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February 26, 2013

Dear Sgt. O'Boyle,

I'm a director on the board of the **San Diego Bicycle Club** (SDBC) where my role is *liaison* to the **San Diego County Bicycle Coalition** (SDCBC) where I'm also a board director and the Chair of the Legal Committee. I'm also the Caltrans District 11 representative on the board of the **California Association of Bicycling Organizations** (CABO). I have been certified to teach bicycle traffic safety by the **League of American Bicyclists**.

I travel by bicycle several thousand miles per year, for commuting, utility and recreation. Though I live in La Jolla, recreational rides take me through Encinitas along Coastal Highway 101, usually once or twice per week. I've seen some recent correspondence between you and others regarding the application of CVC 21202 on Coastal Highway 101 and have some concerns and questions about some of the statements you've made. But before I get to that, I'd like to explain my perspective on related issues so that you can understand where I'm coming from. I apologize for the length of this, but I want to be thorough and clear, as clarity on this issue is critical to the safety of thousands of cyclists who travel on this roadway every year.

SDBC has been riding on Coastal Highway 101 every Saturday morning for over 65 years. I have been personally regularly participating in that ride for over ten years now. The right traffic lane on most of that stretch of highway has always been too narrow for safe *within-lane* passing of bikes by cars, so, whether riding with a group or on my own, I usually “control the lane” when riding there. When riding with others we commonly ride two, or more, side-by-side. If anyone has ever been actually cited with violating 21202 for controlling the lane there whether riding solo or side-by-side with others, I don’t know about it.

Riding side-by-side has many advantages, and not just for the bicyclists. Consider that the only difference in changing

lanes to pass cyclists riding side-by-side, from changing lanes to pass cyclists riding single file, is that the group will be considerably shorter if the cyclists are riding side-by-side. Either way, the passing motorist needs to change lanes, but a group of 15 bicyclists that is three wide and five long requires only about one third of the time and distance to pass than 15 bicyclists riding in a long single line. See the figure below.

V C Section 21202 Operation on Roadway

Operation on Roadway

21202. (a) Any person operating a bicycle upon a roadway at a speed less than the normal speed of traffic moving in the same direction at that time shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

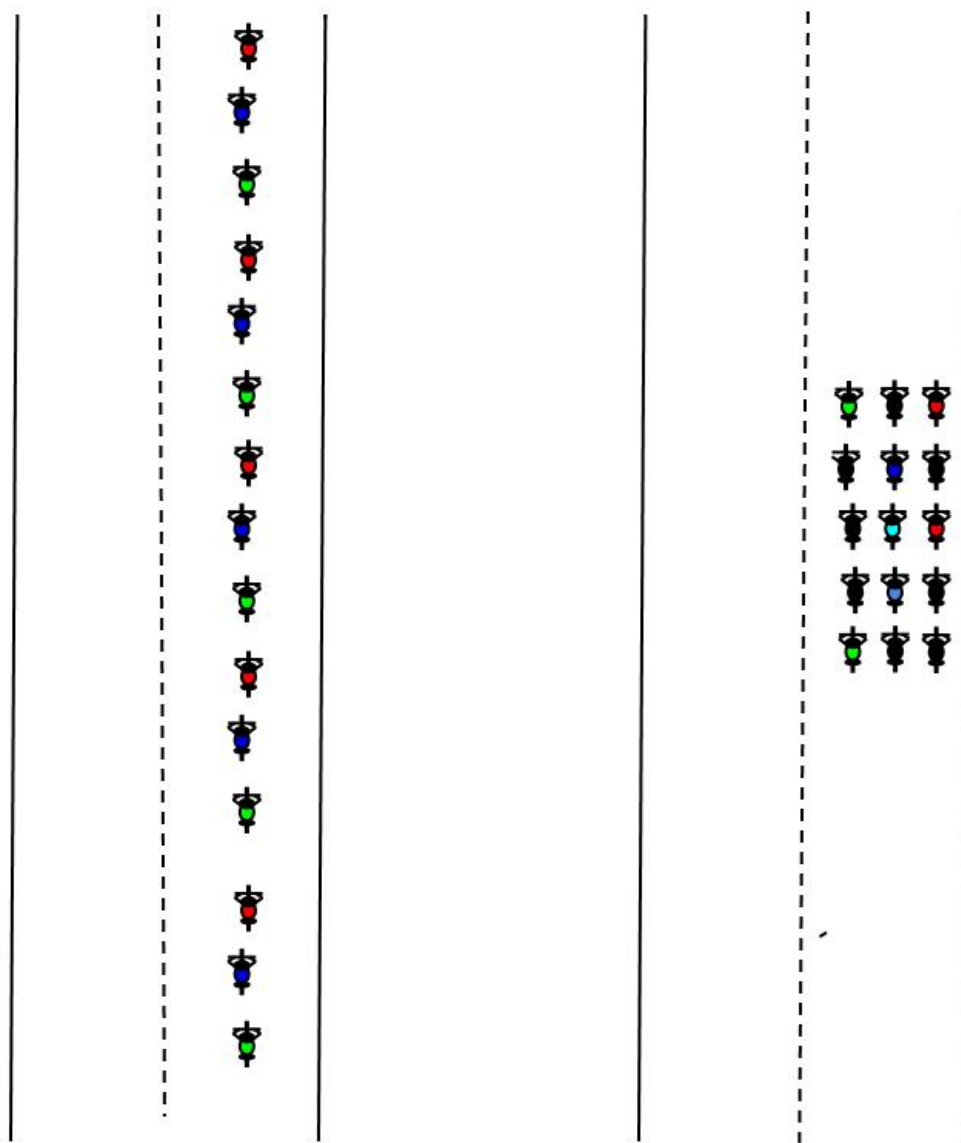
(1) When overtaking and passing another bicycle or vehicle proceeding in the same direction.

