

May 9, 2016

The Honorable Mayor Faulconer and San Diego City Council
The City of San Diego Planning Department
202 'C' Street
San Diego, CA 92101

Via email to: [Susan Morrison, Environmental Planner, City of San Diego – Planning Department; PlanningCEQA@sandiego.gov](mailto:Susan.Morrison@cityofsaniego.gov)

Re: Comments on Recirculated Sections of Draft Environmental Impact Report (“DEIR”) for City of San Diego Single-Use Carryout Bag Reduction Ordinance, Project No. 412659

Dear Honorable Mayor Faulconer and City Council Members,

On behalf of the 15 organization signatories to this letter and the tens of thousands of members represented, we submit these public comments for the City of San Diego Single-Use Carryout Bag Reduction Ordinance (the “Reusable Bag Ordinance”) DEIR. Our non-profit organizations are dedicated to the protection of our waterways from the harmful effects of plastic pollution. Towards this mission, and specifically in support of protecting coastal water quality and marine ecosystems, we have been very engaged in the effort to reduce the amount of single-use plastic litter in the environment. We are very supportive of this Bag Ordinance, which would help eliminate a top source of litter found at our frequent beach clean ups. First and foremost, we strongly urge the City to pass this Reusable Bag Ordinance as soon as possible in an effort to protect our precious and valuable San Diego coastal resources.

Specifically, these comments follow our January 2016 coalition comments on the entire Draft EIR, which also indicated strong support for the Reusable Bag Ordinance (See Attachment A), but will focus on the recirculated sections of the DEIR, as requested by the City. For this revised DEIR, the City changed the conclusion on Greenhouse Gas Emissions from no significant impact found to a revised finding of “significant unavoidable impacts in the area of Greenhouse Gas Emissions”. This finding is not supported by the evidence in the report, the estimation of the GHG effects is overstated and the new mitigation would have off-setting effects that are not recognized in the revised report. We encourage the City to ensure that the DEIR’s findings are supported by evidence and recognize the overall benefit of the Reusable Bag Ordinance.

1. City’s Estimation of Greenhouse Gas Emission Increases is Unsubstantiated and the Conclusion is Unfounded

The signatory organizations are very concerned with the new analyses proffered by the revised DEIR that changed the conclusion of the report to state that the impact from greenhouse gas (“GHG”) emissions went from a level that was originally estimated to be “less than significant and no mitigation is required” to “impact would remain significant after mitigation”. (RDEIR at ES-3).

The conclusion in this DEIR is not supported by the evidence presented in the DEIR. Throughout the body of the report relating to greenhouse gas emissions, it states that the threshold of significance is difficult to determine and that impacts are considered “potentially” significant. (See RDEIR at ES-7). However, the conclusion boldly states that the GHG impacts are significant, unavoidable and cannot be fully mitigated. This is quite a large leap from the body of the analyses to the conclusion. Additionally, there are three studies listed on pp. 3-24 to 3-25 (Equinox Center report, UK Study, and Australia Department of Environment and Heritage study) that report a beneficial effect of plastic bag bans on GHG/climate change impacts. Yet, the conclusion of this DEIR has been changed in the revised version to state essentially the opposite. After referencing the three reports to the contrary, the RDEIR goes back to use Table 3-9 for its conclusion for GHG significance. The primary report relied upon for the calculations in Table 3-9 is the Boustead Report, commissioned by the Progressive Bag Alliance, a consortium of plastic bag manufacturers. The origin of this report, with its funding from the plastic bag industry, should put its accuracy in question and it surely should not be the foundation from which to draw conclusions in the DEIR.¹ Additionally, the Boustead Report compares a “paper grocery bag made using at least 30% recycled fibers” but the paper bags required under the ordinance are made from a minimum of 40% post-consumer recycled content (and there are 100% post-consumer recycled content bags available on the market too). The bags required under the current ordinance proposal are a measurable improvement, from a GHG manufacturing perspective, than the ones assumed by the Boustead Report. Surfrider Foundation urges the City to rely on the substantial evidence in the Equinox Center report, UK Study, and Australia Department of Heritage study, and as a legal matter, the City is entitled to rely upon the substantial evidence in the record when evaluating significant impacts and discount any contrary evidence of suspect origin.

