

# Amending San Francisco's environmental review practice under CEQA to align more closely with the City's transportation policies

San Francisco Bicycle Coalition, June 2008

San Francisco's declared policies (Transit First etc.) are not well not supported by transportation impact analysis under current CEQA practice – in particular, intersection congestion analyzed via automobile level of service ("auto LOS") causes distortions and obstacles (directly and indirectly) to planning efforts for policy-coherent land use and transportation. Broad consensus expressed through legislative action (Board of Supervisors, SFCTA Board) and professional and public opinion holds that LOS is a flawed measure of environmental significance; project modifications and mitigations for anticipated LOS impacts can lead to degradation of those non-automobile transport modes which the City's policies expressly encourage and prioritize. Amendment of the City's transportation impact analysis for CEQA is in order.

While we appreciate the SFCTA's work in developing substitute thresholds of significance and associated mitigation protocols for transportation impacts under CEQA, we continue to be interested in a simpler solution to the matter, and are eager to have the fundamental questions around discontinuing the use of intersection congestion as an environmental effect addressed before conceding that a more complicated solution is required. It seems to us that discontinuing the use of intersection congestion is a discrete and independent action, apart from adopting new environmental effects and significance measures, and that to the extent that the City can successfully discontinue the use of intersection congestion as an environmental effect, the need to adopt new environmental effects and significance measures may be moot.

## **Discontinue the use of intersection congestion as an environmental effect**

Framework language for discontinuation of intersection congestion as an environmental effect, through administrative action (Planning Director / ERO) or legislative action (Planning Commission / Board of Supervisors / SF voters):

Whereas [adopted policy / legislative intent / substantial evidence];

We find that intersection congestion experienced by motor vehicles is not an environmental effect to the people of San Francisco for the observance of CEQA in San Francisco, except to the extent that motor traffic congestion may contribute to air quality impacts in a significant manner.

For CEQA findings prepared in San Francisco, intersection congestion—as indicated by automobile Intersection Level of Service ("auto LOS")—will not be used as an environmental effect for any project, where that effect is limited solely to intersection congestion and the movement of motor vehicles.

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The ERO may, at his/her discretion, request that information and analysis of auto LOS be developed and presented in a CEQA finding, where concerns related to carbon monoxide "hotspots" are indicated for a given project under review.

Policy favoring non-auto mobility modes over auto circulation is well established in the SF Charter, General Plan, and Planning Code.

Legislative intent to discontinue the use of auto LOS as an environmental effect in SF's CEQA practice has been established by the Board of Supervisors (resolution 233-06) and SF County Transportation Authority's board of directors.

Substantial evidence of the failure of auto LOS as a meaningful measure of a project's air quality impacts, and as an obstacle to realizing the City's policy goals, has already been brought to public hearings at the Board of Supervisors, the Planning Commission, the Bicycle Advisory Committee, and elsewhere.

### **Discontinuing the use of intersection congestion is a discrete action**

No matter what the approach or strategy for "LOS reform", the City must first discontinue the use of intersection congestion as an environmental effect under CEQA, and will have to defend legal protests of that discontinuance, as a discrete action, apart from adopting any new or amended environmental effects and associated significance measures and thresholds. When legal protest is raised against the City for any changes it makes to transportation analysis under CEQA, the argument that a substitute analysis has been adopted will not matter much – the discontinuance of intersection congestion analysis will be the essence of the complaint. If the City can't make a defensible case for discontinuing the use of intersection congestion as an environmental effect, it won't matter what other new and meaningful environmental effects and thresholds the City has adopted (and indeed, those are likely to be attacked on their own merits and weaknesses).

SFCTA's approach (to replace auto LOS with one or more other effects) is necessarily a two-part process: 1) Discontinue the use of intersection congestion as an environmental effect under CEQA, indicated by auto LOS; and 2) Adopt new environmental effects associated with transportation, such as "livability" and "person throughput", indicated by ATG or other measures. It is not the indicator metric (LOS) nor the threshold of significance (LOS level "E") which are the primary issues, but the environmental effect (intersection congestion).

Either way, Planning/City will need to declare that intersection congestion is no longer a CEQA concern for SF. If we're going to discontinue assessing the significance of intersection congestion, let's do that. If we're interested in evaluating impacts related to other effects (livability, person-throughput, pedestrian safety, etc.) let's adopt those effects and bring forward significance measures and thresholds (like ATG). But it's two different and separate actions.

**Argument for City's discontinuing the use of auto LOS as an environmental effect *per se***

The City has the power to discontinue the use of auto LOS as an environmental effect *per se*. CEQA directs local agencies to set objectives, criteria, and procedures for determining environmental significance, including thresholds of significance. *CA Public Resources Code, CEQA, Sec. 21082*: "All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to this division . . . The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083 [CEQA Guidelines]."

The CEQA Guidelines Checklist (Appendix G) places a project's anticipated potential to "cause an increase in traffic" at the top of the "Transportation / Traffic" section, and equates increases in volume-to-capacity ratio on roads and congestion at intersections with increases in traffic. SF Admin Code Chapter 31 mandates that "Each initial study shall include an identification of the environmental effects of a project using as its base the environmental checklist form set forth in Appendix G of the CEQA Guidelines and addressing each of the questions from the checklist form that are relevant to a project's environmental effects."

However, departure from strict obedience to the CEQA Guidelines Checklist has already been successfully argued by the City in the "Emporium" precedent (*San Franciscans Upholding the Downtown Plan v. City & County of SF, 2002*). Whereas the CEQA Checklist's Transportation / Traffic topic, question (f), asks "Would the project result in inadequate parking capacity?", the court found that concern for "parking deficit" *per se* is a social matter, not an environmental matter for CEQA review, agreeing with the project EIR's assertion that "[p]arking shortfalls relative to demand are not considered significant environmental impacts in the urban context of San Francisco. Parking deficits are an inconvenience to drivers, but not a significant physical impact on the environment."

The court recognized that secondary environmental impacts resulting from the social matter of parking supply *are* matters for CEQA review, but accepted the project EIR's assertion that those indirect transportation impacts caused by "insufficient" parking supply would be adequately addressed by existing and projected transit and parking facilities.

The same arguments that the City made in the Emporium EIR about parking deficits apply as well to traffic congestion:

"The social inconvenience of having to [hunt for scarce parking spaces / wait at intersections] is not an environmental impact; the secondary effect of [scarce parking / congestion at intersections] on air quality is"

"[Parking deficits / congested intersections] are an inconvenience to drivers, but not a significant physical impact on the environment"

Section 15064 (e) and 15131 (a) of the CEQA Guidelines state that "[e]conomic or social effects of a project shall not be treated as significant effects on the environment," except to the extent that those social effects indicate or lead to a significant physical change to the environment. Limiting the potential impact of auto LOS to the environmental concerns (ie, carbon monoxide hotspots), and leaving behind the social concerns (ie, having to wait at intersections), maintains a meaningful use of auto LOS for CEQA analysis.