

First Amendment to the
Draft Environmental Impact Report

**Single-Use Carryout Bag
Ordinance**

File No. PP09-193
SCH # 2009102095

Prepared by the:



October 2010

PREFACE

This document, together with the Draft Environmental Impact Report (DEIR), constitutes the Final Environmental Impact Report (FEIR) for the Single-Use Carryout Bag Ordinance project. The DEIR was circulated to affected public agencies and interested parties for a 45-day review period from July 12, 2010 to August 26, 2010. This volume consists of comments received by the Lead Agency on the DEIR during the public review period, responses to those comments, and revisions to the text of the DEIR.

In conformance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the FEIR provides objective information regarding the environmental consequences of the proposed project. The FEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The FEIR is used by the City and other Responsible Agencies in making decisions regarding the project. The CEQA Guidelines advise that, while the information in the FEIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the DEIR by making written findings for each of those significant effects. According to the State Public Resources Code (Section 21081), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
 - (1) Changes or alterations have been required in, or incorporated into, the project which will mitigate or avoid the significant effect on the environment.
 - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
 - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In accordance with CEQA and the CEQA Guidelines, this First Amendment to the Draft EIR will be made available prior to certification of the Environmental Impact Report. All documents referenced in this FEIR are available for public review in the office of the Department of Planning, Building and Code Enforcement, 200 E. Santa Clara Street, San José, California, on weekdays during normal business hours.

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I. LIST OF AGENCIES AND ORGANIZATIONS TO WHOM THE DRAFT EIR WAS SENT

State Agencies

California Department of Fish and Game, Region 3
Department of Parks and Recreation
Department of Water Resources
Caltrans, District 4
Native American Heritage Commission
Resources Agency

Regional Agencies

Regional Water Quality Control Board, Region 1

Cities/Local Agencies

City of Campbell
City of Cupertino
City of Fremont
City of Gilroy
Town of Los Gatos
City of Milpitas
City of Morgan Hill
City of Palo Alto
City of Santa Clara
City of Saratoga
City of Sunnyvale
Santa Clara County
Santa Clara Valley Water District

Organizations, Businesses, and Individuals

San José Flea Market
Save the Bay
Save the Plastic Bag Coalition

II. LIST OF COMMENT LETTERS RECEIVED ON THE DRAFT EIR

COMMENT LETTERS REQUIRING A RESPONSE

Organizations

- | | | |
|----|----------------------------------|-----------------|
| A. | Save the Plastic Bag Coalition | August 25, 2010 |
| B. | Save the Bay | August 25, 2010 |
| C. | Clean Water Action | August 25, 2010 |
| D. | Guadalupe River Park Conservancy | August 27, 2010 |

Businesses

- | | | |
|----|-------------------------------------|-----------------|
| E. | Symphony Environmental Technologies | August 25, 2010 |
| F. | American Chemistry Council | August 26, 2010 |

COMMENT LETTERS NOT REQUIRING A RESPONSE

Regional and Local Government Agencies

- | | | |
|----|-----------------------------------|-----------------|
| G. | City of Santa Clara | July 28, 2010 |
| H. | Santa Clara Valley Water District | August 12, 2010 |

Complete copies of all of the comment letters, including any and all attachments are included in this First Amendment to the Draft EIR, in Section V. Because attachments to Comment Letter A were so extensive, they are included on a compact disc which is attached to the First Amendment to the Draft EIR. Anyone that is unable to open the file on the disc can contact the City Planning Division (408-535-3555) during normal working hours and ask for a paper copy.

CORRESPONDENCE RECEIVED AFTER THE REVIEW PERIOD

Section 15088(a) of the Guidelines states that a lead agency shall respond to comments received during the noticed comment period, and “may respond to late comments”. The following communications were received after the end of the comment period:

- | | | |
|----|--------------------------------|--------------------|
| I. | Save the Plastic Bag Coalition | September 27, 2010 |
| J. | Save the Plastic Bag Coalition | October 5, 2010 |
| K. | Save the Plastic Bag Coalition | October 8, 2010 |

The correspondence referenced above consists of emails with attached files. The emails and files were requested to be added to the administrative record. The correspondence did not raise issues that are not addressed in the DEIR or the First Amendment to the Draft EIR, and thus require no response. Complete copies of the emails are included in this First Amendment to the Draft EIR, in Section V, and the attachments to the emails are included on the compact disc.

III. RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR

The following section includes all the comments on the DEIR that were received by the City in letters and emails during the 45-day review period. The comments are organized under headings containing the source of the letter and the date submitted. The specific comments from each of the letters or emails are presented as “Comment” with each response to that specific comment directly following. Each of the letters and emails submitted to the City of San José are attached in their entirety (with any enclosed materials) in Section V of this document.

The CEQA Guidelines state that the lead agency shall evaluate comments on the environmental issues received from persons who reviewed the DEIR and shall prepare a written response to those comments. The lead agency is also required to provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report. This First Amendment to the Draft EIR contains written responses to all comments made on the DEIR received during the advertised 45-day review period. Copies of this First Amendment to the Draft EIR have been supplied to all persons and agencies that submitted comments.

**A. RESPONSE TO COMMENTS FROM SAVE THE PLASTIC BAG (STPB)
COALITION, AUGUST 25, 2010:**

Comment A-1: INTRODUCTION

Save The Plastic Bag Coalition (“STPB”) hereby submits its comments on and objections to the Draft Environmental Impact Report (“DEIR”). STPB’s “Amended Submission” letter dated November 24, 2009 is resubmitted herewith and incorporated herein by reference. STPB’s “First Supplemental – Corrected” letter dated January 9, 2010 is also resubmitted herewith and incorporated herein by reference. Both letters are hereinafter collectively referred to as “STPB’s Scoping Letters.”

The following statements were contained in a San Jose Mercury News editorial on June 14, 2010:

“[Assembly Member Brownley, the author of AB 1998 that would ban plastic bags] calls plastic bags “urban tumbleweeds.” Californians use 19 billion bags a year, and the state spends more than \$25 million a year to try to keep them from blowing across cities and counties. That effort, for the most part, has been a failure.

Environmentalists have studies that show Californians recycle only 5 percent of the plastic bags they use. Worldwide, that number is closer to 1 percent. Yet they take 1,000 years to biodegrade. Huge numbers wind up as health hazards to marine mammals: Plastic bags kill an estimated 1 million seabirds and 100,000 other animals every year, whether from eating the things or getting tangled in them. Nearly 2 million barrels of oil a year is wasted to make the plastic bags used by Californians, enough to produce about 40 million gallons of gasoline.”

Fifty years ago, sea captains rarely encountered plastic bags in their voyages across the Pacific. Today, about 1,000 miles off the coast of California, they find a swirling mass of plastic trash that spans an area estimated to be twice the size of Texas.

http://www.mercurynews.com/editorials/ci_15279773

The Mercury News allegations are incorrect.

- Removing plastic bags would not save the state \$25 million in litter costs. The same streets, highways, parks, rivers and creeks, and other areas will have to be cleaned, even if there are no plastic bags in the litter stream. San Francisco has not saved any money in litter costs since it banned plastic bags.
- The plastic bag recycling rate of 5% was measured before AB 2449 took effect. AB 2449 required stores to install plastic bag recycling collection bins. Since that time, plastic bag recycling has increased significantly.
- If plastic bags take 1,000 years to biodegrade, that is a good thing. Paper bags do biodegrade in landfills. In the process of biodegrading, paper bags emit methane, which is a greenhouse gas (“GHG”) with 23 times the climate changing impact of CO₂.

• The allegation that “plastic bags kill an estimated 1 million seabirds and 100,000 other animals every year, whether from eating the things or getting tangled in them” is untrue. The Times of London has exposed the allegation about 1 million seabirds and 100,000 sea animals being killed by

plastic bags each year as a myth based on a typographical error! The survey on which the myth is based found that the deaths are caused by discarded fishing tackle including fishing nets, not plastic bags. A marine biologist at Greenpeace told The Times: “It’s very unlikely that many animals are killed by plastic bags. The evidence shows just the opposite.”

<http://www.timesonline.co.uk/tol/news/environment/article3508263.ece>

- The allegation that there is a swirling mass of plastic trash including plastic bags, “twice the size of Texas,” is untrue. The Los Angeles Times has made a similar allegation in an editorial on June 24, 2010 stating: “The Great Pacific Garbage Patch is an area of the ocean larger than Texas and thick with floating plastic debris: bottles, bottle caps, bits of packaging and uncountable plastic bags.”

In fact there is no such area of the ocean “larger than Texas and thick with floating plastic debris: bottles, bottle caps, bits of packaging and uncountable plastic bags.” If such an area existed, it would be clearly visible and there would be photographs of it. There aren’t any such photographs, as we can see from Google images.

LA Times editorial at: <http://www.latimes.com/news/opinion/editorials/la-ed-bags-20100624,0,7190647.story>

The allegation that “nearly 2 million barrels of oil a year is wasted to make the plastic bags used by Californians, enough to produce about 40 million gallons of gasoline” is untrue. This is based on the myth that plastic bags are made of oil. In fact, 85% of plastic bags used in the United States are made in the United States. Those bags are made of ethane, which is a waste by-product of domestically produced natural gas. None of it could be used for gasoline.

The Mercury News editorial shows why it is so important that the EIR be *accurate and informative*. STPB plans to cite a *correct* EIR in response to incorrect assertions such as those in the Mercury News editorial, to ensure that the public and decision-makers do not evaluate the proposed ordinance based on myths, misinformation, or falsehoods.

The City is planning to provide education outreach to the public about the environmental impact of plastic bags, as an integral part of this project. In this regard, the DEIR states (at page 26):

“Pursuant to Council’s direction, the Bring Your Own Bag campaign will continue after the ordinance is adopted to provide sufficient outreach to both businesses and consumers. Public support for the program will be developed and supported by visual emphasis on the extent of litter in the Bay Area, especially in the creeks and the Bay, with information on the damage to wildlife caused by litter, and reminders that not only is the ordinance intended to encourage people to stop using single-use carryout bags, it is specifically intended to stop environmental damage from litter. Supporting information on the global extent of litter and its presence in the ocean and other supposed “pristine” environments will be provided. Information will be distributed on the wide variety of reusable bags available, with emphasis on ease of care, convenience, affordability, strength, appearance, and other points of interest. Reusable bags will be for sale and/or distributed freely at street fairs and craft shows throughout the Bay Area. It is the City’s expectation that these outreach efforts will broaden the awareness of the environmental issues involved with the proposed ordinance and encourage consumers to adopt the practice of bringing reusable bags to the store.”

It is imperative that such educational outreach includes *accurate* information about the environmental impacts of the proposed ordinance, rather than sweeping and inaccurate statements.

Response A-1: This comment does not have any relevance to the EIR. The information it is refuting was contained in a newspaper editorial and the rebuttal is based, in part, on another newspaper editorial. To the extent that some of these same statements directed at the editorial are reiterated in the letter which follows, they are responded to substantively in that context. The EIR has no obligation to defend arguments made in newspaper editorials and, in addition, some of the information in the editorial quoted above is different than information in the DEIR. To avoid confusion, no attempt is made to respond to this comment.

Comment A-2: STPB agrees with the City that the imposition of a 25 cent fee on paper bags will effectively result in a major shift to reusable bags, which is the City’s goal. That means that it is *imperative* that the EIR address and disclose the environmental impacts of reusable bags. The DEIR only addresses and discloses the environmental impacts of LDPE reusable bags. *This is the biggest problem with the DEIR.*

Response A-2: It is not clear on what basis this comment concludes that only impacts from LDPE reusable bags are discussed in the EIR. The DEIR addresses impacts related to reusable bags in general where such impacts will be the same regardless of the material the bag is made of, and discusses throughout the text impacts from several types of reusable bags, including bags made from LDPE, HDPE, PP, and cotton. The following sections of the DEIR text address impacts related to reusable bags:

- Page 57 includes a discussion of land use impacts from reusable bags without any restriction on the types of bags.
- Pages 75-76, 80-81, and 88 include discussions of water quality and water supply impacts related to washing reusable bags; specific references are made to reusable bags made from polypropylene, polyethylene, woven cloth and netting.
- Pages 96-99 include a discussion of the potential microbiological hazards associated with all types of reusable bags. No reference is made to excluding certain types of bags from the conclusions.
- Pages 111-113 include a discussion of energy use associated with reusable bags, including bags made from LDPE, HDPE, PP/nylon, and cotton.
- Pages 122-124 include a discussion of greenhouse gas emissions from reusable bags, including bags made from LDPE, HDPE, PP, and cotton. Specific mention is made of a “reusable woven HDPE plastic bag” which is assumed to last for 104 uses.

Additionally, Appendix D, “A Summary of Available Information on Reusable Shopping Bags”, of the DEIR, includes general information on the environmental impacts associated with various types of reusable bags, including:

- A discussion of, and summary of data from, several Life Cycle Inventories (LCIs) describing the cradle-to-gate environmental impacts associated with four types of plastic commonly used in reusable bags: LDPE, HDPE, PP, and PET.
- A discussion of, and summary of data from, relevant portions of two Life Cycle Assessments (LCAs) that analyzed reusable bags made from various materials such as HDPE, LDPE, PP, and cotton.
- A discussion of environmental impacts associated with fibers such as polyester and cotton, including impacts related to cotton cultivation and the use of dyes.

- A discussion of the relative capacity, physical size, and useful life of various reusable bags and the effects these characteristics have on the environmental impact of any given type of bag.

As stated in Appendix D, the City is unable to document all of the impacts related to all of the life cycles of all of the different kinds of bags that might be purchased by all of the shoppers in San José, and any thorough analysis of the impacts of manufacturing, distributing, and using reusable bags that might be purchased and used as a result of the proposed ordinance would be impossible to complete and would be highly speculative. While predicting exactly which types of reusable bags will be used in San José, and the environmental impacts specifically associated with them, would be speculative, a general conclusion regarding the overall impacts of using many if not all reusable bags compared to single-use bags can be drawn from the various sources consulted for the DEIR and cited therein: a reusable bag, if used enough times (the number varies by the type of bag), has fewer environmental impacts than a single-use bag, and a long term shift in consumer behavior away from single-use bags towards reusable bags would have a beneficial impact on the environment.

Comment A-3: STPB is not asserting objections to create a pretext for a lawsuit. The public and decision-makers need an accurate and informative EIR that complies with CEQA, not a lawsuit. STPB is legitimately trying to respond to the very real and serious problem of environmental misinformation, such as the Mercury News editorial.

The DEIR is only a draft and STPB hopes that these objections will prompt the City to make corrections and changes that will result in an EIR that fully complies with CEQA and the avoidance of litigation based on a legally defective EIR.

Response A-3: The City of San José is not responsible for the accuracy of information provided by others, including the Mercury-News editorial, but is insistent that all CEQA documents reflect the best and most accurate information available.

Comment A-4: **OBJECTIONS**

The numbered title headings herein are part of the objections.

Response A-4: Comment Letter A, received from STPB on August 25, 2010, includes a general comment objecting to the perceived failure of the DEIR to address comments submitted in STPB's November 24, 2009 response to the NOP (see comment A-8, below). It should be noted that CEQA does not require that an EIR discuss issues raised by private persons that are not relevant to the proposed project. Section 15083.4(c) of the CEQA Guidelines require that a Lead Agency consider all information and comments received during the scoping period, but the Lead Agency can decide whether the information or comments "may" be included "in whole or in part".

This general comment also appears to refer to several places in this comment letter that list enumerated sections (using both numbers and capital letters) of STPB's 11/24/09 response to the NOP. Several of the enumerated sections are followed by specific bulleted comments, and some of the sections are simply listed without further explanation. For the purposes of the FEIR, all bulleted comments following an enumerated section were interpreted to represent the specific aspects of that enumerated comment that STPB perceives were not addressed in the DEIR, and only those bulleted comments were responded to. Any

enumerated sections listed without further explanation were interpreted to mean the entire section in the NOP response letter was perceived not to have been addressed in the DEIR.

A summary of the content of those enumerated sections in the 11/24/09 letter that are listed below without further explanation (shown in italic font) is provided after each list, as is a reference to where in the DEIR the relevant information can be found. The complete 11/24/09 letter from STPB responding to the NOP can be found in Appendix C of the DEIR.

Comment A-5: 1. STPB OBJECTS TO AN EIR THAT DOES NOT CONFORM TO THE ORDINANCE

The DEIR is based on the following assumptions, parameters and limitations:

A. The fee for exempt paper bags would be set by the ordinance at 25 cents. Collection of that full fee would, however be deferred for two years and a reduced fee of \$.10 (ten cents) would initially be collected during that period. (See DEIR at p. 22.)

B. The paper bag fee would apply to all stores covered by the proposed plastic bag ban.

C. All exempt paper bags would be required to contain a minimum of 40% postconsumer recycled content. (See DEIR at pp. 23, 31.)

D. “The City’s Director of Environmental Services will ensure that there is a mechanism in place for verifying the minimum recycled content in paper bags used in the City prior to implementation of the ordinance. The mechanism may be certification done by a third party such as Green Seal.” (See DEIR at page 25, footnote 20.)

E. The ordinance would exclude plastic or paper bags that are used by customers or the store to protect or contain meat, fresh produce, food prepared at the establishment, or other goods that must be protected from moisture, damage, or contamination, and that are typically placed inside a carryout bag at the point of sale. (See DEIR at p. i.)

F. Restaurants, take-out food establishments, or any other businesses that receive their revenue primarily from the sale of food cooked or otherwise prepared at the establishment would be exempt from the ordinance. (See DEIR at p. i.)

G. The only type of reusable bag that would be permitted in the City would be LDPE reusable bags. This is because LDPE reusable bags are the only type of reusable bags analyzed in the DEIR. The environmental impacts of cloth, jute, nonwoven polypropylene, polyethylene terephthalate (PET), and other non-LDPE reusable bags are not addressed or disclosed in the DEIR. In the DEIR (at p.150), the City states: “There is such a wide variety of [non-LDPE reusable] bags, it is impossible to identify exactly how many uses per bag is required to offset the impacts of using a single-use carryout plastic bag once.”

Response A-5: Statements A-F above reiterate information that is provided in the EIR. Statement G, however, jumps to the end of the document (page 150) and quotes from §6.5 in the Alternatives to the Proposed Project section of the DEIR. The comment quotes from the DEIR but also adds words to the quote, “non-LDPE reusable”, that is neither implied nor intended to be assumed in the sentence. Since this commentor made an incorrect assumption about the meaning of the sentence, the sentence is revised slightly in Section IV,

Revisions to the Text of the Draft EIR, in this First Amendment to the DEIR, in order to make its meaning more clear.

Comment A-6: If an ordinance does not conform to all of the foregoing assumptions, parameters, and limitations, STPB objects and will take legal action to invalidate the ordinance based on CEQA. The reason is that the EIR will not disclose the environmental impacts of *that* ordinance. For example, if any cloth, jute, nonwoven polypropylene, polyethylene terephthalate (PET), or other non-LDPE reusable bags are permitted at stores where plastic bags are banned, then STPB will take such legal action.

Response A-6: Neither the ordinance nor the EIR specifies or implies what types of reusable bags shoppers will be allowed to use in San José. The DEIR notes on page 4 that reusable plastic bags are defined in State law (AB2449) as being “durable”, with a minimum thickness of 2.25 mils and with handles. Following that statement, there are photographs of a number of reusable bags made of various materials (Photos 5,6, and 7). Although this letter quotes and paraphrases other sections of the Project Description, it overlooks page 25 where it is stated in §2.3 that:

This ordinance does not distinguish among types of plastic or types of plastic bags beyond their ability to be reused multiple times. Single-use plastic bags provided free to customers at the check-out stand for the purpose of holding the customer’s purchases are prohibited by the ordinance. Plastic carryout bags are allowed if the bags are intended and identified as reusable and meet the state’s regulatory definition of reusable bags, as described in §2.1.1 above.

The DEIR then provides in Figure 3, photographs of single-use and reusable plastic bags made of different kinds of plastic.

See Response A-2, above, regarding where the EIR includes discussions of various impacts related to non-LDPE reusable bags throughout the EIR.

Comment A-7: No rights are waived by STPB. All rights are reserved by STPB. Nothing herein should be taken to mean that STPB supports a plastic bag ban. STPB believes that a plastic bag ban is not justified on environmental grounds.

Response A-7: The opinion of the letter writer is acknowledged. No response is required.

Comment A-8: **2. STPB OBJECTS TO THE FAILURE TO ADDRESS ALL OF THE ISSUES AND POINTS IN STPB’S SCOPING LETTERS**

STPB objects to the failure of the DEIR to discuss, address, and disclose the following issues and points in STPB’s November 24, 2009 letter:

- Section 2: ¶¶ A, B, D, E, I

At pages 49-50 of the DEIR, there is a discussion about litter statistics. However, no hyperlinks are provided for most of the litter studies cited on those pages and STPB objects to the omission. Those studies for which no hyperlinks are provided are not part of the administrative record.

Response A-8: Please see Response A-4 regarding the inclusion of information identified in the 11/24/09 letter responding to the NOP for this EIR. Article 9 of the CEQA

Guidelines identify the required contents of EIRs. CEQA does not require that information be included that is not relevant to the project or any of the impacts anticipated to occur from the project and/or any of the mitigation measures proposed by the project proponent or identified by a responsible or trustee agency or by a member of the public. It would be particularly confusing to include irrelevant information to satisfy a demand made in a letter sent by a private person (i.e., not a Responsible Agency).

All of the sources for the litter studies discussed in pages 49-50 of the DEIR are cited in *Section 9.0 References* of the DEIR, and are thus part of the administrative record. The two studies describing litter in Los Angeles are not individually cited because they can be found in one source, *An Overview of Carryout Bags in Los Angeles County*, which is listed on page 157 of the DEIR.

Although not required by CEQA or any other authority, for convenience hyperlinks are identified for those references where such links are available; additional hyperlinks are included in Section IV. Revisions to the Text of the Draft EIR.

Comment A-9: Incredibly, the DEIR omits the results of the recent surveys that were completed by volunteers at the San Jose Great American Litter Pickup on March 20, 2010. The City drafted, distributed and collected the survey forms, but doesn't mention the results in the DEIR. The City initially refused to send the results to STPB. Therefore, STPB made a formal Public Records Act request and the results were produced. The City sent the results to STPB in the form of tally sheets and an Excel spreadsheet. The tally sheets are provided herewith as document #72. The spreadsheet is provided herewith in PDF format as document #73. "Plastic bags" constituted 6.7% of the items reported in 187 volunteer reports. Paper items constituted 24.39% of the items reported. (The City did not ask volunteers to count the number of paper bags.) STPB objects to the failure to disclose and discuss these results in the DEIR. The results are the most recent, relevant and reliable evidence of the amount of plastic bag and paper litter in the city. The disclosure must state that the term "plastic bag" used on the forms may include newspaper bags, dry cleaning bags, restaurant bags, produce bags and other plastic bags that would not be banned under the proposed ordinance. The results also show that the highest volume item in the litter stream is cigarette butts, which were 22.04% of the items collected.

Response A-9: The litter pick-up event on March 10th was not citywide, and a relatively small percentage of the volunteers participating turned in the tally sheets (filling them out was not required). The information is not, therefore "relevant and reliable evidence of the amount of plastic bag and paper litter in the city." A summary of the tally sheets that were turned in is provided in *Section IV. Proposed Text Amendments to the Draft EIR*.

Comment A-10: STPB objects to the failure to include any data in the DEIR on the number of paper bags in the litter stream. This is highly relevant information. The DEIR indicates that plastic bags have a propensity to become litter, but paper bags may also have a propensity to become litter. The hyperlink link below is to a YouTube video that is hereby made part of the administrative record. The video was taken by STPB's counsel. The location is Mason Street between Bay Street and Francisco Street in San Francisco. There is a Trader Joe's on the same block. Trader Joe's provides paper carryout bags, not plastic. Paper bags are very much a part of the litter stream in San Francisco.

http://www.youtube.com/watch?v=pazWMPTCDmE&feature=player_embedded

Response A-10: This comment is incorrect in saying that the EIR did not identify paper bags in the litter stream in San José. References to paper in the litter stream are found at the following locations in the DEIR: §3.1.1.3, Photo 18 on page 47; same section, second and fifth paragraphs under “Litter Surveys on page 49; same section, first complete and fourth paragraphs on page 50; §3.2.2, first paragraph on page 64; §3.2.2.1 [Section number in DEIR is incorrect. Correction is included in Text Revisions section.] first paragraph in the section on page 68; §3.2.3, last paragraph on page 71; §3.3.1.2, second paragraph in the section, plus table 3.3-1 on page 78; same section, first partial paragraph on page 79.

Table 3.3.-1, which lists numbers of relevant items found during the 2008 International Coastal Cleanup, identifies the number of paper bags (371) and the number of plastic bags (1,580) found in Santa Clara County.

There are no references to paper litter in studies verifying the presence of litter in waterways and other locations where water has (presumably) dissolved the paper.

It is not clear from this comment what is intended by the reference to paper litter in San Francisco, since San Francisco’s ordinance banning single-use plastic carryout bags does not regulate or require a fee for single-use paper carryout bags, unlike the ordinance evaluated in this EIR. The situation in San Francisco at the present time is not comparable to conditions in San José at the present time (since single-use plastic carryout bags are prohibited in grocery stores in San Francisco) and would not be comparable to conditions in San José with the proposed project (since the proposed ordinance would require a charge for single-use paper carryout bags in San José).

Comment A-11: Note that the link for the Toronto litter survey has changed. The new link is as follows:

http://www.plastics.ca/_files/file.php?fileid=fileXNqTOAdnvk&filename=file_3_2006_toronto_litter_report.pdf

- Section 5: ¶¶ A, B, C, D, E, F, G, H, I, J, K, L, M
- Section 6: ¶¶ A, B, C, D, E
- Section 7: ¶¶ A, B, C, D, E
- Section 12: ¶¶ A, B, C, D
- Section 13 ¶¶ B, C, E

Response A-11: The new link is acknowledged.

Regarding the list of enumerated sections from the STPB 11/24/09 response to the NOP, as stated under Response A-4 above, the following information is provided.

• *Section 5: ¶¶ A, B, C, D, E, F, G, H, I, J, K, L, M*

This section of STPB’s response to the NOP discusses litter in the marine environment, including plastic and paper bags, and its affect on marine life. STPB asks that the EIR provide information, including a great deal of detail about the Pacific gyre, that is unrelated to the proposed project. Where the information is relevant to the proposed ordinance, litter in the marine environment is discussed, including in the following sections of the DEIR: §2.1.2.3 (pp. 18-21), §3.1.1.1 (pp. 36-37), §3.1.1.3 (pp. 45,49), §3.1.2.2 (p. 54), §3.1.2.4 (p. 55), §3.2.2 (pp. 64-69), §3.2.3 (pp. 70-71), §3.2.4.1 (pp. 72,74), §3.3.1.2 (pp. 78-79), §3.3.2.1 (p. 80), §6.1.4 (pp. 139,141), §6.2 (p. 142), and §6.5.1.2 (p. 147).

