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March 18, 2010

SENT VIA FEDERAL EXPRESS

Chief Justice Ronald M. George
Associate Justices Baxter, Chin, Kennard, Moreno & Werdegar
Supreme Court of California
Office of the Clerk, First Floor
350 McAllister Street
San Francisco, CA 94102

Re: Amicus Curiae Letter in Support of Petition for Review
Save the Plastic Bag Coalition v. City of Manhattan Beach, Case No. B215788

Dear Chief Justice George and Associate Justices:

Pursuant to Rule 8.500, subdivision (g), of the California Rules of Court, we submit this letter on behalf of amicus curiae Californians Against Waste ("CAW") to urge the Court to grant Defendant/Appellant's Petition for Review in the matter of *Save the Plastic Bag Coalition v. City of Manhattan Beach*, Case No. B215788, California Court of Appeal, Second Appellate District (the "Decision").

The Decision, which set aside an ordinance of the City of Manhattan Beach ("City") banning the distribution of plastic bags at retail outlets, is a precedent that could frustrate the enactment and implementation of environmentally beneficial ordinances or other enactments in the face of determined opposition from potentially regulated industries. Although the Decision, which ordered the preparation of an environmental impact report ("EIR") for the ordinance, might appear, on its face, to come within the venerable tradition of California Environmental Quality Act ("CEQA") cases upholding the "fair argument" standard, the Decision actually undermines the greater cause of environmental protection by dramatically raising the financial costs of implementing environmentally beneficial public policies, and may even discourage public agencies from adopting environmentally beneficial laws.

As will be discussed below, a particular flaw in the Decision is the court's reliance on very generic, slanted "substantial evidence" supplied by the plastic industry to argue that a particular

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any clear causation between the adopted ordinance and the alleged adverse effects. Without a reasonable showing of causation, the evidence relied upon by the Decision cannot support a fair argument of significant impacts related to the ordinance. Because the Decision is contrary to these principles, we believe it warrants review by this Court.

I. Interest of Amicus Curiae

The CEQA issues presented in the Decision are of direct relevance to the members of CAW. Founded in 1977, CAW is a non-profit environmental research and advocacy organization that identifies, develops, promotes, and monitors policy solutions to pollution and conservation problems posing a threat to public health and the environment. CAW's history has demonstrated it to be the nation's oldest, largest, and most effective non-profit environmental organization advocating for the implementation of waste reduction and recycling policies and programs. CAW is dedicated to conserving resources, preventing pollution, and protecting California's environment through waste reduction and recycling policies and programs.

CAW supports local ordinances that ban environmentally-damaging plastic bags. A principal source of urban litter, plastic bags are a threat to wildlife, a source of urban blight, and are a major component of oceanic pollution. To address these concerns, municipalities, including Manhattan Beach, have adopted ordinances prohibiting the distribution of plastic bags by retailers at point of sale.

CAW does not believe that typical plastic bag bans, such as the City's ordinance, are subject to CEQA, because there are no direct or reasonably foreseeable indirect adverse environmental consequences from such bans. Even if a plastic bag ban were construed as a "project" under CEQA, however, CAW believes that a categorical exemption or negative declaration would be sufficient to address any resulting impacts because a plastic bag ban will significantly reduce – not increase – pollution, and will result in other environmental benefits, including reducing the number of marine animals killed every year by marine debris. CAW therefore believes that the Decision was wrongly decided and urges the Court to grant the City's Petition for Review.

II. Review of the Decision is Warranted.

The appellate court's decision to require the City, with a population of only a few more than 33,000 people, "to expend public resources to prepare an [EIR] for enacting what the City believes is an environmentally friendly ordinance phasing out retail *distribution* (not use) of plastic carryout bags within the City and promoting the *use of reusable bags* (not paper bags) stretches [CEQA] and the requirements for an EIR to an absurdity." (Decision, Dissent of Justice Mosk, p. 1 (emphasis in original).) The Supreme Court's command in *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247 that CEQA generally should be broadly construed has made CEQA a powerful force for environmental protection in California. Still, it must be kept in mind that the *Friends of Mammoth* decision also focuses on the "reasonable scope" of statutory language. Especially when viewed in light of statutes enacted since 1972, the *Friends of Mammoth* interpretive principle should be understood to recognize the necessity for construing CEQA with an awareness of the sometimes very considerable economic costs

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associated with environmental review. Several provisions of CEQA dictate that such considerations be taken into account. (See e.g., Pub. Resources Code, § 21003, subd. (f) [All involved in the environmental review process are responsible for “carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources” so that “those resources may be better applied toward the mitigation of actual significant effects on the environment.”].)

