



DATE: September 28, 2016

TO: Waste Management Authority Board

FROM: Wendy Sommer, Executive Director

BY: Meri Soll, Senior Program Manager

SUBJECT: Reusable Bag Ordinance Expansion – Introduction of Ordinance 2016-2 and Adoption of Addendum to Environmental Impact Report

SUMMARY

At the March 23, 2016 Waste Management Authority meeting, the Board unanimously directed staff to prepare an ordinance amending Ordinance 2012-2 (Regulating The Use Of Carryout Bags And Promoting The Use Of Reusable Bags) to apply to all retail stores and restaurants. At the September 28, 2016 Board meeting, staff will present (1) an update on expansion activities; (2) Ordinance 2016-2 amending Ordinance 2012-2 (Attachment A) for introduction and (3) a resolution adopting an addendum to the Ordinance 2012-2 Final Environmental Impact Report regarding the expansion (Attachment B). If introduced by the Board at this meeting, Ordinance 2016-2 would be presented to the Board for adoption at its meeting in October.

DISCUSSION

Staff has prepared amendments to Ordinance 2012-2 so that it would apply to a larger set of stores as follows:

- Expansion to cover all retail stores and restaurants in Alameda County
- Beginning May 1, 2017, all retail stores will be required to follow current ordinance requirements:
 - Provide customers only compliant bags
 - Charge a minimum of 10 cents per compliant bag
 - Itemize bag charge on receipt
- Beginning November 1, 2017, Public Eating Establishments will be required to implement the following requirements:
 - Compliant paper bags can be distributed at *no charge*
 - Minimum 10 cents charge for compliant reusable bags
 - Itemize receipt of reusable bag charge
- The County and city member agencies may opt out of the expansion by resolution adopted prior to December 9, 2016.

Revised Definitions:

- Revised definition of “*Store*” expands the ordinance to apply to all types of retail stores “operating from a permanent enclosed structure that sells perishable or non-perishable goods including but not limited to clothing, food and personal items directly to a customer.”
- Revised language and definition relating to “*Public Eating Establishments*” expands the ordinance to apply to restaurants and take-out food establishments; including food trucks and vendors who distribute food in bags.

Exemptions:

- Public Eating Establishments may make available to a customer a recycled content paper bag at no charge. They are required to charge for a compliant reusable bag for a minimum price of ten cents.
- Stores operating in certified farmers’ markets are not subject to the ordinance.
- The existing exemptions for produce/product bags and Nonprofit Charitable Reuse Organizations remain in effect.

(A more detailed expansion synopsis can be found in Attachment C)

In addition to preparing the attached Ordinance 2016-2, staff has undertaken the following to allow for the expansion of the Reusable Bag Ordinance:

1. Completed CEQA Review: Addendum to Final Environmental Impact Report

In December, 2011, the WMA certified a Final Environmental Impact Report (FEIR) for the Mandatory Recycling and Single Use Bag Reduction Ordinances that included analysis of the environmental impacts that could result from a reusable bag ordinance applying to all retail establishments in Alameda County. The WMA ultimately adopted Ordinance 2012-2, which affected a subset of all retail stores (stores that sell packaged food and liquor). The 2011 FEIR did not consider restrictions on public eating establishments.

The attached ordinance would amend Ordinance 2012-2 to apply to all of the roughly 10,300 retail stores and 4,000 public eating establishments in Alameda County. The California Environmental Quality Act requires the Lead Agency to prepare an addendum to a previously certified EIR if changes or additions are made to the project. As the 2011 FEIR only analyzed the impacts of applying the ordinance to all retail stores, an addendum to the FEIR was needed to analyze environmental impacts that may result from modifying the ordinance to apply to public eating establishments.

David J Powers and Associates prepared the attached addendum to the 2011 FEIR. The analysis found that the proposed changes to Ordinance 2012-2 *would not* result in any new significant environmental impacts that were not addressed in the FEIR and would not cause any impacts to be substantially greater than were identified in the FEIR. Nor are there any changed circumstances or new information indicating that the ordinance would have any significant impacts not considered in

the FEIR or result in increases in the severity of any impacts identified in the EIR. (The Addendum to FEIR is found in Attachment D.)

2. Completed Memorandum of Understanding (MOU) with Alameda County Clean Water Program regarding \$180,000 financial commitment for program expansion

An MOU between the WMA and the Alameda County Clean Water Program (Program) has been drafted and approved by both entities (awaiting final signature from Board of Supervisors). The MOU can be found in Attachment E. The Program’s management committee has approved and committed \$180,000 in contribution to the WMA to support the expansion of the Reusable Bag ordinance as long as the expanded ordinance applies, at a minimum, to all retail stores within Alameda County. A provision to allow specific cities or the County to opt-out of the expanded ordinance (an “opt-out provision”) is acceptable to the Program. If the Authority amends Ordinance 2012-2 to apply to all retail stores within Alameda County, the Program will remit \$180,000 in financial assistance to the WMA within ninety (90) days after adoption of the amended ordinance.

3. Outreach to member agencies and stakeholders.

In April, staff distributed the amended ordinance language, a synopsis of expansion activities and offered presentations to all member agencies. Staff provided presentations to eleven member agencies on expansion activities and parameters. For the most part, response to these presentations has been in support of an expanded ordinance to affect all retail and restaurants.

Staff also reached out to Chambers of Commerce, business/downtown associations, mall operators and restaurants.

RECOMMENDATION

Staff recommends that the WMA Board 1) introduce Ordinance 2016-2 (Attachment A) by title only, waiving a full reading of the text, 2) direct staff to place the ordinance on the agenda for consideration of adoption at the October 26 WMA meeting and 3) approve a resolution (Attachment B) adopting the Addendum to the Final Environmental Impact Report for the Mandatory Recycling and Single Use Bag Reduction Ordinances.

Although the Recycling Board does not have the authority to adopt ordinances and cannot vote on this item, their participation in discussion of this recommendation is welcomed.

ATTACHMENT A	Ordinance 2016-2 Amending Ordinance 2012-2, Regulating The Use Of Carryout Bags And Promoting The Use Of Reusable Bags
ATTACHMENT B	Resolution Adopting Addendum to the Final Environmental Impact Report for the Mandatory Recycling and Single Use Bag Reduction Ordinances
ATTACHMENT C	Synopsis of Reusable Bag Expansion language
ATTACHMENT D	Addendum to 2011 Final Environmental Impact Report
ATTACHMENT E	Alameda County Clean Water Program Memorandum of Understanding

ATTACHMENT A
ORDINANCE 2016-02
AMENDING ORDINANCE 2012-02

**ORDINANCE REGULATING THE USE OF CARRYOUT BAGS
AND PROMOTING THE USE OF REUSABLE BAGS**

The Board of the Alameda County Waste Management Authority (“Authority”) finds that:

1. In 2012 the Authority adopted Ordinance 2012-02, the Ordinance Regulating The Use Of Carryout Bags and Promoting the Use of Reusable Bags. For the reasons set forth in the findings in Exhibit A, the Authority wishes to amend the ordinance to apply its requirements to stores not subject to the original ordinance and to make minor clarifying changes.
2. The Board of the Alameda County Waste Management Authority held a public meeting on September 28, 2016, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

Therefore, the Board of the Authority hereby ordains as follows:

Section 1. Adoption.

Ordinance 2012-02, the Ordinance Regulating The Use Of Carryout Bags and Promoting the Use of Reusable Bags is hereby amended as set forth in Exhibit A. Text to be added is indicated in bold double underlined font (e.g., **underlined**) and text to be deleted is indicated in strikeout font (e.g., ~~strikeout~~).

Section 2. Severability.

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. Publication.

Within 15 days after adoption of a summary of the ordinance with the names of those voting for and against, the ordinance shall be published and a certified copy of the full text with the names of those voting for and against the ordinance shall either (i) be posted on the Authority’s website or (ii) be posted in the Authority offices.

- Continued on following page -

Following introduction on September 28, 2016, passed and adopted October 26, 2016 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2016-02.

Wendy Sommer
EXECUTIVE DIRECTOR

Exhibit A

ORDINANCE 2012-2 AS AMENDED BY ORDINANCE 2016-2

ORDINANCE REGULATING THE USE OF CARRYOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS

The Board of the Alameda County Waste Management Authority (“Authority”) ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section ~~10~~10.

SECTION 2 (Findings)

- (a) The purpose of this Ordinance is to reduce the use of single use carryout bags and promote the use of reusable bags at the point of sale in Alameda County.
- (b) The Authority has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA grants the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan (“CoIWMP”), and pursuant to Section 5.m of the JPA, the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (c) Reducing single use bag use is reasonably necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and policies.
- (d) Goal 1 of the CoIWMP is to promote environmental quality, ensure protection of public health and safety, and to minimize environmental impacts in all aspects of solid waste management. Policy 1.4.1 includes reduction of hard to recycle materials.
- (e) Goal 2 of the CoIWMP calls on the Authority and its member agencies to achieve maximum feasible waste reduction and to reduce the amount of waste disposed at landfills through improved management and conservation of resources.
- (f) Policy 2.1.1 adopts a waste management hierarchy that ranks management of waste through source reduction and then recycling and composting above landfill disposal.
- (g) Goal 7 of the CoIMWP is to Promote Inter-jurisdictional Cooperation. Policy 7.1.3 states that the Authority shall coordinate with other organizations as needed to fulfill its countywide role including coordinating on related issues such as water and litter. Objective 7.8 states that the Authority will coordinate and facilitate program implementation by individual or subregional groupings of member agencies.