• *Section 6: ¶¶ A, B, C, D, E* • *Section 7: ¶¶ A, B, C, D, E*

These sections in the 11/24 letter inquire about the annual costs to the City related to paper

and plastic bag litter, as well as asking for details about a theoretical alternative to the ordinance if bag manufacturers reimburse the City for bag-related costs. This is similar to a proposal made by the American Chemistry Council to the County Solid Waste Task Force in the past. This EIR addresses that alternative in §6.1.4 on page 138. Where it is relevant to the proposed ordinance, the costs of cleaning up litter, including bag litter and environmental problems related to bags are discussed in the following sections of the DEIR: §2.1 (p. 3), §2.1.2.2 (p. 15), §2.1.2.3 (pp. 18,20), §3.1.1.1 (p. 35), §3.1.2.3 (p. 55), §3.3.1.2 (p. 79), §3.4.1.2 (pp. 85-86), §3.4.2.2 (p. 88), and §6.1.4 (pp. 138-139,141). There would, presumably, not be adverse environmental impacts from the manufacturers paying for litter collection, which could therefore happen at any time.

• *Section 12: §§ A, B, C, D*

This section of the 11/24/09 letter discusses the biodegradation of paper bags and asks for details about paper bags degrading in landfills and other places, and related effects on the environment, and also contains a comment stating that chemicals such as PCBs and DDT do not bond with plastic bag debris in the ocean. The DEIR does not assert that these chemicals bond with plastic bag debris in the ocean. Where it is relevant to the proposed ordinance, the biodegradation of paper bags is discussed in the following sections of the DEIR: §2.1.2.2 (p. 14), §3.1.1.3 (p. 45), §3.1.2.5 (p. 56), §3.2.2 (p. 64), §3.2.1.1 (p. 68), §3.7.2.1 (p. 102), and §3.10.3.1 (p. 124). There are numerous statements in the public realm that plastic bag debris can help transport various toxic substances from one location to another in the ocean, but no scientifically conducted study was found and the subject is not therefore raised in the DEIR. Subsequent to circulation of the DEIR, however, a comment letter from STPB included an attached White Paper from NOAA that includes information that an organic pollutant called phenanthrene, a polycyclic aromatic hydrocarbon, easily attaches itself to polyethylene. Since most single-use plastic carryout bags are HDPE (high density polyethylene) this raises a question relative to the likelihood that mobile plastic bags in an ocean environment may transmit the contaminant. Studies are still evaluating the impacts of this information and this EIR is unable to reach a conclusion as to its significance (see discussion in Response A-67).

• *Section 14 §§ B, C*

This section of the 11/24/09 letter from Save the Plastic Bag states that plastic bags do not contain additives such as PCBs, DDT, and nonylphenols. The DEIR does not assert that plastic bags contain these chemicals.

Comment A-12: In footnote 20 at page 25 of the DEIR, the City states: “The City’s Director of Environmental Services will ensure that there is a mechanism in place for verifying the minimum recycled content in paper bags used in the City prior to implementation of the ordinance. The mechanism may be certification done by a third party such as Green Seal.” The City must state in the EIR exactly what will be done to verify (not merely certify) post-consumer content and if it fails to do so STPB objects.

Verifying post-consumer content in paper bags is an extremely difficult problem, particularly regarding imported bags. Fraudulent self-certification and even third-party certification is a major concern. There has already been a major recycled paper scandal in Japan. See documents ##41 and 75 provided herewith.

<http://wildsingaporenews.blogspot.com/2008/01/recycled-paper-scandal-in-japan.html>

<http://www.guardian.co.uk/business/2008/jan/18/greenbusiness.recycling>

There is no verification program in existence for the post-consumer content of paper bags. Green Seal has never implemented any such verification program in this country or elsewhere. There is no reliable method of verification short of posting government or other verification personnel at manufacturing facilities on a permanent basis, and also at the facilities of post-consumer resin suppliers.

Further, according to paragraph 11 of the Project Elements in Appendix A to the DEIR, if grocers have an “understanding” that paper bags do not have the required level of post-consumer content, then they will be “held harmless” by the City. There is no indication of what kind of “understanding” is required and STPB therefore objects. The term ‘Understanding’ must be defined.

Response A-12: The system that will be used for verifying recycling content is not yet known. CEQA does not require that an EIR identify information that is not yet available or does not exist. Scientific Certification Systems (“Green Cross”) does certify paper bags for recycled content, so the reference in the EIR is corrected in the Text Revisions in this First Amendment to the DEIR. The objections by this letter writer are noted.

Appendix A is a list of project elements, it is not a copy of the ordinance. The word “understanding” is adequately clear for the purpose of providing a list of the elements that will be in the ordinance. The City Council will determine, in considering the ordinance itself, whether or not it provides sufficient assurance that the recycled content standard will be met, consistent with the discussion in this EIR.

An example of how to evaluate environmental claims is found in the Federal Trade Commission’s administrative interpretations for consistency with laws enforced by the Commission. Part 260 of the guidelines states:

In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

These are guidelines, not law, but they provide a reasonable example of what would be considered adequate confirmation of environmental claims.

Comment A-13: See the following link in which states: “Entomologists, including Coby Schal of North Carolina State University, have observed that cockroaches prefer paper to plastic. “They really like to live in the creases found in paper bags,” said Schal, the nation’s top expert on cockroaches. Many cockroach species chew into paper bags to lay their eggs -- something they don’t do with plastic. This is a problem beyond just the yuck factor. Darryl Zeldin, a senior scientist with the National Institute of Environmental Health Sciences, says: “Cockroaches significantly increase asthma symptoms in allergic individuals. And while a third of inner-city residents are cockroach-sensitive, sensitivity to cockroach exposure is widespread in our nation -- not just in the inner cities.” STPB objects that the DEIR fails to address and disclose these facts.

Response A-13: The link in this comment is to a newspaper editorial opposing Whole Foods' proposal to offer only paper bags. There is no background or factual support in the editorial for the quotes that are repeated in this comment and, since it is an editorial, it is assumed to be entirely opinion.

The statement in this comment that the DEIR fails to disclose the relevant information is also not accurate. In §3.6.2.3 on page 94, the EIR states that cockroaches can spread infectious diseases and their droppings can trigger asthmatic attacks. The discussion which follows this disclosure is a summary of information about cockroaches taken from the websites of the City of New York Health Department, the University of Connecticut and the University of Nebraska. Additional facts and information are available at the websites whose links are also disclosed in the footnotes on page 94 of the DEIR.

Comment A-14: The DEIR states (at page 86): "The in-store recycling program required by AB 2449, the state law which forbids cities from requiring stores to charge for single-use plastic bags, is the only program recycling plastic bags in San José at this time. According to information provided by the grocery stores, an amount of plastic equivalent to approximately 7 percent of the bags purchased by the stores is sent to be recycled through this program. Based on visual inspections of the bins, the recycled plastic includes some quantity of plastic film from other sources (e.g., dry cleaning bags)."

Response A-14: This comment is correct; that information is on page 86 of the DEIR.

Comment A-15: The DEIR contains no discussion or disclosure of the environmental impact of terminating the only plastic bag and film recycling program in the City. STPB objects to the failure to disclose that the environmental impact of terminating the AB 2449 plastic bag recycling collection bins program is that all plastic bags of all kinds and all plastic film will go to landfills.

Response A-15: The City of San José is not proposing to terminate the stores' in-store recycling program and has no authority to terminate AB 2449. The stores' private recycling efforts can continue as long as the stores want them to continue. There is, therefore, no nexus for discussing their termination in the EIR.

Comment A-16: The following article raises the critically important issue of the over-proliferation of reusable bags and the impact on landfills. (Document #2 submitted herewith.) STPB objects to the failure to address this issue in the DEIR.

<http://www.theage.com.au/national/bag-the-bag-a-new-green-monster-is-on-the-rise-20100123-mrqq.html>

Response A-16: The article deals with a situation alleged by someone in Australia who claims that reusable bags are proliferating so heavily as a result of a ban on single-use bags passed in one state in Australia that a lot of reusable bags are going to landfills. The allegation does not appear to have been substantiated by landfill studies since none are referenced. In San José, unwanted reusable bags can easily be donated to charities such as Goodwill and the Salvation Army. The plastic reusable bags are recyclable as are the textile bags, but their reuse is environmentally preferable.

The article in the link also points out that the solution is for people to stop accepting giveaways of the bags. The information is acknowledged and hereby included in the Final EIR through its inclusion in this First Amendment. The City of San José rejects the assumption in this comment that a significant impact on landfills is likely to occur as a result of substantial numbers of reusable bags being thrown in the garbage, since no factual evidence is provided that it is occurring or will occur.

Comment A-17: LDPE reusable bags, which are the only type of reusable bags analyzed in the DEIR, would not result in increased exposure to toxic materials. The failure to address toxic materials in cloth, jute, nonwoven polypropylene, polyethylene terephthalate (PET), and other non-LDPE reusable bags is not a problem as long as all such non-LDPE reusable bags are banned. If non-LDPE reusable bags are not banned, STPB objects to the failure to describe and disclose the issue of toxic metals in non-LDPE reusable bags.

Response A-17: As stated in Response A-2, the EIR does analyze various types of reusable bags, and the basis for the first sentence in this comment cannot be determined.

Comment A-18: STPB is submitting herewith the results of testing by Polyhedron Laboratories, an independent laboratory, on two nonwoven polypropylene “Brag about Your Bag” reusable bags that Los Angeles County gave away to the public. (Documents ## 67 and 68.) Three photographs of the actual bag tested in document # 68 are also provided herewith. (Documents ## 69, 70 and 71.) A sample of the bag in document #68 has been retained and will be provided by STPB to the City upon request. The test results show that the bags contained high levels of lead and mercury. Without waiving any objection, the City must address this issue and disclose the environmental impacts in the EIR. STPB objects if it does not do so.

Response A-18: Two pages both entitled “Analytical Report” with dates three months apart were submitted as attachments #67 and #68. Both reports were prepared at a laboratory in Houston, Texas. There is no explanation of the testing or the objectives for the tests. Both of the exhibits reference “Green Fabric Bag” and “Black Board”. The first test, dated November 30, 2009, found virtually no cadmium or lead in the bag, chromium at 1.41 ppm and mercury at 87.90 ppm. The “Black Board” was found to contain low levels of cadmium (1.82 ppm), chromium at 10.66 ppm, mercury at 8.47 ppm, and lead at 98.77 ppm. The conclusion says that “The levels for lead and mercury are high.”

The second report, dated January 29, 2010, has what may be the same two “Samples” – Green Fabric Bag and a “Black Bottom Board” which is probably the stiffener at the bottom of the bag, and the same four heavy metals listed. The results are significantly different in almost every category. Cadmium is still nonexistent in the Green Fabric Bag, but chromium is 2.47 ppm and lead is 4.14 ppm, but mercury is nonexistent. For the bottom board, cadmium is 5.51 ppm, chromium is 14.08 ppm, lead is 96.17 ppm, and mercury is nonexistent. The conclusion says that “The lead level in the black bottom board is high.”

The bag appears to be polypropylene, although the letter doesn’t say so, and it has extensive writing on the outside. The lab report does not say what, exactly, was tested – the plastic in the bag with or without writing. Since inks are frequently a source of heavy metal, this would be useful information. The differences between the two reports are substantial and no explanation is provided for why that might be.

The comment says that the EIR must address this issue, but it is not clear what the letter writer considers to be the impact that must be addressed. Reusable bags are not used to carry unpackaged food (as discussed below in Response A-20) and no evidence is presented or known to exist that heavy metal in polypropylene or other plastics used in bags is a potential risk to humans carrying the bags or taking things out of them. Since plastic does not break down very quickly in landfills, any potential release of whatever heavy metals are present, from those bags or their “bottom boards” that are not recycled would only occur over very long time periods. If this issue is found to be a source of risk (from children playing with or chewing on the bags, for example) by a credible agency or source, the City of San José might be able to ban bags and/or other plastic products containing high levels of heavy metals. It is not clear what other plastics or plastic products (toys, clothing, utensils, etc.) might be found to contain the same metals.

Comment A-19: The recently published University of Arizona study (link below and document #54 submitted herewith) found that 97% of people who use reusable bags do not wash them. This study should be cited and the findings disclosed in the EIR as it is the most comprehensive study on the subject. STPB objects if the study is not cited and disclosed.

<http://www.prweb.com/releases/2010/06/prweb4185254.htm>
http://uanews.org/pdfs/GerbaWilliamsSinclair_BagContamination.pdf

Response A-19: The study funded by the American Chemistry Council was disclosed in the DEIR, based on the only information that was then available (see §3.6.3.2, the first paragraph on page 99). The findings were similar to those of the previous study done in Canada and discussed on page 96 of the DEIR. The newer study also evaluated the effects of washing the bags and concluded that washing reduced the bacteria levels significantly.

Comment A-20: A reusable bag should be wiped clean after every use and washed regularly, but most people don’t know that, and most people who know are very unlikely to be disciplined and conscientious enough to keep the bags clean.

At page 97 of the DEIR, the City states: “Although levels of microbiological contaminants in used reusable bags could be higher than would be present in new, unused single-use plastic bags, proper cleaning of reusable bags, as with any other object that may come in contact with grocery products, would further reduce the potential for exposure of any food items to harmful bacteria.” STPB objects to the City’s understating and dismissal of the hygiene risks of reusable bags based on the assumption that consumers will clean their reusable bags. The City admits that most consumers wash reusable bags infrequently, if at all.

□ The DEIR states at page v, the City states: “Surveys indicates that most bag users wash the bags infrequently.

□ The DEIR states at page 80, the City states: “As discussed in §§3.2.4.2 and 3.6.3.1, most people don’t wash their reusable bags very often, if at all.”

□ The DEIR states at page 88: “Additionally, such bags are not washed often (the most frequent washing identified through anecdotal information has been once a month).”

Accordingly, the EIR must evaluate and disclose the risk of unhygienic reusable bags based on the assumption that most consumers wash reusable bags infrequently, if at all.

Response A-20: No support or justification is offered for the first statement in this comment, (1) that a reusable bag should be wiped clean after every use, nor for the assumption that (2) “most people” are not competent to keep the bags adequately clean. The levels of contamination found in most of the bags were not dangerously high (as reflected in the DEIR), and the sources of the worst contamination (such as milk or leaking blood from meat) would result in visible and unappetizing stains and/or unpleasant odors, conditions most likely to trigger washing. No illness is known to have resulted from failure to wash reusable bags; the testing done, both in Canada and this one in Arizona, was done at the request of representatives of the plastic bag industry, not because there was a problem. Both conclusions are therefore rejected as speculative.

As stated in the DEIR, most food placed in grocery bags is already packaged and those purchases most likely to both be raw and unpackaged, produce, is usually placed in a plastic bag which would not be regulated by the proposed ordinance. The most likely medium for carrying contamination is the user’s hands, which can be contaminated by taking the meat out of any bag, including a single-use plastic carryout bag.

The newer study recommends that bags be washed “regularly” and suggests that a warning be stamped on reusable bags to that effect.

The discussion of this issue in the DEIR addresses the subject and no substantive new information was provided by this later study. The EIR’s conclusions, that this impact would be less than significant, are therefore correct.

Comment A-21: Note that the second link in Section 20 ¶A of STPB’s November 24, 2009 letter has changed. The new link is:

http://www.plastics.ca/_files/file.php?fileid=0&filename=file_A_Microbiological_Study_of_Reusable_Grocery_Bags_May20_09.pdf

Response A-21: The new link is acknowledged. It is assumed that the report is the same.

Comment A-22: There is substantial evidence that some reusable bags are manufactured in grossly unhygienic conditions, including an eyewitness report with photographs in the Scottish Sunday Express on February 10, 2008. (Document #45 submitted herewith.) The City must address this in the EIR and STPB objects if it fails to do so. The City must state in the EIR what steps the City will take to prevent such bags from being distributed, sold or used in the City.

Response A-22: The referenced attachment is a Scottish newspaper article that describes a trip to India by a manufacturer of single-use paper and plastic carryout bags. The businessman went to India, the article states, for the purpose of visiting factories that make reusable cotton and jute bags. The businessman took pictures of unhygienic factories employing children to make reusable bags.

The information is acknowledged. A great many products are made in other countries under conditions that may be unacceptable from both humane and American health standards. When such circumstances are brought to the City’s attention, the City may choose to not purchase the products. The City of San José cannot control the import of such products and it

is not clear how the purchase of some of these particular bags (which are apparently already being manufactured and sold) by consumers in San José would result in a significant environmental impact as defined by the California Environmental Quality Act.

Comment A-23: • Section 22: ¶¶A, B, C

Response A-23: This section of the 11/24/09 letter from STPB responding to the NOP (in Appendix C) suggests alternatives to the ordinance that include improved litter abatement and cleanup in San José. An alternative similar to this was considered and is described in §6.1.4 (pp. 138-139) of the DEIR, but was ultimately rejected because it would not be fully consistent with the project's objectives, would not be feasible, and would not be environmentally superior to the proposed ordinance.

Comment A-24: • Section 23

Response A-24: This comment in the 11/24/09 letter from STPB in response to the NOP describes a litter patrol that the letter writer created in San Francisco. The group no longer exists due to lack of funding. It also states that STPB is considering creating a San José Litter Patrol to clean up litter in San José. The proposed ordinance would not prevent STPB from implementing a private sector litter patrol program. As stated on page 20 of the DEIR, the City already utilizes volunteer litter cleanup crews; such crews are supervised by City staff, however. Increased litter cleanup is discussed as part of an alternative to the ordinance that was considered but rejected for reasons discussed in §6.1.4 (pp. 138-139) of the DEIR.

Comment A-25: In Massachusetts, a voluntary initiative to reduce the number of disposable bags has been successful. The Massachusetts Department of Environmental Protection made the following announcement on July 28, 2010. "The Massachusetts Department of Environmental Protection (MassDEP) and the Massachusetts Food Association (MFA) today announced that a joint initiative with the grocery and supermarket industry to reduce the number of disposable paper and plastic shopping bags distributed in Massachusetts has scored excellent results during the first two years - a reduction of 25 percent since 2007. This public-private partnership has shown great success in increasing the use of reusable bags in place of disposable plastic and paper," Energy and Environmental Affairs Secretary Ian Bowles said. "I applaud grocery stores and supermarkets for working with MassDEP to reduce disposable bag use, and the public for responding to their efforts." As part of the voluntary initiative, 12 supermarket chains, comprised of 384 stores representing over two-thirds of the industry in Massachusetts, have been participating in the effort by tracking annual paper and plastic bag usage. Participating chains reported the reduction of 25 percent in disposable bag distribution in Massachusetts. The goal of the initiative is a reduction of at least 33 percent by 2013."

<http://www.mass.gov/dep/public/press/0710plas.htm>
<http://www.mass.gov/dep/recycle/reduce/sackbag.pdf>
(Document ##80 and 81 submitted herewith.)

The DEIR fails to address the reasonably feasible alternative of voluntary or legislated best practices for stores, such as the Massachusetts program and therefore STPB objects.

Response A-25: According to the attachment, which is a copy of a press release by the Massachusetts Department of Environmental Protection, a voluntary program that includes

12 supermarket chains representing 2/3 of the industry in the state is encouraging people to use bags other than single-use bags. The program includes the following:

Each supermarket chain has implemented steps to encourage using less disposable bags, including training staff to reduce wasteful distribution of bags, offering reusable bags for sale, providing cash incentives for reusable bag use, accepting used plastic bags for recycling and posting instructional signs reminding patrons not to forget to bring their bags.

The participating stores keep records of paper and plastic bags used and report that after two years (since 2007), the numbers of single-use carryout bags have been reduced by 25 percent. The goal for the program is to reduce the number of single-use carryout bags by 33 percent within three more years (by 2013).

Language has been added to the EIR in §IV. *Proposed Revisions to the Text of the Draft EIR* explaining why this alternative was not proposed or discussed in the DEIR.

Comment A-26: Legislating best practices and mandatory percentage reductions are reasonably feasible alternatives. The DEIR fails to address these alternatives and therefore STPB objects. The Massachusetts program shows that such alternatives can be successful.

Response A-26: The City of San José does not agree that this alternative was successful, based on the goals set for the City’s own programs. As discussed in the language added to the DEIR (Section IV of this First Amendment to the DEIR), the Massachusetts program falls far short of the City of San José’s objectives for its program. The “voluntary” program (it does not legislate either best practices or mandatory reductions, according to the link provided in this comment letter) has only been adopted by 2/3 of the grocery stores in the state (no other kinds of stores are referenced and are probably not participating) and has only served to remove one quarter of its single-use bags from distribution at those stores after two years of effort. The program is also encouraging the recycling of plastic bags – by stating that they are all remanufactured into useful products. As stated in the DEIR, this has not been the City’s experience with recycling plastic bags (see Photos 12 and 13 in the DEIR).

The comment uses the phrase “best management practices” but does not provide any explanation of how the actual elements of the program were identified nor does it identify by whom or how “best management practices” were defined. If “best management practices” for controlling the adverse impacts of proliferating single-use carryout bags were to be defined as including a complete ban on single-use plastic carryout bags and discouraging the use of paper single-use carryout bags, then San José’s proposed program is also BMP-based, but will be legislated instead of voluntary (which this comment also suggests).

Comment A-27: There is no discussion in the DEIR of cumulative environmental impacts that complies with CEQA.

Response A-27: This comment is incorrect. The Cumulative section in the DEIR does comply with CEQA. CEQA requirements for a cumulative impacts analysis are summarized on page 128 (§4.0) of the DEIR. The DEIR then identifies other past and reasonably foreseeable future projects, including similar programs in the rest of Santa Clara County, several other cities in California as well as the entire state, and several major U.S. cities outside California. The only negative impacts from the proposed project to which other

similar programs might contribute were the increased water use and tree removal that could occur during the first two years of the City's program if single-use paper bag usage were to increase substantially. The increases could be substantial, but in San José's case, temporary. For reasons described on pages 130-132, it was concluded that San José's proposed ordinance would not result in cumulatively considerable contributions to cumulatively significant impacts.

Comment A-28: STPB objects on the ground that the DEIR fails to discuss all likely environmental impacts, all reasonably feasible alternatives, and all reasonably feasible mitigation measures, specifically the above sections and paragraphs of STPB's November 24, 2009 letter. An EIR must provide public agencies and the public with detailed information about the effect that a proposed project is likely to have on the environment; list ways in which the significant effects of such a project might be minimized; and indicate alternatives to such a project. (Pub. Res Code §21061.) The core of an EIR is the mitigation and alternatives sections. (Pub. Res. Code §21001(g).) Specifically, the EIR must describe a range of reasonable alternatives to the project that would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. (CEQA Guidelines §15126.6(a).) When an alternative is potentially reasonably feasible, an in-depth discussion is required; when an alternative is rejected, the EIR must describe the specific reasons for rejection. (CEQA Guidelines §15091(c).) Although the level of detail will vary depending upon an alternative's potential for feasibility, in every case, the EIR must disclose the analytic route the agency traveled from evidence to action.

Nothing stated in this letter is intended to waive STPB's objections to the City's failure to address each and every section number and paragraph letter identified above.

Response A-28: Each response follows upon each comment above. The remainder of this comment that just quotes CEQA does not seem to require a response. It is not correct that an EIR must address "all" reasonable feasible alternatives and mitigation – it would be impossible do so. As stated in the CEQA Guidelines: "An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation." [§15126.6(a)] The DEIR evaluates three alternatives and explains why four other alternatives were rejected. A fifth alternative raised in this comment letter, "Voluntary Best Practices" has been added to section 6.1.4 of the EIR, *Alternatives Considered but Rejected* (see §IV. *Proposed Text Amendments to the Draft EIR* in this First Amendment to the DEIR).

Comment A-29: 3. STPB OBJECTS TO THE FAILURE TO ADDRESS AND DISCLOSE THE ENVIRONMENTAL IMPACTS OF A MAJOR SHIFT TO REUSABLE BAGS

If the City bans plastic bags (which STPB believes is unjustified), then a fee of at least 25 cents on paper bags is necessary to prevent an environmentally damaging shift to paper. STPB agrees with the City that the imposition of a 25 cent fee on paper bags will result in a major shift to reusable bags. At page 29 of the DEIR, the City states:

"Once the \$.25 bag charge is implemented in two years, the percentage of customers using reusable bags (or no bag) will increase to 89 percent. These numbers are probably low, based on the survey of San José residents mentioned above."

STPB believes that this estimate is reasonable, which means that it is imperative that the EIR address and disclose the environmental impacts of reusable bags.

Response A-29: CEQA requires that an EIR analyze the likely impacts of a government agency approving a “project”. In this instance, the project is a ban on single-use carryout plastic bags and a fee on single-use carryout paper bags. The reduced availability of the single-use carryout bags means that many people will bring reusable bags with them to shop. The direct impact of the project is, therefore, that many shoppers in San José will bring reusable bags with them into stores. There is minimal or no direct adverse environmental impact from a shopper carrying one or more reusable bags into a store to shop. The EIR must only evaluate reasonably foreseeable effects that result from the action taken. It is reasonably foreseeable that people in San José will buy more reusable bags and use them more often. It is not reasonably foreseeable that any particular bag or bags will be used.

The EIR does attempt to identify what types of bags are most available and discusses a universe of possibilities. These bags are available now, when San José has not adopted the ordinance and the demand which the manufacturers of reusable bags are now responding to already exists – they are not the result of the City’s ordinance. It is likely that more reusable bags may come on the market after San José adopts its ordinance and even more if some or all of the cumulatively foreseeable jurisdictions (§4.0 of the DEIR) also adopt a similar ordinance. It is even possible that some manufacturer or manufacturers may begin to manufacture a new type of bag or bags, or may increase their production because of the demand created by shoppers in San José stores and elsewhere. San José has a relatively high average family income and a relatively high average level of education. Whether that means that more expensive bags or bags made with relatively fewer adverse environmental impacts will be more in demand than cheaper bags or bags made with greater environmental impacts is not known. Since it is not known and cannot be known what will happen in the open market of reusable bags, this comment is asking for the EIR to reach conclusions and provide information based on speculation or conjecture.