The initial plastic bag regulations in California banned plastic bags but did not regulate other types of carryout bags. Whether an increase in GHG emissions were enough to prompt a finding that a plastic bag ban alone may have a significant effect on the environment was one of the issues in *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011).² While the Manhattan Beach case was pending, other cities began to adopt bag ordinances that banned plastic bags but also mandated a minimum charge (usually 10 cents) on paper and/or

¹ The Court in the California Supreme Court was very concerned with the origin of these life cycle analysis reports in *Save the Plastic Bag Coalition v. City of Manhattan Beach*, stating “. . . this case serves as a cautionary example of overreliance on generic studies of “life cycle” impacts associated with a particular product. Such studies, when properly conducted, may well be a useful guide for the decisionmaker when a project entails substantial production or consumption of the product. When, however, increased use of the product is an indirect and uncertain consequence, and especially when the scale of the project is such that the increase is plainly insignificant, the product “life cycle” must be kept in proper perspective and not allowed to swamp the evaluation of actual impacts attributable to the project at hand.” 52 Cal. 4th 155, 175 (2011).

² Here, the California Supreme Court took into account the “various studies comparing the environmental impacts of paper and plastic bags that a plastic bag ban was likely to lead to increased use of paper bags, which have relatively greater negative environmental effects including “greater nonrenewable energy and water consumption, greenhouse gas emissions, solid waste production, and acid rain,” and found that “[w]hen we consider the actual scale of the environmental impacts that might follow from increased paper bag use in Manhattan Beach, instead of comparing the global impacts of paper and plastic bags, it is plain city acted within its discretion when it determined that its ban on plastic bags would have no significant effect on the environment.” 52 Cal. 4th 155 at 172.

reusable bags so that overall carryout bag use would decrease and the concerns with greater impacts from increased use of paper bags would be effectively minimized.³ One example is the City of San Francisco's expanded ordinance. (See Attachment A – Certificate of Determination of Categorical Exemption).⁴ Additionally, the San Luis Obispo Integrated Waste Management Authority adopted an ordinance with a fee on paper bags very similar to the ordinance under discussion here, and was sued by Save the Plastic Bag Coalition. The Authority won that suit, with the court stating that Save the Plastic Bag Coalition's claims regarding impacts resulting from increased paper bag usage was "akin to comparing apples with oranges, and it is misleading. . . The Reusable Bag Ordinance is not a ban on single-use plastic bags; rather, it is a comprehensive plan to increase consumer use of reusable bags by banning plastic bags and imposing a \$.10 fee on using paper bags, thereby reducing the use of both single-use plastic and paper bags." *Save the Plastic Bag Coalition v. San Luis Obispo Integrated Waste Management Authority*, Case No. CV 120078, (Oct. 1, 2012) at p.11.

For the City of San Diego's analysis in the DEIR, the conclusion should be supported by the information within the report, and for this new revised conclusion, that is not the case. In fact, the only change in the Section 3 analysis describing Greenhouse Gas Emissions before the mitigation section is with the last line conclusion of this section. Again this change leaps from a "less than significant" conclusion to one new sentence stating that "it is not possible to determine with certainty that this emission rate is below a level of significance." This is unfounded based on the information in the City's own report and based on the analysis done by other cities around the state.

2. City's Estimation of Greenhouse Gas Emission Increases is Likely Overstated

The City's report time and again states that the assumptions it uses are conservative (to err on the side of stating a larger negative environmental impact) and the lack of information to make comparisons and establish thresholds. The prolific use of assumptions and lack of baseline comparisons make the conclusions in the GHG analysis in the report (including that there is a significant and unmitigated impact from GHG) very suspect. It is more likely the case that the City over-corrected the estimate of the GHG impact and continues to overstate the likely effect of paper bag use and the level of significance of that effect.

The City should ensure that the GHG emissions are not overstated by amplifying the estimate of paper bags used when a single-use bag ban is in place. One obvious error in this DEIR is the use of a 1:1 ratio for the single-use plastic to paper bag comparison. It is common knowledge that more groceries/goods can fit in a standard paper bag than a plastic bag, which is why most

³ See, generally, Jennie R. Romer and Shanna Foley, "A Wolf in Sheep's Clothing: The Plastic Industry's 'Public Interest' Role in Legislation and Litigation of Plastic Bag Laws in California," 5 Golden Gate U. Envtl.L.J. 377, 420-432 (2012).

⁴ This document concludes that: "The proposed project would impose a fee on all allowable single-use bags, including recycled-content paper and compostable bags, and studies have shown that establishing a fee results in an increase in reusable bag and no bag use and a decrease in single-use bag use. Lastly, the proposed project would include a public education campaign aimed at promoting reusable bags to further reduce impacts from single-use carryout bags. Therefore, any additional greenhouse gas impacts that may result from the proposed project (i.e., consumers switching from single-use plastic bags to single-use paper or compostable bags instead of reusable bags) would not be cumulatively considerable."

studies use 1:1.5 ratio.⁵ This is an admission in the DEIR at p. 3-25, but the RDEIR continues to use this conservative approach even though the need for accuracy in this analysis is obviously very important. To err on the side of admittedly conservative (i.e. inaccurate) estimations does an injustice to the necessary and impartial analysis this report should provide.