- (h) Numerous studies have documented the prevalence of plastic carry-out bags littering the environment, blocking storm drains and fouling beaches.
- (i) Plastic bags are a substantial source of marine debris.
- (j) Plastic bags cause operational problems at County landfills and transfer stations and contribute to litter countywide.
- (k) ~~The Authority has participated in a campaign with The Bay Area Recycling Outreach Coalition to promote reusable bags countywide for several years. Despite these efforts, plastic bags comprise 9.6% of litter collected during coastal cleanup days (based on 2008 data) in Alameda County. Additionally, plastic bags continue to cause processing equipment problems at County transfer stations.~~ **Agency studies show that as a result of Ordinance 2012-2, there has been a 44% decrease in plastic bags found in Alameda County Storm drains and a 69% decrease in paper and plastic bags at point of sale, and the number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled.**
- (l) **Member Agencies are required by the Municipal Regional Permit (MRP) for storm water to reduce trash by 70% by 2017 and 100% by 2022, with cities having the option to implement plastic bag bans to achieve these requirements.**
- (m) There are several alternatives to single-use carry-out bags readily available.
- (n) ~~Studies document that banning single use plastic bags and charging for single use paper bags will dramatically reduce the single use of both types of bags.~~ **Despite the positive impacts of the existing ordinance, it is estimated that 62% of the projected 764 million bags distributed in Alameda County are distributed by currently affected stores. Further efforts are needed to decrease single-use checkout bags.**
- (o) The Authority prepared the Mandatory Recycling and Single Use Bag Reduction Ordinances Environmental Impact Report, which considered two separate projects and included the environmental review required by the California Environmental Quality Act for this Ordinance. The Authority certified those portions of the EIR relevant to this Ordinance. **The Authority prepared an Addendum that analyzed the environmental impacts associated with amending the reusable bag ordinance and found that the amendments would not result in any new significant environmental impacts that were not addressed in the EIR and will not cause any impacts to be substantially greater than were identified in the EIR. Nor do changed circumstances or new information reveal the ordinance would have any significant impacts not considered in the EIR or result in increases in the severity of any impacts identified in the EIR.**
- (p) **This ordinance will be enforced using the principle of progressive enforcement with the objective of bringing the regulated community into compliance.**

Progressive enforcement measures shall be used in the following order in order to promote compliance: (i) official notification of non-compliance, (ii) warning of an impending administrative citation and related fine, (iii) issuance of an administrative citation and fine, and (iv) civil enforcement and/or criminal enforcement if warranted by the nature of the violation.

SECTION 3 (Definitions)

The definitions set forth in this Section shall govern the application and interpretation of this ordinance.

- (a) “Alameda County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.
- (b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).
- (c) “Authority Representative” means any agent of the Authority designated by the Enforcement Official to implement this Ordinance, including Member Agency employees, or private contractors hired for purposes of monitoring and enforcement.
- (d) “Covered Jurisdiction” means a Member Agency of the JPA that has not opted out of coverage under **Ordinance 2012-02 or Ordinance 2016-02** this Ordinance pursuant to Section ~~98~~ of this Ordinance. **“2012 Covered Jurisdiction” means a Member Agency. “2016 Covered Jurisdiction” means a Member Agency that has not opted out of coverage under Ordinance 2016-02.**
- (e) “Customer” means any Person obtaining goods from a Store.
- (f) “Enforcement Official” means the Executive Director of the Authority or his or her authorized designee.
- (g) “Executive Director” means the individual appointed by the Authority Board to act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.
- (h) “Member Agency” means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas for the purpose of Section ~~98~~ of this Ordinance are:
 - (1) The legal boundaries of each of the 14 incorporated municipalities within Alameda County.
 - (2) The unincorporated sections of the County.

- (i) “Nonprofit Charitable Reuse Organization” means a charitable organization recognized as having Section 501 (c)(3) status by the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- (j) “Person” means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.
- (k) “Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- (l) “Primary Enforcement Representative” is the chief executive of a Covered Jurisdiction or a qualified designee who will coordinate with the Authority regarding implementation of the Ordinance. A qualified designee shall have at least two years of municipal code enforcement experience or have undergone at least the level one municipal code compliance training program of the California Association of Code Enforcement Officers, or equivalent training program approved by the Enforcement Official.
- (m) **“Produce/Product Bags” are bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale, (ii) to hold prescription medication dispensed from a pharmacy, or (iii) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Content Paper Bag.**
- (n) “Public Eating Establishment” means a restaurant, take-out food establishment or other business **(including, but not limited to, food sales from vehicles or temporary facilities open to the public)** that receives 90% or more of its revenue from the sale of **prepared and ready-to-consume** foods and/or drinks **to the public** ~~prepared on the premises.~~
- (o) “Recycled **Content** Paper Bag” means a paper bag provided by a Store to a Customer at the check stand, cash register, point of sale, or other location for the purpose of transporting food or merchandise out of the Store and that contains no oldgrowth fiber and a minimum of forty percent (40%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words “Recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.

- (p) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: 1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; 2) has a minimum volume of 15 liters; 3) is machine washable or is made from a material that can be cleaned or disinfected; 4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; 5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and 6) if made of plastic, is a minimum of at least 2.25 mils thick.
- (q) "Single-Use Carryout Bag" means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store. Single-Use Carryout Bags do not include Produce/Product Bags, ~~bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale, (ii) to hold prescription medication dispensed from a pharmacy, or (iii) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.~~
- (r) "Store" means any of the following stores located within Covered Jurisdictions:
- (1) **Within 2012 Covered Jurisdictions a** A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
 - (2) **Within 2012 Covered Jurisdictions a** A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
 - (3) **Within 2012 Covered Jurisdictions a** A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.
 - (4) **Within 2016 Covered Jurisdictions on and after May 1, 2017 the stores listed in sections 3(r)(1), (2) and (3) above and any other commercial establishment operating from a permanent enclosed structure that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer; and**

(5) Within 2016 Covered Jurisdictions on and after November 1, 2017 any Public Eating Establishment.

SECTION 4 (Carryout Bag Restrictions)

- (a) No Store shall provide a Single-Use Carryout Bag or Reusable Bag to a Customer at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store ~~after January 1, 2013~~ except as provided in this Section.
- (b) ~~On or before January 1, 2015, a~~ **A** Store may make available for sale to a Customer a Recycled **Content** Paper Bag or a Reusable Bag for a minimum price of ten cents (\$0.10).
- (c) **A Store that is a Public Eating Establishment may make available to a Customer a Recycled Content Paper Bag at no charge, or a Reusable Bag for a minimum price of ten cents (\$0.10).** ~~On or after January 1, 2015, a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of twenty five cents (\$0.25). This restriction, however, shall not apply if the Authority finds, after January 1, 2014, that the Ordinance has achieved its goal to substantially reduce the environmental impacts of the use of Single Use Carryout Bags, in which case the minimum ten cents (\$0.10) per bag price provided in Section 4(b) shall apply.~~
- (d) No Store may make available for sale a Recycled **Content** Paper Bag or Reusable Bag unless the amount of the sale of the Recycled **Content** Paper Bag and Reusable Bag is separately itemized on the sales receipt.
- (e) A Store may provide a Reusable Bag at no charge if it is distributed as part of an infrequent and limited time promotion. An infrequent and limited time promotion shall not exceed a total of 90 days in any consecutive 12 month period.
- (f) A Store may provide free Reusable Bags or free Recycled **Content** Paper Bags at the point of sale to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; **a Customer participating in Calfresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code;** and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, as necessary to carry the items purchased at the Store by each such Customer.

SECTION 5 (Permitted Bags)

Nothing in this Ordinance prohibits Customers from using bags of any type that they bring to the Store themselves or from carrying away goods that are not placed in a bag.

SECTION 6 (Exemptions)

This Ordinance does not apply to:

- (a) ~~Single-Use Carryout Bags or Reusable Bags~~ **Produce/Product Bags** distributed to Customers by food providers for the purpose of safeguarding public health and safety during the transportation of take-out foods and drinks prepared on the food provider's premises but intended for consumption at or away from the food provider's premises.
- (b) Single-Use Carryout Bags or Reusable Bags used by ~~Public Eating Establishments~~ or Nonprofit Charitable Reuse Organizations.
- (c) **Stores operating in a certified farmers' market registered in accordance with Section 47020 of the California Food and Agricultural Code.**

SECTION 7 (Recordkeeping and Inspection)

- (a) ~~Every Store shall keep complete and accurate records of the number of Recycled Paper Bags and the number of Reusable Bags purchased and sold each month at the Store during the period commencing July 1, 2012 and ending December 31, 2013. The store shall also keep complete and accurate records of the days on which free Reusable Bags are distributed pursuant to section 4(e) of this Ordinance. All records required by this Ordinance shall be available for inspection within 7 days of the Authority's request at no cost to the Authority during regular business hours by any Authority Representative authorized to enforce this Ordinance. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store address.~~
- (b) ~~The provision of false information including incomplete records or documents to the Authority shall be a violation of this Ordinance.~~
- (c) ~~Authority Representatives are authorized to conduct any other inspections reasonably necessary to further the goals of this Ordinance, subject to applicable laws.~~

SECTION 87 (Enforcement and Phasing)

- (a) **Pre-enforcement Consultation.** An enforcement action shall not be taken in any Covered Jurisdiction without written approval from the Primary Enforcement Representative of that Covered Jurisdiction. The Primary Enforcement Representative

shall provide approval or disapproval of a proposed enforcement action in a timely manner.

