 Cal.App.4th at 901; *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 436-37.)

21 When, as in this case, an agency seeks to take advantage of a categorical exemption  
22 from environmental review, the court applies a deferential "substantial evidence" test in  
23 reviewing the agency's determination. (*Committee to Save Hollywoodland Specific Plan v.*  
24 *City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1187.) In response, the project opponent  
25 must demonstrate *either* the absence of substantial evidence supporting the agency's action  
26 *or* the presence of substantial evidence in the record supporting a fair argument that the  
27 action taken by a regulatory agency will have a significant effect on the environment due to  
28 "cumulative impacts" or "unusual circumstances." (Guideline §§15300.2(b) and (c); *Azusa*

1 *Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th at  
2 1165, 1197; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of*  
3 *San Diego (MI Arbolito, LLC)* (2006) 139 Cal.App.4th at 249, 260 (emphasis added).) The  
4 project opponent bears the burden of proving that unusual circumstances require further  
5 environmental review. (*Porterville*, 157 Cal.App.4th at 899.)<sup>3</sup>

#### 7 **IV. DISCUSSION**

8 The Industry Coalition's fundamental premise is that it presented substantial evidence  
9 to the Waste Management Authority establishing a "fair argument" that there will be  
10 significant negative environmental impacts caused by the Reusable Bag Ordinance such that  
11 the two chosen categorical exemptions, Classes 7 and 8, are not applicable. The factual basis  
12 of Petitioner's premise is that passage of the Reusable Bag Ordinance will result in greater  
13 use of paper and reusable bags, which will actually be far worse for the environment than  
14 single-use plastic bags. As the Court will discuss herein, there are serious procedural and  
15 evidentiary flaws in these arguments.

#### 16 **A. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE WASTE** 17 **MANAGEMENT AGENCY'S CHOICE OF A CATERGORICAL** 18 **EXEMPTION FOR THE REUSABLE BAG ORDINANCE**

19 An agency's selection of a categorical exemption is the first of a three-step process in  
20 determining whether to prepare an EIR:

21 The first step 'is jurisdictional, requiring that an agency conduct a preliminary  
22 review in order to determine whether CEQA applies to a proposed activity.'  
23 The Guidelines give the agency 30 days to conduct this preliminary  
24 review....As part of the preliminary review, the public agency must determine

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25 <sup>3</sup> There is an acknowledged split in authority as to whether the traditional substantial deference test applies  
26 or the fair argument test should be used. This Court will follow the lead of *Banker's Hill* in adopting the  
27 fair argument standard. (139 Cal.App.4<sup>th</sup> at 267.) A more deferential standard would unduly insulate  
28 categorical exemptions from judicial review and frustrate CEQA's primary purpose as an "environmental  
alarm bell." (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; *Laurel Heights Improvement Assn. v.*  
*Regents of University of California* (1988) 47 Cal.3d 376, 392.)

1 the application of any ...categorical exemptions that would exempt the  
2 proposed project from further review under CEQA. The categorical  
3 exemptions are contained in the Guidelines and are formulated by the  
4 Secretary under authority conferred by CEQA section 21084(a). If, as a result  
5 of preliminary review, 'the agency finds the project is exempt from CEQA  
6 under any of the stated exemptions, no further environmental review is  
7 necessary. The agency may prepare and file a notice of exemption, citing the  
8 relevant section of the Guidelines and including a brief 'statement of reasons  
9 to support the finding.' (*Banker's Hill*, 139 Cal.App.4th 249, 257-258  
10 (Citations omitted.))

11 Class 7 and Class 8 are two of thirty-three classes of projects that generally do not  
12 have significant impacts on the environment and are therefore exempt from CEQA review.  
13 "Public Resources Code section 21084 authorizes the Secretary of the Resources Agency to  
14 include in the Guidelines a list of classes of projects exempt from CEQA provided that the  
15 Secretary makes 'a finding that the listed classes ... do not have a significant effect on the  
16 environment.'" (*Azusa Land Reclamation Co.*, 52 Cal.App.4th at 1165, 1191.)

17 Class 7 (Guidelines 15307) excludes from environmental review actions taken by  
18 regulatory agencies, as authorized by state law or local ordinance, to assure the maintenance,  
19 restoration, or enhancement of a natural resource where the regulatory process involves  
20 procedures for protection of the environment. Examples include, but are not limited to,  
21 wildlife preservation activities of the State Department of Fish and Game. Construction  
22 activities are not included in this exemption.

