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November 28, 2008

San Diego City Council
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RE: Proposed plastic bag ordinance; CEQA demand; legal objections;
notice of intent to file lawsuit

Dear City Council and City Attorney:

I represent SaveThePlasticBag.com (“STPB”), an association of plastic bag manufacturers and related businesses. The subject of this letter is the city’s draft ordinance to prohibit certain businesses from provided their customers with plastic carryout bags and imposing a fee on paper bags (O-2009-68). Some of the members of STPB supply plastic bags to such businesses in the City of San Diego and would lose sales if a plastic bag ban or fee ordinance is adopted.

Background

Every manufactured product has a negative environmental impact to some extent. Plastic bags are no exception. The difference between plastic bags and other products is that plastic bags have been singled out for intense and unprecedented scrutiny and are being held to a standard of environmental perfection that no manufactured product could ever satisfy.

Plastic bags are as environmentally benign as any product available today. They have a tiny impact compared to other products and activities. However, this has not prevented them from becoming a negative symbol for some environmental activists and politicians who have become obsessed with eliminating them from the marketplace. In the following statement, the British Government admitted that plastic bags are a symbol and that politicians are pandering to public opinion.

They are a potent symbol of our throwaway society and public opinion recognizes this. Of course, these bags contribute only a small part of the waste that leads to climate-changing emissions, but we need to change the small things as well as the large and to work with the grain of public opinion.

See www.timesonline.co.uk/tol/global/article3532326.ece.

Plastic bags have also been caught up in a broader “all plastic is evil” sentiment propagated by extremists, which is simplistic, unrealistic and absurd.

A London Times [editorial](#) states:

Many of those who have demonized plastic bags have enlisted scientific study to their cause. By exaggerating a grain of truth into a larger falsehood, they spread misinformation and abuse the trust of their unwitting audiences.

Myths and misinformation about plastic bags pervade the Internet. They have found their way into city and county reports, because staff have failed to check facts. The reports are regarded as true by their unwitting audiences, including well-meaning politicians who rely on the reports.

STPB’s primary objective is to provide the *true facts* about plastic bags to decision-makers and the public, thereby dispelling the myths and misinformation. STPB has created an information website at www.savetheplasticbag.com. The website cites only to studies prepared by governmental organizations and independent environmental groups. No plastic industry studies are cited.

Despite STPB’s best efforts to disseminate the facts, we are finding that many lawmakers and their staff are hearing only what they want to hear, including myths and misinformation, and stubbornly and persistently disregarding or refusing to believe any information that interferes with their preconceived views about plastic bags.

STPB is determined to ensure that lawmakers arrive at their decisions about plastic bags with the benefit of accurate and comprehensive factual information.

Myths and misinformation in the draft ordinance

The “whereas” clauses in the preamble to the draft San Diego ordinance contain an abundance of myths and misinformation, as discussed below.

- **WHEREAS, every year, Americans dispose of an estimated 100 billion plastic carryout bags that end up in storm drains, landfills, and litter on land and in water.**

RESPONSE: At least 99.999% of plastic bags do not end up in storm drains or as litter. The amount that ends up as litter as a percentage of bags that are provided to consumers is miniscule.

Plastic bags are extremely compact. According to the California Integrated Waste Management Board, plastic grocery bags and all plastic retail bags together only take up 0.4% of space in landfills, a tiny amount.

www.ciwmb.ca.gov/Publications/LocalAsst/Extracts/34004005/ExecSummary.pdf

You can see this for yourself. Look inside your trash bin. All of that trash will be heading for the landfill. What percentage by weight and volume consists of plastic bags? Very little.

Paper bags are far bulkier than plastic take up far more space. Even though consumers choose plastic bags four out five times over paper, paper bags take up 1.0% of landfill space, more than twice as much as plastic bags.

If plastic bags are banned or subject to a fee, then the space taken up in landfills by paper bags will multiply.

- **WHEREAS, in 2006, the California Integrated Waste Management Board [CIWMB] estimated that Californians’ plastic retail carryout bag use has increased to 20 billion per year.**

RESPONSE: This is not what the CIWMB has stated to be the number of plastic carryout bags. This includes all kinds of plastic bags such as a Macy’s merchandise bag. Note that newspapers are frequently delivered in plastic bags and dry cleaning is returned to the consumer in a plastic bag.