- (b) **Administrative Enforcement.** Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. Where an enforcement action is necessary to enforce this Ordinance, the Enforcement Official will typically issue a notice of violation as authorized in this subsection prior to taking the actions authorized pursuant to sections ~~78~~(c) or ~~78~~(d) of this Ordinance. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed for misdemeanors in Section ~~78~~(d) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine must be paid within 30 days of the notice of violation and must be deposited prior to any requested hearing. A hearing, by a hearing officer, will be held only if it is requested within 30 days of the notice of violation. Evidence may be presented at the hearing. If it is determined that no violation occurred, the amount of the fine shall be refunded within 30 days. The Authority shall serve the final order on the Person subject to the notice of violation by first class, overnight or certified mail.
- (c) **Civil Action.** Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.
- (d) **Infractions and Misdemeanors.** Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year and a fine not to exceed \$1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.
- (e) **Authorized Representatives.** Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Executive Director, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance. **Authority Representatives are authorized to conduct any inspections reasonably necessary to further the goals of this Ordinance, subject to applicable laws.**
- (f) **Phasing. Notwithstanding the foregoing inspection and enforcement authorization** ~~Enforcement of this ordinance~~ **the amendments to this ordinance adopted by Ordinance 2016-02** shall be phased on the following schedule. Prior to January 1, 2013, **the date that a type of establishment will be considered a Store, those establishments** Stores will be notified and public education and outreach activities will take place. ~~Warnings and enforcement~~ **Enforcement** actions will be

taken as needed **beginning November 1, 2017 for Stores described in Section 3(r)(4) and beginning May 1, 2018 for Stores described in Section 3(r)(5)** January 1, 2013.

SECTION 98 (Local Regulation and Opt-Out and Opt-In Provisions)

- (a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the distribution of Single-Use Carryout Bags and Reusable Bags, including more stringent requirements than those in this Ordinance.
- (b) Opt-Out Provision. Any Member Agency by a resolution of its governing body prior to ~~March 2, 2012 may choose to exclude its service area from this Ordinance~~ **December 9, 2016 may choose to exclude its service area from the amendments to Ordinance 2012-02 adopted by Ordinance 2016-02 on October 26, 2016.**
- (c) Opt-In Provision. Any Member Agency that chooses to exclude its service area may request of the Authority by a resolution of its governing board to be re- included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.
- (d) Dispute Resolution. In the event of a dispute between the Authority and a Covered Jurisdiction regarding the implementation of this Ordinance, either party may request a meeting, in which case the Enforcement Official and the Primary Enforcement Representative for the Covered Jurisdiction (or other designee of the chief executive of the Covered Jurisdiction) shall meet to discuss implementation of the Ordinance. After such meeting, the parties may agree to enter into mediation to resolve any disputes between the parties related to implementation of the Ordinance. In addition, after meeting to seek to resolve any disputes between the parties and possible mediation, the Authority Board or the governing body of the Covered Jurisdiction, with at least 30 days public notice, may by resolution choose to exclude the service area of the Covered Jurisdiction from this Ordinance.

SECTION 40 9 (Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4110 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

ATTACHMENT B

**ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY
RESOLUTION #WMA 2016 - 03**

**MOVED:
SECONDED:**

AT THE MEETING HELD SEPTEMBER 28, 2016

**RESOLUTION ADOPTING ADDENDUM TO ENVIRONMENTAL IMPACT REPORT
FOR SINGLE USE BAG REDUCTION ORDINANCE**

WHEREAS, on December 14, 2011, the Alameda County Waste Management Authority (ACWMA) certified a Final Environmental Impact Report for the Mandatory Recycling and Single Use Bag Reduction Ordinances (FEIR); and

WHEREAS, the FEIR analyzed the impacts of two ordinances: a Single Use Bag Reduction Ordinance and a Mandatory Recycling Ordinance; and

WHEREAS, the Single Use Bag Reduction Ordinance considered in the FEIR prohibited the free distribution of single use carryout paper and plastic bags at the point of sale for all retail establishments in Alameda County except public eating establishments and nonprofit charitable reuse organizations, while allowing the distribution of single use paper bags containing at least 40 percent recycled content or reusable bags for a charge of at least 10 cents; and

WHEREAS, ACWMA adopted a limited version of the single use bag ordinance evaluated in the FEIR that applies only to some retail establishments, such as grocery stores, supermarkets, convenience stores, liquor stores, and drug stores (Original Ordinance); and

WHEREAS, ACWMA now proposes to modify the Original Ordinance to apply to all retail establishments regardless of size and type (which were evaluated in the FEIR), as well as public eating establishments (which were not evaluated in the FEIR); and

WHEREAS, since adoption of the Original Ordinance, studies conducted by ACWMA have revealed new information regarding how a single use bag reduction ordinance impacts the use of paper bags, finding that the Original Ordinance did not lead to the increase in paper bag usage that was assumed in the FEIR but did result in the anticipated reduction in single use plastic bag usage; and

WHEREAS, ACWMA prepared an Addendum to the FEIR that analyzed the environmental impacts that may result from the proposed modifications to the Original Ordinance and the new information regarding the use of paper bags; and

WHEREAS, the Addendum found that the proposed modifications to the Original Ordinance would not result in any new significant environmental impacts that were not addressed in the

FEIR and will not cause any impacts to be substantially greater than were identified in the FEIR, and that neither changed circumstances nor new information reveal the modifications to the Original Ordinance would have any significant impacts not considered in the FEIR or result in increases in the severity of any impacts identified in the FEIR.

NOW THEREFORE, BE IT RESOLVED, by the Alameda County Waste Management Authority:

1. ACWMA hereby finds that the foregoing recitals are true and correct; and
2. ACWMA hereby certifies that it has independently reviewed and considered the Addendum to the Final Environmental Impact Report for the Mandatory Recycling and Single Use Bag Reduction Ordinances, and the Addendum reflects the independent judgment and analysis of the ACWMA; and
3. ACWMA hereby finds that the proposed modifications to the Original Ordinance would not result in any new significant environmental impacts that were not addressed in the FEIR and will not cause any impacts to be substantially greater than were identified in the FEIR, and that neither changed circumstances nor new information reveal the modifications to the Original Ordinance would have any significant impacts not considered in the FEIR or result in increases in the severity of any impacts identified in the FEIR; and
4. ACWMA hereby adopts the Addendum to the Final Environmental Impact Report for the Mandatory Recycling and Single Use Bag Reduction Ordinances.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAINED:

Wendy Sommer
Executive Director



BACKGROUND

Reusable Bag Ordinance 2012-2 went into effect January 2013 and applies to 1,300 grocery, drug and liquor stores in Alameda County that traditionally distribute a high volume of single-use bags. The ordinance promotes the use of reusable bags to prevent waste from happening in the first place, as well as reducing litter and keeping plastic bags out of local waterways.

Ordinance Requirements

As of January 1, 2013, affected stores can only distribute compliant reusable bags or bags made of recycled content paper and only if the store charges a minimum price of 10 cents per bag, itemized on the receipt.

Ordinance Effectiveness

Since implementation, the reusable bag ordinance has had dramatic results:

- Overall bag purchases by affected Alameda County retail stores have **declined by 85 percent**.
- The number of shoppers bringing a reusable bag, or not using a bag at all, has more than **doubled**.
- A 44% decrease in plastic bags found in Alameda County Storm drains.
- Stores are participating with a compliance rate of 90%.

Ordinance Expansion

Given the effectiveness of the current ordinance, the Waste Management Authority (WMA) Board has directed staff to plan for an expansion of the reusable bag ordinance to include all retail stores and restaurants. The WMA is expected to vote on an amended ordinance at the first reading in September, 2016. If approved, an additional 13,000 stores and restaurants would be affected by the ordinance.

TIMELINE

<u>January 2012</u>	Reusable Bag Ordinance 2012-2 adopted by WMA Board. The ordinance covers approximately 1300 stores that sell packaged food and liquor. Board stated it would consider possible expansion of the ordinance at a later time, once effectiveness of original ordinance was determined.
<u>January 2013</u>	Ordinance became effective in all Alameda County jurisdictions. Single-use plastic bags no longer available at stores that sell milk, bread, soda, and snack foods as well and/or liquor. A minimum of 10 cents must be charged for each paper bag or reusable bag distributed at point of sale, itemized on receipt.
<u>September 2014</u>	WMA Board finds that ordinance has achieved its goal to substantially reduce environmental impacts.
<u>October 2014</u>	WMA Board approved process for expansion activities; directed staff to further develop budget and scope for potential expansion of the ordinance. WMA supported the need for buy in from <i>all</i> member agencies that participate in the current ordinance.
<u>March 2015</u>	Alameda County Clean Water Program committed \$180,000 in funding support for expansion of ordinance to a larger set of stores.
<u>July 2015</u>	WMA committed additional funding and staff hours to conduct research and stakeholder outreach relating to ordinance expansion activities.