The one common element of the various LCAs and other studies done on reusable bags, including those studies done for the plastic bag manufacturers, is that they all conclude that all of the bags evaluated that are made to be used multiple times have fewer adverse impacts per use than bags made to be used once and then discarded. Information generated about reusable bags shows that the manufacture and use of reusable LDPE bags, reusable cloth bags, and reusable bags made from woven HDPE all result in less greenhouse gas emissions than single use HDPE and single use paper bags (see page 123 Table 3.10-1 of the DEIR). *This information is all in the DEIR.*

Comment A-29: LDPE reusable bags are the only type of reusable bag analyzed in the DEIR. The environmental impacts of cloth, jute, nonwoven polypropylene, polyethylene terephthalate (PET), and other non-LDPE reusable bags are not addressed and disclosed in the DEIR. The failure to address and disclose environmental impacts of cloth, jute, nonwoven polypropylene, polyethylene terephthalate (PET), and other non-LDPE reusable bags is not a problem as long as all such non-LDPE reusable bags are banned. Otherwise, STPB objects to the failure to describe and disclose the life cycle environmental impacts of non-LDPE reusable bags. This is the biggest problem with the DEIR.

Response A-29: Although this letter keeps repeating that LDPE reusable bags are the “only” type of reusable bag analyzed in the DEIR, none of the comments say why that conclusion was reached. As described in Response A-2, above, the DEIR evaluates a number of impacts that might result from a switch to reusable bags; some of those impacts would be

similar for all or almost all reusable bags (such as biological contamination), other impact areas are specifically applicable for certain types of bags. The DEIR does indeed “disclose the life cycle environmental impacts of non-LDPE reusable bags” in the DEIR, to the extent such information can be determined. The DEIR does not directly attribute such impacts to the project, however, since all of the processes described already exist and it cannot be determined, based on any information available, that the project will cause substantial increases in any particular environmental impacts associated with the manufacture of any particular reusable bag or bags. The DEIR does state that the impacts per use will be less from reusable bags than the impacts per use from single-use carryout bags, whether paper or plastic.

Comment A-30: At page 150 of the DEIR, the City states:

“Because reusable bags are sturdier, they require more material and a more rigorous manufacturing process. There is such a wide variety of the bags, it is impossible to identify exactly how many uses per bag is required to offset the impacts of using a single-use carryout plastic bag once. In one of the LCAs prepared (for Carrefour), a comparison was made between the impacts of a single-use HDPE bag and a reusable LDPE bag. The comparison found that by the fourth use, the impacts per use of the reusable bag were lower than those of the single-use bag.”

The fact that there is a wide variety of such non-LDPE reusable bags is not a valid excuse for failing to address their impacts. STPB is willing to agree with the City on a reasonably representative selection of such non-LDPE reusable bags for environmental impact analysis. The City can use a representative bag made from each kind of material, which could be the bags in photos 5, 6 and 7 in the DEIR provided that they include cloth, jute, nonwoven polypropylene, and polyethylene terephthalate (PET). The City can contact STPB’s counsel to discuss the proposed selection.

Response A-30: This comment expands on comments A-2, A-3, and A-5 and elsewhere in this letter. The DEIR does evaluate the impacts of various types of reusable bags, based on information available. This and other comments persist in focusing on one or two references to LDPE bags in the DEIR, and then alleging that they are the only type of bags evaluated.

There are indeed a wide variety of bags currently available, and more are becoming available all the time (see DEIR Table 3.1-1 on pages 38-40 and Table 3.1-2 on pages 40-43 for examples of reusable shopping bags currently available, none of which appear to be made of jute). There is also no valid method at all for estimating which bags will be used by shoppers in San José, either in the near term or in the long term. Having a representative of the plastic bag industry help decide what bags should be evaluated would not make the estimate more accurate or more representative of what bags the residents of San José might choose. Knowing in greater detail what the impacts are from one of each type does not in any way produce the information this comment is requesting – what might be the impacts of manufacturing enough of that type of bag to meet an unknown future demand in San José, should such a demand occur and how do those impacts compare to the impacts that will *not* occur – the impacts of *not* manufacturing the 1.4 million single-use carryout plastic bags given away every *day* in San José under existing conditions.

Nor is it likely that information different from what is already in the DEIR could be disclosed. The DEIR did not find any substantial likelihood of significant impacts resulting

from the widespread use and reuse of reusable bags in any of the subject areas discussed in the EIR.

Comment A-31: The reusable bag analysis must include a “good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from” the increase in reusable bags. (CEQA Guidelines §15064.4(a).)

Response A-31: This information is provided in the DEIR, although the conclusion to §3.10 did not, perhaps, make this as clear as it could have been. Therefore the Text Revisions in this First Amendment to the DEIR includes a clarification on why no significant impact is identified associated with the quantity of greenhouse gases that might result from people switching to reusable bags as part of the implementation of the proposed ordinance. Based on the information available, the DEIR concludes that widespread use of reusable bags will reduce the generation of greenhouse gas emissions compared to the existing situation in which single-use paper and plastic carryout bags are widely used.

This is consistent with the guidance in the section of the CEQA Guidelines cited in this comment, §15064.4(a), in that the EIR describes the impact of greenhouse gas emissions resulting from the increased use of reusable bags, based on a qualitative analysis.

Comment A-32: In addition, the following article raises the critically important issue of the over-proliferation of reusable bags and their disposal in landfills. STPB objects to the failure to address this issue in the DEIR. (Document #2 submitted herewith.)

<http://www.theage.com.au/national/bag-the-bag-a-new-green-monster-is-on-the-rise-20100123-mrqq.html>

Response A-32: The article provided does not include any factual information, nor does it explain why this would be considered a critically important issue. It quotes a number of Australians, some of whom claim that reusable bags are being thrown away instead of reused. Others say that there are too many reusable bags being made and given away, although the article also says most are sold. The only support provided in the article for the claim that too many reusable bags are being thrown away is the following:

Anecdotal reports suggest many reusable bags are not meeting their environmental potential. Online forums include comments from users who have thrown away surplus green bags, used them as rubbish bin liners or given them to charity stores.

It should be noted that donating the bags to charity stores is reuse – a higher environmental value than recycling and a perfectly acceptable environmentally positive action. The article also says that only one state in Australia has adopted a ban on single-use bags, so the nationwide overabundance of reusable bags, if it does actually exist, is apparently the result of over-enthusiasm on the part of the bag manufacturers.

Should reusable bags become a landfill problem, the City of San José waste management programs would encourage consumers to donate surplus bags to charity stores, consistent with current policies. It should also be noted that most of the bags, plastic and fabric, are recyclable and recycling them would not create the processing problems associated with the number and light weight of single-use plastic carryout bags. It is therefore unlikely that reusable bags would be a problem for landfills in San José.

Comment A-33: 4. STPB OBJECTS THAT THE DEIR DOES NOT INCLUDE A CUMULATIVE IMPACT ANALYSIS

There is no cumulative analysis of other current or proposed or probable future plastic bag ban ordinances in the DEIR. STPB objects to the failure to include a cumulative impact analysis.

CEQA Guidelines §15130(a) states that an EIR “shall discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable, as defined in section 15065(a)(3). CEQA Guidelines §15065(3) states that an EIR must be prepared if “the project has possible environmental effects that are individually limited but cumulatively considerable.” CEQA Guidelines §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 Guidelines §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 Guidelines §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:

At 114: “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.”

At 118: “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.” (Emphasis added.)

At 119: “However, under CEQA section 21083, under the Guidelines section 15355 definition of cumulative impacts, and under the Kings County/Los Angeles Unified approach, the need for an EIR turns on the impacts of both the project under review and the relevant past, present and future projects.” (Emphasis by court.)

In *San Franciscans for Reasonable Growth v. City and County of San Francisco*, (1984) 151 Cal.App.3d 61, 75, the court stated:

“[W]e must reject the argument that, because some of the projects under review might never be built, it was reasonable for the Commission not to consider any of them in its cumulative analyses. Such argument is without merit. The fact that the EIR's subject project itself might be built, rather than the fact that it might not be built, creates the need for an EIR. Similarly, the fact that other projects being reviewed are as close to being built as the subject project makes it reasonable to consider them in the cumulative analyses.”

Based on the foregoing, the EIR must consider the impact of the proposed City of San Jose ordinance together with the following pending or proposed ordinances:

- The City of Berkeley proposed plastic bag ban and paper bag fee.
- The City of Los Angeles resolution passed in 2008 to ban plastic bags in 2010 if no plastic bag fee bill is enacted by the Legislature by that time. (No such bill has been enacted.)
- The County of Los Angeles resolution passed on January 22, 2008 to ban plastic bags if certain plastic bag reduction goals are not met. (Los Angeles County has issued a draft EIR for this project.)
- The City of Malibu plastic bag ban ordinance adopted in 2008.
- The City of Manhattan Beach plastic bag ban ordinance adopted in 2008 (if it is not invalidated in the case of *Save The Plastic Bag Coalition v. City of Manhattan Beach* which is pending in the California Supreme Court).
- The City of Palo Alto plastic bag ban ordinance adopted in 2009.
- The City and County of San Francisco plastic bag ban ordinance adopted in 2007 and the changes to and expansion of that program proposed in 2010.
- The City of Santa Monica proposed plastic bag ban and paper bag fee. The City of Santa Monica has issued a draft EIR for this project.)
- All other plastic bag ban ordinances and reduction projects that are being considered or may be or have been implemented in California and outside California.

Response A-33: The City does not disagree that EIRs should include a cumulative impacts analysis, but this comment is inaccurate. The DEIR *does* have a Cumulative Impacts section, on pages 128-132, and the next comment in this letter quotes from that section. As described on page 129, the DEIR assumed that the bill then pending before the state legislature could become law and the ban on single-use plastic carryout bags would apply to the entire state. The DEIR also refers to the San Francisco and Palo Alto bans, the attempts by Santa Monica and Manhattan Beach, and the pending actions by Berkeley, Santa Cruz, San Diego and Los Angeles County (first paragraph of page 129).

The DEIR also mentions existing or pending programs in Portland, Austin, and Washington, D.C. (which were overlooked in this comment).

Therefore, while the DEIR does not list the City of Malibu, the assumption that the ban might be applied statewide was sufficient acknowledgement of the potential for widespread adoption in California.

There is, however, no obligation under CEQA to list “All” other ordinances or “reduction projects” that are being considered or may or have been implemented anywhere in California or the world. CEQA does not require that the EIR achieve unreasonable or impractical levels of completeness. The inclusion of a statewide law (which was not actually approved) in the assumptions would cover the same basic ground as a number of individual (albeit different) local ordinances at cities in California.

Comment A-34: 5. STPB OBJECTS TO THE DETERMINATIONS OF SIGNIFICANCE THAT ARE NOT BASED ON A CUMULATIVE IMPACT ANALYSIS

At page 128 of the DEIR, the City states:

“Since San José would reduce the use of single-use paper bags to a quantity below existing conditions, even if there is an increase in such bag use, it will be temporary and would not rise to a level of being cumulatively considerable.”

This determination of significance, and other statements in the DEIR regarding significance of environmental impacts, are not based on a cumulative impact analysis. Therefore, STPB objects.

Response A-34: This comment is unclear, but appears to be saying that San José’s impacts can only be stated as part of the total cumulative impact. If that is the intent of the comment, it is based on a misreading of CEQA. The EIR is required to evaluate the proposed project in the context of the existing conditions in place at the time the Notice of Preparation was circulated (10/22/09). [Guidelines §15125(a)]

If the comment is saying that San José’s impact can only be discussed as part of a cumulative effect, that is also not accurate. As described in Guidelines §15065(a)3, the project’s impacts are considered cumulatively considerable if the incremental effects of this individual project are significant when viewed in connection with the effects of other project.

That is only true if project *has* a measurable impact. In the case of the impact referenced in this quote, San José might result in a temporary increase in paper bags, but the overall impact of the ordinance is that San José will *reduce* the total number of single-use paper bags used in the City. In other words, San José’s project will have a beneficial impact. If San José’s beneficial impact is added to a hypothetical cumulatively significant adverse impact (i.e., an unknown but possible increase in secondary effects from single-use paper bags resulting from all of the other cumulative projects), the effect of San José’s beneficial impact would be to reduce the effect of the cumulative impacts, which is not a cumulatively considerable adverse impact. Stated yet another way, San José’s program does not bear the burden of being assigned responsibility for a significant impact to which it does not contribute.

Reference should be made to the following statement in the CEQA Guidelines: “An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.” [§15130(a)(1)] Since the project will reduce the overall number of single-use paper bags, it cannot be said to be contributing to any impacts associated with their increase.

Comment A-35: At page 129 of the DEIR, the City states:

“The overall cumulative increase or decrease of paper and plastic bag use resulting from this wide array of programs would require a degree of speculation that would be inconsistent with the purpose of CEQA. As reflected throughout this EIR, there is no solid basis for guessing what future behavior will be when these various programs are fully implemented.”

This is not a valid excuse for failing to conduct a cumulative environmental analysis. The City is validly projecting future behavior in proposing an ordinance that bans plastic bags and imposes a 25-cent fee on paper bags. For example, at page ii of the DEIR, the City states:

“The ordinance will result in an immediate net reduction of approximately 95 percent of the 500 million single-use carryout plastic bags given away annually in San José.”

STPB does not disagree with this projection. It is a valid projection, not speculation.

Response A-35: This comment compares two completely different circumstances and implies that the degree of guesswork is equivalent in both. In the case of the proposed ordinance, the ordinance will ban the practice of giving away 95 percent of the single-use plastic bags now distributed in San José. To state that the result of the ordinance will be a

reduction of approximately 95 percent of the single-use plastic bags currently in use in San José is indeed a projection and not speculation. To say that San José can also accurately project how many of which kinds of bags will be used in all of the cities in California in the future is, however, not true. If all of the programs follow San José's lead, the cumulative impact would not be an increase in paper bags. If all of the programs (except San José) follow San Francisco's lead, there would probably be a cumulatively significant increase in single-use paper bags used and an increase in the effects of manufacturing and distributing and discarding or recycling those bags. In neither case, however, would San José be making a cumulatively considerable contribution to a cumulatively significant impact associated with any increase in use of single-use carryout paper bags, should such an impact occur, since San José will be reducing the number of single-use carryout paper bags used in the City. In other words, San José cannot be held responsible for impacts to which it does not contribute, whether cumulatively significant or not.

If the statewide legislation had passed, it was very similar to San José's ordinance and would have charged for paper bags with minimum recycled content. The effects, therefore, would likely have been that paper bag use might increase temporarily, but would have dropped off as shoppers became accustomed to reusable bags.

Comment A-36: At page 29 of the DEIR, the City states:

“Taking into account the information derived from a wide variety of programs implemented around the world to encourage reusable bags and/or to discourage single-use carryout bags, and averaging their success rates with the survey results mentioned above, the Herrera report estimates that 65 percent of retail customers in San José will readily change to reusable bags (or no bag) if single-use plastic carryout bags are banned and a \$.10 fee is charged for exempt single-use paper carryout bags.”

STPB does not disagree with this projection either. It is a valid projection, not speculation.

At page 72 of the DEIR, the City cites experience in the District of Columbia, Canada, Australia and Ireland as the bases for its projection. (See also pages 21, 28, 53 and 74.)

Los Angeles County and Santa Monica have issued draft EIRs with projections about “future behavior.” Los Angeles County accepts that there may be a huge shift to paper bags under its proposed ordinances, because it is not proposing any paper bag fee. Santa Monica is projecting a huge shift to reusable bags because it is proposing a 25-cent fee on some paper bags.

The “speculation” argument is not a proper basis for failing to prepare a cumulative impact analysis.

Response A-36: The DEIR did not “fail” to prepare a cumulative impact analysis. It did prepare a cumulative impact analysis and within that section of the DEIR, the City declined to speculate about what future paper bag use might be if a wide variety of ordinances were to be approved and implemented by other government agencies. While the City cannot predict what the combined (or cumulative) future impact of these unknown actions might be, it is possible to state that the City's contribution to the cumulative impact will be less than significant because the effect of San José's ordinance will be *less than the existing condition*. A project that reduces an adverse effect to less than the conditions existing at the time the NOP was circulated will, by definition, have a less than significant

impact, whether it is the project-specific impact or the cumulative impact that is being discussed.

Comment A-37: 6. STPB OBJECTS TO THE FAILURE TO DISCLOSE THE RESULTS OF THE US EPA EQUIVALENCIES CALCULATOR

An EIR is an informational document for decision-makers and the public. They cannot possibly understand and evaluate the significance of CO2 equivalent tons unless the data is converted to commonly understood environmental impacts. That is why the US Environmental Protection Agency (“US EPA”) has an online equivalencies calculator at:

<http://www.epa.gov/cleanrgy/energy-resources/calculator.html>
(this hyperlink has changed since STPB’s April 27, 2010 letter)

Results of applying the US EPA calculator must be disclosed in the EIR to convey significances to decision-makers and the public. Further, there must be a separate and discrete finding of the increase in GHG emissions using the equivalencies in the US EPA calculator. Failure to make such a disclosure and include such a finding will violate CEQA. STPB objects to the failure to include the results of applying the US EPA calculator.

The US EPA equivalencies figures must be based on a cumulative impacts analysis.

Response A-37: The DEIR concluded that the proposed ordinance would result in a decrease in greenhouse gas emissions. Because the project would result in a decrease in greenhouse gas emissions, it would not make a cumulatively considerable contribution to a significant impact, and no further analysis beyond what is provided in the DEIR is necessary. The DEIR text has been revised to provide context for the decrease in emissions using figures from the EPA calculator.

Comment A-38: 7. STPB OBJECTS TO ANY THRESHOLD OF SIGNIFICANCE THAT IS NOT BASED ON EVERY BAG CHOICE MADE BY EVERY CONSUMER

By adopting the proposed ordinance, the City is telling that consumer that he or she is making a significant environmental decision with significant environmental impacts each time he or she selects a type of bag. Significance in the context of this project is determined by the comparative environmental impacts of different bag choices: which is better for the environment—plastic, paper or reusable. In the context of this project, each consumer’s bag choice has a significant environmental impact.

Response A-38: The title of this comment does not seem to be about the same subject as the body of the comment.

The thresholds of significance used in the DEIR are derived from those provided in the CEQA Guidelines (Appendix G). As required by CEQA, the conclusions regarding whether or not the project’s impacts would exceed the thresholds are based on the impacts that result from all of the stores in San José to which the ordinance applies complying with the ordinance and all of the shoppers who patronize the stores in San José making appropriate decisions about which bags to use. As explained in the DEIR, the projections about what those decisions might be are based on what has happened elsewhere and what has happened in San José in the past and on a survey of residents of San José. Since there is not good

reliable information about exactly which reusable bags the shoppers in San José might decide to use in the future, the DEIR cannot project how many of which kinds of bags will be used without resorting to an inappropriate and highly conjectural degree of speculation.

The City has attempted, using the best information available, to identify what the total changes might be in the physical environment that would result from adopting and implementing the proposed ordinance. The impacts will be the combined total of all of the actions taken as a direct result of adopting and implementing the ordinance, compared to the existing circumstances.

The City agrees that each shopper’s bag choice is important. The analysis in the DEIR cannot, however, agree that each individual choice is a “significant environmental impact” as defined in CEQA. [§15382]

Comment A-39: 8. STPB OBJECTS TO THE STATEMENTS THAT THE BOUSTEAD REPORT CONCLUSIONS ARE NOT DIRECTLY RELEVANT TO THE PROPOSED ORDINANCE

The Boustead report studied plastic bags with no recycled content and paper bags with 30 percent recycled content. The results were as follows:

**Boustead Report (page 4)
Impact Summary of Various Bag Types
(Carrying Capacity Equivalent to 1000 Paper Bags)**

	Paper (30% Recycled Fiber)	Compostable Plastic	Polyethylene
Total Energy Used (MJ)	2622	2070	763
Fossil Fuel Use (kg)	23.2	41.5	14.9
Municipal Solid Waste (kg)	33.9	19.2	7.0
Greenhouse Gas Emissions (CO2 Equiv. Tons)	0.08	0.18	0.04
Fresh Water Usage (Gal)	1004	1017	58

At page 112 of the DEIR, the City asserts that the Boustead report is irrelevant. The City states:

“Boustead Consulting & Associates prepared an LCA for the Progressive Bag Alliance that evaluates the impacts of paper bags versus HDPE plastic bags; the report is undated but the peer review was completed in 2007. The LCA accounted for 30 percent recycled material in paper bags, and assumed that plastic bags were fully recyclable. It was also assumed that the carrying capacity of one paper bag is equal to 1.5 plastic bags. The LCA concluded that paper bags require approximately 3.4 times the amount of energy as plastic bags. (At a 1:1 capacity ratio, the LCA concluded that paper bags require 5.15 times the amount of energy.) These

conclusions are not directly relevant to the proposed project since the City has found that (1) plastic bags are not readily recyclable; (2) plastic bags do not have the same capacity as paper bags; and (3) the proposed project will require that paper bags have at least 40 percent recycled content. Since bags with more than 40 percent recycled content are already being used in San José, the average recycled content will be more than 40 percent after the ordinance is implemented.”

In the above-quoted extract, the City gives three reasons why it takes the position that the conclusions of the Boustead report are not directly relevant to the proposed ordinance.

First, the City states that plastic bags are not readily recyclable. STPB objects to this baseless and erroneous assertion. Plastic bags are readily recyclable. That is why AB 2449 requires stores to install plastic bag recycling collection bins, so that plastic bags will be recycled. See DEIR at pages 15-8:

“According to a summary provided by CalRecycle of recycling activity in 2008 by local grocery stores, a quantity equivalent to approximately 7 percent of the single-use plastic carryout bags purchased by the stores were recycled by them in the program mandated by AB2449.”

See also document #21 submitted herewith.

Response A-39: The assertion in the DEIR that plastic bags are not readily recyclable was made relative to the statement in the Boustead LCA describing plastic bags as readily recyclable and the reality of the overall recycling system in San José. The word “readily” is defined as meaning “without much difficulty”. [*Webster’s Ninth New Collegiate Dictionary*]

Plastic bags are not readily recyclable in San José and never have been. They are not any longer collected in the curbside recycling program, and must be taken to specific locations elsewhere in order to be recycled. Additionally, the collection bins at the stores are often not easy to find. The combination of these factors presents a barrier to recycling plastic bags. Furthermore, when they were collected curbside by the City for recycling in the City’s program, the City found that plastic bags increased labor and other costs at recycling facilities due to interference with machinery, leading to frequent system shutdowns and the need for manual cleaning, and it is likely that the recycling systems used for the bags collected at grocery stores encounter similar problems. The bags that were collected in the City program (see Photo 13 in the DEIR) were frequently so contaminated that they had to be landfilled. The grocery stores only recycle clean bags.

The Boustead LCA assumed a recycling rate of 5.2 percent for plastic bags, which is roughly similar to the “official” recycling rate at grocery stores in California. As the DEIR states, compared to the quantity of plastic bags purchased at stores subject to AB2449, an amount of plastic film roughly equivalent to seven percent was recycled. Only large grocery stores and large drug stores are subject to AB2449, so it is unclear what percentage of the total amount of plastic bags in San José this figure represents, but the overall recycling rate for plastic bags is likely significantly lower than seven percent (the totals in the records provided by the State of California on plastic bags purchased and recycled by grocery stores were each substantially less than the total quantity of plastic bags given away in San José). Although San José requested information on how and where plastic bags were being recycled from the grocery stores and the State of California, that information was never provided and the City is

unable to confirm that any of the bags are recycled at all. In neither case (5.2 percent or something close to 7.0 percent recycle rates) do the recovery rates support a contention that the material is “readily recycled”.

The “document #21” referenced in the comment is a copy of a webpage describing a plastic bag recycling plant in Indiana. It is assumed that transporting plastic bags from San José to that plant for recycling would consume substantial quantities of energy and would not be practical in the long term, given the relative values of the raw material and the end products.

Comment A-40: Second, the City states that plastic bags do not have the same capacity as paper bags. However, the Boustead report takes that into account. The above table is based on equivalent carrying capacity, that is the carrying capacity of 1,000 paper bags.

Response A-40: The Boustead LCA presents two scenarios: one where paper bags have a carrying capacity of 1:1 compared to plastic bags, and one where paper bags have a carrying capacity of 1.5:1 compared to plastic bags. While the 1:1 capacity scenario would not be relevant to conditions in California, the 1.5:1 capacity scenario could be. These two scenarios are discussed later in the text. The introductory language on page 112 has been revised to reflect the double scenarios (see Section IV of this Draft EIR).

Comment A-41: Third, the City states that the proposed ordinance will require paper bags with 40% recycled content. The Boustead report studied paper bags with 30% recycled content. There is no substantial evidence that an additional 10% of recycled content would result in any net environmental benefit. At page 73 of the DEIR, the City states:

“Recycling itself uses energy, water and other resources. Exactly what the specific net impacts of producing 40 percent recycled content paper bags would be, compared to producing plastic bags, is unknown.”

At page 102 of the DEIR, the City states:

“In addition no LCA was found that looked at the emissions associated with manufacture of 40 percent or 100 percent recycled content paper bags. The air emissions summary in one LCA (Boustead), for example, does not identify the specific benefits or impacts of recycled content (which include less need for use of chemicals, energy, and water) although they are said to have been “taken into account.”

At page 125 of the DEIR, the City states:

“In addition, no LCA was found that looked at the emissions associated with manufacture of 40 percent or 100 percent recycled content paper bags.”

At page 126 of the DEIR, the City states:

“Since single-use paper bags sold to consumers will be required to have at least 40 percent recycled content under the proposed ordinance, the total quantity of greenhouse gas emissions resulting from a change from a plastic to a paper bag may not increase substantially because manufacture of paper using recycled content results in less greenhouse gas emissions than manufacture using virgin material.”

At page 136 of the DEIR, the City states:

“No LCA examined evaluated a single-use paper bag with more than 30 percent recycled content.”

The foregoing statements are contradictory. At page 73, the City says that the specific net impacts of producing 40 percent recycled content paper bags would be, compared to producing plastic bags, is unknown. Nevertheless, the City asserts at page 126 that “manufacture of paper using recycled content results in less greenhouse gas emissions than manufacture using virgin material.”

There is no substantial evidence that “manufacture of paper using recycled content results in less greenhouse gas emissions than manufacture using virgin material.” The recycled content has to be collected from consumers, sorted, transported to a processing facility, washed, and reprocessed. The City admits this at page 73 of the DEIR: “Recycling itself uses energy, water and other resources.” The process may result in more greenhouse gas emissions than manufacture using virgin material.

Response A-41: The DEIR text quoted in this comment does not compare specific environmental benefits of 40 percent recycled content paper and 30 percent recycled content paper. It states only that it is not known what the specific impacts of using and manufacturing 40 percent recycled content paper would be compared to plastic bags or to paper bags made with 30 percent recycled content paper because no study has been completed that looked at these specific scenarios. This is not contradictory with statements that manufacturing paper using recycled content results in less greenhouse gas emissions than manufacturing using virgin material. Both statements are true.

Evidence exists that increasing the percentage of recycled content in paper results in environmental benefits, and this is addressed in the DEIR. In fact, the sentence directly after one section of text quoted in this comment states, “A comparative study of the differences in pollution when paper is made with recycled content is, however, discussed in §3.3, Hydrology and Water Quality, of this EIR.” The referenced section discusses a study that compared chemical emissions from paper manufacturing plants using virgin fiber and plants using recycled paper as feedstocks. The study found that emissions were lower at plants that used recycled paper.

