

Bag Bans: Defrauding The Public Of Reasonable Alternative Solutions

ENVIRONMENTAL IMPACT REPORTS THAT SUPPORT SINGLE-USE CARRYOUT BAG ORDINANCES USE OVERLY RESTRICTIVE OBJECTIVES TO DEFRAUD THE PUBLIC OF REASONABLE ALTERNATIVE SOLUTIONS

By Anthony van Leeuwen, 2 January 2014

Executive Summary. *Environmental Impact Reports (EIRs) document the environmental impact of a specific project including alternatives. In the case of EIRs supporting Single-Use Carryout Bag Ordinances a specific solution to a plastic bag litter problem is proposed that requires a ban on plastic carryout bags and imposes a fee on paper bags in order to encourage (i.e. coerce) shoppers into using reusable bags. The environmental analysis to support this proposed solution is never provided. For example, if plastic carryout bags are bad and should be eliminated, then an analysis should be provided to show that using paper bags instead of plastic bags results in an environmental impact that requires mitigation by reducing the use of paper bags and using an alternative product. That analysis is never performed or provided. In fact, the objectives of the EIR specifically prevent that analysis and alternative from ever being analyzed. If brought up during the public comment period, the response is that it does not meet the objectives. In other words the objectives are cleverly used to defraud the public of an important analysis and a legitimate alternative solution. Instead of impartially evaluating alternative solutions, someone else's pre-conceived solution is shoved down your throat by misguided public officials.*

Introduction

Most of the cities and counties that have implemented plastic carryout bag bans have had to perform an environmental analysis and document that analysis in an Environmental Impact Report (EIR). The process normally begins by drafting a proposed ordinance and then creating the EIR to document the key features of the ordinance and the associated environmental impacts. The proposed ordinance is usually copied from someone else's ordinance and normally contains the following elements:

1. Ban Plastic Carryout Bags at specified stores
2. Impose a minimum fee of 10 or 25 cents per paper bag issued
3. Recommend use of reusable shopping bags
4. Paper bags must have 30 or 40% Post Consumer content
5. Paper bag fee is waived for WIC and SNAP participants
6. Plastic Bags are allowed at Farmers Markets (optional)
7. Plastic Bags are allowed by charitable organizations (optional)
8. Plastic Bags are allowed by restaurants (optional)

The first five elements are universal. The last three are marked optional and depends upon the jurisdiction that is implementing the plastic bag ban. A ban on plastic bags and fee on paper bags to

coerce the shopper into using reusable shopping bags form the key features that are universal in the movement to ban plastic carryout bags. (BEACON, 2013)

Likewise, the EIR is also copied from someone else's EIR and adapted to the local jurisdiction. Errors and weaknesses in the original that were never corrected are propagated to the new EIR during the copy and adaptation process. The review and public comment period for an EIR do not provide a very good forum for correcting errors in the document that should have been caught by a good Quality Control (QC) Audit.

The EIR also includes a set of objectives along with the proposed project and key features as mentioned above. These objectives are not only poorly worded and formulated but are overly restrictive so as to limit the range of potential solutions to an environmental problem to a single pre-conceived solution. Ideally, the objectives should expand the feasible range of alternatives solutions and through a process of analysis the proposed solution is chosen for its overall merit.

The following are the objectives as stated in the Final EIR except they are numbered in order to refer to them as objectives 1 through 5. (BEACON, 2013)

1. *Reducing the environmental impacts related to single use plastic carryout bags, such as impacts to biological resources (including marine environments), water quality and utilities (solid waste equipment and facilities)*
2. *Deterring the use of paper bags by retail customers*
3. *Promoting a shift toward the use of reusable carryout bags by retail customers*
4. *Reducing the amount of single-use bags in trash loads to reduce landfill volumes*
5. *Reducing litter and the associated adverse impacts to storm water systems, aesthetics and marine and terrestrial environments*

We will take a look at each of these objectives and see what the objective states, does not state, and how that objective limits or restricts potential alternative solutions. According to the California Environmental Quality Act (CEQA), besides the proposed project or solution, the EIR is required to include feasible alternatives. These alternatives are required to be feasible and could also be chosen by decision makers instead of the proposed solution. In the case of public policy such as a Single-Use Carryout Bag Ordinance which affects all residents, a full range of realistic and feasible alternatives should be included in the analysis.

Objectives in the EIR should be formulated in order to have the largest set of reasonable alternatives. When objectives are crafted to preclude analysis of certain alternatives, the public interest is not well served. In fact residents may be denied by officials of a more reasonable alternative than the proposed project.