While highlighting a concern for procedural efficiency, this statutory language explicitly emphasizes the importance of mitigating significant environmental effects. The statute thus suggests that, in the Legislature’s view, money directed towards actually preventing or reducing significant environmental damage may be better spent than money spent solely on what this Court has called “generat[ing] paper.” (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564 (*Goleta II*) [“[t]he purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.”]; see also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, 393 (*Laurel Heights I*); CEQA Guidelines, § 15003, subd. (g).) To be sure, requiring an EIR in this case would merely be a paper-generating exercise, which would contribute to the larger scale felling of trees needed to support the overall efforts of Petitioner to thwart the kind of ordinance at issue. As Justice Mosk suggested in jest in his dissent, “[p]erhaps an EIR is necessary for all the paper used by petitioner 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.” (Decision, Dissent, p. 3, fn. 5.)

Another key statute governing the interpretation of CEQA is Public Resources Code section 21083.1, which provides that courts shall not interpret CEQA or the CEQA Guidelines “in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.” (See also *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal. App. 4th 656, 689 [quoting Pub. Resources Code, § 21083.1].) Thus, the first portion of the *Friends of Mammoth* principle, which emphasizes that CEQA should be broadly construed to protect the environment, cannot be applied in a manner that effectively ignores the limiting words found in section 21083.1 or any other statutory provision restricting the breadth of CEQA requirements. While the courts must follow the *Friends of Mammoth* command to interpret CEQA broadly to protect the environment, this emphasis on environmental protection cannot be a basis for ignoring specific statutory language—most of which was enacted long after the Supreme Court’s decision in 1972—emphasizing the need to consider the economic costs of CEQA compliance, and directing courts not to impose procedural or substantive requirements not “explicitly stated” either in CEQA or in the CEQA Guidelines.

Here, the Decision would apply CEQA too broadly, with counterproductive results from an environmental protection standpoint. Review is required because the Decision relied on “evidence” that does not actually show causation between the ordinance and its alleged impacts, and the nature of the impacts alleged by the Plastic Bag Coalition are too speculative to require further review. Without a showing that the ordinance will cause reasonably foreseeable impacts, CEQA does not require environmental review.

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A. The Decision Relied On Evidence That Did Not Establish Causation Between The Ordinance Ban And An Environmental Impact.

CEQA defines “project” to mean “an activity which may *cause* either a direct physical change in the environment, or a *reasonably foreseeable* indirect physical change in the environment.” (Pub. Resources Code, § 21065 (emphasis added).) Thus, in order for an action to be a “project” subject to CEQA, there must be a clear *causal relationship* between the action and reasonably foreseeable adverse impacts on the affected environment. Notably, these notions of causation and reasonable foreseeability are also key aspects of the definition of “effects,” as that term is defined in CEQA Guidelines, which characterize “[i]ndirect or secondary effects” as being both “caused by the project” and “reasonably foreseeable[.]” (Cal. Code Regs., tit. 14, div. 6, ch. 3 [“CEQA Guidelines”], 15358, subd. (a)(2).)

The fact that causation is an important element in CEQA analysis is also evident from a careful review of leading CEQA cases issued by this Court and the Courts of Appeal over the years. (See, e.g., *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 281 [causation found where an annexation constituted an essential part of a development plan by which a property owner intended to urbanize agricultural property; court found it apparent that annexation would “culminate in physical changes to the environment” where “[p]lanning was completed, preliminary conferences with city agencies had processed ‘sufficiently’ and development in the near future was anticipated”]; *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464, 474, [no causal link between the action (formation of a community facilities district) and the alleged environmental impact (the construction of new schools), in that the formation of the district would not create a need for new schools; nor would the construction of new schools be entirely dependent on formation of the CFD]; *City of Livermore v. Local Agency Formation Commission* (1986) 184 Cal.App.3d 531, 538 [revision to a sphere of influence constituted a project because it was a “discretionary activity that will *unquestionably have an ultimate impact on the environment.*” The court added that “[i]t is true that the precise effects are difficult to assess at this stage, but it is *because impact is so easily foreseen that the revision must be considered a project under CEQA.*” (emphasis added)]; see also *Laurel Heights I, supra*, 47 Cal. 3d at p. 396 [in considering what circumstances require consideration in an EIR of future action related to the proposed project, the court articulates a two-part test that asks whether the future action is a “reasonably foreseeable consequence” of the project being considered].)