23 Class 8 (Guidelines 15308) excludes from environmental review actions taken by  
24 regulatory agencies, as authorized by state or local ordinance, to assure the maintenance,  
25 restoration, enhancement, or protection of the environment where the regulatory process  
26 involves procedures for protection of the environment. Construction activities and relaxation  
27 of standards allowing environmental degradation are not included in this exemption.

28 Before adopting the Bag Recycling Ordinance, the Waste Management Authority was  
presented with persuasive evidence of the significant environmental *benefits* of the Reusable  
Bag Ordinance. In particular, the Waste Management Authority relied on the Master  
Environmental Assessment (MEA) on Single-Use and Reusable Bags that was prepared in

1 2010 on behalf of Green Cities California. This MEA included research and reports  
2 demonstrating that:

- 3 • Other public entities have passed or considered passing similar types of  
4 ordinances with significant environmental benefits;
- 5 • In other regions of the world, fees on single-use bags, or single-use bag bans,  
6 have dramatically lowered consumer consumption;
- 7 • In California, 19 billion plastic bags are used annually, with 81% of them  
8 ending up in landfills, which in turn generates 147,038 tons of waste and  
9 requires in excess of \$51 million annually of disposal costs;
- 10 • 247 million pounds of plastic bags are buried in landfills across California;
- 11 • San Luis Obispo County uses about 130 million single-use plastic bags per  
12 year;
- 13 • In coastal communities, the plastic bags find their way from the California  
14 shores and accumulate in the Pacific Ocean with devastating effects;
- 15 • Approximately 257 marine species, according to the US Marine Mammal  
16 Commission, have become entangled in, or have ingested, marine debris; and,
- 17 • Plastic fragments become highly contaminated and have caused hormone  
18 disruption in fish and in humans that ingest the fish.

19 This and other evidentiary material constitutes “substantial evidence” in the record  
20 supporting the Waste Management Authority’s conclusion that the Reusable Bag Ordinance  
21 is exempt from further environmental review pursuant to §§15307 and 15308. (*Committee to*  
22 *Save Hollywoodland Specific Plan*, 161 Cal.App.4th at 1168, 1187.)

23 Nowhere in its brief has the Industry Coalition challenged this conclusion, thereby  
24 conceding (through waiver, as well as failure of proof) that the Reusable Bag Ordinance  
25 properly falls within the categorically exempt activities of regulatory agencies under  
26 §§15307 and 15308. (*Tan v. California Fed. Sav. & Loan Assn.* (1983) 140 Cal.App.3d 800,  
27 811 (issues not raised in the briefing are waived or abandoned); *Reyes v. Kosha* (1998) 65  
28 Cal.App.4th 451, 466 (same).)



1 The remaining question, therefore, boils down to whether satisfactory proof of an  
2 exception has been adduced.<sup>4</sup>

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4 **B. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT**  
5 **THAT THE REUSABLE BAG ORDINANCE MAY HAVE A SIGNIFICANT**  
6 **EFFECT ON THE ENVIRONMENT DUE TO “UNUSUAL**  
7 **CIRCUMSTANCES”**

8 As stated, the categorical exemptions are subject to two specific *exceptions*. If a  
9 project opponent demonstrates a fair argument of a significant effect on the environment due  
10 to unusual circumstances of a particular project, or from cumulative impacts of successive  
11 projects of the same type in the same place, use of a categorical exemption must be denied.  
(Guidelines §§15300.2(b) and (c).)<sup>5</sup>

12 In *Azusa Land Reclamation Co.*, 52 Cal.App.4th at 1165, the court upheld a challenge  
13 to a Class 1 “existing facilities” exemption because there was specific evidence that the  
14 proposed landfill extension was very large, it was located over a major drinking water  
15 aquifer, and it lacked adequate safeguards to minimize environmental impacts from likely  
16 pollutants. The court explained the unusual circumstances concept as follows:

17 “That test is satisfied where the circumstances of a particular project (i) differ  
18 from the general circumstances of the projects covered by a particular  
19 categorical exemption, and (ii) those circumstances create an environmental  
20 risk that does not exist for the general class of exempt projects.” (*Id.* at 1207.)

21 <sup>4</sup> There is a dearth of authority supporting Petitioner’s contentions that the Waste Authority is not a  
22 “regulatory agency,” that the Recycling Bag Ordinance was not “authorized by state law or local  
23 ordinance,” and that there was no applicable regulatory “process.” Plainly, the Waste Authority is a  
24 regulatory agency for the purposes of managing waste reduction and recycling within San Luis Obispo  
25 County. It is a joint powers agency established pursuant to Government Code §6500 and California Public  
Resources Code §40975. Indeed, its jurisdiction and procedures are identical to those of other local  
regulatory agencies. (See *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106 and *Magan v.*  
*County of Kings* (2002) 105 Cal.App.4th 468.)