For example, if plastic bags are bad, why not use paper bags instead? This is the kind of question that many residents in the local jurisdiction have. Yet, an environmental impact analysis of this alternative solution such as "Paper Bags With No Fee" was not even analyzed! Even when this issue is challenged the solution was not included in the alternatives because it did not conform to all of the proposed project's objectives. By cleverly formulating objectives for the proposed project a perfectly reasonable

alternative was not analyzed. Furthermore, because the analysis was never done, the public will never know if this solution would result in a significant (i.e. Class I or Class II) environmental impact that requires mitigation by reducing paper bag use through imposition of a fee to coerce the public into using reusable bags. More important the public will never know if using paper bags would be a perfectly good and acceptable solution.

Similarly, if thin film plastic carryout bags are a litter nuisance, why not use a different type and thicker plastic bag that would not become windblown litter? This is also the kind of question that residents could ask. Yet, an environmental impact analysis of this alternative solution was never even proposed or analyzed. Even if brought up, this solution would not be included in the alternatives because it did not conform to the objectives. Again by cleverly formulating objectives, a perfectly reasonable alternative was never analyzed. Furthermore, because this solution was never proposed or analyzed, the public will never know if this solution would be a reasonable solution and a compromise.

Objective 1: Reducing the environmental impacts related to single use plastic carryout bags, such as impacts to biological resources (including marine environments), water quality and utilities (solid waste equipment and facilities)

Objective 1

Notice how *Objective 1* talks about “*Reducing the environmental impacts related to single use plastic carryout bags*”. On the surface this looks OK since the primary purpose is to reduce environmental impacts of plastic carryout bags. However, the objective as written seeks only to reduce the environmental impact of plastic carryout bags rather than carryout bags in general. The EIR clearly identifies the environmental impacts of all three type of carryout bags including plastic, paper, and reusable bags. In other words, the objective as written would allow greater environmental impacts as a result of paper and reusable carryout bags and not be concerned about the greater overall environmental impact of the project. CEQA requires the EIR to evaluate all environmental impacts of the proposed project. The objective should therefore be re-written to reduce the environmental impact of all carryout bags!

Objective 2. Deterring the use of paper bags by retail customers

Objective 2

Notice how Objective 2 uses the verb “deterring” which means to “discourage”. Notice also that the action is continual and of an indefinite duration with no end point or goal specified. Notice also that the objective describes a continual action to influence human behavior by discouraging the use of paper bags. This is evidenced, by the fact that the proposed ordinance imposes a mandatory minimum fee of 10-cents on each paper bag distributed. The paper bag fee creates a financial disincentive for retail customers to request a paper bag. In other words, objective 2 is clearly an action statement that describes an ongoing effort to influence and change human behavior. A deliberate effort to change human behavior does not appear to be within the scope of the CEQA . While objective 2 is an essential element or a primary strategy of the proposed ordinance it does not describe an end result or end goal and therefore is not a valid objective.

The only information provided why paper bag use must be discouraged and a fee charged for each paper bag is to coerce shoppers into using reusable shopping bags. No analysis is provided in the EIR to show that paper bag use would result in a significant environmental impact (i.e. a Class I or Class II impact) that would require paper bag use be eliminated or discouraged. Furthermore, no negative environmental impacts have been associated with paper bag use in the past. There is no evidence provided in the EIR that there is a legitimate requirement to lessen the environmental impacts of paper bags. This objective should be deleted since it describes a primary strategy of the proposed project and not really a legitimate goal or objective.

Objective 3. *Promoting a shift toward the use of reusable carryout bags by retail customers*

Objective 3

Notice how objective 3 uses the verb “promoting a shift” which is continual action and of indefinite duration. Notice also that objective describes influencing and changing human behavior from using one type of carryout bag to using reusable carryout bags. Notice also that no end point or end goal is described or specified. While some retail customers will begin using reusable carryout bags when plastic bags are banned, most would simply switch to using paper bags which is why the proposed project includes a fee on paper bags that would provide a financial disincentive for retail customers to request paper bags. Therefore, both objective 2 and objective 3 are the primary strategy the proposed project uses to accomplish a shift from plastic and paper to reusable bags.

Notice how Objective 3 basically states an assumption that a shift to using reusable bags by retail customers must be promoted. No evidence is provided that this is a valid objective or necessary from an environmental perspective. In other words, objective 3 is nothing more than someone else’s solution to a perceived problem.