(2) When preparing for a left turn at an intersection or into a private road or driveway.

(3) When reasonably necessary to avoid conditions (including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb or edge, subject to the provisions of Section 21656. For purposes of this section, a “substandard width lane” is a lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.

(4) When approaching a place where a right turn is authorized.

(b) Any person operating a bicycle upon a roadway of a highway, which highway carries traffic in one direction only and has two or more marked traffic lanes, may ride as near the left-hand curb or edge of that roadway as practicable.



Which group of 15 cyclists is easier to pass?

Occasionally we encounter motorists who are not aware of the safety, legal and practical reasons to control lanes and ride side-by-side, and they harass us in various manners, and, so, we've welcomed the recent new treatments (**Bikes May Use Full Lane** signs and sharrows), because of the potential educational aspect.

We understand the flow-down of the vehicle code sections that restrict bicyclist position on the roadway to be as follows.

1. The rights and responsibilities of cyclists to be those of drivers of



vehicles is established in CVC 21200(a).

2. Cyclists, like all drivers, are required to travel on the right half of the road per CVC 21650.
3. When cyclists are moving slower than other traffic, like other drivers of slow moving vehicles, they are restricted to the rightmost lane by 21654 (except when passing or turning left).
4. On 2-lane roads (so not applicable on Coastal 101), when five or more vehicles are formed in line behind the cyclist, the cyclist is required to use a turnout, per 21656.
5. Slow moving cyclists are sometimes further restricted to ride "*as close as practicable to the right*" by 21202, when none of the situations which are listed as exceptions in 21202 are present.

The complexity of the wording in 21202 is often a source of confusion, for law enforcement and judges, as well as for the public at large. Because of the need to use proper roadway positioning for safety, many bicyclists take it upon themselves to learn the specifics of bicycle law, including the meaning, significance and implications of all the exceptions in 21202 (and 21208), sometimes knowing and understanding it even better than law enforcement officers and judges. For example, a few years ago cyclist Andrew Woolley was passing stopped traffic between lanes on El Cajon Blvd in San Diego when he was cited for violating 21202. Woolley tried to point out to the officer, and later in court, that 21202 did not apply because numerous 21202 exception conditions were present, but the officer, and judge, found him to be in violation. On appeal, the city attorney agreed with defendant Woolley's understanding and argument, and the Appellate Division of the San Diego Superior Court ultimately reversed the original decision accordingly (copy attached in full below), stating:

The judgment is reversed and the charges are dismissed in the interests of justice. (*People v. Kriss* (1979) 96 Cal.App.3d 913.) As the People concede, the trial court erred in interpreting Vehicle Code section 21202 as requiring Appellant to ride his bicycle to the right of traffic under the conditions presented here.

This demonstrates that courts understand that when a 21202 exception condition exists, a cyclist cannot be cited or found to be in violation of 21202.

We understand that the entire purpose of 21202 is to generally encourage bicyclists to ride in a manner that facilitates safe *within lane* passing by motorists in accordance with 21750. That's why bicyclists are generally required to ride "*as close as practicable to the right*" within lanes, and why, even though California has no explicit law requiring bicyclists to ride single file, 21202 effectively prohibits side-by-side riding. But lawmakers did not intend for bicyclists to sacrifice their safety or ability to operate as drivers in order to accommodate *within lane* passing, and so they structured the section in the following manner.

