

Letter 9

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- Comment letter-

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Comment 9-1

The proposed amendments to the Appendix G: Transportation/Traffic Checklist are too modest and do not address the significant threats facing California from global warming and other environmental and quality of life issues.

Response 9-1

In response to public comments, the Natural Resources Agency revised the proposed amendments to Appendix G, Section XVI - Transportation/Traffic checklist.

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, or any other 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 how a congestion management program should be used in a transportation impact analysis.

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.)

No further revision to the text is required to respond to this comment.

Comment 9-2

Commenter recommends additional guidance on thresholds of significance related to traffic impacts on human beings.

Response 9-2

In response to this and other comments raising safety concerns, the Natural Resources Agency revised existing question (g) to specifically ask whether a project would “substantially decrease the ... safety of [transit, bikeway, or pedestrian] facilities?”

Notably, existing question (d) already asks whether a project would increase hazards due to design features or incompatible uses.

The comment implies that increases in automobile use at a particular location necessarily results in increased safety hazards. In light of the existing question (d) and the revisions to existing question (g), the CEQA Guidelines contain several tools to examine safety issues. No further revisions are required in response to this comment.

Moreover, the development of additional guidance on thresholds of significance related to traffic impacts on human beings is beyond the scope of this rulemaking, the primary purpose of which is to provide guidance on the analysis and mitigation of greenhouse gas emissions. Neither the CEQA Guidelines nor the Initial Study Checklist in Appendix G establishes thresholds of significance for potential environment impacts, and SB 97 did not authorize the Natural Resources Agency to develop thresholds as part of this CEQA Guidelines update. Furthermore, other comments suggest that the Appendix G, Initial Study Checklist is treated as having established thresholds of significance. As explained in the Initial Statement of Reasons “[t]he provided checklist is a sample [form] that may be modified as necessary to suit the lead agency and to address the particular circumstances of the project under consideration.” (Initial Statement of Reasons at pg. 63.) The purpose of the questions in the checklist is to evoke lead agencies to consider the full range of potential impacts in their initial studies.

Comment 9-3

Revise Appendix G, Section Transportation/Traffic to encompass the safety of the transportation system. Because the checklist is not comprehensive, lead agencies will not be able to identify potential impacts on the environment and on human beings.

Response 9-3

In response to comments such as this, 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.

Comment 9-4

Commenter recommends "Level of Service" be removed from Appendix G, as proposed on January 8, 2009 by the Office of Planning & Research.

Response 9-4

Appendix G, Transportation/Traffic 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 acknowledges the concern expressed by some 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 the transportation/traffic checklist questions.

Question (b), specifically, was revised to ask whether a project would conflict with the provisions of a congestion management program (CMP). As explained in Response 9-1, the revision is intended to clarify how a congestion management program should be used in a transportation impact analysis. A CMP must, pursuant to statute, contain level of service standards for certain designated roadways. (Beginning at Government Code Section 65088.) Thus, level of service standards cannot be deleted from the Appendix G checklist altogether. The proposed amendments did, however, 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.

For the reasons above, the Natural Resources Agency cannot remove level of service standards entirely from the Appendix G checklist and rejects this comment.

Comment 9-5

Clarify changes to Appendix F (I)(2) to specifically reference coal, natural gas and oil. This would expand what lead agencies could consider as energy implications of a project.

Response 9-5

Appendix F, Subsection (I)(2) list's one of three methods to conserving energy. Having reviewed all of the comments concerning amendments to Appendix F - Energy Conservation, the Natural Resources Agency revised subsection (I)(2) to include a reference to "coal" as a fossil fuel. No further revision of the text is required to respond to this comment.

Comment 9-6

Added a mitigation measure to Appendix F (II)(D). This would add specifically allow walking and bicycling as mitigation to reduce a project's potentially significant energy implications.

Response 9-6

Appendix F, Section (II)(D) lists mitigation measures that a lead agency may consider to reduce a project's potential energy impacts. In general, Appendix F is similar to Appendix G in that its purpose is to provoke thoughtful considerations of general energy concerns. First, the mitigation measures listed in this section are not exclusive and lead agencies may consider other measures that reduce a project's energy consumption. Second, the list already provides a lead agency to consider energy consumption as it relates to transportation. (Section (II)(D)(2).) The Natural Resources Agency, therefore, rejects this comment.