<u>December 2015</u>	WMA Board directed staff to develop budget and draft ordinance language to expand to all retail stores (9,000 additional stores) and restaurants (4,000 public eating establishments), with a phase-in approach for restaurants.
<u>March 2016</u>	WMA approved the proposed reusable bag ordinance expansion language.

ORDINANCE AMENDMENTS

Revised definitions:

Store: Any commercial establishment operating from a permanent enclosed structure that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer. (Intent: to capture all types of retail stores. Any place where you can walk into a “brick and mortar” store and purchase a tangible item is covered by the ordinance).

Public Eating Establishment: Any restaurant, take-out food establishment or other business (including but not limited to food sales from vehicles or temporary facilities open to the public) that receive 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public. (Intent: to cover food trucks and vendors who distribute food in bags)

Exemptions:

Produce/Product Bags: bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale, (ii) to hold prescription medication dispensed from a pharmacy, or (iii) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Content Paper Bag.

Stores operating in a certified farmers’ market registered in accordance with Section 47020 of the California Food and Agricultural Code. (Only 20 CA certified markets operate in the county, and many use the produce bags without handles, which are already exempt)

Public Eating Establishments are not required to charge customers if distributing recycled content *paper* bags, but must charge a minimum of 10 cents for a compliant reusable bag.

Other Changes:

Recordkeeping requirements for bag sales and purchasing are removed.

Switch routine inspections to complaint-based inspection only.

NEXT STEPS

<u>April - July 2016</u>	Staff available to attend or present (upon request) to member agency governing boards to provide overview of ordinance revisions.
<u>September 2016</u>	Ordinance introduced and first reading by WMA Board, approval of EIR Addendum
<u>October 2016</u>	Ordinance second reading and adoption by WMA Board. All member agencies automatically opted in.
<u>December 2016</u>	Any member agency choosing to opt out must do so by a resolution of its governing body by December 9, 2016.
<u>May 2017</u>	Ordinance effective for expanded retail stores.
<u>November 2017</u>	Ordinance effective for all restaurants.

Please contact Meri Soll at 510/891-6500 or msoll@stopwaste to schedule a presentation or for more information.

**Addendum to the
Final Environmental Impact Report
ATTACHMENT D**

**Mandatory Recycling and
Single Use Bag Reduction
Ordinances**

State Clearinghouse # 2011042012



August 2016

ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE MANDATORY RECYCLING AND SINGLE USE BAG REDUCTION ORDINANCES

August 2016

1.0 PURPOSE OF ADDENDUM

The California Environmental Quality Act (CEQA) recognizes that between the date an environmental document is completed and the date the project is fully implemented, one or more of the following changes may occur: 1) the project may change; 2) the environmental setting in which the project is located may change; 3) laws, regulations or policies may change in ways that impact the environment; and/or 4) previously unknown information can arise. Before proceeding with a project, CEQA requires the Lead Agency to evaluate these changes to determine whether or not they affect the conclusions in the environmental document.

In 2011, the Alameda County Waste Management Authority (ACWMA) certified the Final Environmental Impact Report (2011 FEIR) for the Mandatory Recycling and Single Use Bag Reduction Ordinances (SCH #2011042012). The 2011 FEIR analyzed the environmental impacts resulting from adoption of two ordinances: 1) a Mandatory Recycling Ordinance that would require all Alameda County single-family, multi-family, and commercial generators to segregate recyclable and organic materials for recovery, and 2) a Single Use Bag Reduction Ordinance that would prohibit the free distribution of single use carryout paper and plastic bags at the point of sale for all retail establishments in Alameda County except public eating establishments and nonprofit charitable reuse organizations, while allowing the distribution of single use paper bags containing at least 40 percent recycled content or reusable bags for a charge of at least 10 cents. The ACWMA adopted a limited version of the Single Use Bag Reduction Ordinance evaluated in the 2011 FEIR that only applies to some retail establishments, such as grocery stores, supermarkets, convenience stores, liquor stores, and drug stores.

Since certification of the 2011 FEIR and approval of the Ordinances, changes to the Single Use Bag Reduction Ordinance have been proposed, which are the subject of this Addendum. In addition, studies conducted since adoption of the Single Use Bag Ordinance have revealed new information regarding how a single use bag reduction ordinance impacts the use of paper bags. The purpose of this Addendum is to analyze the impacts which may result from the modified ordinance and new information (see Section 2.0, *Description of the Proposed Changes to the Project*, Section 3.0, *New Information*).¹The CEQA Guidelines Section 15162 states that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project

¹ As described elsewhere in this Addendum, the 2011 FEIR analyzed the impacts of an ordinance that applied to all retail establishments in the County. The assessment of impacts in this Addendum, therefore, focuses on impacts that may result from modifying the ordinance to also apply to public eating establishments.

unless the Lead Agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
 - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA Guidelines Section 15164 states that the Lead Agency or a Responsible Agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in 15162 calling for preparation of a subsequent EIR have occurred.

2.0 DESCRIPTION OF THE PROPOSED CHANGES TO THE PROJECT

2.1 Summary of Previously Approved Project

The 2011 FEIR analyzed the environmental impacts resulting from adoption of a Single Use Bag Reduction Ordinance that would prohibit the free distribution of single use carryout paper and plastic bags at the point of sale for all retail establishments in Alameda County except public eating establishments and nonprofit charitable reuse organizations, while allowing the distribution of compliant single use paper bags or reusable bags for a charge of at least 10 cents. The 2011 FEIR recognized that compliant reusable bags may include a thicker more durable plastic bag.

The ACWMA adopted a limited version of the Single Use Bag Reduction Ordinance analyzed in the 2011 FEIR that applied only to the following categories of retail establishments in the County:

- (1) Within 2012 Covered Jurisdictions: A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
- (2) Within 2012 Covered Jurisdictions: A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
- (3) Within 2012 Covered Jurisdictions: A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

With the specifications listed above, the adopted ordinance is currently applicable to roughly 1,300 of the approximately 10,300 retail establishments located in both incorporated and unincorporated areas in the County.

2.2 Proposed Changes to the Approved Project

The ACWMA proposes to modify the ordinance to apply to all retail establishments, regardless of size (as evaluated in the 2011 FEIR initially), as well as public eating establishments (which were not evaluated in the 2011 FEIR). With the new proposed language, the modified ordinance would apply to all retail establishments listed below:

- (1) Within 2016 Covered Jurisdictions on and after May 1, 2017: The stores listed in sections 2.1 (1), (2) and (3) above and any other commercial establishment operating from a permanent enclosed structure that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer; and
- (2) Within 2016 Covered Jurisdictions on and after November 1, 2017: Any Public Eating Establishment.

“Public Eating Establishment” means a restaurant, take-out food establishment or other business (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that receives 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public.

The modifications to the ordinance would effectively expand its applicability to include all of the roughly 10,300 retail establishments and 4,000 public eating establishments in Alameda County. Public eating establishments would not be required to charge for paper bags distributed to customers, but would be required to charge at least ten cents for any reusable bag.

3.0 NEW INFORMATION

Subsequent to adoption and implementation of the ordinance, data was collected by the ACWMA to determine its effectiveness. To assess consumer behavior change, ACWMA staff conducted visual observations of customers at a sample of affected retail stores before and after the ordinance went into effect. Staff observed shoppers leaving retail stores for one hour and counted the number and type of bags, or lack of a bag, that customers used to carry their purchases. Observations were made at 17 stores for the years 2012 (pre-ordinance) through 2015 (post-ordinance). The stores included a variety of store types such as grocery, pharmacy, convenience and big box stores throughout Alameda County. As shown in Table 3.0-1 below, contrary to the assumption in the 2011 FEIR that single use paper bag use could increase substantially as a result of the ordinance, the surveys found that the use of single use paper bags increased only slightly (4.9 percent) in 2013, and returned to pre-ordinance levels by 2015. Additionally, the use of cloth or cloth-like reusable bags steadily increased each year after implementation of the ordinance, reaching a 210 percent increase in 2015 compared to pre-ordinance levels. The percentage of customers utilizing no bag followed a similar pattern, increasing by 280 percent by 2015.

Year	Single Use Plastic Bags	Single Use Paper Bags	Cloth-Like Reusable Bags	No Bag
2013	- 100%	+ 4.9%	+ 151%	+ 157%
2014	- 100%	+ 2.4%	+ 190%	+ 199%
2015	- 100%	+/- 0%	+ 210%	+ 280%

To measure change in bag purchasing activities by affected stores, ACWMA staff collected data from five different types of large and small “chain” stores with a presence in Alameda County for the years 2012 through 2015. Chain stores were comprised of a variety of store types: pharmacy, grocery, gas station markets, and big box stores. Purchasing data for an average of 70 stores across the five chain stores was compiled for each given year. As shown in Table 3.0-2, below, stores surveyed ceased purchasing single use plastic bags after 2012, when the ordinance was implemented. Additionally, contrary to the assumption in the 2011 FEIR that single use paper bag use could increase as a result of the ordinance, purchases of single use paper bags by stores actually decreased after implementation of the ordinance, indicating a reduction in demand from customers.