- **WHEREAS, the California Coastal Commission has documented a giant trash “island” floating approximately 1,000 miles off the coast of California that**

weighs 3.5 million tons, is 80% plastic, and has been growing tenfold every decade since the 1950's.

RESPONSE: We refer you to our webpage which contains video footage of this "island" at www.savetheplasticbag.com/ReadContent684.aspx.

The video footage shows a trawl being dragged through the "island" for a full 24 hours, covering about 50 miles. The result was that they collected about as much plastic as would cover the palm of a hand. If this is supposed to be the world's hotspot for marine debris, then it is clear that the issue has been blown out of all proportion.

We constantly see the word "plastic" being used interchangeably with "plastic bags," as in the preamble. Not all plastic is plastic bags.

- **WHEREAS, most of the plastic trash that is now polluting the ocean actually originates onshore.**

RESPONSE: Much ocean debris originates from ships and boats. No one knows whether "most" originates onshore.

- **WHEREAS, many animals mistake plastic carryout bags for food - once plastic bags enter their stomachs, the bags may remain there resulting in starvation and death.**
- **WHEREAS, plastic bags do not bio-degrade; rather, they photo-degrade into smaller and smaller bits of plastic, and the plastic pieces and particles are not digestible by animals.**
- **WHEREAS, over 1 million sea birds and 100,000 turtles, whales, seals, and other marine mammals die from ingesting or becoming entangled with plastic carryout bags each year.**

RESPONSE: The *London Times* is one of the most respected newspapers in the world. No one would suggest that it has pro-business or anti-environmental bias. On March 8, 2008, the *London Times* published an important article entitled: "Series of blunders turned the plastic bag into global villain."

www.timesonline.co.uk/tol/news/environment/article3508263.ece

The article states:

The central claim of campaigners is that the bags kill more than 100,000 marine mammals and one million seabirds every year. However, this figure is based on a misinterpretation of a 1987 Canadian study in Newfoundland, which found that, between 1981 and 1984, more than

100,000 marine mammals, including birds, were killed by discarded nets. The Canadian study did not mention plastic bags.

Fifteen years later in 2002, when the Australian Government commissioned a report into the effects of plastic bags, its authors misquoted the Newfoundland study, mistakenly attributing the deaths to “plastic bags”.

The figure was latched on to by conservationists as proof that the bags were killers. For four years the “typo” remained uncorrected. It was only in 2006 that the authors altered the report, replacing “plastic bags” with “plastic debris”. But they admitted: “The actual numbers of animals killed annually by plastic bag litter is nearly impossible to determine.”

In a postscript to the correction they admitted that the original Canadian study had referred to fishing tackle, not plastic debris, as the threat to the marine environment.

Regardless, the erroneous claim has become the keystone of a widening campaign to demonise plastic bags.”

A marine biologist from Greenpeace told The Times: “It’s very unlikely that many animals are killed by plastic bags,” he said. “The evidence shows just the opposite.” A marine biologist from the British Natural History Museum told The Times: “I’ve never seen a bird killed by a plastic bag.”

In response to the article, the embarrassed British government minister charged with eliminating plastic bags wrote to The Times stating:

We have never said that plastic bags were a leading cause of death in marine animals, though general plastic waste does make a contribution. There are nonetheless serious reasons for our aim to end the practice of dispensing for free, single use bags. They are a significant cause of litter.... Most of the rest of the 13 billion bags used each year end up in landfill. They are a potent *symbol* of our throwaway society and public opinion recognizes this. Of course, these bags contribute only a small part of the waste that leads to climate-changing emissions, but we need to change the small things as well as the large and to work with the grain of public opinion.” [Emphasis added.]

www.timesonline.co.uk/tol/news/environment/article3508263.ece

As the United Kingdom Government acknowledges, ideological symbolism, not truth and environmental protection, is driving the anti-plastic bag campaign.

Misleading people and getting them agitated about the effects of plastic bags on marine life is unfair and irresponsible.