Additionally, §3.9.2.2 discusses the energy savings that would occur if 30 percent recycled content paper bags were replaced with 40 percent recycled content bags. This analysis is based on the Environmental Defense Fund Paper Calculator (available at: <http://www.edf.org/papercalculator/>), as referenced in the DEIR. As noted on the website, the Paper Calculator is based on research done by the Paper Task Force, a peer-reviewed study of the lifecycle environmental impacts of paper production and disposal, and the underlying data are updated regularly. This calculator can be used to compare the environmental impacts associated with paper containing different percentages of recycled content. The calculator shows that increasing the percentage of recycled content leads to a decrease in environmental impacts associated with using paper, including a decrease in greenhouse gas emissions.

Comment A-42: An additional 10% of recycled content would not result in a 10% improvement in environmental impacts. Obviously, a paper bag with 100% recycled content would not have zero negative environmental impacts. But even if an extra 10% of recycled content decreased all environmental impacts of paper bags by 10%, paper bags are still far worse than plastic bags in every environmental category. For example, instead of consuming 2622 megajoules of total

energy, 1000 paper bags would consume 2360 megajoules. Plastic bags with the same carrying capacity consume only 763 megajoules.

Response A-42: The DEIR does not anywhere assert that an additional 10 percent of recycled content in paper bags would result in a 10 percent improvement in environmental impacts, although it might. The exact additional environmental benefit that would be achieved with an additional 10 percent of recycled content is not known. However, available evidence suggests that some additional environmental benefits would occur with a higher percentage of recycled content in paper bags.

Comment A-43: Based on the foregoing, STPB objects to the City's assertion that the conclusions of the Boustead report are not directly relevant to the proposed ordinance.

Response A-43: It is the City's position that while the Boustead LCA, along with other LCAs, provides some value in evaluating the impacts of the proposed ordinance by providing a useful analysis of the general environmental impacts associated with paper and plastic grocery bags, it is not directly relevant to the project because it does not reflect conditions in San José or the conditions that would result from the proposed ordinance. The findings of the Boustead LCA were used for informational purposes in the DEIR, but could not be assumed to quantify the actual environmental impacts that could occur as a result of the project. The City takes this same position for all of the LCAs reviewed in the DEIR (which do not agree on a great many things).

Comment A-44: 9. STPB OBJECTS TO THE INCOMPLETE DISCLOSURE ABOUT THE PREDISPOSAL IMPACTS OF PLASTIC BAGS AND PAPER BAGS

At page 124 of the DEIR, the City states:

“The [Boustead] LCA concluded that from all operations just prior to disposal, the resulting CO2 equivalents are more than 20 percent greater for the single-use plastic bag when compared to the paper bag.”

In fact, Table 27A in the Boustead LCA shows the opposite of what the City asserts in the DEIR. The Boustead LCA shows that from all operations just prior to disposal, the resulting CO2 equivalents are more than 20% greater for the paper bag compared to the recyclable plastic bag. Table 27B shows that from all operations just prior to disposal, the resulting CO2 equivalents are more than 20% greater for the recyclable plastic bag compared to the paper bag.

STPB objects to the assertion that the Boustead report made a finding that Table 27A is incorrect and that Table 27B is correct. The tables are based on different assumptions and if one table is disclosed in the EIR, the other table must be disclosed too. The Boustead reports conclusion is the table on page 4 of the report, which is the table in Objection No. 8 above.

Response A-44: Tables 27A and 27B in the Boustead LCA represent different scenarios (see also Response A-40 above). Table 27A compares the emissions of 1,000 paper bags and 1,000 plastic bags. The results of this table were not used in the DEIR because paper bags and plastic bags do not have the same capacity. Table 27B was used because it compares the emissions of 1,000 paper bags and 1,500 plastic bags, which more accurately represents the relative capacities of these bags, for at least some paper bags (see Photos 1 and 2 on page 5 and Photos 21, 23 and 24 on pages 58 and 59 in the DEIR).

Comment A-45: The City emphasizes in the DEIR at pages 123-124 that decomposing paper bags in landfills is a major source of GHG emissions. The correct conclusion is that it is environmentally advantageous that plastic bags do not decompose in landfills and STPB objects if this is not stated in the EIR.

Response A-45: Pages 123-124 of the DEIR summarize the contents of various LCAs as they relate to greenhouse gas emissions. It is not clear what specific text the comment considers to be emphasizing that decomposing paper bags in landfills are a major source of emissions. Nothing on the two pages represents the City of San José’s position; the information on both pages is summarizing various reports prepared by others. It would also not be a truthful statement since paper bags (which are heavily recycled in San José) are not a major component of landfilled waste in San José and probably are not a major source of GHG emissions.



While the slower rate of decomposition of plastic bags may result in less short term greenhouse gas emissions, depending on how many paper bags are landfilled, the fact that an item does not decompose quickly in a landfill does not make it environmentally superior. Any environmental benefits gained by the slow rate of decomposition of plastic bags in landfills are at least partially offset by the negative environmental impacts caused by the slow rate of decomposition of plastic bags that end up as litter.

Comment A-45: 10. STPB OBJECTS TO THE CITY’S ERRONEOUS STATEMENT OF THE GHG EMISSIONS RATIO IN THE ECOBILAN REPORT

The Ecobilan report (document #78 submitted herewith at page 50) made the following findings:

Indicateur	Sac PE jetable	Cabas souple (n=2)	Cabas souple (n=3)	Cabas souple (n=4)	Cabas souple (n=20)	Sac papier	Sac biodégradable
Consommation d'énergie primaire non renouvelable	1	1.4	0.9	0.7	0.1	1.1	0.9
Consommation d'eau	1	1.3	0.8	0.6	0.1	4.0	1.0
Emission de gaz à effet de serre	1	1.3	0.9	0.6	0.1	3.3	1.5
Acidification atmosphérique	1	1.5	1.0	0.7	0.1	1.9	1.8
Formation d'oxydants photochimiques	1	0.7	0.4	0.3	0.1	1.3	0.5
Eutrophisation	1	1.4	0.9	0.7	0.1	1.4	1.2
Production de déchets solides	1	1.4	0.9	0.7	0.1	2.7	1.1
Risque relatif par abandon des sacs usagés	Fort	Moyen-faible				Faible	Moyen-faible

Tableau 18 : Performances relatives des sacs étudiés (avec mise en décharge des sacs usagés)

Légende :  Performance plus mauvaise d'au moins 20% par rapport au sac PE jetable
 Performance meilleure d'au moins 20% par rapport au sac PE jetable
n Nombre d'utilisations des cabas

“Emission de gaz a effet de serre” means emission of greenhouse gases. “Sac PE jetable” means disposable plastic bag. “Sac papier” means paper bag.

The Scottish report (document #46 submitted herewith at page 23) adopted the above Ecobilan findings in the following table:

Table 4.3 Environmental Impacts of different types of carrier bag relative to a lightweight plastic carrier bag

Indicator of environmental impact	HDPE bag (lightweight)	Reusable LDPE bag (used 2x)	Reusable LDPE bag (used 4x)	Reusable LDPE bag (used 20x)	Paper bag (single use)
Consumption of non-renewable primary energy	1.0	1.4	0.7	0.1	1.1
Consumption of water	1.0	1.3	0.6	0.1	4.0
Climate change (emission of greenhouse gases)	1.0	1.3	0.6	0.1	3.3
Acid rain (atmospheric acidification)	1.0	1.5	0.7	0.1	1.9
Air quality (ground level ozone formation)	1.0	0.7	0.3	0.1	1.3
Eutrophication of water bodies	1.0	1.4	0.7	0.1	14.0
Solid waste production	1.0	1.4	0.7	0.1	2.7
Risk of litter	1.0	0.4	0.4	0.4	0.2

The DEIR (at page 124) misstates those findings in the following table:

Table 3.10-3: Ecobilan for Carrefour Greenhouse Gas Emissions	
Bag Type	Ratio of Greenhouse Gas Emissions*
Single-Use HDPE Plastic Bag	1.0
Reusable LDPE Plastic Bag (used two times)	1.3
Reusable LDPE Plastic Bag (used three times)	0.9
Reusable LDPE Plastic Bag (used four times)	0.7
Reusable LDPE Plastic Bag (used twenty times)	0.1
Single-Use Paper Bag	1.9
Biodegradable Plastic Bag	1.4
*Note: Numbers greater than one indicate a greater environmental impact compared with lightweight plastic carrier bags and numbers less than one indicate a lesser environmental impact compared with lightweight plastic carrier bags.	

The City's table shows that paper bags produce 1.9 times more life cycle GHG emissions than plastic bags, but in fact the Ecobilan report found that paper bags produce 3.3 times more life cycle GHG emissions than plastic bags. STPB objects to the misstatement of the ratio which should be 3.3, not 1.9.

The 3.3 figure in the Carrefour LCA and the Scottish report is highly credible and constitutes substantial evidence. The Los Angeles County draft EIR states (at page 3.1-15):

“The Ecobilan LCA was chosen above the other studies reviewed during preparation of this EIR because it is relatively recent; contains relatively sophisticated modeling and data processing techniques; considers a wide range of environmental indicators; considers paper, plastic, and reusable bags; was critically reviewed by the French Environment and Energy Management Agency; and contains detailed emission data for individual pollutants.”

<http://dpw.lacounty.gov/epd/plasticbags/pdf/DEIR.pdf>

Response A-45: The table from the Carrefour LCA represented in the DEIR is one of several in the Carrefour LCA that compare impacts of paper and plastic bags in different scenarios. The data used in the DEIR comes from a table titled “Tableau 14: Performances relatives des sacs etudies (contexte francais de traitement des dechets)” which translates loosely to a comparison of the relative performance of bags in the context of the French waste management system. It is located in a section titled “23.10 Resume des performances relatives des sacs”, which roughly means a summary of the relative performance of bags. This is the first of the related tables presented in the Carrefour LCA, and was interpreted to provide an overview of bag-related impacts in France, where the report was completed.

The table suggested for use in the above comment is titled “Tableau 18: Performances relatives des sacs etudies (avec mise en decharge des sacs usages)” in the Carrefour LCA, which translates loosely to a comparison of the relative performances of bags in a scenario where used bags are landfilled. This table, as well as all the other similar tables other than the one used in the DEIR, are in an entirely different section of the LCA titled “24 Analyses de sensibilite et simulations”, which roughly translates to sensitivity analysis and simulations. Other tables in this section compare bag-related impacts in several scenarios, such as partial reuse of plastic bags as garbage bags 65 percent of the time, partial reuse 32.5 percent of the time, and incineration of disposed bags for energy recovery. The tables in this section, including the one suggested for use in the above comment, represent simulations of very specific theoretical waste management scenarios, as opposed to the broad overview of the real-world situation in France provided by the table used in the DEIR.

The Scottish report referenced in the comment utilized the table from the Carrefour LCA that the comment suggests should be used in the DEIR. However, the specific scenario portrayed in the table was chosen because the preparers of the Scottish report felt it best represented the waste management system in Scotland. The appendices of the Scottish report provide the rationale used:

“For the base case considered here, we take the Carrefour sensitivity run where 100% of bags of all types go to landfill.”

Over 88% of all waste went to landfill in Scotland in 2002/03, around 2% was incinerated and around 10% was recycled [SEPA]. Most recycled material consists of paper, glass and metal. We do not have evidence to indicate whether paper bags are more likely to be recycled than plastic ones. The assumption that 100% of bags go to landfill is slightly pessimistic. More recent figures show that recycling rates in Scotland increased in 2003/04 to an average of 12.3%. However, it is believed that plastic carrier bags will still be going to landfill or incineration, even though there will have been an increase in the recycling of newspapers, glass jars, tins, paper bags, etc. This reflects the fact that there are currently few facilities for, and little uptake of, plastic carrier bag recycling.

It is unlikely that this situation will persist in Scotland given new environmental legislation such as the Landfill Directive that requires a move away from landfill and other measures to promote recycling. However, it is possible to adapt the analysis to alternative assumptions on waste management using the results of some of the sensitivity analysis presented in the Carrefour study.”

This excerpt from the appendices to the Scottish report makes it clear that the table this comment suggests should be used in the San José DEIR represents a theoretical scenario that does not actually exist but Scotland used it because their system was doing relatively little recycling at that time. The table used in the San José DEIR, on the other hand, represents the actual real-world situation in France. It is the City’s position, therefore, that the Carrefour LCA is accurately and appropriately represented in the DEIR.

Comment A-46: 11. STPB OBJECTS TO THE OMISSION OF CITATIONS AND REFERENCES FOR LITTER STATISTICS

At page 49-50 of the DEIR, the City discusses the following seven litter surveys. No hyperlinks or citations are provided for any of them.

Response A-46: This comment’s statement that “citations and references” were omitted is incorrect. There is no requirement in CEQA that hyperlinks be provided in a CEQA document. Most of the references mentioned in the list that follows this comment are listed in Section 9.0 References, beginning on page 155 of the DEIR. In addition, any and all of the references, including the sources of information in the DEIR, could have been obtained by calling or visiting the Planning Division of the City of San José, or by emailing the document coordinator, John Davidson. The physical address, telephone number, fax number, and email address are all on the transmittal letter included with all copies of the DEIR.

It is also stated on the second page of the Preface, at the beginning of the DEIR, that all documents referenced in it are available for public review at the Planning Division office in San José, on weekdays, during normal business hours at the City Hall address, which are also provided).

Comment A-47: A. Anacostia Watershed Society for the District of Columbia Department of the Environment published in December 2008.

Response A-47: The first time the DEIR text refers to this study, on page 18, includes this information. It is also listed in References on page 155 of the DEIR. It can be obtained from the District of Columbia Department of the Environment and a copy can be reviewed at the office of the San José Planning Division.

Comment A-48: B. City of Los Angeles waste characterization study done in 2004.

Response A-48: The report is referenced in at least two of the reports used in preparing this DEIR, and its title was misstated in the text. It was prepared by the staff of the Ad Hoc Committee on Los Angeles River and Watershed Protection Division. It has been added to the References section in the Text Amendments included in this First Amendment to the DEIR. It can be reviewed at the City Planning office at City Hall during normal business hours.

Comment A-49: C. “In 2005, Caltrans and the various Adopt-a-Highway groups picked up a total of 11.6 million pounds of trash. A breakdown was not done for that material, but a litter management pilot study done by Caltrans from 1998 through 2000 on a freeway in the Los Angeles area found that plastic film (including plastic carryout bags) made up 7 percent by mass and 12 percent by volume of the litter collected.”

Response A-49: This information was originally obtained from other reports. The report is part of a substantial study done in southern California and is available on-line. The link is added to the DEIR in the Text Amendments section of this First Amendment to the DEIR: <http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-00-013.pdf>

Comment A-50: D. “Recent litter surveys done on land in San José found substantial quantities of plastic, including an identifiable number of retail plastic bags (4.88 percent of the “large litter” category) and non-retail plastic bags (2.84 percent of the “large litter” category). Both miscellaneous paper (22.55 percent) and miscellaneous plastic (14.17 percent) were substantial categories. There may have been unidentifiable fragments of both plastic and paper shopping bags included in the miscellaneous categories.”

Response A-50: The footnote for this information and the listing in the §9.0 References both refer to the City’s Litter Assessment prepared in August 2009. The assessment is not available on line but can be reviewed, along with all other source documents for this DEIR, in the office of the Planning Division at City Hall during normal business hours.

Comment A-51: E. “The International Coastal Cleanup described in §3.3.1.2 of this EIR.”

Response A-51: The reference in the text to the International Coastal Cleanup is in §3.3.1.2 on page 78 of the DEIR. The text includes a footnote for the Ocean Conservancy report, *International Coastal Cleanup 2009 Report: A Rising Tide of Ocean Debris (And What We can Do About It)*, 2009. The report can be obtained by writing to the Ocean Conservancy or it can be reviewed at the office of the City Planning Division at City Hall during normal business hours. It is also available at a number of sites on-line.

Comment A-52: F. “That recommendation by the RWQCB was based on a substantial collection of photographs and reports which are documented on the Board’s website at:”

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303dlist.shtml

Note by STPB: There are no such photographs or reports at that hyperlink.

Response A-52: Unfortunately, one of the risks of using links to websites as sources is that websites change (as occurred for several references provided by this letter writer).

When you go to the following link (as listed in this comment):

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303dlist.shtml

You must then click on Appendix C which takes you here:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303d/Appendix_C_Report_02-09/table_of_contents.shtml

From there you can scroll down the list to find the water body you're looking for. If you select Guadalupe River, when you click on it, that link takes you here:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303d/Appendix_C_Report_02-09/00680.shtml#7660

If you scroll down for a while, you see the following links:

- Report from Roger James and Larry Kolb containing Trash Photos submitted for consideration in 2008 303(d) listing process
- Assessment by Matt Cover of Trash Photos (submitted to Region 2 in response to 2008 Data Solicitation)
- Archive of Trash Photos for Guadalupe River submitted for 2008 303(d) list consideration

The one titled archive of trash photos is the zip file, and the others look like presentations containing some photos. Each of the waterways has the same sort of links in its listing.

The following is an excerpt from the Staff Report of the Regional Board staff (found at the link referenced in the comment) recommending that the five waterways and the lower shore of San Francisco Bay be submitted for 303(d) listing as trash impaired:

Evaluation of Photographic Evidence for Trash

Nearly 900 photos of trash impacts were submitted and evaluated to make impairment determinations. These photos presented a fundamental impairment assessment challenge: how to interpret what can be seen in the photos relative to beneficial use impairment? The method we employed was to view the photos as if the water body was being assessed according to the RTA procedure. One of the co-authors of the RTA inspected every photograph and attempted to establish the RTA score for the “level of trash” and “threat to aquatic life” parameters, which relates to impairment of REC-2 and WILD, respectively. One of the first objectives of this photo inspection was to determine if the quantity and quality of the photos were sufficient to establish these parameter scores. Some photos were not clear enough to accomplish this.

In order to establish that the “Level of Trash” parameter was in the poor condition category, we required that reach-scale (i.e., showing most or all of the reach of the creek being photographed) and close-up photos of stream reaches must demonstrate a similar

level of trashiness as the ‘poor condition’ category of the RTA assessment parameter. In other words, we determined if the visual impression of the photos was consistent with the visual impression the evaluator might have experienced during actual RTA assessments for locations scoring in the ‘poor condition’ category. A similar determination was made for each photo relative to the “threat to aquatic life” parameter.

Spatial and Temporal Representativeness of Trash Impairment

As a general rule, water bodies recommended for inclusion on the 303(d) list for trash are those for which there is evidence of trash problems persisting through space and time. We applied this rule to trash assessment data and photographic data. In order to recommend listing, we typically required both that the water body contain two or more sites that show evidence of trash impairment (according to assessment or photo documentation) and that evidence of trash impairment existed on two or more occasions. There were instances in which a listing recommendation was made based on data for multiple occasions but only at one location if there were no other data available, but these were very rare exceptions. For San Francisco Bay listings, if shoreline or creek mouth sites satisfied these data sufficiency requirements, we recommended that the applicable bay segment be listed. In fact, for the bay segments recommended for listing (Central and Lower), there were at least two shoreline or creek mouth locations with unacceptably high levels of trash.

Comment A-53: G. “In a pilot assessment of trash accumulation in waterways in Santa Clara County completed in early 2009, the SCVURPPP found that many of the pieces of trash found in the 19 stretches of San José waterways studied were plastic (46 percent of the total), with plastic bags comprising a substantial amount of the overall collected items (10 percent of the total). A focused collection was completed for a storm drain outfall on Stevens Creek on three separate dates from October 2008 to February 2009.”

Response A-53: The study is listed in §9.0 References on page 160. Because the written report had not been released at that point, the managing scientist provided an oral summary and the data spreadsheets. As stated in the reference on page 160, the information was obtained by personal communication. The information (copies of the spreadsheets) was available from the City Planning Division in City Hall during normal business hours.

Comment A-54: STPB and the public cannot comment on the surveys if they do not have copies of them. As these surveys are the basis for the litter statistics in the DEIR, they are critically important documents and their omission is highly problematic. Therefore, STPB objects to any reference to any of these surveys in the DEIR or EIR. There is no point in producing them after the comment period has expired as STPB and the public will not longer have the opportunity to comment and object.

Response A-54: Neither CEQA (the law) nor the Guidelines assume that all of the source documents for an EIR must be available on-line (they seem to assume just the opposite). Such a requirement would severely limit the analysis. The only requirements in the Guidelines include §15129: “The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR...”, and §15148:

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental

features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

On the second page of the DEIR, at the end of the Preface, is a statement that the EIR and all of the documents mentioned in it are available for public review at the Office of the Department of Planning, Building and Code Enforcement at City Hall, 200 East Santa Clara Street, San José, California, on weekdays during normal business hours. No request was received from the writer of this letter to review the documents or to have copies made of them.

Comment A-55: 12. STPB OBJECTS TO THE UNSUPPORTED AND BASELESS ASSERTIONS MADE IN THE SECTION ENTITLED “LITTER AND WATERWAYS”

The DEIR includes a section entitled “Litter and Waterways.” (Pages 18-21, §2.1.2.3.) STPB objects to this section (and related statements made at page 45 and 88) on each of the following grounds:

A. If plastic bags are banned, the City’s litter budget will not be reduced. The same rivers, creeks, and other areas will still have to be cleaned.

Response A-55: Each of the reasons given for this comment is responded to below.

If the litter in rivers, creeks, streets, parks and storm drains is substantially reduced by source reduction, especially if it is reduced by a substantial percentage of the lightweight, easily airborne plastic litter, there will be less litter scattered less widely. Photos 15, 16 and 20 show plastic bags and plastic film transported by winter runoff that is attached to streamside vegetation in substantial quantities. Some of the plastic in these pictures could be intercepted by the very expensive storm drain inserts, which will, of course, also have to be monitored and maintained by City employees. Some of the plastic in these photographs will probably enter the streams through other pathways (windblown from streets and adjacent paths and trails) and as shown, it is very difficult to remove when it reaches the waterways.

Comment A-56: B. A study completed for the Santa Clara Valley Urban Runoff Pollution Prevention Program (“SCVURRPPP”) is cited at page 21. STPB has been unable to locate the study and it is not part of the administrative record. No hyperlink is provided and the study is not listed in the references section of the DEIR. STPB has checked the SCVURRPPP website at www.scvurppp.org, but if the study has been posted it is not apparent which one it is among the many studies on the website. STPB and the public cannot comment on the study if they do not have a copy of it. As this study is the basis for the entire section on litter and waterways, it is a critically important document and its omission is highly problematic. Therefore, STPB objects to any reference to the study in the DEIR or EIR. There is no point in producing the study after the comment period has expired as STPB and the public will no longer have the opportunity to comment and object.

Response A-56: As stated in Response A-53 above: The study is listed in §9.0 References on page 160. Because the written report had not been released at that point, the managing scientist provided an oral summary and the data spreadsheets. As stated in the reference on page 160, the information was obtained by personal communication. The

information (copies of the spreadsheets) was available from the City Planning Division in City Hall during normal business hours.

Comment A-57: C. The DEIR states (at page 20) that the City “estimates that, without control of litter at the sources, implementation of an expanded litter control program to protect creeks, as required in the new Stormwater Permit, could cost the City up to four million dollars annually.”

If “plastic bags” constitute 10% of total trash along the Coyote Creek, Silver Creek, and the Guadalupe River, among other waterways (based on the SCVURRPPP 2005 study), then the other 90% of trash will constitute a violation of the Stormwater Permit according to the reasoning in the DEIR. Similarly, if roughly 23% of storm drain outfall is “plastic bags” (based on the SCVURRPPP 2005 study) then the other 77%% of trash will constitute a violation of the Stormwater Permit according to the reasoning in the DEIR. If the City is not planning to ban other items that constitute a substantial part of the litter stream, then the “up to four million dollars annually” will still have to be spent by the City. The City will not save any money by banning one item, because cleanup personnel crews will still have to visit and pick up litter at the same locations. This should have been stated and disclosed to decision-makers and the public in the DEIR and must be stated and disclosed to decision-makers and the public in the EIR. STPB objects if this is not done.

Response A-57: The DEIR states on page 20, 3½ inches below the previous statement cited, that “Furthermore, source reduction initiatives such as the potential actions on single-use bags, expanded polystyrene, or other highly littered items will also be important opportunities in the City’s trash load reduction strategy.”

It can also be noted that regulating single-use carryout bags is not the first action by the City in reducing solid waste pollution through source reduction. Over the last two years, the City banned City purchase and use of single-serve bottled water, and in 2009 banned smoking in City parks, outdoor sports facilities, and other public places.

Effective May 2010, the City has required food vendors, at large public events on City property, to use compostable food containers in order to receive an Event Permit. Polystyrene products are no longer being used at large public events. (See <http://www.sjrecycles.org/events-venues/event-policies-reporting.asp#policies>.)

In addition to the reduction in plastic bag litter, the proposed ordinance will ultimately result in a reduction in paper bag litter. Reducing the total volume of litter, especially plastic litter, will reduce the costs of recovering and disposing of the litter. The County Source Reduction and Recycling Subcommittee of the Integrated Waste Technical Advisory Committee is also currently formulating a recommendation to the County Recycling and Waste Reduction Commission (RWRC) regarding a ban or reduction in the use of expanded polystyrene products.

Comment A-58: D. The DEIR states (at page 20):

“In addition to capturing trash in the storm sewer system, the City is reviewing opportunities to remove trash through increased maintenance activities, such as enhancement of street sweeping and storm inlet cleaning activities, additional maintenance of public litter cans, increased public education and outreach, and increased enforcement of anti-littering laws.”

The DEIR should have stated and disclosed, and the EIR must state and disclose, why the City is not willing to give such “increased maintenance activities” an opportunity to work. STPB objects to the failure to do so. It is not difficult to remove plastic bags.

Response A-58: The City is proposing a comprehensive strategy because the City and the Water Board believe that such a strategy will be necessary to accomplish the targets set for the permit. There are already laws forbidding littering, but it still occurs in large quantities.

This last sentence in the comment, that “It is not difficult to remove plastic bags.” is provided without any support or justification. Removing lightweight litter that is blown about by even the lightest air movement (including air moved by cars and streetsweepers) is difficult. Removing plastic bags entangled with creekbed and creekside vegetation (see Photos 15, 16 and 20 in the DEIR) is difficult. Even an operating landfill that has rigorous and continuous litter control operations has difficulty controlling plastic bag litter (see Photo 14 in DEIR).

Comment A-59: E. The DEIR states (at page 20):

“Since most local waterways drain to San Francisco Bay, trash in Bay Area creeks and rivers often ends up in the Pacific Ocean....

Despite these efforts, there is substantial evidence that single-use plastic bags are present as litter throughout the urban environment of San José, are migrating into the various waterways in Santa Clara County, and are contributing to the problem of global ocean pollution.”