26 <sup>5</sup> At the conclusion of oral argument on August 30, 2012, the Court invited the Industry Coalition's attorney  
27 to identify, through non-argumentative citations to the opening brief and the administrative record, wherein  
28 the Coalition had raised the issue of the cumulative impacts exception under Guidelines section 15065(3).  
The Industry Coalition's response is indeed argumentative, but fails to point out where the cumulative  
impacts exception was raised. Hence, the issue has been waived. (*Tan v. California Fed. Sav. & Loan Assn.*  
140 Cal.App.3d at 811; *Reyes v. Kosha*, 65 Cal.App.4th at 466.)

1 (See, e.g., *Fairbanks v. City of Mill Valley* (1999) 75 Cal.App.4<sup>th</sup> 1243, 1260 (rejecting  
2 challenge to Class 3 exemption for the “construction and conversion of small structures” in  
3 that there was nothing about the project that “set it apart” from other small commercial  
4 structures built in urbanized areas; *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413,  
5 426 (upholding challenge to Class 4 exemption for “minor land divisions” due to specific and  
6 unusual impacts of particular project to scenic views, hillside erosion, creek pollution, and  
7 fire safety; *Communities for a Better Environment v. California Resources Agency* (2002)  
8 103 Cal.App.4<sup>th</sup> 98, 127-129 (upholding challenge to Class 32 exemption for an “in-fill  
9 development” based upon specific impacts to aesthetics, cultural resources, water supply, and  
10 health and safety); *Magan v. County of Kings* (2002) 105 Cal.App.4<sup>th</sup> 468, 476 (rejecting  
11 challenge to Class 8 exemption for “existing facilities” due to lack of specific evidence  
12 establishing that ordinance prohibiting land application of sewer sludge would have any  
13 adverse environmental impacts).)

14 In asserting that it presented substantial evidence constituting a “fair argument” that  
15 the Reusable Bag Ordinance may have a significant negative effect on the environment, the  
16 Industry Coalition relies almost exclusively upon a 41-page comment letter from its counsel  
17 referencing several reports from other areas and other contexts that were submitted into the  
18 record. (See AR, IWMA 001343-001385.) These reports include the Franklin Report  
19 (concerning paper bags), the 2005 Scottish Report, the 2007 Boustead Report (prepared by a  
20 plastic industry organization), the British Report, the 2008 ULS Report (regarding a San  
21 Francisco ordinance) and the Los Angeles County EIR. For several reasons, these studies  
22 (from other countries and jurisdictions within the United States), even when coupled with the  
23 arguments of counsel, do not satisfy the “unusual circumstances” exception.

24 First, none of the record evidence specifically criticizes, or even addresses, the San  
25 Luis Obispo Reusable Bag Ordinance. Studies from Los Angeles, San Francisco, Scotland,  
26 and/or Ireland cannot constitute proof of “unusual circumstances” potentially taking the  
27 Ordinance out from under the Class 7 categorical exemption. Stated somewhat differently,  
28 while general evidence and studies can be used in determining whether substantial evidence

1 of a particular *exemption* exists, such *general* evidence by definition does not speak to  
2 specific or unusual impacts resulting from the precise project here proposed. (See *Fairbanks*,  
3 75 Cal.App.4<sup>th</sup> at 1260; *Magan*, 105 Cal.App.4<sup>th</sup> at 476; *Compare Azusa Land Reclamation*  
4 *Co.*, 52 Cal.App.4<sup>th</sup> at 1207; *Myers*, 58 Cal.App.3d at 426; *Communities for a Better*  
5 *Environment*, 103 Cal.App.4<sup>th</sup> at 127-129.)<sup>6</sup>

6 Second, the referenced general studies, as well as counsel’s supporting arguments,  
7 focus almost exclusively on the supposed *increase to paper bag use* that will likely result  
8 from a ban on plastic bags. For example, in its letter of objection to the Waste Management  
9 Authority, the Industry Coalition specifically claims:

10 Based on the foregoing studies, there is substantial evidence that the proposed  
11 ordinance would result in a significant increase in negative environmental  
12 impacts *resulting from increased paper bag usage* if the proposed ordinance is  
13 adopted. [The Industry Coalition] has made a “fair argument,” which triggers  
14 the requirement that the County prepare an EIR in accordance with the ruling  
15 of the California Supreme Court. (Emphasis added).