This same CEQA principle, that an environmental impact must be a reasonably foreseeable consequence of the challenged action, applies across environmental legislation, including the Federal Endangered Species Act (“ESA”). (See *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon* (1995) 515 U.S. 687, 700 n. 13 [under ESA, the prohibition against “harm” incorporates “ordinary requirements of proximate causation and foreseeability”]; see also *American Bald Eagle v. Bhatti* (1993) 9 F.3d 163, 165 [court declined to find that a “one in a million” risk of harm is sufficient to find an ESA violation]). National Environmental Policy Act (“NEPA”) cases also require reasonable foreseeability of impacts; remote and speculative effects do not need to be considered. (*City of Davis v. Coleman* (1974) 521 F.2d 661 [“foreseeing the

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unforeseeable is not required”]; *Metropolitan Edison Co. v. People Against Nuclear Energy* (1983) 460 U.S. 766, 774 [NEPA requires a “reasonably close causal relationship” akin to proximate cause in tort law].) Significantly, NEPA cases have expressed the understanding that “the congressional concerns that led to the enactment of NEPA suggest that the terms ‘environmental effect’ and ‘environmental impact’ . . . be read to include a requirement of a reasonably close causal relationship between a change in the physical environment and the effect at issue.” (*Metropolitan Edison Co.*, *supra*, 460 U.S. at p. 774.) In engaging in this proximate cause analysis, “courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.” (*Department of Transportation v. Public Citizen* (2004) 541 U.S. 752, 767; see also *Ohio Valley Envtl. Coalition v. Aracoma Coal Co.* (2009) 556 F.3d 177, 196 [same].)

Applying this principle to the Decision, the Plastic Bag Coalition failed to produce any evidence establishing that the City’s enactment of the plastic bag distribution ban “will culminate in,” or is in some way linked to, a “reasonably foreseeable effect” for which CEQA was intended to require review. The City found that, while the ordinance banning the distribution of plastic bags by certain retailers may result in an increase in paper bag usage, the ordinance also requires that all paper bags used be at least composed of 40 percent recyclable material. (Decision, p. 5.) Although the City further acknowledged that the manufacture and recycling of paper bags can consume more energy than plastic bags generate, and that the increased use of energy could have an impact on the environment by potentially increasing emissions, the City also considered the facts that the banning of plastic bags by political subdivisions is not wide-spread, and that the number of retailers that would actually be required to use plastic bags was relatively small. (*Ibid.*) In addition, plastic bags would not be replaced by paper bags on a one to one ratio and at least some percentage of plastic bags would be replaced by reusable bags rather than paper. (*Id.* at p. 6.) In light of all of these facts, the City concluded that any increase in the total use of paper bags resulting from the proposed ban on plastic bags in the City would be relatively small, with a minimal or nonexistent adverse environmental impact. The City therefore concluded that significant adverse environmental impacts were not a reasonably foreseeable consequence of enacting the ordinance. (*Id.* at p. 5.)

Despite the City’s determinations on these points, the Court of Appeal majority nevertheless held that an EIR was required. In CAW’s view, however, the generic studies cited by the Decision in support of the majority’s conclusion do not in fact support a finding of causation in this case. To require preparation of an EIR, the evidence supporting a fair argument that the ordinance may result in a significant environmental impact must be “substantial” when viewed “in light of the whole record.” (*Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App. 4th 1162, 1173-1176 [the “fair argument” threshold is low, but it is not so low as to be non-existent].) The record in this case, CAW contends, does not include substantial evidence to support a fair argument of significant adverse environmental effects. None of the reports submitted by petitioners had any information on ordinances similar in size and scope to the one approved by the City, let alone any information directly relevant to the local community in which the ordinance will be implemented. The Decision relies instead on the 2005 Scottish Government Report from a private company on a proposed Scottish tax on plastic bags