Any [bicyclist] [moving slower than other traffic] ... shall ride as close as practicable to the right ... except under any of the following situations:

The “following situations” which are listed immediately subsequent are intended to cover those situations where riding “*as close as practicable to the right*” may compromise the cyclist’s safety or driver rights, so in those situations cyclists are not legally required by 21202 to accommodate *within lane* passing by riding “*as close as practicable to the right ...*”. Among the situations where 21202 is specified by explicit exception to not apply is whenever the lane is “*too narrow for a bicycle and a vehicle to travel safely side by side within the lane*” in 21202(a)(3), obviously because safe *within lane* passing per CVC 21750 is not possible in such lanes, by definition. Of course, when 21202 does not apply, bicyclists are still subject to compliance with 21650, 21654, 21656 and other CVC sections, as applicable.

One potential issue with the “*too narrow for a bicycle and a vehicle to travel safely side by side within the lane*” wording in 21202(a)(3) is that no precise numerical value is specified for what constitutes “too narrow”. But, by using some basic known values we can quickly sketch out about what this should be. Going left to right in a lane, leaving only one foot to the left of the vehicle to the lane edge on the left, 7 feet for typical vehicle width (including mirrors), 3 feet clearance to the cyclist, 2 feet for

the cyclist’s width, and another foot from the cyclist to the road edge, results in $1 + 7 + 3 + 2 + 1 = 14$ feet. That’s a *minimum* because vehicles can be as wide as $8\frac{1}{2}$ feet (per CVC 35100 and CVC 35106), and bicycling as close as only one foot from

Texas Sec. 551.103. OPERATION ON ROADWAY. (a) Except as provided by Subsection (b), a person operating a bicycle on a roadway who is moving slower than the other traffic on the roadway shall ride as near as practicable to the right curb or edge of the roadway, unless:

- (1) the person is passing another vehicle moving in the same direction;
- (2) the person is preparing to turn left at an intersection or onto a private road or driveway;
- (3) a condition on or of the roadway, including a fixed or moving object, parked or moving vehicle, pedestrian, animal, or surface hazard prevents the person from safely riding next to the right curb or edge of the roadway; or
- (4) the person is operating a bicycle in an outside lane that is:
 - (A) less than 14 feet in width and does not have a designated bicycle lane adjacent to that lane; or
 - (B) too narrow for a bicycle and a motor vehicle to safely travel side by side.

(b) A person operating a bicycle on a one-way roadway with two or more marked traffic lanes may ride as near as practicable to the left curb or edge of the roadway.

(c) Persons operating bicycles on a roadway may ride two abreast. Persons riding two abreast on a laned roadway shall ride in a single lane. Persons riding two abreast may not impede the normal and reasonable flow of traffic on the roadway. Persons may not ride more than two abreast unless they are riding on a part of a roadway set aside for the exclusive operation of bicycles.

the road edge is arguably not leaving sufficient room for obstacle maneuvering. In fact, the only state that specifies a numeric minimum, Texas, uses 14 feet (TX 551.103(a)(4)(A)). But all that is beside the point when we’re talking about roads like Coastal 101 where traffic engineers have done the measurements and determinations for us - by treating the roadway with sharrows and BMUFL signs they have declared the lane to be “*too narrow for a bicycle and a vehicle to travel safely side by side within the lane*”.