STPB objects to these statements and substantially similar statements in the DEIR (including but not limited to footnote 38 on page 68) as there is no substantial evidence that plastic bags from San Jose or Santa Clara County are “contributing to the problem of global ocean pollution.” At page 45 of the DEIR, the City makes the following admission:

“No single plastic bag known to have been given away in San José has been identified in the mass of floating plastic found near the Pacific Gyre, the enormous ocean-borne concentration of floating garbage north of the Hawaiian Islands..... San Jose’s plastic bags may or may not have contributed to the Pacific Gyre and/or to other accumulations of trash elsewhere in the Pacific.” [Emphasis added.]

Response A-59: This comment provides no basis or support for assuming that litter from San José does not contribute to trash in the world’s oceans. It is clearly documented in the DEIR that litter from San José enters the streams that flow through the City and by way of those streams, reaches the beaches and wetlands that border San Francisco Bay. Based on the known hydrology of San Francisco Bay, San José cannot pretend that none of its litter ever reaches the ocean. (See Response A-60 below.) Just as there is no proof presently available that any of the plastic in the Pacific Gyre came from San José, there is also no proof at all that San José’s litter is not in the Pacific Gyre or elsewhere in the Pacific.

Comment A-60: Also at page 45, the City states:

“The creeks in San Jose all drain into the Bay, and the Bay drains into the Pacific Ocean twice a day. It is therefore necessary to conclude that plastic bag litter from San Jose contributes to the plastic litter polluting the creeks, Bay, and Pacific Ocean.”

There is no substantial evidence that water from the San Jose area of the Bay flows or drains into the ocean and STPB therefore objects to this statement.

Response A-60: The statement that there is no substantial evidence that water from the San Jose area of the Bay flows or drains into the ocean is incorrect. The DEIR did not attempt to justify the statement because it was thought to be common knowledge.

This statement suggests that tributaries to the Bay or the Bay itself are somehow isolated by a physical barrier from the Pacific Ocean and that there is no hydrologic connection or exchange between these water bodies.

The San Francisco Bay is an estuary, with hydrologic connection to the Pacific Ocean through the Golden Gate channel. An estuary is a semi-enclosed coastal body of water which has a free connection with the open sea and within which sea water is measurably diluted with fresh water derived from land drainage. For a general description of the hydrodynamics of an estuarine system, including freshwater inputs, mixing and flows to larger bodies of water such as the Pacific Ocean, the commentor is referred to *Dynamics of Marine Ecosystems* 2nd edition [by K.H. Mann and J.R.N. Lazier, 1988, Blackwell Scientific Publications, pp 118-125].

Furthermore, the San Francisco Bay Estuary and its tributaries has been very well studied from hydrodynamic and pollutant transport perspectives by the U.S. Geological Survey (USGS), San Francisco Estuary Institute (SFEI), and other scientific and academic efforts. Countless studies on these topics have been performed in the San Francisco Bay, its tributaries and in the adjacent Pacific Ocean for several decades. For information and documentation of these studies, the commentor is referred to any of the publicly available reports and studies on tributary loading (including the well-studied Guadalupe watershed), modeling, pollutant transport and hydrodynamics at SFEI: <http://www.sfei.org/documents>, or USGS: <http://pubs.er.usgs.gov/>. Specifically, the comment is referred to a USGS publication by Lionberger and Schoellhamer, 2009 that presents a tidally averaged sediment-transport model for San Francisco Bay and incorporates decades of studies on the hydrodynamics of the San Francisco Bay Estuary. The report is located at http://pubs.usgs.gov/sir/2009/5104/sir_2009-5104.pdf

Transport from San Jose creeks to the Bay and the Pacific Ocean occurs for sediment and persistent pollutants that are well studied in San Francisco Bay. Because of the basic nature of estuaries and the San Francisco Bay Estuary in particular, and transport of litter in the environment, it is reasonable and logical to presume there is some transport of litter found in San Jose creeks to the Pacific Ocean. San Jose recognizes that quantifications of the mass of litter transported from Santa Clara County tributaries to the Pacific Ocean do not exist, but this does not make stopping the transport of persistent, non-degradable litter and pollution from San Jose to the Bay and the Pacific Ocean less important.

The reference to twice a day (which refers to the tides) may have been misleading if the reader assumed it meant the bay emptied twice a day and the language is deleted in the proposed Text Revisions to the Draft EIR (Section IV of this First Amendment).

Comment A-61: F. The DEIR states (at page 88):

“Even though paper loses its cohesion and disintegrates when wet, the organic material it is made from remains in the water. Because kraft bags are not as easily windblown and are relatively shortlived as litter, however, they would not create the substantial creek litter problems that plastic bags cause.”

STPB objects to the baseless and vague assertion that paper bags are “relatively shortlived” as litter. There is no substantial evidence cited in the DEIR regarding the disintegration of paper in the open air. It is just wrongly assumed by the authors of the DEIR. Paper bags can last for many years in an open environment without disintegrating, even decades. There is no basis for suggesting that they are not a litter problem during that period. They are not environmentally superior to plastic bags in that regard. And as the quoted statement says, paper bags remnants pollute the water.

Response A-61: There is no known basis for asserting that paper bags can “last for many years in an open environment without disintegrating, even decades”. If “open environment” means exposure in the outdoors in a temperate climate (such as San José’s) where the paper is exposed to rain and sunlight, paper bags deteriorate very quickly.

San José also recognizes that paper litter can persist in dry conditions for extended periods. However, the section of the DEIR cited by STPB in this comment is 3.4.2.2 Stormwater and Drainage Impacts Resulting from the Project. Therefore, paper bags are evaluated in this section based on their impacts to the Stormwater and Drainage systems. These systems are not dry and paper products break down much faster than plastic in wet conditions such as stormwater, drainage systems, and the creeks that they flow to. The Anacostia study referred to in this section of the DEIR and discussed in earlier sections (for example §3.2.1.1, page 68) clearly documents that plastic litter, rather than paper litter, is the primary component of litter in waterways. As stated earlier in the DEIR, coastal cleanup day efforts and SCVURPPP surveys have confirmed this observation that plastic litter, not paper litter, is the primary component of litter in waterways. Nowhere does this comment letter provide evidence to refute that assumption.

Estimates of how long a paper bag takes to degrade vary, depending on the conditions assumed and who is doing the estimating. A very popular poster created by the Mote Marine Laboratory lists comparative decomposition times for waste products. The poster says that a paper bag will decompose in one month and a plastic bag in 10 to 20 years (various versions of this information is attributed to Mote, and some versions do not include either paper or plastic bags). Other sources estimate that plastic bags may take up to 1,000 years to decompose, especially in landfills. However, a plastics industry website says the (http://www.plasticsindustry.org/files/about/fbf/myths+facts_grocerybags.pdf) 1,000 years is a “myth”, implying that they never break down. Since these single-use bags have only been in existence for about 50 years, no one really knows how long it will take them to decompose.

Comment A-62: G. Document #84 provided herewith is a letter from Heal the Bay to Los Angeles County which states as follows (at page 4):

“Los Angeles County is using full capture devices to comply with TMDL requirements for the Los Angeles River and Ballona Creek, which prevent all trash of 5mm in diameter or greater from entering a catch basin.”

STPB objects to the failure to address and disclose the fact that full capture devices such as those used in Los Angeles County would result in full TMDL compliance and prevent all plastic bags from reaching the San Francisco Bay or other waterways.

Note: Document #84 is part of the Los Angeles County Initial Study and draft EIR at: <http://bragaboutyourbag.org/>

Response A-62: This comment is incorrect in that it seems to state that full capture devices are not discussed in the DEIR. The installation of full capture devices by the City of San José, as one element of the program required by the new Stormwater Permit is discussed on page 77 in §3.3.1.1. Neither the Regional Board nor the City of San José believe that these devices alone will “result in full TMDL compliance and prevent all plastic bags from reaching the San Francisco Bay or other waterways.” This comment also does not refer to how the devices are maintained, how often the plastic and other litter must be cleaned from the catch basins, or what happens if the devices are not cleaned properly or frequently enough. It is anticipated that all of these questions will be resolved during the first phase of implementation.

Comment A-63: 13. STPB OBJECTS TO ALL REFERENCES TO JUNE 2004 CITY OF LOS ANGELES SURVEY

The DEIR refers to the City of Los Angeles 2004 survey of storm drains. (Page 18, 49, 68, 79, 87.) STPB objects to all references to that survey.

The survey determined that 19% of trash by weight and 25% by volume in 30 catch basins along a one-mile stretch of North Figueroa Street between Cypress Avenue and Avenue 43 was “plastic bags.”

The term “plastic bags” is not defined in the survey, so it could include produce bags, food packaging in the form of bags, restaurant take out bags, dry cleaning bags, merchandise and retail bags, newspaper bags, trash bags, and other plastic bags.

The inability to determine what kind of plastic bags were in the storm drains in the survey is a serious problem and STPB objects to the use of or any reference to the survey without the photographic attachments to that survey which are unavailable to the public and may have been lost. They are not posted on the Internet. This is important because the 25% figure is totally inconsistent with the Keep America Beautiful figure of 0.9% at storm drains. (Document #24 submitted herewith.)

Response A-63: Most litter surveys do not break down the types of plastic bags littered and when they do, the category includes more than just single-use carryout shopping bags. The Keep America Beautiful survey attached to the comment letter identifies their plastic bag category as including trash bags, single-use carryout bags, and dry cleaning bags.

Comparing the Los Angeles storm drain survey to the Keep America Beautiful statistics in the context of this comment is inappropriate because, as stated in the document attached to this comment letter (Document #24):

As is shown in Figure 3-27, litter near storm drains was predominantly cigarette butts and confection litter. Most litter observed in these sites was smaller items (83 percent). Field

crews also made notes regarding litter that had already been washed into the storm drains and was still visible. These items included smaller plastic bags filled with trash. It was not possible to accurately quantify the materials that had fallen into the storm drains. [Page 3-30, 2009 National Litter Study]

The City of Los Angeles survey looked at the material *inside* the storm drain catch basins, which the Keep America Beautiful study did not (other than noting that there were plastic bags down there). The information in the two sources would not and can not be compared since they did not survey the same locations.

The Keep America Beautiful survey says that litter from most sources is down 61 percent, however, it also says that:

...the incidence of plastic items in the litter stream has increased over 165 percent. This plastic has the ability to end up in storm drains and eventually in our waterways causing significant harm to marine life or on land to wildlife.

Comment A-64: STPB further objects on the ground that the City of Los Angeles survey is not representative of conditions across Los Angeles County or the City of San Jose. The survey apparently determined that 19% of trash by weight and 25% by volume in 30 catch basins along a one-mile stretch of North Figueroa Street between Cypress Avenue and Avenue 43 was “plastic bags.” According to another study by the City of Los Angeles, the geographical area covered in the June 2004 survey is part of the central part of the city which “contributes disproportionately more trash per unit area. The central part of the City is characterized with higher population density, has more commercial and industrial areas, and has more pedestrian traffic than other areas of the City.”

Watershed Quality Compliance Master Plan For Urban Runoff, Watershed Protection Division, Bureau of Sanitation, Department of Public Works, City of Los Angeles, May 2009 (document #26 provided herewith) at page 4-2. The link to the document is as follows:

www.lacitysan.org/wpd/Siteorg/download/pdfs/tech_docs/WQCMPURChapters.pdf

Response A-64: Nothing in this statement would render the sample non-representative of conditions in the City of San José. A report prepared by City of Los Angeles staff using the information in the survey, “Policy Tools for Reducing Impact of Single-Use, Carryout Plastic Bags and EPS Food Packaging”, says that the Figueroa Corridor in which the survey was done is in South Central Los Angeles and the major land use is residential (67 percent).

San José also has higher density areas (including Downtown), and North San José (which covers approximately 3,000 acres), for example, includes high density residential, high density office and significant industrial development, with extensive existing and planned pedestrian connections linked to light rail.

The same report referenced in the DEIR and in this comment also evaluated a river clean up event in which the trash and debris were sorted and characterized. It found that plastic film constituted 34 percent by volume, which was described as consisting “predominantly of plastic bags” (48 of the 58 pounds). It is acknowledged in the staff report that the film was wet, so the actual weights are not relevant – only the percentages.

Comment A-65: 14. STPB OBJECTS TO THE BASELESS AND MISLEADING STATEMENTS ABOUT THE IMPACT OF PLASTIC BAGS ON THE MARINE ENVIRONMENT AND MARINE WILDLIFE

The DEIR states at page 64:

“The Pacific Gyre contains a growing mass of floating garbage, much of which is plastic. The conditions in the gyre have been well documented since at least 1997 by photographers, biologists, meteorologists, and various governmental agencies and nonprofit organizations. Photo 30 was taken by Corbett Kroehler and is currently on his website with a notation that it was posted to Oceans, Pollution, Wildlife on Aug 13th, 2008.”

No documentation or substantial evidence is cited in support of this statement and STPB therefore objects. Photo 30 shows one tiny area just a few feet across and does not in any way constitute substantial evidence of a “growing mass of floating garbage in the Pacific.” If the conditions in the gyre have been “well documented” as the City states, then those documents should have been cited.

There are no pictures of any such growing mass of floating garbage on the Internet, including Google images. As many vessels pass through the area, including vessels sent by environmentalists for the purpose of proving the existence of such a “garbage patch,” the lack of photographs is highly significant and must be stated and disclosed in the EIR.

For example, the recently concluded Plastiki voyage did not result in any photographs of any such garbage patch. <http://www.theplastiki.com/photos/>

Response A-65: There is no requirement that an EIR must have photographs of every condition referenced and there is no obligation for the EIR to justify the existence of a phenomenon widely known and documented. It would also be unreasonable to assume that photographs of the entire Pacific Gyre must be printed in an EIR in order to refer to it. There are many photographs of marine litter on the Internet and elsewhere and there is a very large body of scholarly research on the subject of plastic and its impact on marine animals and birds. This comment implies that there are no documents referenced in the DEIR supporting the presence or extent or condition of the Pacific Gyre. That assumption would not be correct. The following documents are listed in §9.0 References in the DEIR:

Algalita Marine Research Foundation. *Pelagic Plastic*. April 9, 2007.

Day, Robert H. and David G. Shaw and Steven E. Ignell. “The Quantitative Distribution and Characteristics of Neuston Plastic in the North Pacific Ocean, 1985-1899. Publ. in *Proceedings of the Second International Conference on Marine Debris, 2-7 April 1989, Honolulu, Hawaii*. R.S. Shomura and M.L. Godfrey (eds). U.S. Dep. Commer., NOAA Tech Memo. NMFS, NOAA-TM-NMFS-SWFSC-154. 1990.

Gregory, Murray R. “Environmental implications of plastic debris in marine settings – entanglement, ingestion, smothering, hangers-on, hitch-hiking and alien invasions”; *Philosophical Transactions of the Royal Society*. 364, 2013-2025. 2009.

Henderson, John R. “Marine Debris in Hawaii”; *Proceedings of the North Pacific Rim Fisherman’s Conference on Marine Debris*, Alverson, DL and June, JA (eds). October

13-16, 1987, p. IB9-206. The Fisheries Management Foundation. (Available from Natural Resources Consultants, 4055-21st Avenue West, Seattle, WA 98199)

Ocean Conservancy. *International Coastal Cleanup 2009 Report: A Rising Tide of Ocean Debris (And What We Can Do About It)*, 2009.

Thompson, Richard C., Charles J. Moore, Frederick S. vom Saal and Shanna H. Swan. "Plastics, the environment and human health: current consensus and future trends"; *Philosophical Transactions of the Royal Society*. (2009) 1, 1-14.

Yoshida, Howard O. "Marine Debris: A Growing Concern". A brief summary of the Workshop on the Fate and Impact of Marine Debris held in November 1984 in Honolulu, Hawaii. <http://marinedebris.noaa.gov/marinedebris101/reference_non.html>

Three further references, one also from the website of the Philosophical Transactions of the Royal Society, have also been added to the References section in the Text Amendments to this DEIR:

Arthur, Courtney, Holly Bamford and Joel Baker. "The Occurrence, Effects and Fact of Small Plastic Debris in the Oceans." National Oceanic and Atmospheric Administration White Paper prepared for a workshop held 9/9-10/08. September 3, 2008.

Barnes, David K. A., Francois Galbani, Richard C. Thompson, and Morton Barlaz. "Accumulation and fragmentation of plastic debris in global environments"; *Philosophical Transactions of the Royal Society*. (7/27/2009) 364:1985-1998.

Spear, Larry B., David G. Ainley & Christine A. Ribic; "Incidence of Plastic in Seabirds from the Tropical Pacific, 1984-91: Relation with Distribution of Species, Sex, Age, Season, Year and Body Weight"; Elsevier Science Limited 0141-1136/95. Accepted for publication August 16, 1994. Page 123.

Most of the scholarly research papers include substantial additional lists of further references on issues related to plastic in the ocean, in marine animals, and in oceanic birds. Most of those written after 2000 also mention the garbage mass accumulating in the Pacific Gyre.

Regarding the statement in this comment that the lack of photographs must be disclosed, there is no "lack of photographs" and therefore nothing to disclose. There are extensive close-up photographs on many different websites of many small pieces of plastic floating in seawater, taken both under water and of sea water samples in containers. Additionally, regarding the absence of satellite or aerial photographs of a floating mass of garbage, the following quotations are two of several similar explanations found at various websites:

I keep putting 'island' in single quotes because it's not quite what you may imagine, instead of a big mass of floating plastic bottles and trash, it's actually more like a plastic soup, constantly moving just below the surface of the water. This is why there are no real pictures of the island and you can't see it on Google Earth, or in satellite images. Without pictures of a so called 'trash island', people are less likely to believe in its existence and the media has no stimulating images or graphics to catch our attention with. [Source of quote: [<http://www.thechicecologist.com/2009/06/pacific-plastic-trash-island/>]

The most common misconception is that the trash pile is like an island, or a dense pile like this one in San Diego Harbor. It's not packed in as tight as that – it's more like a dense collection of tiny floating pieces of plastic, most of which are not on the surface. A big container ship or naval vessel going through there would probably not notice much out of the ordinary – after all, there is some degree of plastic trash floating on the surface all over the world. [Source of quote: <http://theoystersgarter.com/2007/10/23/why-there-are-no-pictures-of-the-north-pacific-trash-gyre/>]

There are also numerous videos taken in and around the Pacific Gyre that show seawater with very thick concentrations of small pieces of plastic, including this one from a national news broadcast: <http://www.cbsnews.com/video/watch/?id=591802n&tag=related;photovideo>

Scripps Oceanographic Institute started a multi-year study of the Gyre, evaluating a number of its characteristics and sources: <http://sio.ucsd.edu/Expeditions/Seaplex/Science/>

Regarding what a ship called the “Plastiki” found or did not find on a voyage, it is not the purpose of this EIR to explain or defend its records or activities. However, the website cited by this comment implies that the primary purpose was to demonstrate how usable products could be made from plastic waste materials, and states that the vessel would:

... journey more than 11,000 nautical miles drawing attention to the health of our oceans, in particular the colossal amounts of plastic debris, by showcasing waste as a resource and demonstrating real world solutions through the design and construction of the Plastiki.

Comment A-66: At pages 64 to 71 of the DEIR, and in other parts of the DEIR, various allegations are made about the impact of plastic bags on marine wildlife. However, the discussion is vague and ambiguous and does not address the specific points, issues and questions in Section 5 ¶¶ A-M of STPB's November 24, 2009 letter. This is particularly important as reducing the “contaminating of the world's oceans” is cited as one of the primary objectives of the proposed ordinance. (DEIR at p. 30.) The City claims at page v of the DEIR that as a result of the proposed ordinance, “San José will contribute less plastic to the pollution in San Francisco Bay and the Pacific Ocean, and fewer bags to endanger fish, turtles and birds in local creeks and the Bay and Ocean.”

Response A-66: The November 24, 2009 letter to which this comment refers (Appendix C in the DEIR) includes in its Section 5 a statement that incorrectly limits the basis of arguments for an EIR¹, asks for a great deal of extremely detailed information about the make-up of the Pacific Gyre, including the size of the plastic pieces, the quantity and concentration, the number of intact plastic bags in the Pacific Gyre, and specific make-up and verified sources of all of the pieces of plastic in the Gyre. None of that information is necessary or required in an EIR for the City of San José. The City is not proposing to clean-up the Gyre, only to *not* add to ocean pollution. The EIR does not contend that waste from the City of San José created the Gyre or is a substantial component of its current make-up. The Gyre is apparently so large and contains so much plastic that it is unlikely that anyone

¹ Comment 5 in the 11/24/09 letter says that the EIR should only address impacts of single-use carryout bags on the marine environment “if and only if” there is “substantial” evidence that bags from the City of San José reach the Pacific Ocean. It also states that if there is no such “substantial” evidence, the EIR must say that the 1.4 million plastic bags given away each day in San José have no impact on the Pacific Ocean. This approach (ignore possible impacts unless they can be proven without doubt) would not be appropriate in identifying significant impacts and it is not appropriate in this analysis.

knows the sources of all of the trash that is in it. The Gyre is identified in the DEIR as a location of substantial quantities of plastic trash, much of it reduced to such a condition that its source cannot be identified.

The Frequently Asked Questions website on The Great Pacific Garbage Patch that is maintained by the National Oceanic and Atmospheric Administration (NOAA) [<http://marinedebris.noaa.gov/info/patch.html>] includes a general overview of what is known about the size and make-up of the Pacific Gyre.

The City of San José is unable to accurately state that its litter, including single-use plastic bag litter does not contribute to the contamination of the Bay and oceans, especially since the evidence indicates otherwise. There were a substantial number of plastic bags found along the creeks and bayshores in Santa Clara County during the 2009 International Coastal Cleanup Day (1,580 – see Table 3.3-1 in the DEIR). There were only 67 found on the coastlines of the entire *country* of Ireland, which now bans single-use plastic carryout bags.

It is factually accurate to state that the proposed ordinance will cause San José to “contribute less plastic to the pollution in San Francisco Bay and the Pacific Ocean, and fewer bags to endanger fish, turtles and birds in local creeks and the Bay and Ocean”.

Comment A-67: At page 64 of the DEIR, the City states:

“As many as 260 species of animals are known to ingest or become entangled in plastic debris. In addition to the physical risks of becoming entangled or eating plastic, chemical contamination of water, animals, and human beings has been traced to plastic waste.”

No citation is provided for this statement. STPB objects because (i) there is no substantial evidence for the assertion and (ii) not all plastic waste is plastic bags. The DEIR is concerned with only one form of plastic and that is plastic bags.

Response A-67: A footnote has been added to the statement on page 64. The information was drawn from one of the source documents in the References section of the DEIR, an article entitled “Plastics, the environment and human health: current consensus and future trends”.

The DEIR does not anywhere state that all of the 260 species are impacted by plastic bags in litter. There are verified incidents of plastic bags found in the digestive systems of turtles, seals, whales, and dolphins. There are also references to plastic bags entangling marine animals without specific animals always identified.

Regarding the issue of chemical contamination, one of the attachments to this comment letter is a NOAA White Paper which states that one of the organic contaminants transported by plastic in the ocean is phenanthrene, a polycyclic aromatic hydrocarbon². It binds to three types of plastic, including polyethylene. Polyethylene was found in one study to have the highest apparent distribution coefficient (a measure of how much contaminant binds to a surface) for phenanthrene. The study also states that the plastic pieces can release the contaminants to living organisms that ingest the plastic. Since polyethylene is the primary

² Phenanthrene is a suspected but not confirmed human carcinogen and has been found to cause reproductive problems and birth defects in mice. It is a chemical used in the manufacture of various products, including plastic.

material used in making single-use plastic carryout bags, there may be a connection between plastic bags and exposure of the animals that eat the plastic debris to toxic substances. The paper was released in 2008 and the research it discusses was still ongoing.

Comment A-68: At page 18 of the DEIR, the City states that marine debris has been shown to have “dramatic impacts on wildlife and habitat...” This is vague, ambiguous, and grossly misleading. There is no description of or specificity regarding the “impacts” that are “dramatic.”

Response A-68: Webster’s Ninth New Collegiate Dictionary defines “dramatic” as applying to “situations in life and literature that stir the imagination and emotions deeply”.

For citizens of San José who care about the health of their creeks and the appearance of their City, the conditions shown in Photo 15 and Photo 16 of plastic litter, including plastic bags, contaminating the riparian habitat along the Guadalupe River can be said to cause a dramatic impact (see Comment Letter from Guadalupe River Park and Gardens Conservancy in Section III.D. of this First Amendment to the DEIR).

For people who are interested in any or all marine life or in protecting wildlife or in the humane treatment of animals, the conditions caused by plastic entanglement and ingestion can reasonably be said to cause feelings that are deeply emotional. The numerous pictures of turtles and seals entangled in plastic bags and other plastic debris that are currently in various locations on the Internet illustrate occurrences that are highly disturbing and for many people, undoubtedly emotional.

Comment A-69: The DEIR mentions turtles numerous times in the DEIR. There is no substantial evidence that any turtles are killed by plastic bags. In a report by the US National Ocean Atmospheric Administration (NOAA) (document #32 provided herewith), the authors state (at page 9):

“There are very few, if any, published records of small plastics as the direct cause of mortality in sea turtles.”

Response A-69: This comment appears at the very end of a lengthy subsection in the White Paper describing the substantial quantity and type of plastics, including plastic bags, taken from dead sea turtles. The study even acknowledges that it was not looking for effects of plastic bags but of very small pieces of plastic. While the authors were unable to confirm that “small plastics” was the cause of death, at least one of the studies cited (by George Balazs in 1985) suggests that plastics are major threats to threatened and endangered sea turtles.

This White Paper was compiled before 2008 and completed for a conference in 2008. It therefore could not reflect another paper published in 2008 which reflects the review of 408 autopsies done on leatherback turtles from 1886-2007. The first plastic was found in an autopsy done in 1968. Of the 371 autopsies from that year and onwards, 37.2 percent identify the presence of plastics. Plastic bags were the most common item found, but the presence of fishing lines, twine, pieces of mylar balloons, a plastic spoon, and candy and cigarette wrappings were also documented.

The review was done with a relatively conservative methodology, in order not to overstate the role of plastic in causing death. The cause of death was determined to be plastic only where there was sufficient plastic identified as blocking the gut to preclude the passage of food and cause death. Of the 138 leatherbacks that had ingested plastic, 8.7 percent (12 turtles) had sufficient plastic obstructing the passage of food to be likely to cause or to have caused death. This is 3.2 percent of all of the turtles autopsied from 1968 onward. This is not 3.2 percent of all turtles who died during that period, just those that were autopsied and whose autopsy records were still available. In many cases of turtles that had ingested plastic, it was not possible to discover the cause of death from the records remaining and they were not included in this statistic. In some other cases, there was sufficient plastic in the gut to reduce absorption, which would impair their health and reproductive ability, and possibly cause their death during migration. [N. Mrosovsky, Geraldine D. Ryan, Michael C. James; "Leatherback Turtles; The Menace of Plastic". Marine Pollution Bulletin 10/2008. Page 287.]

