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COMMUNICATION

Date: 3/17/05
To: SBCAG Board
From: Jim Kemp, Executive Director
Re: Request for Conformity Lapse Status Information

At the January SBCAG board meeting, several board members expressed concerns regarding SBCAG's most recent federal conformity lapse and requested staff to report back to the board on the conformity status of other areas around the state. The board also expressed interest as to what causes or creates a conformity lapse and how they can be avoided in the future. These questions as well more generic background conformity information are highlighted below. For more detailed information, the staff contact on conformity issues is Jim Damkowitz (961-8907)

What is Conformity?

Transportation conformity is required by the Clean Air Act to ensure that federal funding and approval are given to highway and transit projects that are consistent with ("conform to") the air quality goals established by a federally approved air quality implementation plan (known as the State Implementation Plan or SIP). Conformity, for the purpose of the SIP, means that transportation activities will not compromise an area's progress towards achieving or maintaining the national ambient air quality standards.

How is Conformity Determined?

Four tests must be satisfied for a regional transportation plan or transportation improvement program (FTIP) to be found to conform with the federal air quality plan: 1) the plan or program must demonstrate that all transportation control measures (TCMs) identified in the federal air quality plan are on schedule and are being expeditiously implemented; 2) total emissions from the "future" transportation system as envisioned in the plan or program remain at or below the limits established in the federal air quality plan (i.e., emission budgets); 3) the plan or program is financially constrained; and, 4) the interagency consultation and public participation procedures established in SBAPCD Rule 701 are documented and satisfied.

By far the most arduous test is #2 which entails regional transportation and air quality modeling to be performed. The federal conformity regulation specifically requires that all inputs to the transportation and air quality models represent the "latest planning assumptions" available at the time the conformity analysis is initiated by the MPO.

What Triggers a Conformity Lapse?

Transportation projects must come from both a conforming regional transportation plan (RTP) and transportation improvement program (FTIP). At a minimum, conformity of these documents must be re-determined every three years. For FTIPs – which have a 2-year shelf life – conformity must be determined every two years. Failure to adequately achieve the four conformity tests described above will result in a lapse at the time of the plan or program's expiration date. If either the plan or program lapse then both are considered to lapse.

Member Agencies

Buellton ■ Carpinteria ■ Goleta ■ Guadalupe ■ Lompoc ■ Santa Barbara ■ Santa Maria ■ Solvang ■ Santa Barbara County

Whereas RTP and FTIP updates are the responsibility of the MPO, local air district responsibilities also affect conformity. EPA approval of a new federal air quality plan with new emission budgets triggers an 18 month clock for re-determining conformity of an existing RTP and FTIP with those new emission budgets. In addition, EPA approval of a new air quality model required for conformity typically includes a maximum 2-year grace period by which conformity must be re-determined for existing RTPs and FTIPs.

What happens during a Conformity Lapse?

During a conformity lapse, no department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an approved air quality implementation plan. No MPO shall give its approval to any project, program, or plan which does not conform to an approved air quality implementation plan. Work that is currently under way on a project may continue, but no new phases of work may begin during a lapse.

What Other Areas in California have Experienced a Conformity Lapse?

As of January 2005, four areas within the state were in lapse. These include: Santa Barbara County; Searless Valley (Trona area – NW corner of San Bernardino County); the Sacramento metropolitan area (Sacramento Area Council Of Governments planning jurisdiction – which includes the counties of Sacramento, Yolo, Placer, El Dorado, and portions of Solano, Sutter and Contra Costa counties); and, the Lake Tahoe Basin (see Map). New conformity determinations for Santa Barbara County and the Lake Tahoe Basin were submitted for federal review in February that resulted in ending the conformity lapse in these areas. Both of these areas lapsed on October 4th 2004 – their FTIP expiration dates. The Sacramento metropolitan planning area (SACOG) has been lapsed since October 2003 and is not anticipated to remedy its lapse until Fall 2005. Searless Valley area has been in lapse since March of 1999.

In addition to the current lapses mentioned above, there have been lapses within the state that have been subsequently remedied by the respective MPOs. Most recently – the Bay Area (Metropolitan Transportation Commission 5-county planning region) lapsed twice in 2002 for approximately 8 months combined. The Southern California Association of Governments 7-county planning region lapsed during each of its last two RTP update cycles for approximately 3-months each. The San Diego metropolitan area lapsed briefly during their last RTP update.

Since the promulgation of the 1990 Clean Air Act there has been many other lapses around the state. For instance, Santa Barbara County lapsed for six months back in 1995 due to a failed TCM project identified in our 1982 federal air quality plan (at that time the most recent EPA approved federal air quality plan for the county). Other areas around the state (and nation) had similar lapse problems in the mid 1990's as new federal air quality plans were under development to replace antiquated TCMs adopted in the early 1980's.