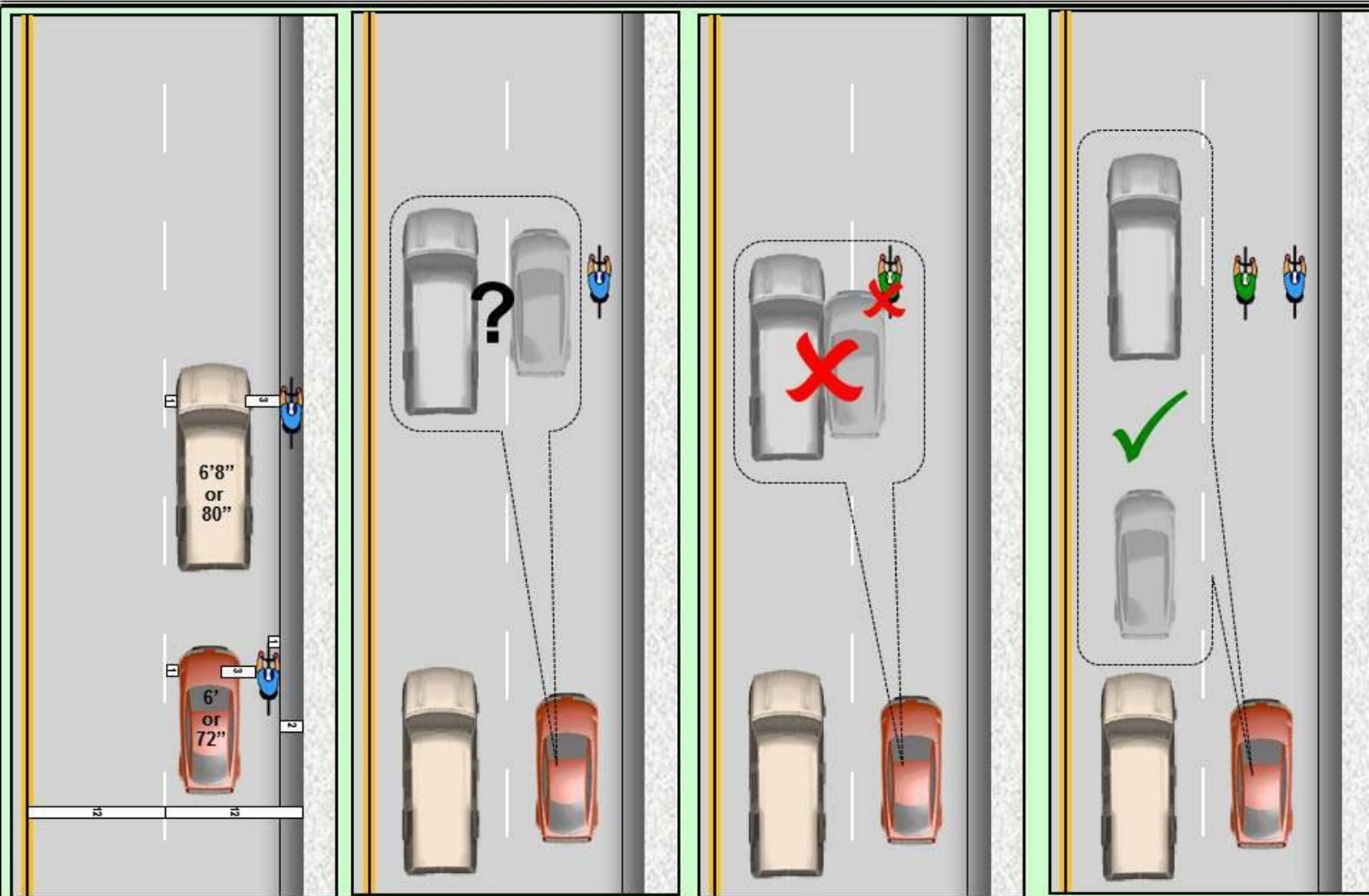
The official name for sharrows is "shared lane marking" and the 2012 California Manual of Traffic Controls and Devices, in Section 9B.06, states: "The **Bicycles May Use Full Lane** (R4-11) sign may be used on roadways where no bicycle lanes or adjacent shoulders usable by bicyclists are present and where travel lanes are too narrow for bicyclists and motor vehicles to operate side by side".

Further, the MUTCD states: "... a **Shared Lane Marking**... may be used in addition to or instead of the **Bicycles May Use Full Lane** sign to inform road users that bicyclists might occupy the travel lane." For support, it refers to CVC 21202(a)(3) as defining a "substandard width lane" as a "lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the same lane." The clear purposes of sharrows and BMUFL signs is for traffic engineers to take the guesswork out of whether the 21202(a)(3) substandard width condition applies, to clearly designate where 21202 does not require cyclists to ride far right so that they may occupy the lane for safety reasons.

Many people seem to believe that 21202 encourages cyclists to ride "far right" in order to facilitate "straddle passing" in "*lanes too narrow to be shared...*", where the passing motorist straddles the cyclist's lane and the adjacent lane as he overtakes, as well as *within lane* passing in wide lanes, but the (a)(3) wording about substandard width lanes makes the intent clear. The 21202 requirement to ride "far right" simply does not apply in such lanes. The reason for this is that while straddle passing can be done safely and legally in compliance with 21750 when the adjacent lane is unoccupied, a safer complete lane change is also possible when the adjacent lane is unoccupied. More importantly, when the adjacent lane is occupied motorists approaching from behind need to slow and prepare accordingly, and the sooner they are aware of this, the more space and time they have to manage this safely. The diagram below demonstrates the problem of far right riding, and the solution of lane control.