- **WHEREAS, plastic bags and marine debris affect at least 267 marine species, including but not limited to, 86% of all sea turtle species, 44% of all seas bird species, and 43% of all marine mammal species.**
- **WHEREAS, plastic bags take at least 15 years to breakdown, so when animals die with plastic bags in their stomachs, once they decay, the plastic re-enters the environment and continues to threaten other wildlife.**

The allegation in the preamble that “plastic bags and marine debris affect at least 267 marine species” is vague and ambiguous. What is the “marine debris”? Obviously it is not plastic bags. What does “affect” mean?

According to the U.S. National Oceanic and Atmospheric Administration: “There are very few, if any, published records of small plastics as the direct cause of mortality in sea turtles.” (*The Occurrence, Effects and Fate of Small Plastic Debris in the Oceans*, September 2008.)

We are familiar with the photographs that appear on anti-plastic bag websites showing turtles and seabirds. We have dedicated a page on our website to these photographs to make people realize that the same five photographs are being shown over and over again to unwitting audiences.

See www.savetheplasticbag.com/ReadContent612.aspx.

- **WHEREAS, in the ocean, the small plastic pieces accumulate bacteria, pesticides, and other toxins which may be transferred to the marine animals that ingest them; this bioaccumulation of toxins travels up the food chain and may endanger human health.**

Plastic carryout bags do not contain pesticides or toxins. If there are pesticides and toxins in the oceans, the source is not plastic carryout bags.

- **WHEREAS, on land, plastic bags block storm drains, trap birds, and kill livestock.**

Many items block storm drains. If plastic carryout bags disappear, storm drains will continue to be blocked by the other items.

Plastic bags do not trap birds or kill livestock. These are myths. Even if there are any such occurrences, they are so rare that they do not justify action.

- **WHEREAS, a 2004 study conducted by the city of Los Angeles revealed that plastic bags made up 25 percent of the litter cleaned from 30 storm drain catch basins.**

The City of Los Angeles provides a photograph of accumulate debris in the Los Angeles River support of their assertion about storm drain catch basins. The photograph is on our website at www.savetheplasticbag.com/ReadContent606.aspx.

As you will see from the photograph, there does not appear to be a single plastic bag in the catch basin. There are thousands of bottles, cups, and other items.

- **WHEREAS, plastic carryout bags are recyclable; however, very few are actually recycled. Large grocery chains have provided recycling containers for plastic bags since the early 1990's, yet the current rate of recycling is less than 5 percent.**

Plastic bags recycling bins were installed in supermarkets in July 2007, not the early 1990s. This was done pursuant to AB 2449 (Pub. Res. Code §§42250-42257)

AB 2449 is a multi-year program that has not had a chance to work. A publicity program needs to be launched to advise people about the recycling bins. However, with the constant threats by cities and counties and the Legislature to ban or impose onerous fees on plastic bags, no one is willing to allocate resources to advising people about recycling an item that may be banned or effectively phased out by the imposition of a fee.

The percentage of plastic bags that consumers bring back to the store can be easily boosted, *if the threats stop*.

- **WHEREAS, recycled content paper bags made from 40 percent post-consumer and 60 percent post-industrial paper are readily available for stores to stock as carryout bags, which supports the curbside collection of paper.**

Plastic trash bags are required by law to contain 10% post-consumer resin. This legal requirement is regulated and supervised by the CIWMB, which provides for certifications of compliance. See: www.ciwmb.ca.gov/BuyREcycled/TrashBags/.

There is no similar program for paper bags. The City of San Diego would have no way of verifying compliance with the 40% post-consumer requirement, especially regarding overseas manufacturers.

- **WHEREAS, in 2002, Ireland implemented of a fee for the provision of plastic carryout bags that resulted in an approximate 90% reduction in plastic bags in the first year of the fee.**

RESPONSE: Ireland saw an *increase* in the number of plastic bags that consumers were forced to purchase for diapers, bin-liners, and other uses after being deprived of free plastic carryout bags. See:

<http://archives.tcm.ie/irishexaminer/2003/01/29/story651891687.asp>.