Comment 9-7

Revise the Guidelines to require lead agencies in environmental impact reports to address the adverse effects of traffic collisions on human beings.

Response 9-7

In response to this and other comments raising safety concerns, the Natural Resources Agency revised Appendix G, Section XVI existing question (g) to specifically ask whether a project would "substantially decrease the ... safety of [transit, bikeway, or pedestrian] facilities?"

See Response 9-2 for additional discussion. No further revision of the text is required to respond to this comment.

Comment 9-8

Analyzing and mitigating traffic collision impacts should be required of lead agencies and is consistent with how impacts on cultural and historic resources are treated under CEQA.

Response 9-8

As explained above, the Natural Resources Agency further revised Appendix G Section XVI question (g). See Response 9-2 for additional discussion. No further revision of the text is required to respond to this comment.

Comment 9-9

Traffic congestion and vehicular LOS are not environmental impacts thus are not appropriate areas for CEQA review.

Response 9-9

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.

As explained in Response 9-4, proposed revisions to Appendix G, Section XVI checklist subsection (b) are intended to clarify the role of a congestion management program in a transportation impact analysis. To change the section's heading would inappropriately suggest traffic is not a consideration under CEQA and would therefore be inconsistent with statute.

Comment 9-10

The commenter believes the CEQA guidelines inaccurately focuses on LOS as a measurement of traffic impacts and ignores safety of motorists, bicyclists, and pedestrians. Lead agencies ignore Section 15065(a)(4), requiring an EIR where, in light of the record a project causing substantial adverse effects on human beings, either directly or indirectly.

Response 9-10

As explained above, the Natural Resources Agency received many comments concerning the proposed amendment to reintroduce “level of service” to Appendix G, Section XVI checklist subsection (b). In response, the checklist was revised with the intent of broadening the scope of a transportation analysis to consider the overall performance and safety of the circulation system. See Responses 9-1 and 9-2 for additional discussion. No further revision to the text is necessary to respond to this comment.

Comment 9-11

The changes to the Appendix G: Transportation/Traffic checklist questions are an improvement but do not go far enough. Question (b) in particular can be interpreted to mean that “level of service” still must be one of the metrics used as a “congestion management program”.

Response 9-11

As explained above, “level of service” is one of many metrics a lead agency may use when conducting an analysis on transportation-related impacts as suggested in question (a). The comment also appears to object to any mention of the phrase “level of service” in question (b). That question, as revised, would ask whether a project would conflict with the provisions of a “congestion management program.” The Government Code, beginning at section 65088, 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, however, 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. No further revision to the text is required to respond to this comment.

Comment 9-12

While there are certain environmental impacts related to traffic, including air pollution, GHG emissions, and noise, congestion and LOS themselves are not environmental impacts and should not be included in the checklist.

Response 9-12

The proposed amendments do not treat congestion and level of service as environmental impacts. Rather, the Natural Resources Agency acknowledges the concern expressed by some 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 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
- Harmonize 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 that establish objective measures of effectiveness.

As explained in the Initial Statement of Reasons,

[Q]uestion (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. This change is appropriate because an increase in traffic, by itself, is not necessarily an indicator of a potentially significant environmental impact. [Citations omitted.] Similarly, even if some projects may result in a deterioration of vehicular level of service – that is, delay experienced by drivers – the overall effectiveness of the circulation system as a whole may be improved. [Citations omitted.] Such projects could include restriping to provide bicycle lanes or creating dedicated bus lanes. Even in such cases, however, any potential adverse air quality or other impacts would still have to be addressed as provided in other sections of the checklist. Finally, the change to question (a) also recognizes that the lead agency has discretion to choose its own metric of analysis of impacts to intersections, streets, highways and freeways. [Citations omitted.] Thus, “level of service” may or may not be the applicable measure of effectiveness of the circulation system.

(Initial Statement of Reasons, at pp. 64-65.) Further, evidence presented to the Natural Resources Agency indicates that “mitigation” of traffic congestion may lead to even greater environmental impacts than might result from congestion itself. (See, e.g., Cervero, Robert. (July, 2001). *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis*. Journal of the American Planning Association, Vol. 69 No. 2. American Planning Association (confirming “induced demand” phenomenon associated with capacity improvements).)