In Lane vs Lane Change Passing



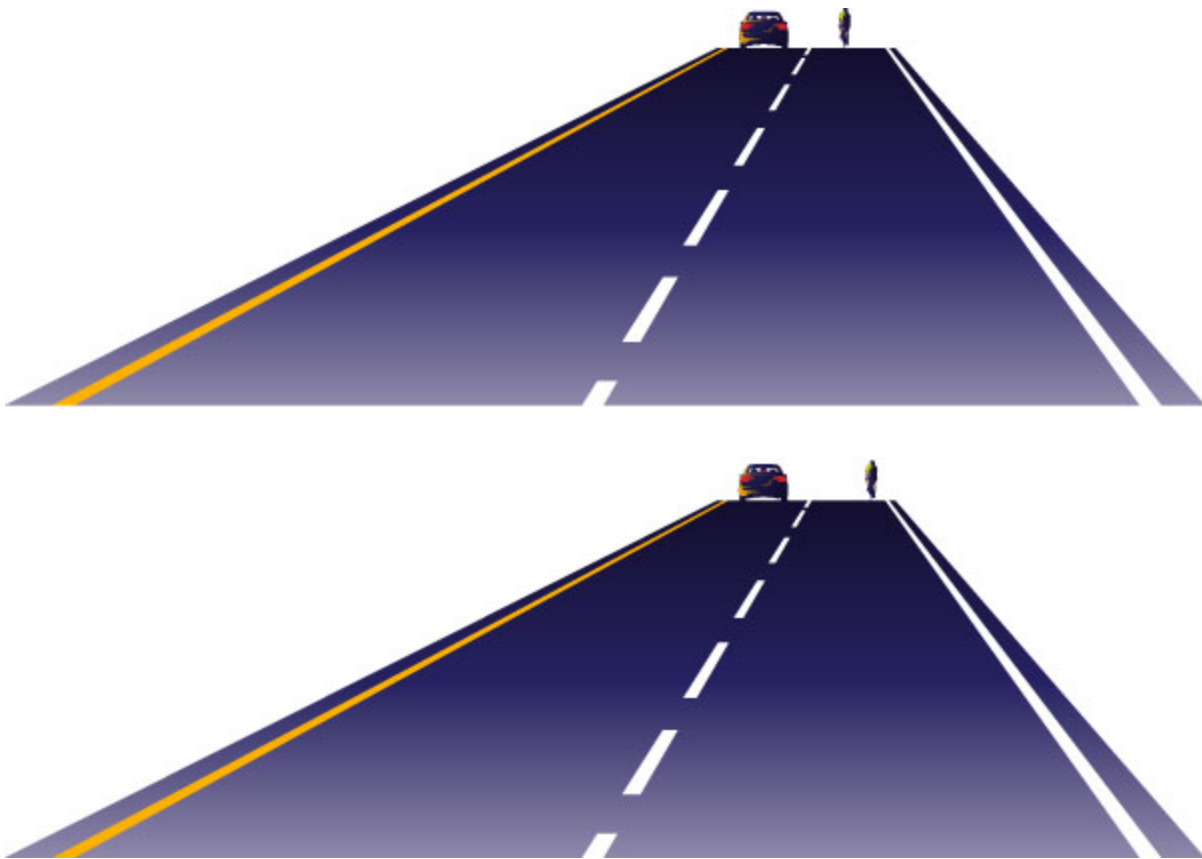
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Lane Pos. – Rev 0.0 – Slide # 0

Referring to the frames in the diagram above left-to-right numerically, #1 shows that *within-lane passing* in a 12 foot wide lane results in close/dangerous passing of the far right cyclists, with less than 3 feet of passing distance. In #2 the blue cyclist is riding far right and the motorist in the red car is tempted to squeeze by, dangerously close. The motorist may think he has room to safely pass and only realize after he is committed to the squeeze and cannot safely slow down in time to get behind the cyclist, that the pass is unsafe. This dangerous predicament is all too familiar to most cyclists. In #3 and #4 the green cyclist is positioned to make it clear that *within-lane* passing is not possible, and #4 shows the motorist in the red car realizing he must slow down, change lanes, and get behind the SUV in the adjacent lane in order to pass safely.

Another way to appreciate the point of a bicyclist using conspicuous lane positioning to control a “too narrow...” lane is in terms of what road construction crews do. When they must close part of a lane using traffic cones or barriers, they always close the entire lane if the remaining space would be too narrow for a truck. They know better than to leave a too-narrow lane because approaching drivers will not realize it is too narrow to use until they are right on top of it, giving them less time to merge left and/or slow down, and possibly encouraging them to sideswipe the barrier or cones. When the entire lane is closed, motorists can see that at a longer distance. Similarly, when bicyclists are at lane center or ideally left of center, motorists can see and will realize that a lane change will be required at a longer distance. The perspective illustration below illustrates what a motorist sees from a distance. Notice how much more obvious it is that a lane change is needed with the cyclist in a conspicuous lane position.