An American manufacturing industry and jobs under threat

85% of plastic bags used in the United States are manufactured in the United States. Approximately 4,000 employees in the United States, including in California, manufacture plastic bags. When lawmakers take action to eliminate plastic bags, they eliminate American jobs. These are jobs held by real people with real families who are routinely ignored by California politicians.

All lawmakers, including the San Diego City Council, have a profound responsibility to all the people of this nation and to our manufacturing industries. It cannot ignore the effects of their actions beyond the city's borders.

Destroying American jobs based on myths and misinformation would be irresponsible and tragic. Doing so just when we are entering the worst economic crisis since the Great Depression would be heartless. The thousand of American workers who manufacture plastic bags are not at fault for wanting to support themselves and their families.

Most reusable bags are made in China, including those sold by Trader Joe's, Safeway and Whole Foods. It is incredible that any public official in this country would even think about exporting American jobs without doing *due diligence*. However, that is exactly what is happening.

For the protection of American jobs, it is imperative that the San Diego City Council recognizes that it has a duty to take the special care in their fact-finding and decision-making about plastic bags. It must take care to ensure that prejudice and passion against plastic bags, including by their staff and obsessed environmentalists, do not blind them to the truth and the real world consequences of their actions.

Public opinion

A poll was conducted by Fairbank, Maslin, Maulin and Associates through a telephone survey of California registered voters between June 28 and July 2, 2008. The sample population was 700 and the margin of error +/- 3.7 %. According to the poll, 58%

of Californians oppose a proposed 25 cent tax on plastic bags. More than two-thirds of those polled in Los Angeles and San Diego oppose the tax.

The results of the above opinion polls and others can be viewed at www.savetheplasticbag.com/ReadContent650.aspx.

At a time when many people in the City of San Diego are in dire economic straits, and every penny counts, they will not appreciate a tax on shopping, whether it is a tax on plastic bags or paper bags.

CEQA

The California Environmental Quality Act (CEQA) is designed to ensure that accurate environmental information is presented to lawmakers before they make their decisions. CEQA requires the preparation of an Environmental Impact Report (EIR) before any ordinances or other “projects” are adopted that *may* have a significant negative effective on the environment.

In *People v. County of Kern* (1974) 39 Cal. App. 3d 830, 842, the court stated:

Only by requiring [an agency] to fully comply with the letter of the law can a subversion of the important public purposes of CEQA be avoided, and only by this process will the public be able to determine the environmental and economic values of their elected and appointed officials, thus allowing for appropriate action come election day should a majority of the voters disagree.

The Oakland lawsuit

In July 2007, the City of Oakland adopted an ordinance banning plastic bags. A coalition of plastic bag manufacturers (including three STPB members) filed a petition for writ of mandate against the City of Oakland, because the city had failed to prepare an EIR pursuant to CEQA. *Coalition To Support Plastic Bag Recycling v. City of Oakland, et al.*, Alameda Superior Court, Case No. RG07-339097.

In May 2008, the Alameda Superior Court issued a writ of mandate invalidating the Oakland ordinance. It found that there was a *possibility* that the ordinance would have a significant environmental impact, because paper is worse for the environment and banning of plastic bags would result in increased paper bag usage. The decision was not appealed and the Oakland ordinance has been revoked.

I am providing you with a copy of the Alameda Superior Court decision herewith.

The Los Angeles County lawsuit

In January 2008, Los Angeles County adopted a program to reduce the number of plastic bags by 30% by 2010 and 65% by 2013. The failure to achieve either goal will trigger an ordinance banning plastic bags.

In July 2008, STPB filed a petition for a writ of mandate. *Save The Plastic Bag Coalition v. County of Los Angeles, et al*, Los Angeles Superior Court, Case No. BS115845. The ground for the petition is that the county failed to prepare an EIR prior to adopting the program.¹

The case is pending. Copies of the primary documents filed by STPB can be viewed at www.savetheplasticbag.com/ReadContent541.aspx.

