

## Letter 64

John Knox White  
Program Director  
TRANSFORM

August 27, 2009

### **Comment 64-1**

Appendix G: Transportation/Traffic checklist does not have a clear relationship to environmental effects and GHG emissions.

### **Response 64-1**

The Natural Resources Agency disagrees. The proposed amendments to Appendix G, Section XVI - Transportation/Traffic checklist serve multiple purposes in an analysis of environmental effects and GHG emissions.

Subsection (a) changes the focus from an increase in traffic at a given location to the effect of a project on the overall circulation system in the project area. Specifically, the change to subsection (a) recognizes that the lead agency has discretion to choose its own metric of analysis of impacts to intersections, streets, highways and freeways. (Pub. Resources Code, § 21081.2(e); *Eureka Citizens for Responsible Government v. City of Eureka*, (2007) 147 Cal.App.4th 357, 371-373 (lead agency has discretion to choose its methodology).) However, this discretion does not allow a lead agency to rely on speculative or unreasonable methodologies or measures for analysis. If metrics for measuring the capacity of an entire circulation system do not exist or are not considered sufficient by a lead agency, lead agencies remain free to consider level of service, and/or any other reasonable measure or metric, so long as they consider the transportation system in its entirety.

Subsection (b) asks whether a project: "Conflict[s] with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?" The Natural Resources Agency's proposed revisions to this subsection are intended to clarify that lead agencies have the discretion to, and therefore should, consider consistency with circulation system goals and policies beyond level of service, though that standard has been retained where it is relevant and applicable. As regional congestion management agencies move away from a pure "LOS" analysis, to other standards and travel demand measures (such as vehicle miles traveled, etc.) these refined questions will provide flexibility so that impacts to a system can be fairly and adequately analyzed.

Current subsection (f) was deleted. Case law recognizes that parking impacts are not necessarily environmental impacts. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal. App. 4th 656, 697.) Therefore, the question related to parking is not relevant in

the initial study checklist. However, if there is substantial evidence indicating a potential for adverse environmental impacts from a project related to parking capacity, such as for example attendant air quality issues that result from cars idling while searching for parking spots, the lead agency must address such potential impacts regardless of whether the checklist contains parking questions. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

Furthermore, the Natural Resources Agency has further revised the transportation questions in Appendix G's checklist. Section XVI, subsection (f), now asks whether a project: "Conflict[s] with adopted policies, plans, or programs regarding public transit, bikeways, or pedestrian facilities, or otherwise substantially decreases the performance or safety of such facilities." Consequently, if a lead agency has a plan or policy in place relative to pedestrian or bicycle mobility, or transit operations, subsection (f) will provide suggested guidance on how a lead agency may approach analysis of potential impacts relative to the criteria and parameters contained in such policies or plans.

Finally, the Natural Resources Agency is acting under both the authority in SB 97 and its general authority in Public Resources Code section 21083(f) to periodically update the CEQA Guidelines.

#### **Comment 64-2**

Commenter recommends Appendix G: Transportation/Traffic checklist should remove the term "roadway capacity" and the term is inconsistent with the Initial Statement of Reasons. As stated, "...an increase in traffic, by itself, is not necessarily an indicator of a potentially significant environmental impact."

#### **Response 64-2**

In response to public comments submitted on proposed amendments, the Natural Resources Agency further refined question (a) to shift the focus from the capacity of the circulation system to a broader context of consistency with applicable plans, policies, and other objective measures of effectiveness.

No further revision to the proposed amendments is required in response to this comment.

#### **Comment 64-3**

Commenter appreciates broadening the Appendix G: Transportation/Traffic checklist but inappropriately relies on a roadway capacity standard as a proxy for environmental impact.

#### **Response 64-3**

The Natural Resources Agency notes the commenter's support of broadening the Appendix G, Section XVI. In response to comments similar to ones such as this, the Natural Resources Agency revised this section to focus on the overall effectiveness of the circulation system.

#### **Comment 64-4**

Appendix G: Transportation/Traffic checklist questions emphasize impacts to cars and ignore impacts to people, transit, bicyclists, and other modes. As result, lead agencies may conclude reducing vehicle capacity is assumed to have a negative transportation impact and is mitigated at the expense of the environment, roadway safety, and the net benefits of moving people.

#### **Response 64-4**

The comment seems to suggest removing “level of service” from the Appendix G, Section XVI checklist.