Comment A-70: The DEIR states at page 66:

“While pictures of seals and turtles entangled with plastic bags have been widely publicized....”

STPB objects to this sweeping, unsupported and misleading statement. Decision-makers and the public reading this statement will believe that there are hundreds or thousands or tens of thousands of such pictures, which is untrue. There are no such pictures.

Response A-70: The statement quoted from the DEIR does not say there were hundreds or thousands of such pictures – it says, quite accurately, that the pictures have been “widely publicized”. The 11/24/09 letter from STPB responding to the NOP says much the same thing, that a single picture of a turtle eating a blue plastic bag “appears hundreds of times on the Internet.” There is actually more than one picture of a turtle eating a blue plastic bag, so that statement may not be totally accurate.

It is also not accurate to say that “there are no such pictures”, as this comment concludes. Following this page are six photographs from the Internet; one (Photo C) with a blue plastic bag is the picture STPB claims on their website is the only picture on the Internet of a turtle eating a plastic bag:

“We have been unable to find another photograph of a turtle eating a plastic bag anywhere on the Internet.” [<http://www.savetheplasticbag.com/ReadContent612.aspx>].

The other five pictures were downloaded from the Internet on 9/30/10, including two other turtles eating plastic bags, one turtle that appears to be dead with his head wrapped around with film plastic, a turtle entwined with multiple plastic bags, and one turtle excreting a plastic bag.

The first link below is a video of a sea turtle eating plastic bag remnants. The second link has a photograph of the contents of a dead green sea turtle’s stomach, including several plastic bags, various bits of fish nets, and a chunk of compressed polystyrene foam.

<http://www.youtube.com/watch?v=JR3qCpFzp5c>

http://www.topp.org/blog/did_missing_turtles_eat_plastic_bags

Comment A-71: The DEIR states at page 71:

“The two primary problems that trash poses to wildlife are entanglement and ingestion. Mammals, turtles, birds, fish, and crustaceans all have been affected by entanglement in or ingestion of floatable debris, and many of the species most vulnerable to the problems of floatable debris are endangered or threatened. Entanglement is harmful to wildlife because it can cause wounds that can lead to infections or loss of limbs; it can also cause strangulation, suffocation, drowning, and limit escape from predators. Ingestion of trash can lead to starvation or malnutrition if the ingested items block the intestinal tract, preventing digestion, or if they accumulate in the digestive tract, making the animal feel “full” and lessening its desire to feed. Ingested items can also block air passages and prevent breathing, thereby causing death. Parent birds that eat plastic or other trash will regurgitate the trash for their young, causing the chicks to starve to death.”

The only evidence cited for these allegations is footnote 41 which states:

“An article in the Australian Daily Telegraph from October 23, 2009, shows a picture of a dead Laysan albatross chick with its belly opened to show that it was full of plastic trash. The same article said that one-third of the albatross chicks on Midway Atoll die from ingestion of plastic.”

There is no support for these sweeping statements on page 71 and similar statements made in other parts of the DEIR. The Australian Daily Telegraph article is not substantial evidence for anything other than the photograph in it, especially as no sources are cited in the newspaper article. The sweeping statements in the newspaper article are not substantial evidence. Moreover, the article does not mention plastic bags and the photograph does not appear to show any plastic bags inside the dead albatross.

Response A-71: The footnote is not offered as proof of all of the statements, only of the photograph, which is evidence that sea-going birds eat plastic garbage. The sources of the other statements made in this paragraph are, however, all found in the reference documents listed in Section 9.0 of the DEIR. The information is also a restatement of the information in the quotes provided on page 66 from the NOAA website for Cordell Bank, which references the ill effects of high rainfall in washing the contents of San Francisco Bay Area urban storm drains into Cordell Bank Marine Sanctuary. The next subsection of the DEIR, §3.2.1.1, summarizes the information provided elsewhere in the DEIR that plastic bags make up a substantial component of the litter that enters storm drains.

Comment A-72 As noted in the introduction above, a marine biologist at Greenpeace told The Times:

“It’s very unlikely that many animals are killed by plastic bags. The evidence shows just the opposite.”

In the same London Times article, a professor who is a marine biologist at the British Natural History Museum said:

“I’ve never seen a bird killed by a plastic bag. Other forms of plastic in the ocean are much more damaging. Only a very small proportion is caused by bags.”

A senior policy analyst with the federal Marine Mammal Commission, has stated:

“In their eagerness to make their case [against plastic bags], some of the environmental groups make up claims that are not really supportable.”

<http://www.npr.org/templates/story/story.php?storyId=127600685>

Response A-72: The opinions of these three people, as they are offered, are just opinions and have no relevance to this EIR. The quotations do not come with any evidence, context, or factual information, so it is impossible to tell whether the three people are knowledgeable about the subject or are reacting to something about which they have no experience at all. The remark about environmental groups making up claims is worthless without specific details and definitive proof that such claims have been fabricated about evidence on which this EIR relies.

Even if the individuals quoted do have pertinent knowledge, the quotations are out of context and may be irrelevant. For instance, the marine biologist says he has not seen a bird killed by a plastic bag, but this particular biologist may have little or no expertise in birds. It cannot be determined what he considers a “small proportion” relative to the numbers of birds that are killed by plastic bags, or what forms the basis for that conclusion. If ten percent of all birds who die from plastic die from plastic bags, that would be a substantial number albeit a “small proportion”, and the impact would be unacceptable. No substantive response can, therefore, be offered for this comment.

Comment A-73: The DEIR states at page 64:

“Studies and expeditions have documented the mass of trash formed in the Pacific Gyre (also sometimes called the North Pacific Gyre).”

No substantial evidence is cited in support of this statement and STPB therefore objects.

Response A-73: See Responses A-65 and A-66 above. It should also be noted that the next paragraph after the one cited in the DEIR in this comment includes details of one expedition that documented the presence of the Pacific Gyre in 1997 (page 66 of the DEIR), so it is not accurate to say that “no substantial evidence” is cited in support of the statement.

Comment A-74: The DEIR states at page 64:

“As many as 260 species of animals are known to ingest or become entangled in plastic debris. In addition to the physical risks of becoming entangled or eating plastic, chemical contamination of water, animals, and human beings has been traced to plastic waste.”

No substantial evidence is cited in support of these two sentences and STPB therefore objects. Further, STPB objects as the proposed ordinance is concerned with plastic bags only. “Plastic trash” and “plastic waste” are much broader categories than plastic bags. If the City is alleging that plastic bags threaten human health, then substantial evidence must be cited or the statement must be retracted.

If the City is going to allege in the EIR that plastic bags threaten marine wildlife, then such claims must be specific and based on substantial evidence that is cited in the EIR or it must withdraw and retract the allegations. STPB objects to the failure to do so. Further, the City must describe and quantify the impacts to the maximum extent possible. STPB objects to the failure to do so.

Response A-74: The DEIR does describe the extent to which plastic bags are present in the ocean and cause harm to marine wildlife.

Plastic bags enter the global oceans, are found intact in oceans, and break down into smaller and smaller pieces (see the video included in Response A-70 above that shows a turtle eating from a remnant of what appears to have been a plastic bag). The bags are found intact in the ocean also, frequently in large numbers [see Charles Moore's records of having found the Pacific Gyre garbage patch in 1997. The information is in several locations on the Internet, including these two articles: <http://www.cdnnews.com/news/article/a071104.html> and <http://www.environmentalgraffiti.com/waste-and-recycling/news-north-pacific-gyre-100-million-tons-garbage-and-growing>], also see:

http://www.google.com/imgres?imgurl=http://www.oceanwideimages.com/images/11013/large/24M1910-01-marine-pollution.jpg&imgrefurl=http://www.oceanwideimages.com/categories.asp%3FcID%3D522&h=365&w=550&sz=87&tbnid=sEEe76b59Dv9bM:&tbnh=88&tbnw=133&prev=/images%3Fq%3Dpictures%2Bof%2Bplastic%2Bbags%2Bin%2Bthe%2Bocean&zoom=1&q=pictures+of+plastic+bags+in+the+ocean&usq=FgMXmaRpFvkeVsa5SKhNY_x2eE8=&sa=X&ei=QgumTMreB4SisAOprj-Dg&ved=0CBoQ9QEwAg

Also, the following video made by ABC News shows various sizes of pieces of plastic film and plastic bags that are part of the Pacific Gyre:

<http://www.mnn.com/earth-matters/translating-uncle-sam/stories/what-is-the-great-pacific-ocean-garbage-patch>

While no one knows at this time precisely what are the sources for all of the small bits of plastic in all of the oceans, and there is not a precise breakdown of all of the types and sources of plastics found in the necropsies done of animals and birds and fish found to contain plastics since 1967, (the earliest known date when plastic was found in a leatherback turtle), it is known that plastic bags exist and have caused or contributed to the deaths of various animals and birds living in or near the oceans). The extent to which this is the case is described in the EIR to the maximum extent feasible at this time. The City of San José is not claiming that plastic bags cause a specific quantity or degree of harm to marine animals, only that plastic bags contribute to the problems. That level of proof is provided in the DEIR.

Comment A-75: A related issue is the following statement at page 68 of the DEIR:

“Specifically, certain hard plastics leach toxic chemicals (including bisphenol A or BPA) into the water and polystyrene breaks down into three styrene oligomers that are not found in nature. BPA disrupts the hormone systems of animals, and the styrene oligomers are believed to be human carcinogens.”

The subject of the DEIR is plastic and paper carryout bags, not hard plastics or polystyrene. Plastic bags are not made of hard plastic or polystyrene. STPB objects to this statement in the DEIR because it conveys the impression that plastic bags leach such chemicals, which is untrue. Plastic bags do not contain such chemicals. In fact, the DEIR contains the following statement (at page 79) admitting that none of these chemicals are in plastic bags:

“As discussed in the previous section of this EIR, §3.2, recently released research reports have identified products of plastic degradation in the ocean, including the endocrine disruptor BPA and certain styrene oligomers (chemical products of polystyrene degradation). Research released by the American Chemistry Society has identified evidence that plastic can and does degrade in the natural environment. While these chemical pollutants have been found in increasing concentrations in ocean water, none of them are believed to be associated with plastic bags.”

The City’s allegation at page 68 and its reference at page 79 to dangerous chemicals is extremely serious, misleading, and wrong as applied to plastic bags. A statement must be included that the EIR that the statements in the DEIR at page 68 and 79 about chemicals in plastic bags are misleading and incorrect and are retracted. STPB objects to the failure to do so.

Response A-75: This comment appears to overlook the statement that also appears immediately after the statement on pages 68-69 which is quoted above. The DEIR states that “There is no information available that identifies a likelihood that plastic bags would degrade in the ocean. There is anecdotal evidence from scientific observers that plastic bags retain their form for extended periods in the ocean environment.”

The statement that is suggested by this comment cannot be included because (1) there are no statements made in the DEIR about chemicals in plastic bags (it actually says just the opposite), so the statements could not be labeled as “misleading”; and (2) the information that is provided about such chemicals in other plastics is specifically attributed to other plastics and the DEIR states in both instances that the circumstances do not appear to apply to plastic bags. The information in the DEIR is correct and not misleading. There is no basis for retraction.

The information is relevant and is included in the DEIR because of statements made widely by representatives of the plastic industry and others that plastics do not break down in water, including seawater. That is now known to not be true of all plastics and this is relevant information for the public and decision makers. It is also relevant that the leaching of these specific toxic substances (styrene oligomers and BPA) into ocean water does not apply to plastic bags).

Response A-67 above does identify the likelihood that polyethylene, the primary plastic used in making single-use carryout plastic bags, does transport one of the organic pollutants found in the ocean. This information was included in a NOAA White Paper submitted by the letter writer.

Comment A-76: 15. STPB OBJECTS TO THE USE OF OUTDATED AND INAPPLICABLE PLASTIC BAG RECYCLING DATA

Decision-makers and the public need to know how well AB 2449 is working before a decision is made to ban plastic bags. Los Angeles County has obtained data from the CIWMB (now the Department of Resources Recycling and Recovery (CalRecycle)) and more data may be available. Los Angeles County has also been gathering its own data from individual stores in the County. STPB objects to the failure to include such updated recycling data in the EIR. The City of San Jose should contact Coby Skye at the Los Angeles County Department of Public Works to obtain the data. Coby Skye’s e-mail address is: cskye@dpw.lacounty.gov. His telephone number is (626) 458-5163.

Response A-76: The information in the DEIR on plastic bag recycling required by AB 2449 is the most current information and was provided by CalRecycle. As stated on page 15 of the DEIR, CalRecycle provided the information on plastic bag recycling at grocery stores in California based on the most recent information available to the state agency. The information was provided to the EIR consultant on June 15, 2010, and according to the state staff, had just that month been compiled based on a 2007 at-store database and 2008 At-Store Recycling Certifications. The information provided in the DEIR is, therefore, the most current information available as of June 2010.

Please note that the report does not identify what the actual contents of the collection bins were (*i.e.*, to what extent they contained only single-use carryout plastic bags). There is also no information as to where the bags were taken or what became of them. Although the state law requires that local jurisdictions be given this information, it has never been provided to the City of San José. The City of San José has no knowledge that any of the bags were recycled, and is unable to determine from the information provided what became of the single-use carryout plastic bags collected within the City's jurisdiction.

Comment A-77: 16. STPB OBJECTS TO THE FAILURE TO CONSIDER THE REASONABLY FEASIBLE ALTERNATIVE OF A BAG-TO-BAG RECYCLING SYSTEM SUCH AS STRIPES2STRIPES

The DEIR states:

At page 15:

“The City of San José has not identified any municipal recycling programs that divert substantial percentages of plastic bags from landfill and litter, particularly not any serving a major city. A representative of the plastic bag manufacturers is quoted in the San José Mercury News as saying that the best option for plastic bags was “a massive plastic-bag recycling program. But the environs [sic] stopped us. They didn't want to recycle them, they wanted to ban them altogether.” [Quoting Stephen Joseph, counsel for STPB, San José Mercury News. “The environmentalist who wants to save the plastic bag”. April 15, 2010.]

In San José, the City's Recycle Plus residential curbside recycling program accepted plastic bags for recycling from roll-out of the city-wide program in 1993 until early 2009, or for approximately 15 years. Despite extensive public education and outreach efforts, there was limited success with plastic bag recycling in the City of San José. Residents were willing to recycle plastic bags in large numbers, but most failed to understand that bags needed to be clean, have nothing adhering to them, and they needed to be bagged or packaged together so they would not be contaminated by all of the organic materials, dirt and other contaminants in the recycled materials stream. It was therefore neither convenient nor easy to recycle the bags, despite their being collected in a curbside program.

The City found that plastic bags increase labor and costs at recycling facilities due to interference with machinery, leading to frequent system shutdowns and the need for manual cleaning (see Photo 12). In addition, plastic bags often become mixed with other recyclables, reducing the market value of those materials. San José's recycling facility operators reported that bales of recycled plastic bags had little or no value on the market. As a result, the City's recycling contractors were, in recent years (prior to 2009), paying 180 dollars per ton to have those bales taken away. The tonnages of plastic bags handled in this way, in San José and elsewhere, would likely not have appeared in the state's records of plastic bags disposed during this time period, and therefore might have contributed to the

apparent reduction in plastic bags landfilled in the figures cited in the previous paragraph. Photo 13 shows a bale of residue from one of the City's recycling facilities (photo taken in February 2008). The residue is hauled to a sanitary landfill and, as is apparent in the photograph, most of it is plastic bags."

At page 85:

"Despite extensive public education and outreach efforts, there has been limited success with plastic bag recycling programs in the City of San José and elsewhere in the state. Residents were willing to recycle plastic bags in large numbers, but most failed to understand that bags needed to be clean, have nothing adhering to them, and they needed to be bagged or packaged together so they would not be contaminated by all of the organic materials, dirt and other contaminants in the recycled materials stream. It was therefore neither convenient nor easy to recycle the bags, despite their being collected in a curbside program.

San José's recycling facility operators report that recently bales of recycled plastic bags have little or no value. As a result the City's contractors have paid up to 180 dollars per ton to have these bales taken away. In 2009, the City ended the promotion of plastic bag recycling through the City's residential Recycle Plus program. As shown in Photo 13, a substantial quantity of the single-use plastic bags processed through the recycling facility are so contaminated that they end up as residue sent to landfill."

At page 138:

"As reported earlier in this EIR, there were no recent buyers for the material and the City's recycling facility operators have had to pay \$180 per ton to have the bales of plastic bags hauled away."

At page 139:

"In addition to increasing labor and facility costs because the bags interfere with the operating machinery in the materials recovery facility, plastic bags become mixed with other recyclables, reducing the market value of the other commodities. In late 2008, a 1,400 pound bale of mixed paper was rejected by a recyclable commodities buyer because of excessive plastic contamination. Photo 13 illustrates the scale of that problem currently being dealt with in a nearby materials recovery facility in Alameda County. For all of these reasons, the City finally concluded that the nature of the product itself made recycling it infeasible."

Stephen Joseph is quoted in the Mercury News article above. He was referring to the Stripes2Stripes ("S2S") recycling system. Stephen Joseph is the Chief Executive Officer of Stripes2Stripes, LLC and is in charge of the S2S project. See:

www.stripes2stripes.org

S2S is available as a reasonably feasible alternative to banning plastic bags that would address the following problems:

- Plastic bag litter
- The low plastic bag recycling rate
- Minimizing the dedication of non-renewable resources
- Diversion of plastic bags from MRFs

- Diversion of plastic bags from landfills
- Source reduction

A copy of the Petition to the California Integrated Waste Management Board (“CIWMB”) is submitted herewith as document #77. The Petition is incorporated herein by reference. CIWMB approval is not required to launch the program.

Stephen Joseph, as the CEO of Stripes2Stripes, hereby petitions the City of San Jose to accept S2S as a reasonably feasible alternative to banning plastic bags. The plastic bag industry is able and willing to implement S2S with the City’s cooperation. Stephen Joseph and leading plastic bag manufacturers are ready to meet with City officials immediately to discuss the implementation. S2S can be fully operational within six months.

The S2S proposal was presented to Victor Duong and Joel Corona, Executive Vice President and Chief Operations Officer, at California Waste Solutions (“CWS”) in San Jose in 2008. CWS operates the San Jose Material Recovery Facility (“MRF”). They reacted positively to S2S at that time.

Note that despite the statements in the Petition, there are no patents pending in any aspect of S2S, no ownership of any aspect of S2S, and no proprietary or other rights associated with S2S. The project can be implemented by anyone, even without the approval of Stephen Joseph and Stripes2Stripes, LLC.

A patent application was made regarding the S2S concept but was abandoned in order to encourage anyone to undertake S2S. There will be no further patent applications.

If the City rejects S2S, then STPB demands that it make separate written findings explaining stating the reasons.

Response A-77: This comment is suggesting that the City of San José create a brand new recycling program just for plastic bags. It would require that there be sufficient numbers of the particular type of bags manufactured, purchased, and used to replace the 1.4 million single-use carryout bags currently given away daily in San José. It is assumed that the bags referenced are HDPE, but it is not so specified.

It is therefore assumed that the company which is represented by this commentor would then undertake (for an unknown amount) to collect all of these new plastic bags. The company appears to not yet have implemented this program at any location and does not have any experience collecting or recycling. The suggestion may be that San José agrees to accept plastic bags full of plastic bags in its existing single stream recycling programs (there are different programs serving single-family and multi-family residential) and then the existing programs would separate out the plastic bags to be hauled away by the company described in this comment.

There is no estimate in this comment of how long it would take to implement this program including establishing the manufacturing operation(s), persuading all of the retail stores in San José to purchase these bags, establishing the collection system to pick up the bags from processing facilities, or what the costs would be to the City and or its contractors, and ultimately to the rate payers. There is also no explanation of where the bags would be reprocessed or what would happen to the recycled bags. The website says the recycled bags

would be “sold to recyclers”. San José has operated recycling operations in the City for over 20 years and has found that a substantial change in the system needs to be tested by a pilot program and follow-up.

This program would only work if all plastic bag users kept their plastic bags clean and separate. The problems that have arisen with plastic bags collected for recycling in the past, including contamination by food waste and by other materials (*i.e.*, paper receipts left in the bags, labels glued onto the bags), are therefore also not addressed. San José’s recycling program did recommend to residents in the past that residents should put all recycled plastic bags inside one plastic bag and tie it closed. The directions were not widely followed.

One of the critical objectives of the proposed project is to reduce litter. The sources of litter include people who throw the bags down outside the store or elsewhere. Although the comment says it would reduce litter, it is not clear that this program would or could reduce plastic bag litter, other than windblown bags when recycling carts are emptied. It would also not reduce litter produced by windblown bags that are not recycled and are dropped, blown from uncovered trash and garbage receptacles, and blown from garbage trucks and landfills. Plastic bags would therefore still continue to be a substantial source of litter, as was the case when plastic bags were recycled by the City of San José (in a program which did not require any effort by the user to keep bags clean or place them in a separate container and was therefore more convenient for the residents).

A common condition in recycling programs that must separate one type of waste from another (as would be the case with this proposed system) is contamination of one material stream by another – the plastic bags would continue to exist in the recycling collection system and some of them would continue to migrate into the machinery and cause operating problems (see page 15 and Photo 12 in DEIR).

This program would not be consistent with any of the project objectives (listed on pages 29-30 of the DEIR), would not be environmentally superior, and would appear not to be feasible based on San José’s extensive experience with municipal recycling.

Comment A-78: 17. STPB OBJECTS TO THE FAILURE TO CONSIDER AND ANALYZE THE REASONABLY FEASIBLE ALTRERNATIVE OF A FEE ON PLASTIC BAGS AND PAPER BAGS

At page 142 of the DEIR, the City states:

“AB 2449 requires all California grocery stores to take back and recycle plastic grocery bags. Under that legislation (which is still law in California), however, no city, county, or other public agency is allowed to impose a plastic carryout bag fee upon a store that is in compliance with the statute.

Because a fee on plastic bags could not be imposed on any stores in compliance with the statute, which is assumed to include most major grocery and drug stores, a fee on plastic bags would largely be ineffective. It would also not eliminate single-use plastic bags as completely as a ban, so plastic bag litter is likely to still occur. Because San José would be unable to levy a fee on most single-use plastic bags distributed in the City, this alternative is infeasible. AB 2449 expires in 2013. This alternative could become feasible when AB 2449 expires, or prior to that date if the legislation is repealed.

Conclusion: This alternative would not be feasible and is not environmentally superior. It is not discussed any further in this EIR.”

AB 2449 expires on January 1, 2013. (Pub. Res. Code §42257.) After that time, the City may impose a fee on plastic bags. As the DEIR states (at page 142): “This alternative could become feasible when AB 2449 expires.” If it feasible, the City should have considered and analyzed it. However, the City instead contradicts itself by stating (at page 142) without any basis: “This alternative would not be feasible.” STPB objects as the alternative must be considered and analyzed.

A fee on plastic bags would be preferable to a ban, because paper bags are worse for the environment than plastic bags, especially regarding GHG emissions. Banning plastic bags while retaining paper bags is an environmentally disadvantageous course of action.

Response A-78: The DEIR does identify this alternative and explains why it was not further considered (in Section 6.1.4 Alternatives Considered but Rejected) on pages 141-142. CEQA requires that an EIR evaluate the impacts of a project on the environment that existed *at the time the Notice of Preparation was circulated*. The NOP for this project was circulated on October 22, 2009. The law which prohibits charging for single-use plastic bags existed at that time and currently exists. It will expire, unless the legislature chooses to extend it. Since the legislature recently declined to change state law relative to single-use carryout bags, there is no assurance that the legislature will choose to change the status quo. This alternative is presently not feasible and as discussed on pages 141-142 of the DEIR, it is also not environmentally superior. There is, therefore, no valid reason to consider it any further. As stated throughout the DEIR, the City’s program is not intended to promote or extend the use of paper bags, but to promote and extend the use of reusable bags. The process of developing the proposed ordinance, including consideration of these alternatives, is summarized in §2.1.3 of the DEIR, starting on page 21.

Comment A-79: 18. STPB OBJECTS TO THE FAILURE TO INCLUDE SEPARATE DISCRETE FINDINGS

There are no separate and discrete findings in the report on each of the points required to be considered in the EIR. Therefore, STPB objects.

CEQA Guidelines §15091 states:

“No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.... The findings...shall be supported by substantial evidence in the record.”

Response A-79: As required by CEQA, findings regarding all of the impacts are adopted by the decision-making body prior to approval of the project. Since the decision-making body for ordinances in the City of San José is the City Council, the City Council will consider the EIR prior to taking action on the project. If the Council decides to approve the project, it will adopt a resolution of findings based on information in the Final EIR and elsewhere in the administrative record.

There is no requirement in CEQA or in any section of the CEQA Guidelines, including §15091, that findings be included in the EIR.

Comment A-80: 19. STPB OBJECTS TO CERTIFICATION OF THE EIR BY ANY ENTITY OTHER THAN THE CITY COUNCIL

At page 2 of the DEIR, the City states:

“Once the Planning Commission determines (at that or at a subsequent public meeting) that the EIR is complete and in compliance with the requirements of the California Environmental Quality Act (CEQA), they will certify the EIR and send it forward to the City Council.”

STPB objects to certification by the Planning Commission as it is unelected. The EIR must be certified by the City Council or there must be a right of appeal to the City Council. Pub. Res. Code §21151(c). See *Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517.

Response A-80: The City’s Environmental Review Ordinance requires that all environmental impact reports receive a public hearing before the City’s Planning Commission and that the EIRs be found by the Planning Commission to be complete and in compliance with CEQA. As stated in §15090(b) of the CEQA Guidelines, that certification can be appealed to the City Council.

Whether or not the Planning Commission’s certification is appealed, as stated in Response A-79, the Final EIR will be reviewed and considered by the City Council prior to acting on the project, and findings must be adopted by the Council.

Comment A-81: ADMINISTRATIVE RECORD

All of the documents cited herein or provided herewith, or cited in STPB’s November 24, 2009 and January 9, 2010 letters, constitute evidence supporting the objections herein and are part of the administrative record.

STPB is submitting herewith, by e-mail, copies of 84 documents and web pages hyperlinked or cited herein and in STPB’s November 24, 2009 and January 9, 2010 letters, or which otherwise support the objections herein. STPB requests that all 84 documents be made part of the administrative record.

REQUEST FOR NOTICES

I request that you send me by e-mail and regular mail any future public notices regarding the DEIR, EIR and proposed ordinance.

CONTACT PERSON

Stephen Joseph is the designated contact person for the Save The Plastic Bag Coalition regarding the DEIR, EIR and proposed ordinance.