The Manhattan Beach lawsuit

In July 2008, the City of Manhattan Beach adopted an ordinance banning plastic bags. In August 2008, STPB filed a petition for a writ of mandate. *Save The Plastic Bag Coalition v. City of Manhattan Beach, et al*, Los Angeles Superior Court, Case No. BS116362. The ground for the petition is that the city failed to prepare an EIR prior to adopting the ordinance.

The case is pending. Copies of the primary documents filed by STPB can be viewed at www.savetheplasticbag.com/ReadContent541.aspx.

The environmental impact of paper bags

In 2005, the “Scottish Government” issued an environmental impact assessment on the effects of a proposed plastic bag levy in Scotland (the “Scottish Report”). The report states:

Page vi: If only plastic bags were to be levied..., then studies and experience elsewhere suggest that there would be some shift in bag usage to paper bags (which have worse environmental impacts).

Page 31: [A] paper bag has a more adverse impact than a plastic bag for most of the environmental issues considered. Areas where paper bags score particularly badly include water consumption, atmospheric acidification (which can have effects on human health, sensitive ecosystems, forest

¹ STPB filed the lawsuits in the name of Save The Plastic Bag Coalition, an alternative name that it uses for litigation purposes.

decline and acidification of lakes) and eutrophication of water bodies (which can lead to growth of algae and depletion of oxygen).²

Page 31: Paper bags are anywhere between six to ten times heavier than lightweight plastic carrier bags and, as such, require more transport and its associated costs. They would also take up more room in a landfill if they were not recycled.

The Scottish Report (at page 23) contains the following comparison of the environmental metrics of plastic bags and paper bags. The report takes into account the fact that a paper bag holds more than a plastic bag. According to the report, paper bags result in:

- 1.1 times more consumption of nonrenewable primary energy than plastic bags.
- 4.0 times more consumption of water than plastic bags.
- 3.3 times more emissions of greenhouse gases than plastic bags.
- 1.9 times more acid rain (atmospheric acidification) than plastic bags.
- 1.3 times more negative air quality (ground level ozone formation) than plastic bags.
- 14.0 times more water body eutrophication than plastic bags.
- 2.7 times more solid waste production than plastic bags.

The Alameda County Superior Court relied upon the Scottish Report in making its decision to invalidate the Oakland plastic bag ban ordinance. The report is available at www.scotland.gov.uk/Resource/Doc/57346/0016899.pdf.

In March 2008, ULS (www.use-less-stuff.com) issued a report analyzing the types of paper bags required under San Francisco's plastic bag ban ordinance (the "March 2008 ULS Report"). The March 2008 ULS Report includes the following findings:

- Plastic bags generate 39% less greenhouse gas emissions than uncomposted paper bags, and 68% less greenhouse gas emissions than composted paper bags.
- Plastic bags consume less than 6% of the water needed to make paper bags.
- Plastic bags consume 71% less energy during production than paper bags.

² "Eutrophication" means the process by which a body of water becomes rich in dissolved nutrients, thereby encouraging the growth and decomposition of oxygen-depleting plant life and resulting in harm to other organisms.

- Paper sacks generate almost five times more solid waste than using plastic bags.
- After four or more uses, reusable plastic bags are superior to all types of disposable bags -- paper, polyethylene and compostable plastic -- across all significant environmental indicators.

The March 2008 Report concludes as follows (at page 5):

Legislation designed to reduce environmental impacts and litter by outlawing grocery bags based on the material from which they are produced will not deliver the intended results. While some litter reduction might take place, it would be outweighed by the disadvantages that would subsequently occur (increased solid waste and greenhouse gas emissions). Ironically, reducing the use of traditional plastic bags would not even reduce the reliance on fossil fuels, as paper and biodegradable plastic bags consume at least as much non-renewable energy during their full lifecycle.

The Alameda County Superior Court relied upon the March 2008 ULS report in making its decision to invalidate the Oakland plastic bag ban ordinance. A copy of the March 2008 ULS report can be downloaded at www.use-less-stuff.com.

Banning or imposing a fee on plastic bags would increase paper bag usage, even if a fee is imposed on paper bags

In 2007, the City of San Francisco passed an ordinance banning non-compostable plastic carryout bags in supermarkets and grocery stores with more than \$2 million in annual sales and chain pharmacies. The ordinance requires the use of paper bags, compostable plastic bags, or reusable bags.

