



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject INFORMATION: Design Concept and Scope
of Projects in Planning and Environmental
Documents

Date: JAN 31 1992

From Director, Office of Environment
and Planning

Reply to
Attn of HEP-41

To Mr. Edwin M. Wood
Regional Federal Highway Administrator (HRA-09)
San Francisco, California

This is in response to your September 4 memorandum on the above subject. At issue is the need for consistency of design concept and scope of projects in environmental documents with regional plans and programs. We apologize for the delay in responding to your memorandum. We had anticipated that the issues you discussed would be addressed in the final conformity rule. However, the rule has been delayed, and we want to provide guidance now rather than wait for the completion of that process.

We agree that meeting the requirements of the Clean Air Act Amendments (CAAA) will require better coordination between the metropolitan planning organizations (MPOs) and project proponents in developing transportation plans, programs, and environmental documents. We also agree that the timing of environmental documents should coincide better with that for the transportation improvement program (TIP) conformity determination to the extent possible, to avoid a difference in design concept and scope between the TIP and the environmental document. Better coordination on timing will also avoid a difference in design concept and scope with the transportation plan.

The question of project design concept and scope in transportation plans is a complex issue, and is still under discussion with the Environmental Protection Agency (EPA) as we develop the Notice of Proposed Rulemaking on the final conformity rule. Until such time as this issue is resolved, we recommend that you continue to follow the current interim conformity guidelines for plan conformity determinations.

The CAAA does not change National Environmental Policy Act (NEPA) requirements. Should the design concept and scope of the projects scheduled through the NEPA process be significantly different from that included in the plan or TIP, additional analysis will be required to determine if the conformity determinations for the existing plan and program are still valid. This is critical, since we can not approve projects which do not come from a conforming plan and program. Consequently, we can not approve a final environmental document that includes a project which is significantly different in design concept and scope (i.e. includes a larger, more comprehensive project), from that which was found to conform in the plan and TIP. To avoid this conflict, the preliminary engineering (PE) phase, for the

preparation of the environmental document for the overall project, should be included in the TIP and the proposed project should be analyzed for conformity. This approach also applies for those projects where Federal funds are not being used for PE, but are anticipated for some other phase of the project. However, as required by the interim conformity guidance, there must be a reasonable expectation that sufficient funding will be available to complete the overall project during the analysis period before it can be included in the TIP. In some cases, this may require the analysis period to be adjusted to coincide with the completion dates of the projects included in the TIP.

The proposed California Division Office response to the California Department of Transportation includes 2 options for dealing with these issues. Option #1 is basically the same as that discussed previously, i.e. the "larger" or overall project would be described in the TIP, and the conformity finding made on this project, which matches the one described in the environmental document. Please remember that the project must also match the project described in the conforming plan from which it is taken.

Regarding option #2, both the overall and smaller project would need to meet NEPA requirements of logical termini and independent utility. The danger of option #2 is the potential of a nonconformity determination on the overall project later in the process when it is included in the TIP. We would recommend this process only in unusual circumstances.

Your correspondence also asked us to discuss the issue of implementing certain features of design scope which are included in applicable State Implementation Plans (SIPs) as transportation control measures (TCMs), but are not scheduled as part of a project's initial construction. Implementation of such features (for example, high-occupancy vehicle lanes) which are included in an applicable SIP, should be consistent with the SIP schedules. Expedient implementation of TCMs is required as a condition of conformity under Section 176(c)(3)(A)(ii). As discussed in the EPA/DOT interim conformity guidance, the TIP submission must include the status of each TCM in the applicable SIP. This discussion could be included in the TIP itself, or as a separate status report which is submitted with the TIP. Either way it is part of the consideration by both the MPO and FHWA/Federal Transit Administration in making a conformity determination.

In the situation you described, the Memorandum of Understanding would not have to be included in the SIP for FHWA purposes. However, it is incumbent on the MPO, State, and FHWA officials to establish a means of tracking these measures on a continuing basis, since they are part of the conformity determination. The important issues involve the commitments made in the SIP and the credits taken in the conformity analysis. As with any other TCM, the implementation must be consistent with the SIP schedule and the status provided in the TIP submission or the TIP, per the EPA/DOT interim conformity guidance. If emissions credits are taken, and the pricing mechanisms prove unsuccessful, this would need to be reflected in the next conformity analysis and appropriate action taken.

Should you have any further questions, please contact Mr. James M. Shrouds at FTS 366-4836 or Ms. Kathy Laffey at FTS 366-2077 of my office.



Kevin E. Heanue

cc:

HPP-01
HPP-03
HPP-04
HPP-06
HPP-07
HPP-08
HPP-010
HTE-04
HSY-04
HES-05

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