Year	Single Use Plastic Bags	Single Use Paper Bags
2012 (Pre-Ordinance)	36,802,300	13,173,800
2013	0	8,334,000
2014	0	7,853,059
2015	0	8,117,721

While the data on customer behavior and store purchasing patterns runs contrary to the assumptions in the 2011 FEIR regarding the potential negative consequences of the ordinance, other data collected by the ACWMA indicates that some of the positive outcomes of the ordinance assumed in the 2011 FEIR have come to pass. For example, the ACWMA partnered with the Alameda Countywide Clean Water Program to conduct an Alameda Countywide Storm Drain Trash Monitoring and Characterization Study. One of the goals of the study was to assess the effectiveness of the ordinance by evaluating the rate at which plastic bags were observed in storm drains fitted with storm drain capture devices prior to and after the ordinance became effective. The number of bags observed during this study (conducted in 2014) was significantly less than the number observed in a similar 2011 study conducted for the Bay Area Stormwater Management Agencies Association (BASMAA). Plastic bags found in storm drains decreased by roughly 44 percent, indicating that the ordinance has been successful in reducing single use plastic bag litter.

The results described above are corroborated by data collected in the nearby City of San Jose, which implemented a similar bag reduction ordinance in 2012. Litter surveys demonstrated a reduction in bag litter of approximately 62 percent in the storm drain system, 60 percent in the creeks and rivers, and 59 percent in City streets and neighborhoods, when compared to data collected prior to implementation of the ordinance. Observational surveys of store customers showed that reusable bag use increased greatly following the implementation of the ordinance, from almost four percent of bags observed to approximately 62 percent of bags observed. In addition, the percentage of customers that chose not to use a bag, and instead carry items by hand, more than doubled. The overall impact was that the average number of single-use bags used per customer decreased from three bags to 0.3 bags per visit following the implementation of the ordinance. Results from store observations reflect that the ordinance has had the intended effect of reducing the use of single-use bags.^{2,3}

Based on the real-world outcomes of the bag reduction ordinances in Alameda County and the City of San Jose, where the use of single use plastic bags was essentially eliminated in affected retail establishments, the use of single use paper bags did not increase substantially, and the percentage of customers utilizing reusable bags or no bag at all increased dramatically, it can be reasonably inferred that the positive impacts identified in the 2011 FEIR resulting from the elimination of plastic bags in the County were achieved, while the negative impacts identified in the 2011 FEIR resulting from a potential increase in the use of paper bags were largely avoided.

² City of San Jose. Memorandum to Transportation and Environment Committee – Subject: Bring Your Own Bag Ordinance Implementation Results and Actions to Reduce EPS Foam Food Ware. November 20, 2012. Available at: http://www3.sanjoseca.gov/clerk/CommitteeAgenda/TE/20121203/TE20121203_d5.pdf.

³ City of San Jose, Memorandum to Honorable Mayor and City Council – Subject: Amendment to the Single-Use Carryout Bag Regulations. September 12, 2013. Available at: <http://sanjoseca.gov/DocumentCenter/View/21329>.

4.0 ENVIRONMENTAL IMPACTS OF THE PROPOSED CHANGES TO THE PROJECT

The discussion below describes the environmental impacts of the modified project, as they compare with the impacts of the previously evaluated project in the 2011 FEIR and the approved project, which was a limited version of the project evaluated in the 2011 FEIR. This Addendum only addresses those resource areas that would be potentially negatively affected by the proposed changes to the previously evaluated project and limited-scale approved project.

The negative environmental effects of the Single Use Bag Reduction Ordinance are primarily associated with a potential increase in paper bag manufacturing, transport, and disposal, and the positive effects are associated with a reduction in plastic bag manufacturing, transport, and disposal, including litter. The revisions to the project would have no effect or would result in a reduction in impacts in regards to the following environmental issues, either because the impact area is not affected by an increase in paper bag use, or because a further reduction in plastic bag use would have beneficial effects:

- Aesthetics
- Agricultural and Forestry Resources
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Land Use
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation

Impacts in these areas would be consistent with those disclosed in the 2011 FEIR, and no further discussion is warranted.

The revised project expands the number of establishments (i.e. public eating establishments) subject to the Single Use Bag Reduction Ordinance, resulting in a potential increase in the distribution of single use paper bags in lieu of single use plastic bags in the County. This Addendum, therefore, focuses on the potential negative effects of an increase in paper bag usage compared to the analysis in the 2011 FEIR, and evaluates the impacts of the revised project in regards to the following environmental issues:

- Air Quality
- Biological Resources
- Greenhouse Gas Emissions
- Hydrology and Water Quality
- Transportation
- Utilities and Service Systems
- Energy
- Cumulative Impacts

4.0.1 Methodology

To analyze the environmental impacts of the Single Use Bag Reduction Ordinance, the 2011 FEIR relied on estimates of pre-ordinance usage of single use paper and plastic bags, then applied data from other jurisdictions that previously implemented bag reduction ordinances, as well as survey results from local residents, to estimate the change in bag usage that would occur as a result of the ordinance. Data from various scientific studies on the relative environmental impacts related to the

manufacture, distribution, and disposal of individual paper, plastic, and reusable bags was then applied to the projected bag usage totals to help determine the environmental impacts of the proposed ordinance compared to existing conditions.

The 2011 FEIR estimated that, prior to the ordinance, approximately 763,993,000 single use plastic bags and 104,181,000 single use paper bags were distributed annually in Alameda County. Based on data from other jurisdictions and survey results from local residents, the 2011 FEIR estimated that the proposed ordinance would result in 65 percent of people using a reusable bag or no bag at retail establishments, while 35 percent would pay the 10 cent charge for a paper bag. It was also assumed that public eating establishments and nonprofit charitable reuse organizations accounted for five percent of the overall number of single use bags distributed in the County. Since those establishments would be exempt from the ordinance, it was assumed that five percent, or 38,200,000, of the 763,993,000 single use plastic bags distributed annually in the County would continue to be distributed after implementation of the ordinance. Using these assumptions, the 2011 FEIR estimated that the ordinance would result in an annual reduction in the distribution of single use plastic bags of 725,793,000 (rounded to 726 million in the 2011 FEIR text). The 2011 FEIR also estimated that the ordinance would result in a maximum annual increase in the distribution of single use paper bags of up to 101,634,000 (rounded to 102 million in the 2011 FEIR text).

As described previously, although the ACWMA ultimately adopted a Single Use Bag Reduction Ordinance that applied to a limited number of retail establishments in the County, the 2011 FEIR analyzed the environmental impacts resulting from an ordinance that applied to all retail establishments. Therefore, the impacts of the proposed modification to the ordinance to expand its applicability to all retail establishments in the County were analyzed in the 2011 FEIR. As shown by the data collected after implementation of the ordinance (refer to Section 3.0, *New Information*), the analysis in the 2011 FEIR represents an overly conservative assessment of impacts resulting from the ordinance in that it assumed a substantial increase in the usage of single use paper bags of 98 percent, which has not occurred. The 2011 FEIR, therefore, fully analyzed the environmental impacts that could result from the proposed expansion of the ordinance to cover all retail establishments in the County, and no further analysis is required in this area.

The 2011 FEIR did not, however, analyze the environmental impacts of a Single Use Bag Reduction Ordinance that would apply to public eating establishments. The analysis in this Addendum, therefore, focuses on potential impacts associated with a change in the nature of bag usage at public eating establishments in Alameda County.

Unlike retail establishments covered by the existing ordinance, under the proposed ordinance, public eating establishments would not be required to charge a 10 cent fee for single use paper bags distributed to customers. Additionally, the nature of purchases at public eating establishments differs from those at retail establishments in that takeout food is often bagged either prior to the customer's arrival or in the back of the house, and customers might be more averse to using reusable bags for freshly prepared food out of concerns that the food might spill and soil the bag. The analysis in this Addendum, therefore, conservatively assumes that the proposed modification to the ordinance would result in a replacement of the use of plastic bags to the use of paper bags in public eating establishments in the County at a 1:1 ratio. As described previously, the 2011 FEIR assumed that public eating establishments and nonprofit charitable reuse organizations, which were exempt from the proposed ordinance, accounted for five percent of pre-

ordinance single use plastic bag distribution. To be conservative, this Addendum assumes that the entire five percent, or 38,200,000 bags annually, is attributable to public eating establishments, and that the proposed modification to the ordinance would result in a reduction of 38,200,000 single use plastic bags along with a corresponding increase of 38,200,000 single use paper bags distributed annually in the County. This assumption is likely overly conservative because less than 20 percent of the public eating establishments in the County are take-out establishments that regularly utilize single use bags to package food given to customers. The remainder of the public eating establishments are sit-down restaurants where single use bags are utilized much less frequently. Additionally, some of the take-out establishments already utilize single use paper bags as the primary means of packaging, and would not increase their use of single use paper bags as a result of the proposed modifications to the ordinance.