16 This argument, however, is akin to comparing apples with oranges, and it is misleading.

17 The Reusable Bag Ordinance is not a ban on single-use plastic bags; rather, it is a  
18 comprehensive plan to increase consumer use of reusable bags by banning plastic bags *and*  
19 imposing a \$.10 fee on using paper bags, thereby reducing the use of *both* single-use plastic  
20 *and* paper bags. The Industry Coalition cannot redefine the project according to its liking.  
21 (See Pub. Res. Code §21065; 14 Cal Code Regs §§15378(a), (c)-(d); *Kaufman & Broad-*  
22 *South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4<sup>th</sup> 464, 470; *Black*  
23 *Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4<sup>th</sup> 974, 984.) Nor can it  
24 claim that the paper bag fee is, in actuality, a mitigation measure when the record plainly

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26 <sup>6</sup> As discussed in Section IV (A), *supra*, Petitioner could have submitted (but did not submit) such evidence  
27 in an effort to contradict the Waste Authority’s decision to place the Ordinance within the “environmental  
28 benefit” category of Class 7 and Class 8. In any event, the Green Cities California 2010 MEA is  
substantial evidence that “fees that are directly passed onto consumers have been effective at altering  
behavior” and that fees on single-use bags, or single-use bag bans, have dramatically lowered consumer  
consumption.

1 supports a different conclusion. (*Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329,  
2 1353.)

3 Relatedly, the Industry Coalition contends that the Reusable Bag Ordinance will  
4 increase deployment of reusable bags. While this is no doubt the aim of the Ordinance, no  
5 studies or expert reports have been submitted showing that San Luis Obispo consumers will  
6 treat reusable bags as throw away bags or that they will not use them multiple times.

7 The same holds true for the assertion that the Waste Management Authority failed to  
8 account for the recycling benefits of the single-use plastic bags. However, reports from  
9 Australia, Ireland, Scotland, Los Angeles, San Jose, and/or Santa Cruz, by definition, do not  
10 speak to specific or unusual impacts that may result from implementation of the San Luis  
11 Obispo Ordinance currently before the Court.

12 Third, the multiple analyses conducted by Petitioner's counsel, both in letters to the  
13 Waste Management Authority and in briefs to this Court, do not constitute substantial  
14 evidence raising a fair argument of environmental impacts. (See *Pala Band of Mission*  
15 *Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.) For example, Petitioner's  
16 counsel references the Los Angeles County EIR, which purportedly addressed a ban on  
17 plastic bags, along with a corresponding \$.10 fee per paper bag. However, the Los Angeles  
18 EIR is not a part of the record, and counsel's interpretation of it does not constitute  
19 substantial evidence under the fair argument test. (*Id.*)

20 Similarly, counsel's statements regarding the consumer responses to the \$.25 cent  
21 paper bag fees adopted by City of San Jose and County of Santa Cruz, while permissible  
22 argument, do not constitute "evidence" that a \$.10 cent paper bag fee is insufficient to negate  
23 or decrease demand for single-use paper bags. (IWMA 1362.)<sup>7</sup>

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26 <sup>7</sup> These are but a few of the many instances where argument by the Industry Coalition is submitted as  
27 evidence. Public comments lacking a specific factual foundation do not constitute substantial evidence  
28 raising a fair argument of significance. (*Sierra Club v. California Dept. of Forestry and Fire Protection*  
(2007) 150 Cal. App.4th 370; *Architectural Heritage Ass'n v. County of Monterey* (2004) 122 Cal. App.4th  
at 1117.)

1 Fourth, the legal arguments submitted by the Industry Coalition repeatedly blur or  
2 conflate important distinctions under CEQA law. For example, Petitioner relies heavily on  
3 the case it brought before the California Supreme Court, *Save the Plastic Bag Coalition v.*  
4 *City of Manhattan Beach* (2011) 52 Cal.4<sup>th</sup> 155, for the proposition that an EIR is required in  
5 San Luis Obispo principally because the County of San Luis Obispo is significantly larger  
6 than the City of Manhattan Beach.

7 In *Manhattan Beach*, the City adopted an ordinance banning the use of single-use  
8 plastic bags. Although the staff report concluded that CEQA did not apply under the  
9 “common sense” exemption, and that the project was categorically exempt under §15308, the  
10 City nevertheless conducted an initial study. In its initial study, the City found that the  
11 project did not have any significant impacts and it adopted a negative declaration.