To determine the impact of the ordinance, ULS observed store and customer bag usage in San Francisco. A total of 25 retail stores were visited from September 14 to 17, 2008. Stores were walked through, store personnel were questioned, checkout activities were observed, and customers' bagging preferences were reviewed.

ULS found that all food chains affected by the ordinance had switched to paper bags only. ULS also found that "very few people" brought reusable bags to the store -- no more than in other cities. ULS concluded as follows in a report issued in September 2008:

If reducing environmental impact is the objective of the Ordinance, results to date do not indicate it will be successful. First, little use of reusable bags was observed. Second, the replacement of plastic by paper and the return

to double bagging may actually increase environmental impact, as many peer reviewed lifecycle studies indicate that paper bags use more energy, produce more waste, and generate more greenhouse gas emissions than do plastic bags.

The September 2008 ULS Report can be downloaded at www.use-less-stuff.com.

The Scottish Government also concluded in the Scottish Report (at page vi) that banning or imposing a fee on plastic bags only would result in a substantial boost in paper bag usage.

The environmental impact of reusable bags

If plastic bags are banned and paper bags are subjected to a fee, then a boost in reusable bag usage may occur. Like any other manufactured product, reusable bags have a negative environmental impact. However, we have found that lawmakers and their staffs act as if reusable bags have no negative environmental impact whatsoever, which is unrealistic.

Most reusable bags are manufactured in China. An EIR is necessary to determine the following:

- Metrics of consumption of nonrenewable energy to produce reusable bags. (An article in the *Wall Street Journal* (An Inconvenient Bag, Sep 26, 2008) states: “Many of the cheap, reusable bags that retailers favor are produced in Chinese factories and made from nonwoven polypropylene, a form of plastic that requires about 28 times as much energy to produce as the plastic used in standard disposable bags and eight times as much as a paper sack, according to Mr. Sterling, of Natural Capitalism Solutions.”)
- Metrics on emissions of greenhouse gases in the production of reusable bags.
- Metrics on consumption of water to produce reusable bags.
- Metrics on creation of acid rain (atmospheric acidification) in the production of reusable bags.
- Metrics on creation of negative air quality in the production of reusable bags
- Metrics on water pollution or eutrophication in the production of reusable bags.
- Metrics on the consumption of nonrenewable energy to transport reusable bags. (Most reusable bags are made in China and have to be shipped to the United States and then transported by truck. Reusable bags are more voluminous and heavier than plastic bags, thereby requiring more diesel fuel to transport.)

- Metrics on the reusability of plastic carryout bags for bin liners, pet waste and other uses, which are not uses for “reusable” bags.
- Recyclability of reusable bags. (Most reusable bags are made from nonwoven polypropylene, which is not recyclable.)
- Metrics on solid waste production caused by disposal of plastic bags.
- Metrics on the extent to which reusable bags are actually reused. (The above-mentioned *Wall Street Journal* article referenced above states: “Earlier this year, KPIX in San Francisco polled 500 of its television viewers and found that more than half -- 58% -- said they almost never take reusable cloth shopping bags to the grocery store.”³

The “common sense” exemption

CEQA §15061(b)(3), known as the “common sense exemption,” states: “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, the activity is not subject to CEQA.”⁴

The California Court of Appeal has held: “If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt.” *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117.

There is such a legitimate dispute about the negative environmental impacts of boosting usage of paper bags and reusable bags.

Exemptions claimed in the draft ordinance

The draft ordinance states that it is exempt from CEQA under CEQA §15308, “because this is an action taken by a regulatory agency for the protection of the environment.” The draft ordinance further states that the city has considered the potential exceptions to CEQA §15308 as set forth in CEQA §15003.2 and “determined that no substantial evidence has been presented to support the application of any exception.”

