

Making Bicycling Environmentally-Friendly Again

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In 2005, San Francisco was poised to begin construction of a network of bike lanes. But that same year, San Francisco's plans came screeching to a halt when a local gadfly with an anti-bike bee under his bonnet filed a lawsuit. To the surprise of San Francisco's bicycle advocates, the lawsuit alleged that by making room for cyclists on San Francisco's streets, bicycle lanes would create more air pollution. Although this seems counter-intuitive, the lawsuit alleged that bicycle lanes would increase automobile traffic congestion, and this congestion would have a negative impact on air quality. And because the bike lanes had a potentially significant impact on air quality, the lawsuit argued that the city was required to conduct an environmental review of the project—which it had not done.

A San Francisco court agreed that an environmental review was required, and issued an injunction prohibiting the city from building any bicycle lanes. Now, despite the anti-bicycle undertones of the lawsuit, an important principal was actually being raised in court—in California, a governmental entity can't say a project has no environmental impact just because it wants the project. If the government wants to approve a project, it can do that, but it has to follow the law. And according to the bike lane lawsuit, San Francisco had not followed the law. Thus, the city had been enjoined from building any bike lanes until it had conducted the appropriate environmental review.

Here's how the law works: In California, the California Environmental Quality Act ["CEQA"] requires that some types of proposed projects must be reviewed for potentially significant environmental impacts. The environmental review must address all significant environmental impacts, and must identify any measures that can be undertaken to mitigate those impacts. The law does not require a project to have no impact; it merely requires that significant impacts be identified and discussed. The purpose of the law is to provide the government decision-makers with the information they need to make a fully-informed decision. Even if the project has significant impacts on the environment, the government can still approve the project. What the government cannot do is attempt to conceal the extent of the environmental impacts by refusing to study them.

And that is where the city ran afoul of the law, in the eyes of the court. The city argued that rather than study the environmental impacts of the bicycle plan in its entirety, the city was only required to study the individual impacts of projects the city would actually build. The bicycle plan, the city argued, was only a set of guidelines and recommendations for the city, rather than a hard and fast set of projects that would definitely be built. In other words, as

every bicycle advocate eventually realizes, what the city said in the bicycle plan and what the city would actually commit to build were two very different things.

But in making this argument, the city was essentially asking to be allowed to break the bicycle plan down into segments, and segmenting a large project with significant environmental impacts into smaller projects with smaller impacts is not allowed under CEQA. The court agreed that the city had not studied the potential negative impacts on air quality that the anti-bike activist had identified, and ordered the city to halt construction of its bike lanes until an environmental review had been completed. For five years, San Francisco's Bicycle Plan languished, while the lawsuit and the eventual environmental review made their way through the court

And as frustrating as that was to San Francisco's bicycle advocates, the principle of requiring government to study the environmental impacts of projects it approves is an important principle to preserve. On the other hand, it seems fairly intuitive that an increase in bicycling is actually environmentally beneficial. And yet, it took five years of litigation and 2,200 pages of environmental review, and a significant amount of taxpayer dollars to move an environmentally beneficial project forward..

And the resulting environmental review and mitigation costs may increase the cost of building a bike lane to prohibitive levels. How prohibitive? [According to Andy Thornley](#), the former Policy Director at the [San Francisco Bicycle Coalition](#),

"That takes that \$20,000 or \$40,000 bike lane and suddenly makes it a \$200,000 project, and it takes a project that might have taken a month or two to go from design to implementation and it could make it into a 2- or 3-year project. In many cases it's not so much that we take the bike lane or the crosswalk all the way through the research and reject it, it's that we don't even go into the environmental review because public agencies don't have the resources to spend the time and the money on these pretty cheap projects. So there is a hugely chilling effect to having to go through all of these hoops."

That observation is not just idle speculation. San Francisco's experience with one anti-bicycling activist caught the attention of Los Angeles, which was about to embark on its own expansion of bicycling. Fearing a similar lawsuit, Los Angeles began preparing its own exhaustive environmental review of its Bicycle Plan. The San Francisco lawsuit also caught the attention of Cameron Smyth, a California Assembly member from Santa Clarita, a Los Angeles County city north of Los Angeles. Hoping to help Los Angeles avoid the expense and delay of environmental review for its Bicycle Plan, Assembly Member Smyth introduced [legislation to streamline CEQA review for bicycle lanes](#). Last week, the California legislature passed that legislation, and it is expected to be [signed into law](#) by Governor Brown this month. Under the new law, cities will conduct a streamlined review of bike lane projects, and submit their findings to the State and County, along with a notice of exemption from

CEQA. [A second bill exempting bike lanes from CEQA review](#) is also working its way through the legislature, and is expected to be approved by the Assembly this month.

As complicated as the process has been, this is the correct outcome. California's environmental laws should not be circumvented, but bike lanes are environmentally-beneficial projects, rather than the environmentally harmful projects that the law was intended to address. By exempting bike lanes from full environmental review, the California Legislature has expressed its intent to restore some balance to California's environmental laws, and with the stroke of the Governor's pen, that balance can be restored.