PROPOSAL FOR GOOD FAITH DISCUSSIONS

STPB invites and strongly urges City officials (and David J. Powers & Associates, Inc.) to meet with STPB to discuss and attempt to resolve each objection.

STPB wants the whole environmental truth to be disclosed to the City Council and the public in a clear and informative EIR based on substantial evidence and a cumulative analysis, without baseless assertions, misleading statements, or other objectionable material. The primary goal of the STPB campaign is to ensure that decision-makers and the public know the environmental truth.

CONCLUSION

All rights are reserved, including but not limited to the right to challenge the validity of a plastic bag ban based on the preemptive effect of Pub. Res. Code §42250-57. The fact that particular parts of the DEIR are not mentioned or objected to herein does not mean that STPB accepts their accuracy or validity.

No rights or duties are waived by any statement or omission herein. Strict compliance with all the applicable provisions of CEQA is hereby demanded.

Response A-81: These comments do not include substantive information or questions related to the DEIR. No response is required.

B. RESPONSE TO COMMENTS FROM SAVE THE BAY, AUGUST 25, 2010:

Comment B-1: As the oldest and largest organization working to protect and restore San Francisco Bay, and representing thousands of residents of San José among our 25,000 members and supporters, Save The Bay submits these comments on San José’s Draft Environmental Impact Report: Single-Use Carryout Bag Ordinance (DEIR).

A healthy and vibrant San Francisco Bay is central to the quality of life and economy in the Bay Area. Plastic bags are a significant contributing factor to the pollution of our creeks, rivers, and the Bay. Save The Bay estimates that more than one million plastic bags enter San Francisco Bay each year.

The evidence is overwhelming that restricting the free distribution of single-use bags is the environmentally preferable alternative. Issues raised by the plastic industry and by some concerned stakeholders have been proven unfounded, with no necessary environmental mitigation efforts cited within the DEIR. Save The Bay would like to draw your attention to a few key points that underscore the argument for the City of San José moving forward with this important step.

Litter and Waterways

Save The Bay is particularly concerned about the impacts that single use bags, specifically plastic bags, have on the environment and on San Francisco Bay. The DEIR details the threat that plastic bags pose to the environment, noting that the International Coastal Cleanup (ICC) report details that plastic bags were the second most common debris item found littered on beaches. (p 18)

The DEIR notes that there are already several waterways in San José that are listed as “trash-impaired” under section 303(d) of the federal Clean Water Act. Cities and counties, including San José, are currently working to meet new, stringent standards from the San Francisco Bay Regional Water Quality Control Board that call for “zero trash” in waterways by 2022. The Water Board specifically recommends enacting regulations to limit the top contributors of litter in our waterways, such as plastic bags. Such legislation is a cost-effective and practical tool to help cities achieve the trash goals in the Municipal Regional Water Permit (MRP). San José estimates that, “without control of litter at the sources, implementation of an expanded litter control program to protect creeks, as required in the new Stormwater permit, could cost the City up to 4 million dollars annually.” (p.18)

San José has already invested significantly in litter prevention and abatement, spending \$4.9 million each year in litter management. “Current litter abatement efforts in San José are diverse, costly, and have proven insufficient to adequately control the problem.” (p.18)

Recycling

San José’s 15 years of experience with plastic bag recycling, as outlined in the DEIR, illustrates that plastic bag recycling is costly and difficult with little return. (p.15) Furthermore, plastic bags interfere with San José’s existing recycling infrastructure. The bags clog machinery and necessitate regular cleaning from jammed machines, wasting valuable labor and time at recycling facilities. At one point, the City was forced to pay \$180/ton to have the plastic bags hauled away because there was no viable recycling market. (p.15)

Recycling these inherently disposable products is neither the quickest, nor the most cost-effective way to reduce the proliferation of single-use bags in our environment. As noted in the EIR, other

cities in the US and around the world saw reductions in the use of single-use bags of up to 90% within one month of the introduction of a fee. (p.53)

Response B-1: To clarify, the DEIR states on page 53 that Washington D.C. saw a 50 to 80 percent reduction in the use of single-use plastic bags one month after the imposition of a five-cent fee, but makes no claim as to the speed at which Ireland achieved its 90 percent reduction in the number of plastic bags used. However, the Irish government website, as reference in the DEIR as the source for this information, states that the levy "...had an immediate effect on consumer behaviour with a decrease in plastic bag usage from an estimated 328 bags per capita to 21 bags per capita overnight." Other statements regarding the content of the DEIR are accurately presented in this comment, and no further response is necessary.

Comment B-2: **Hygiene**

Reusable bags do not pose an unreasonable threat to human health, especially since produce and meat bags are excluded from the proposed ordinance. Shoppers should use common sense and regularly launder their reusable bags to avoid contamination.

A Canadian plastic industry group paid for a study to look at bacterial and fungal growth in reusable bags, testing a total of 25 reusable bags intercepted from shoppers and finding that 64% of the bags contained some level of bacteria, 20% contained yeast, and 24% contained mold. The actual bacterial counts, when compared to a typical kitchen counter, table, or sponge, are far lower than what people are exposed to in their homes on a daily basis. The comparison chart provided in the EIR shows, for example, that contaminated reusable bags had an average of 1,010 colony forming units, as compared to 9,620,000 colony forming units on contaminated sponges. (p.98)

Los Angeles County similarly concluded, "as is the case for any reusable household item that comes into contact with food items,... reusable bags do not pose a serious public health risk if consumers care for the bags accordingly and/or clean the bags regularly.... A representative of the County Department of Public Health has stated that the public health risks of reusable bags are minimal." (p.ES-2)

Response B-2: Statements regarding the content of the DEIR are accurately presented in this comment. No further response is necessary.

Comment B-3: **Greenhouse Gasses/ Life Cycle Analysis**

The DEIR does not substantiate claims that a ban on plastic bags would increase greenhouse gasses (GHGs), or that the production of paper bags contributes to more GHGs than the production of plastic bags. "The City has not found a study prepared by a neutral third party that specifically compares the impacts of manufacturing HDPE grocery bags with the impacts of manufacturing kraft paper grocery bags made with a high percentage (over 30 percent) of post consumer recycled content." (p.13)

On the topic of Life Cycle Analyses (LCAs), the DEIR also states that "the one element of the LCAs that is fairly consistent, including European, Australian, and U.S. studies, is that they all conclude that reusable bags are environmentally superior and would result in fewer adverse impacts." (p.14)

Furthermore, the DEIR points out that San José’s ordinance would require paper bags to have a minimum 40% post-consumer recycled content. (p.125-26) This detail also changes the equation when debating the environmental merits of single-use paper and plastic bags.

Response B-2: To clarify, while the DEIR concludes that the proposed ordinance would not result in a significant impact related to greenhouse gas emissions, no conclusion was drawn as to whether the production of paper or plastic bags results in more greenhouse gas emissions in a bag-to-bag comparison. Pages 122-127 of the DEIR text include a discussion of available information on greenhouse gas emissions related to various bag types, including summaries of Life Cycle Assessments (LCAs) that concluded paper bags result in more emissions over the life span of the product. One LCA, however, concluded that while paper bags result in more emissions over their lifetime, they generate fewer emissions during production than plastic bags. Because no report was found that analyzed a 40 percent recycled content paper bag, the exact emissions related to the production of paper bags that would be distributed in San José after implementation of the ordinance is unknown. Other statements regarding the content of the DEIR are accurately presented in this comment, and no further response is necessary.

Comment B-4: San José General Plan Goals

San José already has several policies that create a platform on which to support an ordinance such as the one outlined in the DEIR. The City’s Zero Waste Goals, Green Vision, and commitment to comply with the strict guidelines of the Municipal Regional Water Permit (MRP) all point to the importance of adopting legislation that will keep the most abundant types of litter out of our streets, storm drains, waterways, and San Francisco Bay.

In 2005, San José participated in the adoption of the Urban Environmental Accords as part of UN World Environment Day. Signers of the accords pledged to achieve zero waste by 2040. Later, in 2007, San José adopted the Green Vision, a set of ten environmental goals, and through this process developed a Zero Waste Strategic Plan, which includes such actions as working on a countywide effort to reduce the abundance of single-use bags in the city. San José’s proposed ordinance is also in line with the resolution adopted by the California Ocean Protection Council, whose top priority actions include to: “Prohibit single-use products that pose significant ocean litter impacts where a feasible less damaging alternative is available.”

Conclusion

We strongly urge the Planning Commission, Mayor, and City Council to adopt this EIR and introduce an ordinance that will limit the free distribution of single-use bags at all retailers in San José. Cities throughout Santa Clara County and the state are looking toward the passage of a strong ordinance in San José that would ban plastic bags and place a fee on paper bags at most retailers. San José’s leadership in this arena is needed even more today than it was when it was first proposed.

The EIR has provided evidence that counters any doubts that stakeholders or legislators may have about such an ordinance, and its adoption should move forward without delay.

Response B-4: The City Council will take this recommendation into account in their decision-making process.

C. RESPONSE TO COMMENTS FROM CLEAN WATER ACTION, AUGUST 25, 2010:

Comment C-1: On behalf of Clean Water Action and our 60,000 members in California, I am pleased to submit these comments regarding the Draft Environmental Impact Report on the proposed Single Use Carry-out Bag Ordinance for the City of San Jose. Clean Water Action is a national non-profit environmental advocacy organization with a national headquarters in Washington, D.C. and 17 state chapters throughout the country. We have had an office in San Francisco and have been working to improve water quality in the San Francisco Bay and Delta since 1990. Our California program works on state-wide water quality and supply issues and in communities throughout the San Francisco Bay and Delta region.

In California, we are working to reduce marine plastic pollution, not only because of the impacts on water quality, but also, because single use disposable products contribute to resource extraction, pollution, water and energy consumption, and use chemicals that enter the environment and pollute waterways. In general, we support transitions from disposable to reusable products. We have extensive experience working on solid waste and water quality issues in California. I personally have an extensive background in the area of marine debris, having worked as a consultant for the California Coastal Commission and the California Ocean Protection Council to craft policies for the state on marine debris. I authored two papers that have helped to form the state's policies on these issues: (1) California Coastal Commission, *Eliminating Land-based Discharges of Marine Debris in California* (2006) and (2) Ocean Protection Council, *An Implementation Strategy for the Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter* (November 2008). Clean Water Action is pleased that the City has proposed an ordinance that bans plastic bags and places a fee on paper. Both types of disposable bags create unnecessary environmental impacts that can be substantially reduced by transitioning to re-usable bags. In addition, reducing disposable bag generation can contribute significantly to reducing marine debris, reducing municipal trash and litter control costs, and improving the quality of life in urban neighborhoods.

General reaction to the DEIR

In general, we find that the DEIR is a commendable document. It presents a balanced accumulation and analysis of information pertaining to the issue of bags, of the City's planning process, of the impacts and need for mitigation, and relies on objective information. The findings are consistent with our understanding of the issue. We concur that there will be less than significant impacts on the environment from temporary increases in paper bag usage. We believe that very little water usage increase will occur from laundering, especially since as early adopters, members of our staff rarely wash re-usable bags and we hear the same from others. Manufacturing of disposable bags requires far more water and energy overall than re-usables. We find the potential green-house gas reductions to be encouraging and provide another reason to support this measure.

Land Use and Stormwater Impacts from Litter Reduction-

Responding specifically to the sections addressing land use, litter reduction, and stormwater impacts, we agree with the DEIR's assumption (p. 53) that the proposed ordinance would result in a significant decrease (up to 95%) of bag use, thereby resulting in a significant reduction in the bag component of litter. Experience in other geographic regions demonstrates that bans and fees are both effective means to achieve the goal of transitioning to re-usable bags. Washington, D.C.'s 5 cent fee on grocery bags resulted in an 80% decrease in the use of disposable bags. Ireland's 31 cent fee resulted in a 90% decrease. We agree with the DEIR's assessment, based on our historic experience in solid waste and litter issues, that Denmark's fee was less successful in motivating a reduction in bag use (only 65%) because it was not visible to the consumer. Fees on single use bags that are visible to the consumer are effective, though not as effective as bans, in promoting re-usable bags.

There is a significant need for jurisdictions to take action to reduce inputs of trash, including plastic bags, to the San Francisco Bay. According to Save the Bay, more than one million bags enter the Bay each year. The Bay is considered an impaired water body under section 303(d) of the Clean Water Act. In response, the SF Bay Regional Water Quality Control Board issued a Municipal Regional Permit (MRP) for storm water in 2009, under which the City of San Jose and other jurisdictions will have to reduce trash inputs to the Bay to zero by 2022.

To comply with the MRP, many jurisdictions are planning to increase litter abatement activities and install expensive trash capture and control devices in the storm drain system. These activities control trash rather than minimize its generation. They are expensive measures that require extensive equipment, on-going maintenance, and extensive resources in terms of labor and disposal of collected trash and debris. According to the DEIR, these measures could cost the City up to \$4 million dollars each year (p.20). According to research conducted by the Santa Clara Valley Urban Runoff Program, plastic bags account for 10% of the trash identified in several impaired water bodies. By banning the free distribution of plastic bags, the City will effectively remove this 10% percent of the trash, and at the same time reduce the on-going costs of controlling trash through litter and storm water trash abatement. In terms of reducing trash inputs to the Bay, measures that prevent trash from ever being generated in the first place, like those that encourage individuals to rely on re-usable instead of disposable plastic products, are the most sensible approaches to achieving zero trash.

Response C-1: Statements regarding the content of the DEIR are accurately presented in this comment. No further response is necessary.

Clean Water Action encourages the City to finalize the EIR and move forward with its proposed ordinance. The time for action to reduce our addiction to unnecessary disposable products that carry tremendous life-cycle impacts on the environment is now.

Response C-2: The City Council will take this recommendation into account in their decision-making process.

**D. RESPONSE TO COMMENTS FROM GUADALUPE RIVER PARK
CONSERVANCY, AUGUST 27, 2010:**

Comment D-1: The Guadalupe River Park Conservancy provides community leadership for the development and active use of San Jose’s Central Park through education, advocacy, and stewardship. We are collaborating with the City of San Jose to create a world-class attraction for residents and visitors. Therefore, we strongly urge the City to move forward with a ban on single-use bags. We believe the implementation will result in a significant decrease in the number of plastic bags that end up in local waterways.

Response D-1: The City Council will take this recommendation into account in their decision-making process.

Comment D-2: Plastic bags get swept into storm drains that then empty into our creeks and rivers. The debris that isn’t carried out to San Francisco Bay ends up lodged in branches and plants along the banks of waterways such as the Guadalupe, harming wildlife and creating visual blight.

Our staff and board members frequently give tours of the park to potential corporate and individual donors. Trash in the river – the majority of it plastic based – creates a very negative first impression and detracts from the “urban oasis” image we are cultivating.

Response D-2: The presence of litter in the Guadalupe River is documented in Photos 15 and 16 in the DEIR. These photos show litter, including plastic bags, lodged in foliage along the banks of the river, as described in this comment.

Comment D-3: In our role as stewards, we mobilize volunteers to pick up trash on a weekly basis, so we are very aware of the impact of single-use bags on our landscape and waterways. We have adopted the section of the Guadalupe River from Coleman Ave. to Hwy. 880 and coordinate river clean ups in May and September in conjunction with national river and coastal clean-up promotions. These litter collection days yield an astonishing amount of trash that then gets hauled to the local landfill. Eliminating plastic bags from this mix will not completely solve this problem, but it is a step in the right direction. We strongly urge the Planning Commission, Mayor, and City Council to adopt this EIR and introduce an ordinance that will limit the free distribution of single-use bags at all retailers in San José.

Thank you for your efforts to encourage environmental sustainability.

Response D-3: The City Council will take this comment and recommendation into account in their decision-making process.

E. RESPONSE TO COMMENTS FROM SYMPHONY ENVIRONMENTAL TECHNOLOGIES, AUGUST 25, 2010:

Comment E-1: GENERAL

There is a tendency in democratic societies for groups of activists to use the legislative process to impose their views upon their fellow citizens. This is particularly noticeable in California.

The restriction of the freedom of California shoppers and shopkeepers to live their lives and conduct their businesses as they please can only be justified if the proposed restriction is not only (a) based on accurate facts and objective arguments, but also (b) if there is a proven benefit to the community as a whole which is so substantial as to justify the proposed interference with the freedom of its citizens.

For the reasons clearly set out in the Objection made by “Save the Plastic Bag” campaign dated August 18th 2010, neither of these criteria has been satisfied in the case of the proposed ban on plastic bags by the City of San Jose. See also <http://www.biodeg.org/position-papers/Plastic-bag-bans/?domain=biodeg.org>).

If plastic carry-out bags are banned, there will not only be interference with the freedom of the citizen, which is a serious matter in itself, but California consumers will be forced to pay for bin-liners and for imported durable bags and will expect to see some serious justification for this in the middle of a recession - and people employed in the California plastics industry could lose their jobs. Perhaps the rich will not mind, but the poor certainly will.

Response E-1: This comment is based on an assumption that single-use carryout bags really are “free” to the consumer. That is not an accurate assumption. As pointed out at the end of §2.1.3 on page 22 of the DEIR, these bags are not actually “free”. They are paid for by all of the store’s customers and their cost is hidden in the prices charged for the merchandise sold by the store. The cost of a reusable bag is amortized for all of the times the bag is used by its purchaser. Bin-liners will only be paid for by the people who use them.

This comment does not raise any questions about the DEIR, but expresses opinions about the project. The City Council will take this comment into account in their decision-making process.

Comment E-2: DURABLE BAGS

Clearly, people are not going to take their purchases home in their pockets, and the proposal seems to be to force them to buy and use durable shopping bags (sometimes called “bags for life” though their useful life can be short depending on the treatment they receive). They then become a very durable form of litter, and durable bags made from cotton or jute cannot realistically be recycled. When dumped in landfill they occupy much more space than plastic carry-out bags, and they emit methane when conditions become anaerobic. Methane is a greenhouse gas 23 times more powerful than CO₂.

Response E-2: Most reusable bags are made from either plastic (HDPE, LDPE, PP, PET, etc.) or cloth (cotton, linen, etc.), both material classes of which are accepted in San José’s recycling program. Cloth items entering the recycling system are referred to as textiles. According to the EPA’s *Municipal Solid Waste Generation, Recycling, and Disposal in the United States: Facts and Figures for 2008*, nearly 1.9 million tons of textiles were recycled in the U.S. in 2008, representing a recycling rate of over 15 percent. In

addition to recycling, reusable bags can easily be donated to charities such as Goodwill and the Salvation Army for reuse. The City of San José rejects the assumption in this comment that a significant amount of reusable bags will end up in landfills as a result of the proposed ordinance.

Comment E-3: Durable bags are of course re-usable, but so are normal plastic bags which can, and usually are, re-used many times before eventual disposal, often as a kitchen bin-liner.

Durable bags are much thicker and more expensive to make and to transport, and a large number of them would be required for the weekly shopping of an average family.

30,000 jute or cotton bags can be packed into a 20-foot container, but the same container will accommodate 2.5 million plastic carrier-bags. Therefore, to transport the same number of jute or cotton bags 80x more ships and trucks would be required than for plastic bags, using 80x more fuel, using 80x more road space and emitting 80x more CO₂.

Response E-3: The assumptions in this comment related to transporting reusable bags would only be correct if reusable bags replace single-use bags at a 1:1 ratio, which is not the case. By definition, one reusable bag replaces many single-use bags. The proposed ordinance would eliminate roughly 475 million single-use plastic bags in San José every year. If it is assumed that the figures presented in the comment are accurate, this would eliminate the need for 190 20-foot containers every year. It is unlikely that more than 190 20-foot containers, which would hold 5.7 million jute or cotton bags, would be needed to transport reusable bags to San José on an annual basis. For this to be the case, every man, woman, and child in San José would have to accumulate more than five new reusable bags every year for the rest of their lives.

Comment E-4: Durable bags are usually imported from distant countries, creating a significant carbon-footprint. In those countries land and water resources have been used to grow the cotton and jute instead of food, and fertilizers and pesticides have usually been used, and substantial amounts of hydro-carbons have been burned in the production and manufacturing process. In some cases child-labour, or other unacceptable employment practices may have been used.

Response E-4: Many products, including a percentage of both single-use and reusable shopping bags, are imported from other countries. Representatives of the plastic bag industry have said that 15 percent of single-use plastic bags are imported. It is not known what percentage of reusable bags is currently imported. Appendix D of the DEIR contains a summary of available information on reusable bags, and the DEIR summarizes multiple LCA's that compare the environmental impacts of both single-use and reusable bags. These LCA's consistently found that, even accounting for impacts related to importing bags from abroad, reusable bags are better for the environment than single-use bags.

The information regarding employment practices is acknowledged. As stated in Response A-21, a great many products are made in other countries under conditions that are unacceptable from both humane and American health standards. When such circumstances are brought to the City's attention, the City does not purchase the products and recommends against their purchase by others. The City of San José cannot control the import of such products.

Comment E-5: By contrast, normal carry-out bags can be made locally in California, using local labour and contributing to the local economy. They are made from ethane, which is a by-

product of natural gas, but nobody is extracting gas to make plastic – they are extracting it for fuel, and it makes sense to use the by-product instead of wasting it.

Response E-5: §2.1.2.1 of DEIR acknowledges that, according to industry representatives, 85 percent of single-use plastic bags are produced domestically, often using ethane, which is a byproduct of natural gas refining. No evidence has been provided that a reduction in plastic bag use would result in the waste of any of the ethane recovered from natural gas or from petroleum refining. It is assumed that any available ethane would still be used to make ethylene, much of which would still be used to make polyethylene, which has many other uses besides the manufacture of film for single-use plastic carryout bags. Section 2.1.2.1 of the DEIR describes some of the many durable goods already made from polyethylene (see top of page 13).

Comment E-6: Shoppers do not always go to the shop from home, where the durable bags would normally be kept, and consumers are unlikely to have a durable bag with them when buying on impulse items such as clothing, groceries, CDs, magazines, stationery etc. Research conducted for the Scottish Government¹ showed that 92% of people think re-using carrier bags is good for the environment but 59% forget their durable bags and have to take new ones at the checkout.

Response E-6: In California, at least, reusable bags are frequently kept in the car. Shoppers would still be able to purchase exempt single-use paper bags for a fee under the proposed ordinance, and would not be required to purchase new reusable bags if they forget to bring their own. Additionally, as described in §2.3.1 of DEIR, in 2009, the City began the “Bring Your Own Bag” campaign. The goals of the Bring Your Own Bag campaign are to: 1) ensure that residents and businesses have had an opportunity to provide input to the development of the ordinance, and 2) promote the use of reusable bags over single-use carryout bags in San Jose. Pursuant to Council’s direction, the Bring Your Own Bag campaign will continue after the ordinance is adopted to provide sufficient outreach to both businesses and consumers. It is the City’s expectation that these outreach efforts will broaden the awareness of the environmental issues involved with the proposed ordinance and encourage consumers to adopt the practice of bringing reusable bags to the store.

Comment E-7: Long-term reusable bags are not hygienic if a tomato is squashed or milk is spilled. Research by Guelph Chemical Laboratories in Canada in 2008 has shown that “re-usable grocery bags can become an active microbial habitat and a breeding-ground for bacteria, yeast, mold, and coliforms. The unacceptable presence of coliforms - ie intestinal bacteria, in some of the bags tested, suggests that forms of E.Coli associated with severe disease could be present in a small but significant proportion of the bags.” Similar research has been carried out with similar conclusions at the University of Arizona who found that consumers almost never wash re-usable bags.

The Environment and Plastics Industry Council of Canada commissioned a study on re-usable bags in 2009 which found that 64% of the bags showed bacterial contamination. Almost 30% had bacterial counts higher than those considered safe for drinking water. They noted that although in theory these bags can be cleaned, it is difficult to thoroughly dry them without encouraging microbial growth.

Response E-7: The study referenced in this comment is described in detail in §3.6.3.2 of DEIR. This study was compared to other studies documenting the existence of bacteria levels on common household surfaces and items that were much higher than those found in reusable bags. The DEIR concluded that the routine use of reusable bags as they are most

commonly used, to carry packaged groceries and other purchases home from a store, would not expose users to unusual or excessive levels of harmful bacteria or other microbiological contaminants, and that washing the bags when they become soiled would further reduce the likelihood of such exposure.

Comment E-8: Why not just re-use a plastic carry-out bag many times over? It is much smaller and lighter and can be carried in a pocket or handbag.

Response E-8: The reuse of plastic carryout bags would not be prohibited by the ordinance, only their free distribution at the point of sale.

Comment E-9: BIODEGRADABLE PLASTIC

For those who believe in long-term re-usable bags, they can be made from washable extended-life oxo-biodegradable plastic and will last for 3-5 years.

It is inevitable, whatever kind of bag is used, that some will find their way accidentally or deliberately into the open environment.

Dr. Caroline Jackson M.E.P 4 made the following statement in July 2008: *“Legislation has tended to concentrate on waste which can be collected, and to encourage people to reduce, re-use, and dispose responsibly of their waste, by recycling, incineration with energy-recovery, or by other disposal routes.” “However, we also need to take account of the fact that we will never succeed in collecting all the waste and that some may remain to disfigure the landscape. Technologies have now become available which can produce plastic products such as shopping bags, garbage sacks, packaging etc. which are fit for purpose, but will harmlessly degrade at the end of their useful life.”*

Far from seeking to ban plastic bags, San Jose should require short-life plastic products of all kinds to be oxo-biodegradable. Oxo-biodegradable technology costs very little, and converts ordinary plastic at the end of its useful life into a material with a completely different molecular structure. At that stage it is no longer a plastic but has become a material which can be bio-assimilated in the environment in the same way as a leaf.

For a video of d2w plastic degrading see <http://www.youtube.com/watch?v=i3TGqcpWJTM>

It is vital when considering degradable or biodegradable plastic (draft EIR pp 139-141) to distinguish between (a) oxo-biodegradable plastic (made from ethane in the same way as normal plastic, and tested according to ASTM D6954), and (b) hydro-biodegradable or “compostable” plastic usually made from crops and tested according to ASTM D6400 – the standard for industrial composting. See http://www.biodeg.org/files/uploaded/biodeg/Oxo_vs_Hydro-biodegradable.pdf

Discarded conventional plastics remain in the environment for many decades, and are often impossible or expensive to collect, so recycling, landfill, composting, and incineration are not options for dealing with them. Oxo-biodegradable plastic is designed to mitigate the problem of plastic waste which escapes into the environment and cannot realistically be collected.

Of course, the plastic product has to have a useful life, so it will not degrade immediately, but oxo-bio bags can be made to degrade within 6 months of being supplied to shoppers. Exposure to sunlight accelerates degradation, but the process of oxo-bio-degradation, once initiated, continues even in the absence of light, so long as air is present. The plastic will degrade much more quickly in

the open than in a building, and in warm weather will disappear more quickly. Of course, if the product has been exposed to air for some time before being discarded it will disappear in an even shorter time thereafter.