Objective 3 also promotes a singular solution and not necessarily the best solution from an environmental perspective. Each reusable bag has a larger environmental impact than a plastic bag on a per bag basis. The use of reusable bags can only be justified if each reusable bag is used multiple times. The number of times a bag must be reused depends upon the material the bag is made from. For example, a cotton bag would have to be used at least 173 times before the bag has an environmental impact less than using a plastic bag. A paper bag has four (4) times the environmental impact of a single plastic bag. Hence, a paper bag must be used and then reused three times before it equals the environmental impact of a plastic carryout bag. A non-woven polypropylene (PP) reusable bag must be used fourteen (14) times before it has an environmental impact less than a plastic bag. (Edwards & Fry, 2011) There is no guarantee that shoppers will reuse reusable bags the requisite number of times in order to achieve the environmental benefit – shoppers may replace dirty bags rather than washing bags since most bags must be hand washed and hand washing is a time consuming practice.

In Australia, the reusable bag has been dubbed the “Green Monster” because shoppers have so many reusable bags that they are being thrown away and disposed of in the landfill in such quantities it has attracted the attention of environmentalists. The problem can be attributed to stores who make a

profit on each reusable bag sold and to various promotional bag giveaways by organizations resulting in shoppers who accumulate more bags than they can reasonably use. (Munro, 2010)

Objective 3 is also not a proper objective. Objective 3 states that it “promotes a shift” from one product to another. Since no specific goal has been set and since some people have already shifted from plastic carry out bags to reusable carry out bags this objective has essentially been achieved. This objective should be rephrased to *encourage* the use of reusable bags or no bag at all. In the proposed ordinance the consumer has three choices: a recyclable paper bag, a reusable bag, or no bag. If consumers all choose either recycled paper bags or no bags, or a combination of the two, the objective would fail. Hence, objective 3 is not only poorly worded but invalid as a legitimate objective.

Objective 4. *Reducing the amount of single-use bags in trash loads to reduce landfill volumes*

Objective 4

Notice how objective 4 talks about reducing the amount of single-use bags in trash loads to reduce landfill volumes. First of all, this objective is invalid and is at odds with state law. California State Law establishes goals for reduction in the amount of material going to the landfill. This is accomplished through Waste Reduction including diversion through recycling and reuse, or by reduction and prevention.

This objective narrowly focusses on reducing plastic and paper carryout bags in the landfill and does not include reusable bags or secondary impacts from the proposed project, such as the replacement plastic bags shoppers will have to purchase to line small wastebaskets, etc. California State law applies to all material going to the landfill and the EIR should evaluate all materials going to the landfill as a result of the proposed project and not just single-use bags! According to CalRecycle’s website: “CalRecycle's vision is to inspire and challenge Californians to achieve the highest waste reduction, recycling and reuse goals in the nation. Through innovation and creativity, sound advancements in science and technology, and efficient programs that improve economic vitality and environmental sustainability, we build a stronger California.” (CalRecycle, 2013)

Furthermore, *Objective 4* is incomplete in that it does not consider diversion of material to recycling activities or to potential reuse vice directly to the landfill. Hence a related goal should be included to encourage the recycling of plastic, paper, and reusable bags. This addition is needed for completeness.

Again, the volume of material going to the landfill increases with the proposed ordinance. (van Leeuwen, 2014) Hence objective 4 should be rewritten to include all carryout bags.

Objective 5. *Reducing litter and the associated adverse impacts to storm water systems, aesthetics and marine and terrestrial environments*

Objective 5

Notice that the *Objective 5* talks about reducing litter. This objective does not specify an acceptable level of litter or what type of litter is to be reduced. Litter is the result of people’s actions and an ordinance can no more reduce litter than anti-litter laws on the books. Educating the public is a step in

the right direction and might help to reduce some litter, but the most persistent litterers are young adults between ages 15 to 34. (Beck, 2007, pp. 6-2).

Litter impacts storm water systems and storm water system should have trash capture devices installed that must be maintained by regular cleaning. Plastic bags are a very small part of litter, in fact the San Jose plastic bag ban shows an average reduction of 3 plastic bags per storm drain catch basin per year.

Plastic bags, even though they comprise at most only 0.6% of litter, because of their large surface area are a very visible part of litter that affects aesthetics. However, the predominance of fast food litter, which is 29.1% of all litter, also provides a very visible litter component. (Schultz & Stein, 2009, p. 59) While people want their city to be clean and beautiful, you have to clean up **all trash** not just the 0.6% of litter consisting of plastic bags including plastic grocery bags while leaving the other 99.4% of litter. (Stein, 2012)

Reducing the impact of litter on marine and terrestrial environments is important. It can be achieved by the hard work of cleaning up litter, identifying the sources of litter and preventing those sources from further contributing to litter in the environment through installation of trash capture devices particularly in storm drains, and taking regular action to cleanup that litter and properly dispose of it.