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throughout that entire county, as well as the Boustead Report and Franklin Report, both of which were sponsored by plastic bag manufacturers and focus on the merits of plastic bags. (Decision, pp. 7-11, 12-14.) The "Use Less Stuff Report," also cited by the Decision, relied on four other previously prepared studies to consider global energy consumption and greenhouse gas emissions that result from paper bag manufacture, and concludes that paper bags have environmental impacts. (Decision, pp. 11-12.) Although the City arrived at this same generic conclusion, the City also went on to determine that the impact *from its ordinance* would be minimal, as the ban does not encourage paper bag use and the number of additional paper bags that would be used would be minimal. (Decision, pp. 5-6.) Thus, the City properly concluded that a negative declaration, and not an EIR, was required under CEQA.

In order to support a fair argument of substantial evidence of significant impacts, petitioners need to do more than just invoke generalized studies that do not actually address the challenged action, particularly where the challenged action is designed to promote environmental benefits. For example, in *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1584, while the Court of Appeal appropriately held that Kern County had violated CEQA when it adopted a negative declaration for an ordinance designed to promote environmental benefits within the county (by requiring more treatment before sludge could be disposed on land within the County), the court reached its conclusion based on well-developed, detailed substantial evidence in the record showing a *reasonable possibility* of a foreseeable impact. The court found what it termed a "vast amount of information" supporting a fair argument of environmental effect. (*Ibid.*)

In general, the information in an agency's administrative record relied upon to find a causal link between a proposed agency action and adverse environmental effects should be tailored to the community in which such effects are said to arise. In *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, the court considered evidence of urban decay where petitioner had retained a professor of economics to study the cumulative economic effects that would be caused by the project at issue. The professor analyzed the five-mile area surrounding the project sites and made conclusions based on the then-current conditions of the local area. The court found the report "extremely significant" and stated that "it strongly supports [petitioner's] position that CEQA requires analysis of urban decay." (*Id.* at pp. 1209-1210.)

Here, the information upon which the Court of Appeal majority relies was not tailored to the community or to the actual terms of the challenged ordinance, which would not result in a one-to-one replacement of plastic bags with paper bags. (Decision, Dissent, p. 6 [the evidence of potential impacts that could result from increased use of paper bags includes reports that "deal with the subject of paper versus plastic in an undefined territory".]) Further, evidence in the record shows that the City considered the potential impact associated with increased paper bag use and concluded, based on the actual requirements of the ordinance, that the ordinance would not *cause* a significant environmental impact. (Decision, Dissent, pp. 3-4.) Without some substantial evidence showing causation between the ordinance and the kinds of adverse effects generically catalogued in the studies supplied by Petitioner, there can be no "fair argument" and no requirement for an EIR.

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B. The Evidence Presented By The Plastic Bag Coalition Of Potential Adverse Impacts Is Speculative And Therefore Does Not Require Further Environmental Review.

Another key principle that supports the City's finding that further environmental review of the ordinance was not required is that an agency need not consider impacts that are too speculative for evaluation. (CEQA Guidelines, §§ 15144 ["[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can."]; 15145 [If after thorough investigation, however, the agency finds that a particular impact is too speculative for evaluation, it may terminate further discussion of the impact.]) In this case, it is speculative to think that the generic evidence submitted by the Save the Plastic Bag Coalition translates into actual significant adverse effects from the ordinance.

Case law interpreting CEQA Guidelines sections 15144 and 15145 supports this conclusion. For example, in *Marin Municipal Water District v. KG Land California Corporation* (1991) 235 Cal.App.3d 1652, 1660-1663, the court upheld an EIR prepared for a moratorium on water connections because the content sought by petitioners was too speculative; the EIR recognized that the moratorium had social and economic consequences, but that these might not be felt for several years and "reasonably refused to speculate about possible secondary environmental consequences which might result from any long-term economic or social changes." (See also *Alliance of Small Emitters/Metals Industry v. South Coast Air Quality Management District* (1997) 60 Cal.App.4th 55 ["any efforts to assess the impacts of unknown and unknowable technology would be pure speculation"]; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1137 (*Laurel Heights II*) [agency's conclusion that "the potential cumulative impacts of toxic air emissions are too speculative for evaluation" upheld where there were "no accepted methodologies or standards by which to qualitatively measure the cumulative toxic emission impacts of all potential sources of toxic air emissions"].)