It is true that oxo-biodegradable plastic (in common with almost everything else on the planet) emits a small amount of CO₂ when it degrades, but compostable plastic, paper, cotton and jute will emit methane in anaerobic conditions, which is much worse.

Symphony's d2w oxo-biodegradable plastics do not contain "heavy metals," they have been successfully tested for eco-toxicity, and they are certified fit for food-contact.

When degraded, oxo-biodegradable plastics will no longer be capable of entangling wildlife and will cease to have any visual impact, and will not leave harmful residues. Yes, you could ban plastic bags altogether, but for the reasons referred to above this is not justifiable.

Hydro-bio (compostable) plastic will not readily degrade unless it is collected and taken to an industrial composting factory. It is misleading to call this type of plastic biodegradable, because it will readily degrade only in the special conditions found in the composting process.

In June 2009 Germany's Institute for Energy and Environmental Research concluded that oil-based plastics, especially if recycled, have a better Life-cycle Analysis than crop-based compostable plastics. These are not really renewable if you consider the fossil-fuels burned in their production process (http://www.biodeg.org/files/uploaded/biodeg/Hydro-biodegradable_Plastic_Production_Process.pdf)

Response E-9: The use and reuse of biodegradable plastic carryout bags would not be prohibited by the ordinance, only their free distribution at the point of sale. An exemption to the ordinance for degradable plastic bags was considered but rejected as an alternative (pages 139-141 of the DEIR) because it would not be consistent with the project's objectives to facilitate use of reusable bags, minimize single-use carryout bag litter, and minimize adverse effects on the City's recycling program; would probably not be feasible because the bags are not widely available, and based on available information, would not be environmentally superior.

Comment E-10: RECYCLING

Oxo-bio can be recycled with normal plastic but post-consumer plastics are not in any event accepted into the San Jose recycling scheme.

Response E-10: This is not accurate. Plastics labeled with recycling symbols 1-7 are accepted for curbside recycling in San José. Single-use plastic grocery bags are not currently accepted.

Comment E-11: Barriers to recycling include: the high volume-to-weight ratio of [normal] waste plastic, which makes it expensive to collect, store and transport; high levels of contamination, which compromise the quality of the recycle; the different types of polymer which require sorting; and the low market price for the recycle.

The "European Plastic Recyclers" report of 10th June 2009 shows a fundamental misunderstanding of oxo-biodegradable technology. Oxo-biodegradable plastics are now well established and their

benefits are being realised all over the world. Last year Symphony alone sold enough to make 5 billion plastic products

The main cause for the recyclers' concern should be "Hydro-biodegradable Plastics" "Compostable Plastics" and "crop-based Bioplastics" These will certainly compromise a normal oil-based plastic recycling process, but there is not a word in the EuPR statement about this danger.

We agree that plastic has a value. Oxo-biodegradable plastic can be recycled during its useful life but if a carry-out bag has not been recycled within its useful life it probably never will be. If it has escaped into the oceans or forests and cannot realistically be collected, how can you recycle it at all?

Recycling of oxo-bio plastics is explained at <http://www.biodeg.org/position-papers/recycling/?domain=biodeg.org>. In short there is no issue unless the recyclate is used to make long-life film products such as building films. However, these are usually made from virgin polymer, or from recyclate whose provenance is known. Long-life films are not normally made from mixed rubbish whose provenance is unknown, but in such a case stabilisers should be added whether the recyclate contains oxo-bio plastic or not. These stabilisers will neutralise the effect of any residual additive.

The San Jose draft EIR has failed to distinguish between recyclate for making short-life and long-life products; between recyclate whose provenance is known and not known; between products where rapid degradation is desirable and not desirable; between products where recyclate is allowed and not allowed; and cases where stabilisers are necessary whether there is any pro-degradant additive present or not.

Response E-11: Problems associated with recycling degradable plastic bags, including oxo-biodegradable bags, are discussed on page 140 of the DEIR. The DEIR text states that oxo-biodegradable bags have been reported not to damage the overall value of the reclaimed material. The DEIR text also includes a statement from the European Plastics Recyclers stating that "OXO-degradable additives" are incompatible with mechanical recycling and have the potential to pollute existing waste streams. According to the U.S. Association of Postconsumer Plastic Recyclers, the degradable plastics produce greenhouse gas (methane) during degradation.

Future research may allow the City to include "oxo-bio" plastic in the City's recycling program. Single-use plastic carryout bags of any kind, however, do not meet the City's objectives for the proposed project.

Comment E-12: LANDFILL

So far as landfill is concerned, Oxo-bio is better than hydro-bio, because it does not emit methane. Oxo will fragment in the upper layers and will save some space, but a landfill is not an environment for which degradable plastic of any kind is really relevant. Once a piece of plastic waste has been collected and buried in landfill it has already been disposed of responsibly, and landfill operators do not want material degrading unless the landfill is designed to collect the gases - they prefer stability.

Plastic takes up very little space in the average landfill, but plastic should not be wasted by burying in landfill at all. If it is not suitable for recycling (and most consumer plastics are not) it should be taken to a modern incinerator, where the energy within the plastic can be captured and used without emitting pollutants.

COMPOSTING

As for composting, neither oxo or hydro plastic is much use. Hydro has to convert itself to CO₂ gas within 180 days in order to meet the composting standards (ASTM D6400 EN 13432 etc.) so it contributes to climate change but does nothing for the soil. Oxo is better because it releases its carbon slowly into the plants, but composting is not an option for anything unless the material can be collected and sent to an industrial composting plant nearby.

Most industrial composters do not want plastic of any kind because even if oxo-bio did not exist they would have to separate the compostable from non-compostable plastic, which they do not wish to do. It is not economic.

The packaging manager of Tesco (Britain's largest supermarket) said on 20th October 2009 that the supermarket "does not see the value in packaging that can only be industrially composted" and that "city authorities do not want it, as it can contaminate existing recycling schemes."

Home composting is not suitable for plastic of any kind, and contaminated post-consumer plastics will serve only to attract rats in a home environment.

LITTER

It is sometimes said that that people dispose more carelessly of biodegradable materials, and this is an argument which would, if true, apply to hydro-biodegradable as well as oxo-biodegradable, plastics. It is not however true. Oxo-biodegradable plastic bags have now been dispensed by supermarkets for more than five years, but there is no evidence that people dispose more carelessly of them, and they have not been encouraged to do so.

Pick up any piece of plastic litter and you are most unlikely to find the word "biodegradable" on it. It is ridiculous to think that litter-louts will read the label to see whether it is degradable before deciding to throw it away.

But suppose for the sake of argument that 10% more were discarded. If 1,000 conventional and 1,100 oxo-biodegradable bags were left uncollected in the environment, 1,000 conventional bags would remain in the rivers, streets and fields for decades, but none of the oxo-biodegradable bags would be left at the end of the short life programmed into them at manufacture.

Education may have some effect, but there will always be people who will deliberately or accidentally discard their plastic waste. What will happen to all the plastic waste (not just plastic bags) that will not be recycled or will not be incinerated, and instead will litter the countryside - would it not be better if the discarded plastic were all oxo-biodegradable?

Response E-12: The ordinance does not distinguish between types of plastic used for single-use bags. Single-use plastic bags of any kind would be prohibited from being distributed for free at the point of sale in San José. As stated on page 56 of the DEIR, the proposed project will substantially reduce the number of plastic bags that become litter in the streets and waterways, thus resulting in a beneficial environmental impact.

The information included in this letter reflects the development of different plastics that may meet standards for different uses and handling than current plastic products. If those

products can satisfy market demand, they may be used in the future for purposes for which plastic bags are uniquely suited.

**F. RESPONSE TO COMMENTS FROM AMERICAN CHEMISTRY COUNCIL,
AUGUST 26, 2010:**

Comment F-1: I write on behalf of the Progressive Bag Affiliates of the American Chemistry Council (“ACC”) to comment on the City’s Draft Environmental Impact Report (“DEIR”) for Single-Use Carryout Bag Ordinance. ACC continues to note significant shortcomings and inaccuracies in the DEIR that fail to satisfy CEQA.

Response F-1: The comments in this letter are each responded to individually below.

Comment F-2: Most importantly, the DEIR assumes that consumers will shift behavior from plastic bags to reusable bags, but then fails to fully and adequately address the potential environmental impacts of this shift in a glaring manner. Recent studies indicate that bacteria grows readily in reusable bags, so they require frequent washing for public health and sanitation reasons.¹ This regular washing has an impact on the environment – from increased water consumption to energy use to detergent use – that has not been adequately and fully evaluated in the DEIR. If this additional energy use is significant, it may have additional or cumulative environmental impacts, such as greenhouse gas impacts, that likewise must be evaluated.

Response F-2: The studies referenced in this comment are discussed in §3.6.3.2 (starting on page 96) of the DEIR. The studies did not find any source of significant risk but the second study did suggest that washing reduces the presence of undesirable microbes in the bags. The likelihood that washing reusable bags might result in significant impacts to water quality and/or water supply and wastewater treatment are addressed in the DEIR in §3.3.2.1 (on page 80) and §3.4.2.3 (on page 88).

Since no significant increase in water use is anticipated to occur, no significant increase in energy use or in the emission of greenhouse gases would occur as a result of the need to wash reusable bags.

No information is provided in this letter, or in any other comments, that would contradict or modify the information and conclusions in the DEIR.

Comment F-3: The DEIR must be revised to fully analyze these additional environmental impacts, which could be significant, and which may require a mitigation analysis. Please feel free to contact me if I can assist you further with respect to these comments.

Response F-3: Since this letter does not identify any new impacts, or any information that supports a different conclusion regarding the absence of significant impacts, no further response is required.

IV. PROPOSED REVISIONS TO THE TEXT OF THE DRAFT EIR

The following section contains proposed revisions/additions to the text of the *Draft Environmental Impact Report Single-Use Carryout Bag Ordinance*, dated July 20010. Revised or new language is underlined. All deletions are shown ~~with a line through the text~~.

Page No. Text Revision

vi Summary:

Insert the following row at the end of the table on this page:

Greenhouse Gas Emissions	
Based on the information summarized in §3.10.3.1 of the EIR, reusable bags will generate less greenhouse gases per use than either paper or plastic single-use carryout bags. The City’s proposal to encourage a transition to reusable bags instead of single-use bags would therefore have fewer greenhouse gas impacts than allowing continued reliance on single-use bags. (Less Than Significant Impact)	No mitigation is required.

45 3.1 Land Use; 3.1.1 Existing Environmental Setting; 3.1.1.2 Existing Land Uses; 3.1.1.3 Visual and Aesthetic Character; Litter:

Revise the fifth complete paragraph on the page as shown:

Plastic bags are found on the streets, sidewalks, and in parks in San José, and in the storm sewers and catch basins that drain to San Francisco Bay. As shown in Photos 15, 16, and 20, plastic bags are also found on the banks and in the water of the creeks in San José. The creeks in San José all drain into the Bay, and the ~~Bay drains into the Pacific Ocean twice a day~~ tides and currents freely mix the incoming ocean water and the water of the Bay. It is therefore necessary to conclude that plastic bag litter from San José contributes to the plastic litter polluting the creeks, Bay, and Pacific Ocean.

49 Litter Surveys:

Insert the following reference and footnote in the third paragraph of the section:

The City of Los Angeles did a waste characterization study in 2004 and found that plastic bags made up 25 percent by weight and 19 percent by volume of litter found in 30 storm drain catch basins.^{29a} It should be noted in this context that storm drains flow into creeks and rivers in California, and from there to the Pacific Ocean in many cases (including Los Angeles and Santa Clara County). [^{29a}Characterization of Urban

Litter, prepared by the staff of the Ad Hoc Committee on Los Angeles River and Watershed Protection Division. June 18, 2004.]

Insert the following reference and footnote in the fourth paragraph of the section:

Each year, Caltrans sweeps 184,000 highway lane miles to remove debris and litter. In 2005, Caltrans and the various Adopt-a-Highway groups picked up a total of 11.6 million pounds of trash. A breakdown was not done for that material, but a litter management pilot study done by Caltrans from 1998 through 2000 on a freeway in the Los Angeles area found that plastic film (including plastic carryout bags) made up 7 percent by mass and 12 percent by volume of the litter collected.^{30a} California Department of Transportation, District 7 Litter Management Pilot Study. June 26, 2000. <http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-00-013.pdf>

50 **Insert** the following paragraph at the end of the section on this page:

The Great American Litter Pick Up, an all-volunteer activity, took place in San José on March 20, 2010. The volunteers were given tally sheets to list what they picked up. Approximately 18-27 percent of the volunteers turned in their tally sheets. Teams picked up litter in Council Districts 1,2,3,4,5 and 7, with significantly more teams collecting in Districts 1,2, and 3 than in the other three districts, and none in the remaining four districts. Because the data from the event that is available is such a small percentage of the total litter collected and does not cover most of the City, it cannot be identified as representative, but is provided below for informational purposes:

	<u>Plastic Bags</u>	<u>Cigarette Butts</u>	<u>Styrofoam</u>	<u>Plastic Wrappers</u>	<u>Recyclables</u>	<u>Paper</u>	<u>Other</u>
<u>Number</u>	<u>2820</u>	<u>13712</u>	<u>3063</u>	<u>9731</u>	<u>3103</u>	<u>12466</u>	<u>7621</u>
<u>% of Total</u>	<u>5.4</u>	<u>26.1</u>	<u>5.8</u>	<u>18.5</u>	<u>5.9</u>	<u>23.7</u>	<u>14.5</u>

64 3.2 Biological Resources; 3.2.2 Existing Environmental Setting:

Revise the third paragraph on the page as shown:

As many as 260 species of animals, including invertebrates, turtles, fish and mammals, are known to ingest or become entangled in plastic debris.³ In addition to the physical risks of becoming entangled or eating plastic, chemical contamination of water, animals, and human beings has been traced to plastic waste. There is no similar documentation of the widespread occurrence of animals suffering from the presence of paper debris.

68 **Revise** the heading on this page as shown:

3.2.1.2.1 Plastic Litter in Water Bodies

³ Thompson, Richard C., Charles J. Moore, Frederick S. vom Saal and Shanna H. Swan. "Plastics, the environment and human health: current consensus and future trends"; Philosophical Transactions of the Royal Society. (2009) P. 2155.

- 112 3.9 Energy; 3.9.2.4 Energy Use Associated with Single Use and Reusable Bags; Boustead Consulting & Associates for the Progressive Bag Alliance (USA); Life Cycle Assessment for Three Types of Grocery Bags:

Revise the text of the second paragraph of this section as shown:

Boustead Consulting & Associates prepared an LCA for the Progressive Bag Alliance that evaluates the impacts of paper bags versus HDPE plastic bags; the report is undated but the peer review was completed in 2007. The LCA accounted for 30 percent recycled material in paper bags, and assumed that plastic bags were fully recyclable. It was also assumed that the carrying capacity of one paper bag is equal to 1.5 plastic bags. The LCA concluded that paper bags require approximately 3.4 times the amount of energy as plastic bags. (At a 1:1 capacity ratio, the LCA concluded that paper bags require 5.15 times the amount of energy.) These conclusions are not directly relevant to the proposed project since the City has found that (1) plastic bags are not readily recyclable; ~~plastic bags do not have the same capacity as paper bags; and (3)~~ (2) the results are based on assumptions, such as a high rate of waste incineration and low rate of paper bag recycling, that do not accurately reflect the current situation in San José. Additionally, the proposed project will require that paper bags have at least 40 percent recycled content, which is higher than the 30 percent recycled content of the bags analyzed in the LCA. Since bags with more than 40 percent recycled content are already being used in San José, the average recycled content will be more than 40 percent after the ordinance is implemented.

- 115 3.9.3 Energy Impacts; 3.9.2.2

Energy Impacts Resulting from the Project: **Insert** the following after the third paragraph on the page:

As described on pages 80-81 and 88, it is anticipated that users of reusable bags will continue to wash their bags only when needed and that such bags would be washed in mixed laundry loads, resulting in no measurable increase in washing loads or water use. There would, therefore, not be a significant increase in energy use associated with washing reusable bags.

- 124 3.10 Greenhouse Gas Emissions; 3.10.3 Existing Conditions; 3.10.3.1 Greenhouse Gas Emissions Associated with Single-Use and Reusable Bags;

Boustead Consulting & Associates for the Progressive Bag Alliance (USA): *Life Cycle Assessment for Three Types of Grocery Bags*: **Insert** the following after the first complete paragraph on the page:

The Boustead report does not include a life cycle assessment for reusable bags. It does, however, include the following statement:

This study did not examine the impacts associated with reusable cloth bags, so no comparison was made between the cloth bags and single-use polyethylene plastic bags. In other studies, however, cloth bags were shown to reduce environmental impacts if consumers can be convinced to switch.

The author of the study also expresses his opinion that consumers do not appear likely to change their behaviors.

Insert the following at the bottom of the page, after the last paragraph:

The report concluded that paper bags produce 90 percent more greenhouse gas emissions than plastic bags, and that reusable LDPE bags used at least three times produce less emissions than both paper and plastic bags. The woven HDPE reusable bag listed in Table 3.10-1, however, must be used more times before it will generate benefits compared to a single-use HDPE bag. There is limited information available on the life cycle impacts of reusable bags. What is available, however, supports the conclusion that reusable bags that are used multiple times will produce fewer adverse impacts per use than either paper or plastic single-use bags. This is a logical conclusion.

Other studies, going back to 1991 further support the benefits of reusable bags. An evaluation of life cycle energy intensity done by an economics professor found that the energy use for reusable nylon bag was far more efficient than either paper or plastic single-use bags, even if the single-use bags were reused 10 times or more, and then 75 percent of them were recycled.⁴ Since the two largest sources of greenhouse gas generation are energy use and decomposition, and since reusable bags were found to have lower energy per use and are discarded less often, this is consistent with the findings in the Nolan-ITU and Ecobilan studies.

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3.10.4.1 Greenhouse Gas Emissions Discussion: **Add** the following to the end of the section at the top of this page:

Based on the information summarized in §3.10.3.1 above, reusable bags will generate less greenhouse gases per use than either paper or plastic single-use carryout bags. The City's proposal to encourage a transition to reusable bags instead of single-use bags would therefore have fewer greenhouse gas impacts than allowing continued reliance on single-use bags. No additional analysis of greenhouse gas impacts from reusable bags is required. **(Less Than Significant Impact)**

3.10.4.2 Greenhouse Gas Emissions Impacts Resulting from the Project

Insert the following text in the third paragraph of the section:

As discussed in §2.3.2, a conservative estimate of increased use of single-use paper carryout bags would be an increase of 37 to 69 million additional paper bags. Using the methodology described at the beginning of §3.0, the data from the Boustead LCA shows that there could be an annual reduction in greenhouse gas emissions of as much as 9,600 tons of CO₂e compared to existing conditions with the reduction in plastic bag use and the anticipated increase in paper bag use. A fee of \$.25 would result in a reduction of as much as 15,000 tons of CO₂e. According to the EPA's Greenhouse Gas Equivalencies Calculator, the emissions *eliminated* by the proposed

⁴ Fenton, Robert W. "Reuse versus recycling: a look at grocery bags". Resource Recycling, March 1992. Page 105.

ordinance would be equivalent to emissions from the annual electricity use of 1,057 to 1,651 homes.

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6.0 Alternatives to the Proposed Project; 6.1 Selection of Alternatives; 6.1.4 Alternatives Considered but Rejected:

After the fourth paragraph on the page, **Insert** the following new section:

Voluntary Best Practices for Stores

The State of Massachusetts has implemented a voluntary program that involves grocery stores encouraging people to use fewer single-use carryout bags. Each store or chain of stores is encouraged to implement various activities to educate people about alternatives to using single-use carryout paper and plastic bags. Some of the initiatives include training staff to reduce wasteful distribution of bags, offering reusable bags for sale, providing cash incentives for reusable bag use, accepting used plastic bags for recycling and posting instructional signs reminding patrons not to forget to bring their bags. The State of Massachusetts also distributes a brochure that describes alternatives to using single-use bags all the time. It encourages doing without a bag when it's not needed, the use of reusable bags, and recycling single-use paper and plastic carryout bags.

While the Massachusetts program is voluntary, the City could conceivably pass an ordinance that requires stores to implement a "best practices" program that encourages people to use fewer single-use carryout bags. The Massachusetts program has only been implemented by 2/3 of the grocery stores. If the program were law, it would probably be adopted by all stores, but the implementation might be less vigorous. It is also difficult for a government to define what "best practices" might be for all sizes and types of stores.

The primary reason for not proposing this alternative is that it is inconsistent with the project objectives. Specifically, it is not consistent or supportive of the following project objectives, which are identified on pages 29 and 137 of the DEIR:

Minimizing the dedication of non-renewable resources to single-use carryout bags. This alternative would make a much smaller contribution to the quantity of non-renewable resources dedicated to single-use carryout bags. Despite vigorous support by the state, it has only been adopted by 2/3 of the grocery stores and (apparently) no stores other than grocery stores. Thus far (over two years), only 25 percent of single-use bags have been reduced in 2/3 of the grocery stores. Even with three more years of effort, it is anticipated that the total number single-use bags distributed at those grocery stores will be reduced by only a third. In other words, less than one-third (2/9) of the single-use carryout bags distributed just at the grocery stores in Massachusetts will be eliminated by five years of this program. The City's proposed program is anticipated to reduce the total number of single-use carryout bags distributed by almost all retail outlets in San José by 89 percent within two years.

Eliminating the use of the estimated 568 million single-use carryout bags per year by 2013 by regulating their free distribution at retail establishments. By comparison,

2/9 of that total is 126 million bags; 2/9 of the bags distributed only at grocery stores is an even smaller number.

Minimizing to the greatest extent feasible the amount of single-use carryout bag litter contaminating public and private property in San Jose, polluting streets, parks, sidewalks, storm and sewer systems, creeks and streams. Most of the bags and the bag litter would remain with this alternative.

Minimizing to the greatest extent feasible the quantity of single-use carryout bag litter polluting streams and other water bodies in Santa Clara County and the San Francisco Bay Area, and contaminating the world's oceans. Most of the bags and the bag litter would remain with this alternative.

Minimizing to the greatest extent feasible the presence of plastic bags in the City's recycling program, where they contaminate recovered material streams and clog processing equipment. Even though the City no longer officially recycles single-use plastic bags in the curbside program, the bags continue to be put out for collection and continue to contaminate the recycled materials stream.

Conclusion: This alternative would not be fully consistent with most of the project's objectives and to the extent that further delay in implementing community wide source reduction would result in more single-use plastic and paper bags entering the environment and polluting the ocean, as well as the streams and streets of San José, this alternative would not be environmentally superior. It is not discussed any further in this EIR.

150 6.5 Ban on All Single-Use Carryout Bags Alternative; 6.5.1 Comparison of Environmental Impacts; 6.5.1.6 Hazardous Materials:

First complete paragraph on the page: **Revise** the paragraph as shown:

Because reusable bags are sturdier, they require more material and a more rigorous manufacturing process. There is such a wide variety of the bags, it is impossible to ~~identify~~ quantify exactly how many uses per bag is required for all types of bag materials to offset the impacts of using a single-use carryout plastic bag once. For example, ~~in~~ in one of the LCAs prepared (for Carrefour), a comparison was made between the impacts of a single-use HDPE bag and a reusable LDPE bag. The comparison found that by the fourth use, the impacts per use of the reusable bag were lower than those of the single-use bag.

155 Section 9.0 References:

Insert the following information at the beginning of the section:

Ad Hoc Committee on the Los Angeles River and Watershed Protection Division, Characterization of Urban Litter. Staff report dated June 18, 2004.

Insert the following information at the end of the third item currently listed on the page:

Available at: <<http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,499180.asp>>

Insert the following information after the third item currently listed on the page:

Andrady, Tony L. Ph.D. “Plastics in the Marine Environment: A Technical Perspective”. Center for Engineering Technology RTI International.

Arthur, Courtney, Holly Bamford and Joel Baker. “The Occurrence, Effects and Fate of Small Plastic Debris in the Oceans.” National Oceanic and Atmospheric Administration White Paper prepared for a workshop held 9/9-10/08. September 3, 2008.

Insert the following information after the fifth item currently listed on the page:

Barnes, David K. A., Francois Galbani, Richard C. Thompson, and Morton Barlaz. “Accumulation and fragmentation of plastic debris in global environments”; Philosophical Transactions of the Royal Society. (7/27/2009) 364:1985-1998.

Insert the following information after the 11th item on the existing page:

California Department of Transportation, *District 7 Litter Management Pilot Study*. June 26, 2000. <http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-00-013.pdf> [Last accessed on September 27, 2010]

156 **Insert** the following information after the 11th item on the existing page:

City of Los Angeles Bureau of Sanitation. “Policy Tools for Reducing Impact of Single-Use, Carryout Plastic Bags and EPS Food Packaging”. June 2, 2008. Available at: <http://www.ci.la.ca.us/san/solid_resources/recycling/CityStaff/PDF/2008/Plastics_Report.pdf>

Insert the following information after the 12th item on the existing page:

City of Los Angeles Department of Public Works Bureau of Sanitation Watershed Protection Division. “High Trash-Generation Areas and Control Measures”. January 2002.

157 **Insert** the following information after the 5th item on the existing page:

Ecobilan. *Evaluation des impacts environnementaux des sacs de caisse Carrefour*. February 2004.

158 **Insert** the following information after the 5th item on the existing page:

Herrera Environmental Consultants, Inc. *City of San José Single-Use Carryout Bag Fee Fiscal Analysis*. June 22, 2010.

Insert the following information after the 8th item on the existing page:

Mrosovsky, N., Geraldine D. Ryan, Michael C. James. “Leatherback Turtles: The menace of plastic”. *Marine Pollution Bulletin*. 2009 287-289.

Insert the following information after the 12th item on the existing page:

Nevins, Hannah, David Hyrenbach, Carol Kelper, Jenny Stock, Michelle Hester, and Jim Harvey. “Paper for Plastic Debris Rivers to the Sea Conference 2005: Seabirds as indicators of plastic pollution in the North Pacific”. [Provided by personal communication from Jim Harvey.]

159 **Insert** the following information at the end of the 5th item on the existing page:

Available at:

<http://www.oceanconservancy.org/pdf/A_Rising_Tide_full_lowres.pdf>

160 **Insert** the following information after the 3rd item on the existing page:

Spear, Larry B., David G. Ainley & Christine A. Ribic; “Incidence of Plastic in Seabirds from the Tropical Pacific, 1984-91: Relation with Distribution of Species, Sex, Age, Season, Year and Body Weight”; Elsevier Science Limited 0141-1136/95. August 16, 1994. Page 123.

V. COPIES OF THE COMMENT LETTERS RECEIVED ON THE DRAFT EIR