The change in bag usage associated with the proposed modifications to the ordinance described above was not analyzed in the 2011 FEIR, and the environmental impacts that may result are discussed below. The analysis utilizes the same methodologies and source materials that were used in the 2011 FEIR to determine impacts on a per-bag basis, where applicable.

4.1 AIR QUALITY

Air quality impacts related to carryout bags include the release of emissions during the manufacturing, transport, and disposal processes. Various life cycle assessments (LCAs) of shopping bags have been completed in support of bag regulation policies worldwide, and many of them were consulted during the preparation of the 2011 FEIR. Most LCAs try to account for air emissions during all stages of product life, from product creation to disposal. While LCAs do not have consistent methodologies, and frequently use assumptions that differ from each other, and from local conditions, they provide a useful means to quantify emissions associated with any increase in the use of single use paper bags. Based on data from LCAs and the projected changes in bag usage resulting from the proposed ordinance, the 2011 FEIR estimated that the project (as applied to all retail establishments) could result in overall annual reductions in emissions of nitrous oxides (NO_x) by seven tons and carbon monoxide (CO) by 40 tons, and an overall annual increase in emissions of sulfur oxides (SO_x) by 24 tons, all of which are classified as criteria pollutants by the US EPA.

The emissions resulting from the project would occur in the locations where paper bags are manufactured, along roadways on which they are transported, and at facilities where they are recycled or disposed of, all of which are dispersed over large geographic areas and multiple air basins. As a result, the 2011 FEIR made the following determination regarding air quality impacts of the proposed ordinance:

Impact AQ-3: Although an increase in certain air quality emissions from increased paper bag manufacturing could occur as a result of the ordinance, these emissions would be dispersed throughout the country in the various locations where paper bags are manufactured. There is no evidence to suggest these emissions would occur in any one location in amounts that would conflict with or obstruct implementation of an applicable air quality plan, violate any air quality standard or contribute substantially to an existing or projected air quality violation, or result in a

cumulatively considerable net increase of any criteria pollutant for which the project region is classified as non-attainment under an applicable federal or state ambient air quality standard including releasing emissions which exceed quantitative thresholds for ozone precursors. (Less Than Significant Impact)

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. The 2011 FEIR assumed an annual increase in the distribution of single use paper bags of up to 101,634,000, and analyzed the environmental impacts of such a scenario. Because this increase never materialized, and the corresponding negative impacts never occurred, the impacts associated with a potential increase of 38,200,000 single use paper bags resulting from the proposed modification to the ordinance would fall well within the impacts already identified in the 2011 FEIR. The proposed changes to the project, therefore, would not result in any new or more significant air quality impacts than those identified in the 2011 FEIR. **[Same Impact as Approved Project (Less Than Significant Impact)]**

In addition to analyzing the environmental impacts associated with the proposed modifications to the ordinance assuming only a negligible increase in paper bag usage from the original ordinance, this addendum also considers the potential environmental impacts of the proposed modifications of the ordinance assuming paper bag use does increase. Applying the same conservative analytical scenario that was used in the 2011 FEIR, which assumed that post ordinance paper bag use would increase, an additional 38,200,000 increase in paper bags *could* occur as a result of the proposed modification to the ordinance to include public eating establishments.

Based on data from LCAs utilized in the 2011 FEIR, under this scenario, accounting for the corresponding decrease in single use plastic bag distribution, emissions of SO_x, CO, and NO_x associated with manufacturing, transporting, and disposing of paper bags could all increase compared to what was assumed in the 2011 FEIR. SO_x emissions could increase by 23 tons for a net increase of 47 tons, CO emissions could increase by two tons for a net decrease of 38 tons, and NO_x emissions could increase by nine tons for a net increase of two tons.

Despite the potential increases in emissions described above, the conclusion of the 2011 FEIR would still apply to the modified ordinance even under this extremely conservative scenario, since there is no evidence to suggest these emissions would occur in any one location in amounts that would conflict with or obstruct implementation of an applicable air quality plan, violate any air quality standard or contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase of any criteria pollutant for which the project region is classified as non-attainment under an applicable federal or state ambient air quality standard including releasing emissions which exceed quantitative thresholds for ozone precursors.

4.2 BIOLOGICAL RESOURCES

The 2011 FEIR determined that an increase in paper bag use resulting from the ordinance could result in an increase in trees cut down for virgin material to manufacture the paper bags. Although most trees used for paper bag manufacturing are grown for the purpose of harvesting, an increase in paper bag demand in Alameda County might cause trees to be harvested sooner than they would otherwise have been used. The plantations where these trees are harvested, however, are replanted and new trees grown to replace them. While the short term loss of trees is a negative impact, this increase is a relatively minor increase in wood used for commercial paper manufacturing, should the increased demand in the County occur. The habitat loss and any associated impacts to biological resources resulting from this incremental addition to tree removal would be short term, relatively minor, and would not be a significant impact. For these reasons, the 2011 FEIR reached the following conclusion:

Impact BIO-4: Any increased tree removal resulting from an increased use of paper bags would not result in significant biological resources impacts based on the thresholds identified at the beginning of this section. (Less Than Significant Impact)

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. The 2011 FEIR assumed an annual increase in the distribution of single use paper bags of up to 101,634,000, and analyzed the environmental impacts of such a scenario. Because this increase never materialized, and the corresponding negative impacts never occurred, the impacts associated with a potential increase of 38,200,000 single use paper bags resulting from the proposed modification to the ordinance would fall well within the impacts already identified in the 2011 FEIR. The proposed changes to the project, therefore, would not result in any new or more significant impacts to biological resources than those identified in the 2011 FEIR. **[Same Impact as Approved Project (Less Than Significant Impact)]**

In addition to analyzing the environmental impacts associated with the proposed modifications to the ordinance assuming only a negligible increase in paper bag usage from the original ordinance, this addendum also considers the potential environmental impacts of the proposed modifications of the ordinance assuming paper bag use does increase. Applying the same conservative analytical scenario that was used in the 2011 FEIR, which assumed that post ordinance paper bag use would increase, an additional 38,200,000 increase in paper bags *could* occur as a result of the proposed modification to the ordinance to include public eating establishments.

If significant additional paper bag usage did occur as a result of adding public eating establishments to the affected store set, additional tree removal for paper bag manufacturing may occur. However, trees utilized in commercial paper manufacturing are primarily grown for the purpose of harvesting, and are replanted with replacement trees. As described in the 2011 FEIR, the habitat loss and any

associated impacts to biological resources resulting from this incremental addition to tree removal would be short term, relatively minor, and would not be a significant impact.

4.3 GREENHOUSE GAS EMISSIONS

The 2011 FEIR determined that, even using the most conservative assumptions, there could be a net annual reduction in greenhouse gas emissions of 11,000 tons of CO₂e compared to existing conditions with the reduction in plastic bag use and the anticipated increase in paper bag use, and made the following impact determination:

Impact GHG-3: The proposed ordinance would result in a net reduction in greenhouse gas emissions related to the manufacture and use of carryout bags. (Beneficial Impact)

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. The 2011 FEIR assumed an annual increase in the distribution of single use paper bags of up to 101,634,000, and analyzed the environmental impacts of such a scenario. Because this increase never materialized, and the corresponding negative impacts never occurred, the impacts associated with a potential increase of 38,200,000 single use paper bags resulting from the proposed modification to the ordinance would fall well within the impacts already identified in the 2011 FEIR. The proposed changes to the project, therefore, would not result in any new or more significant impacts than those identified in the 2011 FEIR, which found that the project would result in a net reduction in greenhouse gas emissions. **[Same Impact as Approved Project (Beneficial Impact)]**

In addition to analyzing the environmental impacts associated with the proposed modifications to the ordinance assuming only a negligible increase in paper bag usage from the original ordinance, this addendum also considers the potential environmental impacts of the proposed modifications of the ordinance assuming paper bag use does increase. Applying the same conservative analytical scenario that was used in the 2011 FEIR, which assumed that post ordinance paper bag use will increase, an additional 38,200,000 increase in paper bags *could* occur as a result of the proposed modification to the ordinance to include public eating establishments. This could result in an increase in greenhouse gas emissions of 2,000 tons of CO₂e per year compared to the previously evaluated project. The project as a whole, however, would still result in a net decrease in greenhouse gas emissions of 9,000 tons of CO₂e per year compared to conditions without the ordinance in effect.

4.4 HYDROLOGY AND WATER QUALITY

The paper bag manufacturing process requires more water than the plastic bag manufacturing process. As a result, the 2011 FEIR determined that the ordinance could result in an increased use of fresh water, should an increase in paper bag use occur. This increase in water use would likely occur at various pulp and paper manufacturing plants that would supply the bags that might be sold in Alameda County. It is not known where these plants are located, but they are likely dispersed throughout the western U.S., if not the entire U.S. and parts of Canada. Paper manufacturing plants that require substantial quantities of water are typically located in areas that have appropriate water supplies. Modern plants reuse incoming water multiple times, according to representatives of the paper industry, and clean it up between uses and prior to discharge. An incremental increase in water use at various paper plants, therefore, would not be likely to result in a significant environmental impact.