As stated by Justice Mosk in dissent, "[t]he City should not have to consider the effect of a ban on the distribution (not use) of plastic bags in the City on such matters as deforestation, energy use, acid rain, greenhouse gas emissions, water, waste, and air quality. These purported elements are not significantly affected by this small scale application of the ordinance." (Decision, Dissent, p. 6.) Indeed, such effects are speculative when one considers that "[t]his small residential city, with only 217 licensed retail establishments that might provide plastic bags, would have a comparatively infinitesimal distribution of paper bags." (Decision, Dissent, p. 5.) Because the evidence provided by the Plastic Bag Coalition is based on speculation about potential impacts of the ordinance, it does not require additional environmental review.

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C. In This Case, Evidence In The Record Supports Application Of A Categorical Exemption From CEQA Review.

The CEQA Guidelines provide for a categorical exemption from CEQA where a project is one undertaken to assure the “maintenance, restoration, enhancement, or protections of the environment” (CEQA Guidelines, § 15308 [exempting actions by agencies for the protection of the environment]; see also § 15307 [exempting actions by agencies for the protection of natural resources].) CEQA also includes a “common sense” exemption that applies where “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 Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 385-389.) While the City did not assert that the ordinance was subject to any of these exemptions, the principles underlying CEQA’s inclusion of exemptions are nonetheless relevant here to highlight the fact that environmental review should only be required where there is substantial evidence that the agency action will actually cause a negative environmental effect. Moreover, whether a project qualifies for exemption is a question of law, and a reviewing court can consider whether a project qualifies for an exemption even where the agency did not first consider the issue. (See *Erven v. Board of Supervisors* (1975) 53 Cal.App.3d 1004, 1013-1014; *Elk County Water District v. Department of Forestry and Fire Protection* (1997) 53 Cal.App.4th 1, 10 [question of whether exemption applies involves purely legal questions that are “unaffected by any factfinding below.”].)

An agency may be required to conduct CEQA review when adopting policies intended to benefit the environment; however, there must be substantial evidence that the action could actually cause an adverse impact on the environment. For example, in *California Farm Bureau v. California Wildlife* (2006) 143 Cal.App.4th 173, the court found that the environmentally beneficial nature of the project, consisting of acquisition of property to convert it into a wetland habitat, did not support use of the common sense exemption. In that case, the administrative record reflected the fact that the agency consistently took the position that the loss of agricultural land was not itself an adverse environmental impact, but *did not point to any evidence* in the record showing that it had considered the potential environmental impacts from the management plan and the construction and maintenance of the new habitat. (*Id.* at p. 186.) Because there was no evidence to support application of the exemption, it could not be said that the project would not cause an environmental impact. Here, the record shows that the City relied on evidence to support its conclusion that any impact associated with the ordinance would be minimal. (Decision, pp. 5-6.; see also Decision, Dissent, pp. 3-4)

Similarly, in *Dunn-Edwards Corp. v. Bay Area Air Quality Management District* (1992) 9 Cal.App.4th 644, 658, the court invalidated use of the exemptions under CEQA Guidelines sections 15307 and 15308 for adoption of amendments to air district regulations governing the solvent content of architectural coatings that were designed to reduce volatile organic compound (“VOC”) emissions in the district. The court found evidence suggesting the new regulations would actually lead to a net increase in VOC emissions, and the district was unable to point to any evidence in the record enabling it to conclude with certainty that these concerns were unfounded. Here again, unlike the agencies in *California Farm Bureau* and *Dunn-Edwards*, the

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City actually considered the potential impact that could result from banning plastic bags, but concluded, based on evidence in the record, that any impact would be relatively minimal and therefore insignificant. (Decision, pp. 5-6.; see also Decision, Dissent, pp. 3-4)