Now, let's consider the legality of side-by-side cycling in lanes “too narrow...”. Assuming the lane in Figures A, B and C below is “too narrow ...”, as established by traffic engineers who marked these lanes with sharrows and “Bikes May Use Full Lane” signs, let us see whether any of the cyclists depicted may be in violation of 21202.

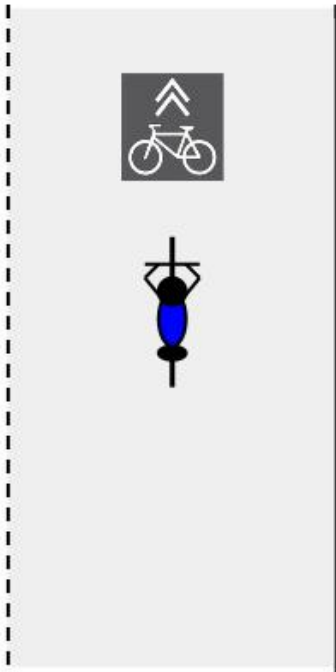


Figure A

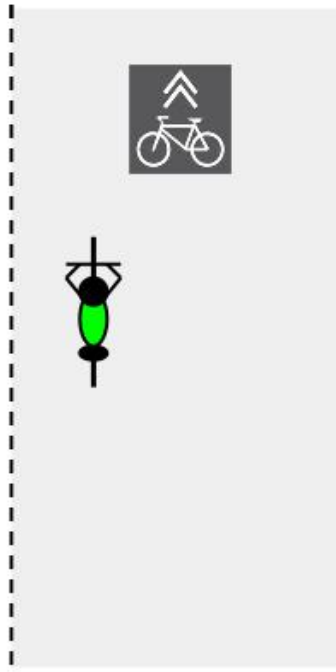


Figure B

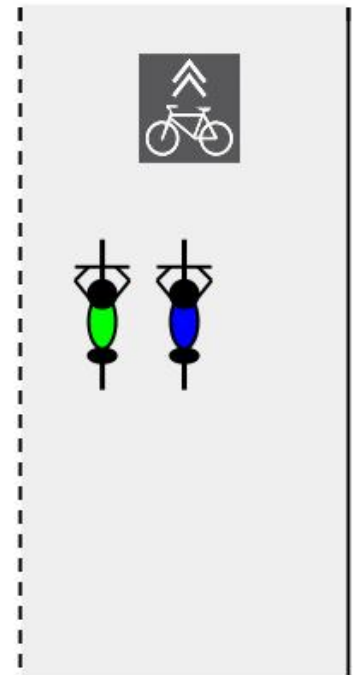


Figure C

In **Figure A** we have the blue solo cyclist riding near lane center. Even though there is space to his right, he is not violation of 21202 at least because of the “*lane is too narrow ...*” exception condition, due to which there is no requirement to “*ride as close as practicable to the right*”. That is, even if it’s arguably practicable to ride closer to the right, there is no legal requirement to do so, nor violation if he does not.

In **Figure B** we have the green solo cyclist riding at about the left tire track. He too is not in violation of 21202, again because of the “*lane is too narrow ...*” exception condition. In fact, while the position of the blue cyclist (lane center) might still invite dangerously close “straddle passes”, the position of the green cyclist (left tire track) is arguably safer, since it makes it clearer sooner to traffic approaching from behind that they need to change lanes completely to pass safely, and so are likely to have more time and distance to plan and execute a safe pass accordingly. At least when traveling in a “*too narrow...*” lane, bicyclists, like motorcyclists, are not legally prohibited from choosing the lane position that is best for the conditions.

In **Figure C** the two bicyclists are shown together, side-by-side, in the same lateral positions they held in the previous figures. Since neither is in violation of 21202 in **Figures A** and **B**, neither can be in violation of 21202 in **Figure C**. Each is in the same lateral position in the same narrow lane in both figures. It’s nonsensical for the law to exempt either from 21202 violations because of the narrow lane condition in **Figures A** and **B**, but not in **Figure C** where the identical narrow lane condition is also present.

Finally, I've attached below the July 16, 2009 letter from Michael Miles, Caltrans District Director, in which he explains to citizen Bob Helper:

When the lanes are not wide enough for safe side-by-side sharing with motorists, per CVC 21202(a)(3), there is no restriction on the number of bicyclists who can ride side by side within a travel lane.