Additionally, this analysis does not comport with the results found in other cities. San Diego's proposed reusable bag ordinance is a comprehensive ordinance that includes a ban on single-use plastic bags and also puts a charge on paper/reusable; paper bag charges are proven to decrease overall carryout bags consumption because it is proven that customers are incentivized to bring their own bags. For example, in San Jose, California reusable bag use increased greatly following the implementation of the ordinance, from almost 4 percent of bags observed to approximately 62 percent of bags observed. At that same time the average number of single-use bags used per customer decreased from 3 bags to 0.3 bags.⁶

3. Mitigation Measures Would Likely Offset Program-level Negative Impacts

The City came up with six mitigation measures to establish with the reusable bag ordinance project, which would help reduce single-use paper bag use and promote the switch from single-use to reusable bags for shoppers. These measures include (1) public education and outreach on the ordinance,⁷ (2) promotion of reusable bag alternatives, (3) promotion of recycling of paper carryout bags, (4) donation and distribution of reusable bags, (5) promotion of consumer transition to reuse and reduction, and (6) consideration of a higher fee on paper bags after implementation. If quantified, these measures would surely result in decreased amounts of single-use paper usage, and a corresponding decrease in the global warming impact rate per bag (described as 3.3 in Table 3-9). However, the DEIR refuses to calculate any reductions as a result of these measures because the reductions "cannot be readily quantified". We believe the "zero impact" assumption is not warranted and not accurate. Again, we see the report using an overly conservative approach to the analysis of GHG effects that does not give any value to the mitigation efforts, and therefore, reflects on the accuracy of the GHG conclusions as highly questionable.

⁵ Even the otherwise conservative Boustead Report uses the 1:1.5 ratio. Boustead Consulting and Associates Ltd., Life Cycle Assessment for Three Types of Grocery Bags – Recyclable Plastic; Compostable, Biodegradable Plastic; and Recycled, Recyclable Paper, 2007.

⁶ See City of San Jose Bag Ban analysis:
http://www3.sanjoseca.gov/clerk/CommitteeAgenda/TE/20121203/TE20121203_d5.pdf

⁷ See Attachment A, San Francisco Determination of Categorical Exemption: "The proposed project would impose a fee on all allowable single-use bags, including recycled-content paper and compostable bags, and studies have shown that establishing a fee results in an increase in reusable bag and no bag use and a decrease in single-use bag use. Lastly, the proposed project would include a public education campaign aimed at promoting reusable bags to further reduce impacts from single-use carryout bags. Therefore, any additional greenhouse gas impacts that may result from the proposed project (i.e., consumers switching from single-use plastic bags to single-use paper or compostable bags instead of reusable bags) would not be cumulatively considerable." at pp.23-24.

4. Given the Current Conclusions on GHG, City Should Adopt Alternative 4 as the Environmentally Superior Alternative Promoting a Larger and Faster Shift to Reusable Bags

Surfrider Foundation and signatory organizations support Alternative 4 “Apply the Single-Use Carryout Bag Reduction Ordinance, but Impose a Higher Fee on Recyclable Paper Single-Use Carryout Bags Alternative” as the best alternative for the City to truly switch consumer behavior from single-use (plastic or paper) to reusable bags. Surfrider Foundation recommends a higher fee on single-use paper bags so that people will be more incentivized to bring reusable bags to the store rather than pay more for single-use paper bags. This will not only accomplish the stated goal of the overall ordinance in a more effective way, it will also abate the City’s most recent concerns with greenhouse gas emissions related to higher paper bag usage. According to Table 4-7 in the DEIR, the use of Alternative 4 would result in a reduction of 147,903,000 single-use paper bags per year, as compared to the current Reusable Bag Ordinance.

5. Conclusion

On behalf of the 15 signatory organizations, thank you for the opportunity to submit these comments on the DEIR for the City of San Diego Single-Use Carryout Bag Reduction Ordinance. We strongly urge the Mayor and City Council to consider the information in this letter, recognize the overall environmental benefit of a single-use plastic bag ban and adopt a reusable bag ordinance. Municipalities and the general public throughout the county and the state are looking to the City of San Diego for your leadership on this issue and recognition that the restriction of free distribution of single-use bags is the environmentally preferable alternative. In a City with such a great wealth of coastal resources, we hope that we can ensure this type of protection for the greater good of the local environment and tourism economy that is dependent on a clean and healthy coast.

Sincerely,
Roger Kube
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