A document called “Municipal Best Management Practices for Controlling Trash and Debris in Storm Water and Urban Runoff” identifies the **Total Maximum Daily Loads** program to reduce the amount of litter by 10% per year for 10 years. The document further describes that Full Capture Devices commonly called “trash screens” or “trash excluders” or “rubbish traps” that must be installed on storm drains to capture litter larger than 5 mm. **These devices are being installed in storm drains, and will prevent plastic bags, other plastic debris, and litter from being released into the riverbed and out into the ocean.** (Gordon & Zamist, 2013)

Misuse of Objectives

The objectives specified for the proposed project are frequently misused. For example, objectives 2 and 3 describe the primary strategy of the proposed project or ordinance. These two objectives are specific and unique to the proposed project for which the EIR is being prepared. By law, the EIR is required to document feasible alternatives to the proposed project. Each alternative is a unique project in itself and will incorporate different strategies to achieve the environmental goals. **In too many EIRs the objectives of the proposed project are used to disqualify or reject an alternative project, even though the project is conceptually different and the objectives do not apply.** The proposed project and each alternative should be evaluated based upon merit in achieving a solution to the underlying problem that the proposed project intends to solve and not based upon the proposed projects objectives. In other words, if an alternative solution does a better job at solving the underlying problem than the proposed solution, then it should be considered for adoption instead.

For example, in one EIR a project alternative was a “Plastic Bag Deposit Program” which would be similar to California’s bottle bill that places 5 or 10-cent deposit on beverage containers. The project was rejected because it would not deter paper bag use or promote a shift to reusable bags which are objectives associated with proposed project and not this particular alternative. Both the proposed

project and the alternative provide completely different solutions and strategies to solve the underlying problem with plastic bag litter and the damage that litter causes to the environment. You simply cannot use the objectives of the proposed project to reject the alternative since the projects use different concepts and strategies to achieve the environmental objective consisting of objectives 1, 4, and 5. In fact, in doing so, the alternative is essentially rejected because it is not identical to the proposed project. This is wrong!

In another example, an alternative project “No Charge for Paper Bags” would ban plastic carryout bags and allow stores to distribute paper carryout bags instead at no charge. Retail customers are still free to use reusable carryout bags if they so desire. This alternative would achieve objectives 1, 4, and 5 of the proposed project and is therefore a **valid alternative**. Objectives 2 and 3 are not applicable to this alternative, because this alternative is substantially different and moves customers from plastic carryout bags to paper bags; Whereas, the proposed project moves customers from plastic carryout bags to paper and reusable bags. This alternative project is wrongly rejected by using the rationale that the alternative does not meet objectives 2 to “deter paper bag use” and 3 fails to “promote a shift to reusable bags”. This alternative project is also wrongly rejected by using a different standard of evaluation as described in the following statement: *“This alternative was rejected because it would not deter customers from using paper bags, which have greater impacts related to air quality, GHG emissions, and water quality than plastic bags on a per bag basis”*. By changing the standard of evaluation to a “per bag basis” along with the implied assumption that paper bags are worse for the environment than plastic bags (the very plastic bags we are banning because they are so bad for the environment!) the EIR cleverly avoids an environmental analysis of this alternative solution preferred by the public, an alternative solution that would achieve the basic environmental objectives 1, 4, and 5 of the proposed project. By avoiding the environmental analysis, the public is kept from learning that paper bag use, although not as advantageous to the environment as plastic bags, does not result in significant environmental impacts and is a perfectly acceptable solution. **In essence, the public is DEFRAUDED from consideration of an important alternative, an alternative that may more acceptable to the public and superior than the proposed project.**

Both of the above mentioned projects must be analyzed based upon the project’s own merit and feasibility in accordance with California Environmental Quality Act (CEQA).

Conclusion

Most EIRs use objectives to limit and to restrict the range of feasible alternatives considered. The objectives should be written in such a manner to foster the largest universe of feasible and potential solutions to a problem including those alternatives that the public would regard as more acceptable. By misusing objectives to eliminate alternatives, the public is fraudulently denied the opportunity to consider alternatives that might be more acceptable than the proposed project. Therefore, we can come to the conclusion that EIRs for Single Use Carryout Bag Ordinances are not a fair or an impartial analysis of potential alternatives but a political document designed to shove someone else’s solution down the throats of the American People.

Public officials who vote to certify the EIR and pass a Single Use Carryout Bag Ordinance are complicit in defrauding the public of more reasonable and more acceptable solutions to the public in response to a wind-blown litter problem with thin-film plastic carryout bags.

About The Author

Anthony van Leeuwen is the founder of the [Fight The Plastic Bag Ban](#) website and writes extensively on the subject. He holds a bachelors and Master's degree in Electronics Engineering and has over 40 years of experience working in the federal government.

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