Appendix G, Section XVI, Transportation/Traffic checklist question (b) asks whether a project is consistent with an applicable congestion management program. In this regard, the question implements the directive in section 15125(d) that lead agencies analyze inconsistencies between the proposed project and applicable regional plans. The reference to level of service in that question reflects the requirement in the Government Code that a congestion management program establish level of service standards for certain designated roadways. (Government Code, § 65089(b)(1).) If a project is within a designated “in-fill opportunity zone,” level of service standards would not apply. (Government Code, § 65088.4.) The Natural Resources Agency cannot change the requirements for congestion management programs that are set out in statute. The proposed amendments to question (b) do seek to put level of service standards in their proper context within a congestion management program, however. To the extent the comment suggests that level of service should be deleted from question (b) altogether, for the reasons described above, the Natural Resources Agency declines to adopt the suggestion.

Numerous comments urged the Natural Resources Agency to further revise Appendix G to include more specific questions to address safety issues. In response, the Natural Resources Agency further revised question (f) to provide: “(would the project) conflict with adopted policies, plans, or programs regarding public transit, bikeways, or pedestrian facilities, or otherwise substantially decrease the performance or safety of such facilities?” Consequently, if a lead agency has a plan or policy in place relative to pedestrian or bicycle mobility, or transit operations, subsection (f) will provide suggested guidance on how a lead agency may approach analysis of potential impacts relative to the criteria and parameters contained in such policies or plans. The Natural Resources Agency believes this revision sufficiently addresses this comment. No further revision to the text is required to respond to this comment.

#### **Comment 64-5**

Revise Appendix G: Transportation/Traffic checklist questions to include an alternative to using the term “capacity” as it has no direct or clear association with significant environmental effects, beneficial projects may reduce vehicle capacity thus be seen as having a negative environmental impact, “capacity” could be seen as a threshold thus possibly induce congestion, mitigating to meet capacity standards is typically expanding roadways which result in adverse environmental impacts.

### **Response 64-5**

See Response 64-1

### **Comment 64-6**

Revise Appendix G: Transportation/Traffic question (b) to remove LOS and include VMT. VMT is a more appropriate metric in that it correlates with air quality, noise, pedestrian impacts, and vehicle emissions in addition to others.

### **Response 64-6**

The Natural Resources Agency acknowledges the concern expressed by this and other comments that the use of level of service metrics in CEQA analysis has led to an auto-centric focus. The Office of Planning and Research and the Natural Resources Agency have participated in extensive outreach with stakeholder groups to revise question (a) in the transportation section of Appendix G to accomplish the following goals:

- Assess traffic impacts on intersections, streets, highways and freeways as well as impacts to pedestrian, non-vehicular and mass-transit circulation
- Recognize a lead agency's discretion to choose methodology, including LOS, to assess traffic impacts
- Consistent with existing requirements in congestion management programs, general plans, ordinances, and elsewhere

In response to public comments submitted on proposed amendments, the Natural Resources Agency further refined question (a) to shift the focus from the capacity of the circulation system to consistency with applicable plans, policies, and other objective measures of effectiveness.

Question (b) still refers to level of service standards, but does so in the context of a congestion management program. Government Code section 65088, and following, requires Congestion Management Agencies, in urbanized areas, to adopt Congestion Management Programs covering that agency's cities and county, and in consultation with local governments, transportation planning agencies, and air quality management districts. A CMP must, pursuant to statute, contain level of service standards for certain designated roadways. A CMP must also include a land use analysis program to assess the impact of land use decisions on the regional transportation system. A CMA may require that land use analysis to occur through the CEQA process. Thus, level of service standards cannot be deleted from the Appendix G checklist altogether.

The proposed amendments did amend question (b) to put level of service standards in the broader context of the entire CMP, which should also contain travel demand measures and other standards

affecting the circulation system as a whole. Beyond this amendment, however, the Natural Resources Agency cannot remove level of service standards entirely from the Appendix G checklist.

**Comment 64-7**

Revise Appendix G: Transportation/Traffic checklist to include a question directing lead agencies to consider an increase in VMT in conjunction with two thresholds – 14,000 VMT/yr per household, or, 70% of the per-household or per-capita average VMT for the area.

**Response 64-7**

The Natural Resources Agency intentionally left it to the discretion of the lead agency to determine the most appropriate method to assess environmental effects. Rather, the amendments are intended to clarify and make specific existing state law and be consistent with existing statutes and regulations. Furthermore, the Guidelines amendments were designed to be consistent with the existing CEQA framework for environmental analysis.

As explained above, amendments to Appendix G, Section XVI maintain a lead agency's discretion to choose its own metric of analysis. A specific reference to "vehicle miles traveled" and the comment's suggested thresholds would limit that discretion. The Natural Resources Agency rejects this comment.