The 2011 FEIR also determined that incremental increases in water quality impacts would not result in a significant impact at paper bag manufacturing plants that meet current national Clean Water Act standards for water discharged back into the environment, and the following conclusion was reached:

Impact HYD-4: Incremental and temporary increases in water quality impacts related to increased paper manufacturing, should they occur as a result of this ordinance, would not be significant at a paper bag manufacturing plant that meets current national Clean Water Act standards for water discharged back into the environment. (Less Than Significant Impact)

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. The 2011 FEIR assumed an annual increase in the distribution of single use paper bags of up to 101,634,000, and analyzed the environmental impacts of such a scenario. Because this increase never materialized, and the corresponding negative impacts never occurred, the impacts associated with a potential increase of 38,200,000 single use paper bags resulting from the proposed modification to the ordinance would fall well within the impacts already identified in the 2011 FEIR. The proposed changes to the project, therefore, would not result in any new or more significant hydrology and water quality impacts than those identified in the 2011 FEIR. **[Same Impact as Approved Project (Less Than Significant Impact)]**

In addition to analyzing the environmental impacts associated with the proposed modifications to the ordinance assuming only a negligible increase in paper bag usage from the original ordinance, this addendum also considers the potential environmental impacts of the proposed modifications of the ordinance assuming paper bag use does increase. Applying the same conservative analytical scenario that was used in the 2011 FEIR, which assumed that post ordinance paper bag use would increase, an additional 38,200,000 increase in paper bags *could* occur as a result of the proposed modification to the ordinance to include public eating establishments.

If significant additional paper bag usage did occur as a result of adding public eating establishments to the affected store set, the project could result in additional water usage at paper manufacturing plants. This increase would represent a negligible percentage of overall paper manufactured in the U.S. Given this negligible increase in the amount of water usage, the fact that the use of water would be distributed throughout the western United States, and that paper manufacturing plants would adhere to Clean Water Act standards for water discharged back into the environment, the proposed modifications to the ordinance would result in a less than significant impact on water supply and water quality.

4.5 TRANSPORTATION

The 2011 FEIR determined that the proposed ordinance could lead to an increase in the frequency of truck trips needed to deliver a greater number of single use paper carryout bags to Alameda County. Any increase in truck trips related to paper bag delivery would be at least partially offset by a substantial reduction in truck trips related to single use plastic carryout bag delivery, and any net increase in truck traffic resulting from the change in bag use would be negligible.

The 2011 FEIR consulted three EIRs completed for similar single use bag reduction ordinances in the Cities of San Jose and Santa Monica, and the County of Los Angeles to determine the potential increase in truck trips that could result from the ordinance. Using the County of Los Angeles estimate, which was the most conservative, and adjusting the total to reflect the population of Alameda County, the 2011 FEIR determined that the proposed ordinance could result in approximately five new trucks trips per day. These trips would be spread throughout Alameda County.

In reality, since bags are delivered in mixed loads of merchandise, there would probably be no more truck trips necessary to deliver paper bags. Other mechanisms, such as including single use paper bags in deliveries more frequently or increasing routing efficiencies could be used.

For the purposes of this project, a transportation impact is considered significant if it does not conform to Alameda County's LOS standard. Project traffic impacts are measured against existing traffic volumes on the existing transportation roadway network in conformance with CEQA. The 2011 FEIR determined that, considered under the criteria of the County's LOS standard, any increased traffic generated by the proposed single use bag reduction ordinance would be minimal and would not exceed the established threshold required for preparing a Traffic Impact Analysis (*i.e.*, it would not generate a substantial increase in peak hour traffic), and that the project conforms to the County's transportation policies. The 2011 FEIR reached the following conclusion:

Impact TRANS-3: No significant increase in traffic would occur as a result of adoption of the proposed ordinance to reduce the use of single use bags in Alameda County. No significant impacts were identified to any element of the transportation system. (Less Than Significant Impact)

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. The 2011 FEIR assumed an annual increase in the distribution of single use paper bags of up to 101,634,000, and analyzed the environmental impacts of such a scenario. Because this increase never materialized, and the corresponding negative impacts never occurred, the impacts associated with a potential increase of 38,200,000 single use paper bags resulting from the proposed modification to the ordinance would fall well within the impacts already identified in the 2011 FEIR. The proposed changes to the project, therefore, would not result in any new or more significant transportation impacts than those identified in the 2011 FEIR. **[Same Impact as Approved Project (Less Than Significant Impact)]**

In addition to analyzing the environmental impacts associated with the proposed modifications to the ordinance assuming only a negligible increase in paper bag usage from the original ordinance, this addendum also considers the potential environmental impacts of the proposed modifications of the ordinance assuming paper bag use does increase. Applying the same conservative analytical scenario that was used in the 2011 FEIR, which assumed that post ordinance paper bag use would increase, an additional 38,200,000 increase in paper bags *could* occur as a result of the proposed modification to the ordinance to include public eating establishments.

If significant additional paper bag usage did occur as a result of adding public eating establishments to the affected store set, the project could result in an additional two truck trips per day, for a total of seven truck trips added to roadways in Alameda County as a result of the project. These minimal additional truck trips would not result in a significant impact.

4.6 UTILITIES AND SERVICE SYSTEMS

The analysis of the project's effects on Utilities and Service Systems in the 2011 FEIR focused on impacts to water supply and wastewater, stormwater and drainage, and solid waste. The effects of the proposed modification to the ordinance on water supply and wastewater are discussed in Section 3.4, above. The 2011 FEIR determined that the proposed ordinance would have a beneficial impact in the area of stormwater and drainage due to the reduction in plastic bag litter that would occur as a result of the project. The proposed modification to the ordinance would result in the same beneficial impact by removing even more plastic bags from the County that might end up as litter entering the storm drainage system.

In the area of solid waste, the 2011 FEIR determined that the project could have a negative effect related to an increase in paper bag usage. The paper bag lifecycle produces more solid waste than plastic bags, partly because more solid waste is produced during paper manufacture and partly because the bag creates a greater weight of solid waste at the end of its lifetime simply by being heavier than an equivalent plastic bag. As a result, the 2011 FEIR estimated that the ordinance

could lead to a slight increase in solid waste entering landfills and the County's recycling system in the form of paper bags. Paper bags, however, are more easily handled by the County's recycling system than plastic bags, and recycled paper bags offer a greater market value than recycled plastic bags, increasing the likelihood of post-consumer use. The 2011 FEIR determined that landfills and recycling facilities in the County have adequate capacity to accommodate a potential increase in paper bags being disposed of or recycled as a result of the ordinance, and reached the following conclusion:

Impact UTIL-3: The proposed ordinance would not result in any significant utilities and service systems impacts, based on the thresholds identified at the beginning of this section. (Less Than Significant Impact)

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. The 2011 FEIR assumed an annual increase in the distribution of single use paper bags of up to 101,634,000, and analyzed the environmental impacts of such a scenario. Because this increase never materialized, and the corresponding negative impacts never occurred, the impacts associated with a potential increase of 38,200,000 single use paper bags resulting from the proposed modification to the ordinance would fall well within the impacts already identified in the 2011 FEIR. The proposed changes to the project, therefore, would not result in any new or more significant impacts to utilities and service systems than those identified in the 2011 FEIR. **[Same Impact as Approved Project (Less Than Significant Impact)]**

In addition to analyzing the environmental impacts associated with the proposed modifications to the ordinance assuming only a negligible increase in paper bag usage from the original ordinance, this addendum also considers the potential environmental impacts of the proposed modifications of the ordinance assuming paper bag use does increase. Applying the same conservative analytical scenario that was used in the 2011 FEIR, which assumed that post ordinance paper bag use would increase, an additional 38,200,000 increase in paper bags *could* occur as a result of the proposed modification to the ordinance to include public eating establishments.

If significant additional paper bag usage did occur as a result of adding public eating establishments to the affected store set, the project could result in additional paper bags entering landfills or being processed in the County's recycling or composting system. This potential increase would be spread throughout various locations in the County, and no single landfill, composting, or recycling facility would receive a substantially greater amount of paper in relation to existing throughput. The existing solid waste system in the County has adequate capacity to accommodate the potential increase in paper bag disposal and recycling that could result from the proposed modification to the ordinance, and no new or modified facilities would be needed, resulting in a less than significant impact.

4.7 ENERGY

Based on the LCAs consulted in preparation of the 2011 FEIR, the life cycle of a single use paper bag requires more energy than that of a single use plastic bag. The 2011 FEIR determined that the proposed ordinance would result in a net reduction in energy use due to the presumed shift away from the use of single use bags in favor of reusable bags. Although reusable bags often require more energy to manufacture than both single use paper and plastic bags, when they are reused many times the result is a net reduction in energy use associated with the use of bags for carrying items out of retail establishments due to the number of single use bags, and their associated energy use, that are no longer needed.