12 The trial and appellate courts concluded that an EIR was required because record  
13 evidence supported a fair argument that the ban would increase environmental damage. (*Id.*  
14 at 164-165.) The California Supreme Court reversed, holding that the Manhattan Beach  
15 ordinance would have no significant effect on the environment:

16 When we consider the actual scale of the environmental impacts that might  
17 follow from increased paper bag use in Manhattan Beach, instead of  
18 comparing the global impacts of paper and plastic bags, it is plain the city  
19 acted within its discretion when it determined that its ban on plastic bags  
20 would have no significant effect on the environment. (*Id.* at 172.)

21 However, it does not follow from this statement that an EIR is required in any  
22 community larger than Manhattan Beach. The Supreme Court never addressed the Class 7 or  
23 Class 8 categorical exemptions. Its dicta, that “the analysis would be different for a ban on  
24 plastic bags by a larger governmental body,” was directed toward the petitioner’s cumulative  
25 impact analysis. As stated (fn.5, *supra*), this issue regarding cumulative impacts has been  
26 neither raised nor briefed in the case before this Court. (*Id.* at 724)<sup>8</sup>

27 <sup>8</sup> By necessary implication, the *Manhattan Beach* decision defeats application of the “common sense”  
28 exemption under Guideline §15061(b)(3). A fair reading of *Manhattan Beach* raises the possibility of the  
need for environmental review of plastic bag bans. To use the language of the exemption, it cannot be seen  
with *certainty* that there is *no possibility* that the activity in question may have a significant effect on the  
environment. (Kostka & Zischke, *CEB California Environmental Quality Act*, 2<sup>nd</sup> Ed. §5.112.) On the

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#### IV. CONCLUSION

The administrative record contains substantial evidence supporting the beneficial environmental effects of the Waste Management Agency's comprehensive plan to increase consumer use of reusable bags by banning the use of single-use plastic bags and placing a \$.10 fee on single-use paper bags, thereby enhancing and protecting the environment. Accordingly, use of the Class 7 and Class 8 exemptions is appropriate.


In contrast, the evidence of "unusual circumstances" submitted by the Industry Coalition during the administrative process is nonexistent. The evidence that was submitted consists of arguments, crafted by the Coalition's lawyer, interpreting reports from other regions of the United States and other countries. Not a single expert offered an opinion on the pros or cons of San Luis Obispo's Reusable Bag Ordinance. This does not amount to "substantial evidence".

Because there is no substantial evidence supporting a "fair argument" that any unusual effects of the Reusable Bag Ordinance may have an adverse environmental effect, the Waste Management Agency's decision not to conduct further environmental review was appropriate.

Accordingly, the petition for a peremptory writ of mandate is DENIED.

It is so ORDERED. Counsel for respondents shall prepare the Judgment.

Dated: October 1, 2012



CHARLES S. CRANDALL  
Judge of the Superior Court

CSC:jn

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other hand, the Industry Coalition is using the wrong standard in contending that a \$.10 fee on paper bags cannot be "seen with certainty" to result in "no possibility" of a significant environmental effect. Nor was the Waste Management Authority required to respond to or refute the fair argument to a certainty under *Davidon Homes*, 54 Cal.App.4<sup>th</sup> at 106, 118. These are requirements of the "common sense" exception, not the categorical exemptions.

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

Civil Division

CERTIFICATE OF MAILING

SAVE THE PLASTIC BAG COALITION  VS.  SLO COUNTY WASTE	CV120078
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**Minnery, Jeffrey A**

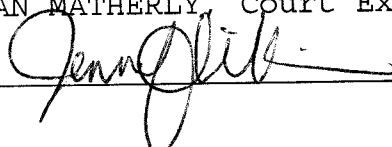
*Attorney for Respondent*  
ADAMSKI MOROSKI MADDEN CUMBERLAND GREEN  
P. O. Box 3835  
San Luis Obispo CA 93403

\* Attached Pleading: Ruling and Order denying Peremptory Writ  
of Mandate, filed 10/01/12

Under penalty of perjury, I hereby certify that I deposited in the United States mail, at San Luis Obispo, California, first class postage prepaid, in a sealed envelope, a copy of the foregoing addressed to each of the above  
OR

If counsel has a pickup box in the Courthouse that a copy was placed in said pickup box this date.

SUSAN MATHERLY, Court Executive Officer

by  \_\_\_\_\_, Deputy

Dated: 10/1/12  
*Via email*