In the Oakland case, the Alameda Superior Court noted that CEQA §15300.2(c) contains an exception to the categorical exemptions when there is a “reasonable possibility” that the activity will have a significant effect on the environment due to “unusual circumstances.” The court further noted that this is reviewed under the “fair argument” standard. *Citing, Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 264, 265. The court ruled that

³ STPB is highly averse to relying on newspaper reports for environmental data. However, the *Wall Street Journal* article shows the need for a Life Cycle Analysis on reusable bags, rather than an automatic (and clearly erroneous) assumption that reusable bags have no significant environmental impact.

⁴ 14 Cal. Code. Regs. Ch. 3 is referred to herein as “CEQA.”

the question is whether “on the basis of the whole record, there was no substantial evidence that there would be a significant [environmental] effect.” *Citing, Azusa Land Reclamation Company v. Main San Gabriel Basin Watermaster* (1997) 42 Cal.App.4th 1165, 1202 (emphasis in original Azusa opinion). The court concluded as follows:

A shift in consumer use from one environmentally damaging product to another constitutes an “unusual circumstance” of an activity that would otherwise be exempt from review under CEQA as activity undertaken to protect the environment. (See, e.g., *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 474.) The court also finds that substantial evidence in the record supports at least a fair argument that single use paper bags are more environmentally damaging than single use plastic bags. [Citing Scottish Report and ULS Report.] (Exh. B at 11-12)

In this letter, we have provided substantial evidence of a negative environmental impact if the ordinance is adopted. We have made a “fair argument” that such an impact will occur. Accordingly, the City of San Diego cannot rely on CEQA §15308 as the basis for not preparing an EIR.

Cumulative effects

CEQA §15065(3) states that an EIR must be prepared if “the project has possible environmental effects that are individually limited but cumulatively considerable.”

CEQA §15065(3) states that “cumulatively considerable” means that the “incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”

CEQA §15355 defines “cumulative impacts” as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.”

CEQA §15355(b) states that “[c]umulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”

In *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, the court stated:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. [Footnote] One of the most important

environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact. [*Id.* at 114.]

From *Kings County* and *Los Angeles Unified*, the guiding criterion on the subject of cumulative impact is whether *any* additional effect caused by the proposed project should be considered significant given the existing cumulative effect. [*Id.* at 118.] (Emphasis added.)

The court stated that the agency must “focus on the combined effects of these impacts.” 103 Cal.App.4th at 121.

CEQA §15064(f) specifically addresses the kind of evidence that an agency may and may not rely upon in determining whether there will be a significant effect:

Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

CEQA §15064.7(a) states that an agency may develop “thresholds of significance.” A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant. CEQA §15064.7(a)

The City of San Diego has not developed any such thresholds of significance.

Based on the foregoing, in determining whether the common sense or any other exemption applies, the City of San Diego is required by law to view its own proposal in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects, including but not limited to the following:

- The San Francisco plastic bag ban ordinance adopted in 2007
- The City of Malibu plastic bag ban ordinance adopted in 2008
- The Los Angeles County single use bag reduction program adopted in January 2008

- The City of Manhattan Beach plastic bag ban ordinance adopted in 2008
- The proposed plastic bag fee being considered by Santa Clara County
- All other plastic bag ordinances and projects that are being considered in California and outside California

Demand for EIR

STPB demands that an EIR be prepared pursuant to CEQA that determines and evaluates the environmental impacts of paper bags and reusable bags, prior to the adoption of any ordinance or program regarding plastic bags. It is indisputable that paper bags and reusable bags may have a significant negative effect on the environment.

In the event that no EIR is prepared, then STPB hereby asserts a continuing objection pursuant to California Public Resources Code §21177. STPB will file a petition for a writ of mandate in San Diego Superior Court.

Attorney's fees

In the event that STPB files any legal proceedings, STPB will request attorney's fees pursuant to California Code of Civil Procedure §1021.5.

Conclusion

Pursuant to CEQA §15072(b), I request that you mail to me any future notice of intent to adopt a negative declaration or mitigated negative declaration under CEQA.

I request that this letter and a copy of the Oakland decision provided herewith be made part of the administrative record on the proposed ordinance.

STPB is interested in opening a constructive dialog with the city. If there is any interest on the city's part, please let me know.

All rights are reserved.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Joseph", with a long horizontal line extending to the right from the top of the signature.

Stephen L. Joseph