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. The 2011 FEIR assumed an annual increase in the distribution of single use paper bags of up to 101,634,000, and analyzed the environmental impacts of such a scenario. Because this increase never materialized, and the corresponding negative impacts never occurred, the impacts associated with a potential increase of 38,200,000 single use paper bags resulting from the proposed modification to the ordinance would fall well within the impacts already identified in the 2011 FEIR. The proposed changes to the project, therefore, would not result in any new or more significant energy impacts than those identified in the 2011 FEIR. **[Same Impact as Approved Project (Less Than Significant Impact)]**

In addition to analyzing the environmental impacts associated with the proposed modifications to the ordinance assuming only a negligible increase in paper bag usage from the original ordinance, this addendum also considers the potential environmental impacts of the proposed modifications of the ordinance assuming paper bag use does increase. Applying the same conservative analytical scenario that was used in the 2011 FEIR, which assumed that post ordinance paper bag use would increase, an additional 38,200,000 increase in paper bags *could* occur as a result of the proposed modification to the ordinance to include public eating establishments.

If significant additional paper bag usage did occur as a result of adding public eating establishments to the affected store set, the project could lead to an increase in energy use associated with bag manufacture, transport, and disposal. Even with this increase, however, because of the decrease in energy usage associated with the reduction in the use of single use plastic bags, the ordinance as a whole would not result in the use of fuel or energy in a wasteful manner, nor would it result in a substantial increase in demand upon energy resources, resulting in a less than significant impact.

4.8 CUMULATIVE IMPACTS

At the time of preparation of the 2011 FEIR, many jurisdictions were considering adopting ordinances regulating the distribution of single use bags, but few ordinances had been adopted and implemented for a long enough period of time to determine the change in bag use behavior patterns that would result. The 2011 FEIR determined that negative environmental effects could conceivably occur if the cumulative effect of these various programs lead to a large increase in paper bag use compared to existing conditions, but did not identify significant cumulative impacts to which the project would contribute.

As described in Section 3.0 above, data collected throughout Alameda County after implementation of the ordinance shows that the project did not lead to the increase in paper bag usage that was assumed in the 2011 FEIR but did result in the anticipated reduction in single use plastic bag usage. In fact, the use of single use paper bags returned to pre-ordinance levels by 2015. Similar results were seen in the nearby City of San Jose, where a single use bag reduction ordinance resulted in a nearly complete elimination of single use plastic bags without a substantial increase in the use of paper bags.^{4,5} It can be inferred from this data that other bag reduction ordinances adopted in the Bay Area and throughout the State since the preparation of the 2011 FEIR achieved similar results. Potential cumulative impacts associated with a large increase in paper bag use, therefore, have not occurred.

Although the proposed modification to the ordinance could result in an increase in the use of single use paper bags, because of the relatively insubstantial increase in paper bags and the new information showing the 2011 FEIR significantly overestimated the cumulative increase in paper bag use, the modified project would not result in new or more significant cumulative impacts than those identified in the 2011 FEIR. **[Same Impact as Approved Project (Less Than Significant Impact)]**

⁴ City of San Jose. Memorandum to Transportation and Environment Committee – Subject: Bring Your Own Bag Ordinance Implementation Results and Actions to Reduce EPS Foam Food Ware. November 20, 2012. Available at: http://www3.sanjoseca.gov/clerk/CommitteeAgenda/TE/20121203/TE20121203_d5.pdf.

⁵ City of San Jose, Memorandum to Honorable Mayor and City Council – Subject: Amendment to the Single-Use Carryout Bag Regulations. September 12, 2013. Available at: <http://sanjoseca.gov/DocumentCenter/View/21329>.

5.0 CONCLUSION

Based on the above analysis and discussion, no substantive revisions are needed to the *Mandatory Recycling and Single Use Bag Reduction Ordinances FEIR*. No new significant impacts or impacts of substantially greater severity would result from the modified project because there have been no changes in circumstances in the project area that would result in new significant environmental impacts or substantially more severe impacts; and no new information has come to light that would indicate the potential for new significant impacts or substantially more severe impacts than were identified in the 2011 FEIR. Therefore, no further evaluation is required, and no Subsequent EIR is needed pursuant to State CEQA Guidelines Section 15162. An Addendum to the 2011 FEIR is the appropriate review document for the modified project, pursuant to Section 15164.

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ATTACHMENT E

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into on this ___ day of September, 2016 by and between the Alameda County Flood Control And Water Conservation District (“District”) and the Alameda County Waste Management Authority (“Authority”).

RECITALS

1. On January 25, 2012, the Authority adopted an Ordinance Regulating the Use of Carryout Bags and Promoting the Use of Reusable Bags (“Ordinance 2012-2” or “ordinance”) to reduce the use of single use carryout bags and promote the use of reusable bags at the point of sale in Alameda County. The ordinance applies to certain retail establishments that sell packaged food and liquor, such as grocery stores, supermarkets, convenience stores, liquor stores, and drug stores.
2. The Authority has the power to enact and amend Ordinance 2012-2 pursuant to the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA grants the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan, and pursuant to Section 5.m of the JPA, the power to adopt ordinances necessary to carry out the purposes of the JPA.
3. Based on the success of Ordinance 2012-2, the Authority is considering expanding the ordinance to a larger set of affected stores to include all retail stores and public eating establishments in Alameda County to further reduce single use bag usage. The Authority expects to vote on whether to adopt expansion of the ordinance on October 26, 2016.
4. The Authority implements and enforces the ordinance on behalf of the member agencies and would implement and enforce any amendments to the ordinance.
5. The Alameda Countywide Clean Water Program (“Program”) is a consortium of local government entities working together with the community to protect creeks, wetlands and the San Francisco Bay. The Program's member agencies are: County of Alameda, the cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro and Union City, the District, and the Zone 7 Water Agency.
6. The District is the Program’s Fiscal Agent and Program Manager, and is responsible for administrative matters, subject to the direction of the Program’s Management Committee.

7. The Program's member agencies are issued stormwater discharge permits from the San Francisco Bay Regional Water Quality Control Board. These permits require the member agencies to conduct activities to reduce pollutants being discharged to local creeks and the Bay.

8. The current stormwater discharge permit (Municipal Regional Stormwater Permit No. R2-2015-0049) requires the member agencies to reduce the discharge of trash by 70% by July 2017 and 80% by July 2019. Expanding the ordinance to include all retail stores within Alameda County will assist member agencies in complying with this requirement and will efficiently further the Parties shared interest in trash reduction.

9. The Program's management committee has approved a \$180,000 contribution to the Authority to support the costs of implementing and enforcing an expanded ordinance, A provision to allow specific member agencies of the Authority to opt-out of the expanded ordinance (an "opt-out provision") is acceptable.

NOW, THEREFORE, the Authority and the District (on behalf of the Program) (the "Parties") agree as follows:

1. If the Authority amends Ordinance 2012-2 to apply to all retail stores within Alameda County (an opt-out provision is acceptable), the Program shall remit \$180,000 ("Funds") in financial assistance for implementing and enforcing the expanded ordinance to the Authority within ninety (90) days after the adoption of such amendment to the ordinance and the receipt of an invoice for said amount. If the Authority does not amend Ordinance 2012-2 on or before December 31, 2017, then this MOU shall immediately terminate.

2. The Funds shall be used at the Authority's discretion for implementation and enforcement of the amended ordinance. Any Funds not so used within three (3) years shall be returned to the District for the Program.

3. The Program shall have no involvement with the use of the Funds or the implementation or enforcement of any amended ordinance. Notwithstanding the foregoing, the Program may help to educate the public about any amendment and assist with any other ordinance implementation agreed to by the Parties. The Program and each member of the Program shall bear no liability whatsoever for the proceedings to amend the ordinance, the implementation of the ordinance, the enforcement of the ordinance, or any costs of any kind not specifically provided for herein. Authority agrees to fully defend, indemnify, and hold harmless the Program, its member agencies, and their officers, employees, agents, and officials (collectively, "indemnified parties"), to the maximum extent permitted by law from and against all claims, suits, losses, damages, injuries, expenses, liabilities, liens, actions, causes of action, charges, assessments, fines and penalties of any kind, from any cause, arising out of or relating directly or indirectly to the ordinance or the performance of this MOU, except to the extent attributable to the active negligence or willful misconduct of the indemnified parties.

4. Except as otherwise required by paragraph 2, above, this MOU does not obligate the Authority to take any particular action with regard to any amendments to the ordinance or with regard to implementation or enforcement of any amended ordinance, and the Authority shall have no obligations to the Program as a result of this MOU.

5. This MOU is entered into and will be performed in Alameda County, California, and shall be governed by the laws of California.

IN WITNESS WHEREOF, EACH PARTY HEREBY APPROVES AND EXECUTES THIS MEMORANDUM OF UNDERSTANDING

District	Authority
<p>_____</p> <p>President, Board of Supervisors</p> <p>DATE: _____</p>	<p>_____</p> <p>Wendy Sommer, Executive Director</p> <p>DATE: _____</p>
<p>APPROVED AS TO FORM: County Counsel</p> <p>By: _____ Kathy Lee, Deputy County Counsel</p>	<p>APPROVED AS TO FORM:</p> <p>By: _____ Richard Taylor, Authority Counsel</p>

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