Now, with respect to the statements you've made recently about all this, apparently you have, or will be, instructing officers to cite cyclists for violating CVC 21202 on 101 who are riding two or more side-by-side, despite the "substandard width" lane condition clearly identified by the new sharrows and Bikes May Use Full Lane signage. So, I'm concerned that we will not be supported by law enforcement when riding in a safe and legal manner. I'm hopeful that given the above explanations we will find agreement with you that bicycling side-by-side in a narrow lane is safe and not a violation of 21202, and that traffic law enforcement efforts on 101 would be better spent by encouraging motorist compliance to pass bicyclists safely by making full lane changes and passing with sufficient clearance per CVC 21750.

To be sure, 21202 does not explicitly say that side-by-side riding is lawful in lanes "*too narrow...*" But laws don't specify what behavior *is* lawful; they only specify behavior that is *not* allowed; everything else is implicitly allowed. That's why officers need to cite the specific section that was violated when writing a ticket. No law, including 21202, explicitly prohibits side-by-side bicycling. However, as noted above, 21202 *implicitly* prohibits side-by-side riding, *but only when it applies*. Of course it prohibits nothing (including side-by-side riding) when it doesn't apply, due to a conditional exception, such as the presence of a lane that is "*too narrow ...*"

I look forward to hearing from you that you have been convinced; that cyclists controlling the lanes, solo or side-by-side, are not in violation of 21202, or any other section of the vehicle code. However, if you still believe side-by-side riding is a violation of 21202 on roads with substandard width lanes, an explanation would be very much appreciated.

Thanks very much,
Serge

V C Section 21200 Laws Applicable to Bicycle Use Peace Officer Exemption

Laws Applicable to Bicycle Use: Peace Officer Exemption

21200. (a) A person riding a bicycle or operating a pedicab upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division, including, but not limited to, provisions concerning driving under the influence of alcoholic beverages or drugs, and by Division 10 (commencing with Section 20000), Section 27400, Division 16.7 (commencing with Section 39000), Division 17 (commencing with Section 40000.1),

and Division 18 (commencing with Section 42000), except those provisions which by their very nature can have no application.

V C Section 21650 Right Side of Roadway

Right Side of Roadway

21650. Upon all highways, a vehicle shall be driven upon the right half of the roadway, except as follows:

- (a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing that movement.
- (b) When placing a vehicle in a lawful position for, and when the vehicle is lawfully making, a left turn.
- (c) When the right half of a roadway is closed to traffic under construction or repair.
- (d) Upon a roadway restricted to one-way traffic.
- (e) When the roadway is not of sufficient width.
- (f) When the vehicle is necessarily traveling so slowly as to impede the normal movement of traffic, that portion of the highway adjacent to the right edge of the roadway may be utilized temporarily when in a condition permitting safe operation.
- (g) This section does not prohibit the operation of bicycles on any shoulder of a highway, on any sidewalk, on any bicycle path within a highway, or along any crosswalk or bicycle path crossing, where the operation is not otherwise prohibited by this code or local ordinance.

V C Section 21654 Slow Moving Vehicles

Slow-Moving Vehicles

21654. (a) Notwithstanding the prima facie speed limits, any vehicle proceeding upon a highway at a speed less than the normal speed of traffic moving in the same direction at such time shall be driven in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.
- (b) If a vehicle is being driven at a speed less than the normal speed of traffic moving in the same direction at such time, and is not being driven in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb, it shall constitute prima facie evidence that the driver is operating the vehicle in violation of subdivision (a) of this section.
- (c) The Department of Transportation, with respect to state highways, and local authorities, with respect to highways under their jurisdiction, may place and maintain upon highways official signs directing slow-moving traffic to use the right-hand traffic lane except when overtaking and passing another vehicle or preparing for a left turn.

V C Section 21750 Overtake and Pass to Left

Overtake and Pass to Left

21750. The driver of a vehicle overtaking another vehicle or a bicycle proceeding in the same direction shall pass to the left at a safe distance without interfering with the safe operation of the overtaken vehicle or bicycle, subject to the limitations and exceptions hereinafter stated.

Woolley case

The whole case is described in [this blog](#), which includes links to official documents. I attached the appellate court decision below.