While the terms “volume to capacity ratio” and “congestion at intersections” no longer appear in question (a), nothing precludes a lead agency from including such measures of effectiveness in its own general plan or policies addressing its circulation system. Though the Office of Planning and Research originally recommended specifying “vehicle miles traveled” as a question in Appendix G, it later revised its recommendation to allow lead agencies to choose their own measures of effectiveness. (Letter from OPR Director, Cynthia Bryant, to Secretary for the Natural Resources Agency, Mike Chrisman, April 13, 2009.) Thus, as revised, question (a) accommodates lead agency selection of methodology, including, as appropriate, vehicle miles traveled, levels of service, or other measures of effectiveness.

As explained in Response 9-11, above, the Government Code requires the development of congestion management programs that include level of service standards and can be implemented through the CEQA process. The Natural Resources Agency, therefore, cannot encourage lead agencies in Appendix G to ignore level of service standards that are required by state law. Instead, the Natural Resources Agency put level of service standards in their proper context within the congestion management program. Thus, the proposed amendments do not treat level of service or congestion as environmental resources. No further revision is required in response to this comment.

Comment 9-13

Efforts to decrease congestion and increase LOS result in threats to human safety and cause other direct or indirect environmental impacts.

Response 9-13

See Responses 9-1, 9-2, and 9-9. The commenter misinterprets level of service as an environmental impact. Rather, “level of service” is a metric that may be used to assess the significance of transportation-related impacts which may result in environmental effects.

Furthermore, CEQA already requires a lead agency to consider if a mitigation measure would cause one or more significant effects and further discuss those effects before approving a project. (State CEQA Guidelines, § 15126.4(a)(D).) No further revision to the text is required to respond to this comment.

Comment 9-14

Expanding roadways to meet LOS standards is undermining the State's efforts to combat reliance on fossil fuels and reduce energy consumption.

Response 9-14

As explained in the Initial Statement of Reasons, Section 21081.2 of the Public Resources Code requires local jurisdictions to analyze a project's effects on traffic at intersections, streets, highways, and freeways. (Initial Statement of Reasons at pg. 65.) See Responses 9-1 and 9-2 for additional discussion. No further revision to the text is required to respond to this comment.

Comment 9-15

Commenter believes LOS projections impede designing and implementing bicycle projects.

Response 9-15

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.

Regarding the implementation of bicycle projects, CEQA requires analysis and mitigation of a project's significant adverse environmental impacts, even if that project may be considered environmentally beneficial overall. As the Third District Court of Appeal recently explained:

“[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]” There may be environmental costs to an environmentally beneficial project, which must be considered and assessed.

(*Cal. Farm Bureau Fed. v. Cal. Wildlife Cons. Bd.* (2006) 143 Cal. App. 4th 173, 196.) Nothing in SB97 altered this rule. Thus, lead agencies must consider whether impacts from new bicycle facilities may be significant, and if so, whether any feasible measures exist to mitigate those impacts. If such impacts are found to be significant and unavoidable, proposed amendments to section 15093 would expressly allow lead agencies to consider the region-wide and statewide environmental benefits of a project in determining whether project benefits outweigh its adverse environmental impacts.

Comment 9-16

Commenter believes by lead agencies requiring high LOS standards, those standards are met at the cost of human safety and discouraging alternative modes of transportation.

Response 9-16

See Responses 9-1, 9-2, and 9-15. No further revision to the text is required to respond to this comment.

Comment 9-17

Commenter believes LOS is directly responsible for discouraging people from choosing alternative modes of transportation. Expanding roadways allows for higher speeds of traffic thus making roadways unsafe for bicyclists and pedestrians.

Response 9-17

As explained above, the amendments to Appendix G, Section XVI, in part, change 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. See Response 9-1 and 9-15 for additional discussion. No further revision to the text is required to respond to this comment.

Comment 9-18

Revise Appendix G: Transportation/Traffic Question (d) to include risks associated with the transportation system. This would expand the question to ask if a project poses a potential increase in hazards from a list of examples.

Response 9-18

In response to comments received on the Appendix G, Section XVI – Transportation/Traffic checklist, the Natural Resources Agency revised the amendments subsection (f) to consider safety components of the circulation system. See Response 9-2 for additional discussion. No further revision is required to respond to this comment.

Comment 9-19

Commenter supports the removal of parking capacity from Appendix G: Transportation/Traffic checklist.

Response 9-19

The Natural Resources Agency notes the commenter's support of amendments to Appendix G, Section XVI question (f). 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.) As the comment is not seeking to make additional changes to the text, no further response is required.