In *Magan v. County of Kings* (2002) 105 Cal. App. 4th 468, the respondent county banned application of sewage sludge to land, citing scientific uncertainties over the extent to which application of sludge could adversely affect public health or the environment, relying on the categorical exemption for actions taken for the protection of the environment. The court concluded that the county had met its burden of demonstrating substantial evidence that the ordinance fell within the categorical exemption. The burden then shifted to petitioner to demonstrate that the ordinance had a reasonable possibility of causing adverse environmental effects. The petitioner argued that the ordinance would cause negative environmental impacts; however, because petitioner supplied *no evidence* to support these allegations, the court rejected them as nothing more than speculation and upheld the county's conclusion that no negative impacts would be caused by adoption of the ban. (*Id.* at pp. 476-477.) Again, because the ordinance would not *cause* environmental impacts, no further environmental review was required. Here, because the evidence in the record does not show that the ordinance would cause a significant adverse impact, and the evidence cited to by the Plastic Bag Coalition is speculative at best, the City's conclusion that no significant adverse impacts would result from adoption of the ordinance should have been upheld. Indeed, citing the categorical exemptions for projects undertaken to benefit the environment and the common sense exemption, the dissent concludes that "common sense suggests the ordinance is not subject to CEQA." (Decision, Dissent, p. 4.) Evidence in the record supports this conclusion.

III. Conclusion

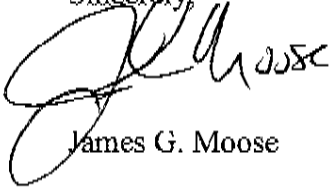
In light of the statutory prohibition against interpreting CEQA "in a manner which imposes procedural or substantive requirements beyond those explicitly stated" and the reminder from this Court that the purpose of CEQA is not to generate paper, but to compel government to make decisions with environmental consequences in mind (Public Resources Code section 21083.1; *Goleta II, supra*, 53 Cal.3d at p. 564), we respectfully request that the Court grant the City's Petition for Review to correct the errors reflected in the Decision.

As stated by Justice Mosk in dissent, "[t]he Legislature and judiciary generally have taken steps to ensure that environmental impacts are given consideration, including when government acts. But that does not mean that we must apply environmental laws in a commercial dispute or when efforts are made to protect the environment in a limited area, just because of some hypothetical, de minimis effects of an ordinance." (Decision, Dissent, p. 7.) By relying on reports that did not speak to the terms of the ordinance, and were not tailored to the community in which the ordinance would take effect, the Decision would apply CEQA too broadly. Without a showing

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that the ordinance would cause the alleged impacts, CEQA does not require additional environmental review of speculative impacts of the ordinance. The Decision's errors should be corrected and the City's negative declaration should be upheld. Review in this case, leading to an eventual decision by this Court upholding the City's ordinance, would be a blow in favor of greater, rather than less, environmental protection in this State of 38 million people.

Sincerely,



James G. Moose



Ashle T. Crocker

cc: See service list

1 *Save the Plastic Bag Coaliton v. City of Manhattan Beach*
 2 California Court of Appeal, Second Appellate District, Case No. B215788

3
 4 **PROOF OF SERVICE**

5 I am a citizen of the United States, employed in the City and County of Sacramento.
 6 My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am
 7 over the age of 18 years and not a party to the above-entitled action.

8 I am familiar with Remy, Thomas, Moose and Manley, LLP's practice whereby the
 9 mail is sealed, given the appropriate postage and placed in a designated mail collection
 10 area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each
 11 day's business.

12 On March 18, 2010, I served the following:

13 **AMICUSE CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW**

- 14 On the parties in this action by causing a true copy thereof to be placed in a sealed
 15 envelope with postage thereon fully prepaid in the designated area for outgoing mail
 16 addressed as follows; or
- 17 On the parties in this action by causing a true copy thereof to be delivered via
 18 Federal Express to the following person(s) or their representative at the address(es)
 19 listed below; or
- 20 On the parties in this action by causing a true copy thereof to be delivered by
 21 facsimile machine number (916) 443-9017 to the following person(s) or their
 22 representative at the address(es) and facsimile number(s) listed below; or
- 23 On the parties in this action by causing a true copy thereof to be electronically
 24 delivered via the internet to the following person(s) or representative at the
 25 address(es) listed below; or
- 26 On the parties in this action by causing a true copy thereof to be hand-delivered to
 27 the following person(s) or representative at the address(es) listed below;

28 **SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct and that this
 Proof of Service was executed this 18th day of March 2010, at Sacramento, California.

 Matthew C. Tabarangao