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Clerk of the Superior Court
JUN 18 2010
By: JW Browder, Deputy

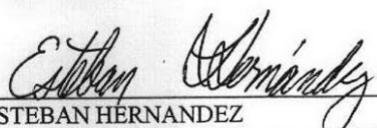
**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, APPELLATE DIVISION**

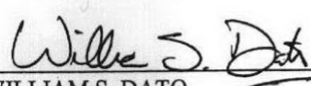
PEOPLE OF THE STATE OF CALIFORNIA,) Appellate Division No.: CA 221322
Plaintiff(s) and Respondent(s),) Trial Court Case No.: Y769289
v.) (Central Division, County Courthouse)
ANDREW JOHN WOOLEY,)
Defendant(s) and Appellant(s).)

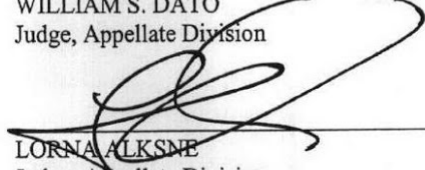
ORDER

The judgment is reversed and the charges are dismissed in the interests of justice. (*People v. Kriss* (1979) 96 Cal.App.3d 913.) As the People concede, the trial court erred in interpreting Vehicle Code section 21202 as requiring Appellant to ride his bicycle to the right of traffic under the conditions presented here.

Dated: JUN 18 2010


ESTEBAN HERNANDEZ
Acting Presiding Judge, Appellate Division


WILLIAM S. DATO
Judge, Appellate Division


LORNA ALKSNE
Judge, Appellate Division

APP 06-18-10 P14

Caltrans Letter

DEPARTMENT OF TRANSPORTATION

100 S. MAIN STREET
LOS ANGELES, CA 90012
PHONE (213) 897-0362
FAX (213) 897-0360



*Flex your power!
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July 16, 2009

Mr. Bob Helper
29725 Pacific Coast Highway
Malibu, CA 90265-2642

Subject: Bicycle Travel on Pacific Coast Highway (State Route 1)

Dear Mr. Helper:

This is in response to your letter dated June 28, 2010, regarding regulating of bicycle travel on Pacific Coast Highway (State Route 1) in the City of Malibu.

You mentioned "Bike Lanes" and "single file rule" in your letter. Please note that there are no designated "Bike Lanes" on this portion of State Route 1, only highway shoulders, and there is no "single-file rule" in the California Vehicle Code (CVC).

California law allows bicyclists to legally travel on Pacific Coast Highway in the City of Malibu. The vehicle code does not require single file riding, either in the roadway or on the shoulder. Here are the relevant codes:

- CVC 21200 gives cyclists the rights and duties of drivers, thus requiring them to follow traffic laws in the CVC. This includes:
- CVC 21650, which requires that all highways users operate on the right hand side of the roadway.

Please note that the roadway, "that portion of a highway improved, designed, or ordinarily used for vehicular travel" does not include the highway shoulder, so cyclists are not required to use the shoulder for normal operation, in addition cyclists have the option to use the shoulder per 21650(g) and 21650.1. When the shoulder is safely navigable, cyclists will typically use the shoulder as a courtesy to other road users, even though they are not required to do so. Unlike a bike lane, which is a mandatory use facility per CVC 21208, a highway shoulder is an optional facility for bicycle travel. CVC 21654 also requires to drive in the right hand marked roadway lane, not the shoulder, when moving slower than other traffic, and if the outside travel lanes, exclusive of the shoulder, are wide enough for safe side by side sharing, then 21202(a), requires cyclists slower than the speed of traffic to operate "as far right as practicable to the right hand curb or edge of the roadway". Please note that the "edge" of the roadway is defined by the shoulder stripe in those areas where there is no curb.

Bob Helper
July 16, 2010
Page 2

When the lanes are not wide enough for safe side-by-side sharing with motorists, per CVC 21202(a)(3), then there is no restriction on the number of bicyclists who can ride side by side within a travel lane.

Bicyclists are also allowed, per CVC 21202(a)(4), to leave the edge of a shareable width lane to avoid places where right turns are authorized, which are typically driveways and intersections. So in summary, bicyclists moving slower than other traffic, have the right to use the full right hand lane when it is too narrow to safely share with motorists, and also have the option to use shoulders if they so choose. When the lanes are wide enough for safe side by side sharing, then cyclists must ride as far right as practicable to the right hand curb or edge of the roadway, with the exceptions listed in the full legal text on the attachment to this letter, again with the option to use the shoulder.

If you feel that drivers or bicyclists are violating the law, and you would like to report any incidents, we recommend that you contact your local law enforcement organization having jurisdiction in this area.

If you have any questions, please contact Dale Benson, of District 7 Office of Local Assistance, at (213) 897-2934.

Sincerely,



MICHAEL MILES
District Director

Attachment