How Long will Santa Barbara County be Subject to Conformity?

With the federal attainment designation of the "new" 8-hour ozone standard, Santa Barbara County will be relieved of all conformity requirements on June 15, 2005 – the date of the 1-hour ozone standard revocation. Pending no legal challenges at the federal level, future transportation plans and programs developed by SBCAG will not be impacted by conformity after June 15, 2005. Since SBCAG will no longer be subject to conformity, the threat of a lapse will no longer exist. Consistent with our MOU, SBCAG and the SBAPCD will continue to work closely on future updates to air quality plans and consistent with SBAPCD Rule 701 engage in interagency consultation early in the development of future transportation plans and programs.

October 4, 2004 Conformity Lapse – How Did it Happen?

As previously reported to the board there were several factors that culminated in SBCAG's inability to avoid a conformity lapse on October 4, 2004 – the expiration date of the 2002 FTIP. These included delays in receiving statewide travel survey data from Caltrans for input to SBCAG's new travel model and ultimately delays getting formal buy-off on the new model from our member local agencies and from the board. Completion of the new model was necessary for SBCAG to demonstrate conformity of the 2004 FTIP with the 2001 Clean Air Plan emission budgets. An even greater setback occurred when FHWA handed down a policy decision requiring SBCAG to perform a full update to the 2001 RTP as part of our FTIP update and conformity determination. These actions/decisions precluded SBCAG from meeting the October 4, 2004 FTIP expiration deadline.

To keep the county's conformity exempt projects moving forward, SBCAG developed and adopted an "interim" FTIP which only included those projects federally recognized as having no impact on air quality (e.g., safety projects, roadway maintenance and rehab projects, transit projects, demand management projects, and other transportation control measures). SBCAG and Caltrans also expedited execution of several cooperative agreements prior to the October 4th deadline that allowed several high profile state highway projects (Highway 101 operation improvements) to move forward during the lapse. Concurrently, SBCAG expedited development of an RTP update that addressed only federal planning requirements – called a Metropolitan Transportation Plan (MTP). The 2004 MTP included: updated growth forecasts, an extended 2030 forecast horizon, new travel model forecasts, new cost and financial constraint analysis, revised programmed and planned project schedules, and a public review process. The amended 2004 FTIP and 2004 MTP complete with positive conformity findings were approved by SBCAG in January and were submitted for federal review the same month. Federal approval of these documents and an end to the lapse occurred on February 16, 2005 (see attachment FHWA/FTA approval letter).

Are There any Additional Conformity Deadlines Pending?

EPA approval of the 2001 Clean Air Plan (CAP) on August 8, 2003 triggered an 18-month conformity clock requiring new FTIP and RTP conformity determinations using the new 2001 CAP emission budgets by February 8, 2005. Federal approval of the 2004 FTIP and 2004 MTP on February 16th addressed this requirement. This underscores the importance of SBCAG's decision to develop the 2004 MTP - given that a lapse would have occurred on February 8th and lasted until adoption of the 2005 RTP – anticipated in May/June (4 to 5 month lapse).

SBCAG continues to monitor legal challenges to both the 1-hour ozone standard revocation and recent conformity amendments.

Summary

- The conformity regulation is complex and often triggers the need for extensive work whenever a plan or program is updated or amended or there are changes in the regulations and/or interpretations of the regulations by the Federal Highway Administration, Federal Transit Administration, Environmental Protection Agency or the courts. As a result, conformity lapses are not uncommon.
- Although a conformity lapse precludes taking action on many projects programmed in the FTIP (eg., allocation of funds), no project schedules were impacted during the lapse of SBCAG's FTIP and RTP between October 2004 and February 2005.

- As of June 15, 2005, SBCAG will no longer be required to make conformity findings, thus a plan or program conformity lapse is no longer a threat. However, SBCAG will also lose its eligibility for approximately \$2.5 million annually in federal CMAQ apportionments.
- Consistent with our MOU, SBCAG and the SBAPCD will continue to work closely on future updates to air quality plans and consistent with SBAPCD Rule 701 engage in interagency consultation early in the development of future transportation plans and programs.



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
650 Capitol Mall, Suite 4-100
Sacramento, CA. 95814
February 16, 2005

IN REPLY REFER TO
HDA-CA
Document # 46300

Mr. Jim Kemp, Executive Director
Santa Barbara County Association of Governments
260 North San Antonio Road, Suite B
Santa Barbara, CA, 93110

Dear Mr. Kemp:

SUBJECT: Conformity Determination for SBCAG's 2004 Federal Transportation Improvement Program and 2004 Metropolitan Transportation Plan

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have completed our review of the conformity determination for the Santa Barbara County Association of Governments' (SBCAG) 2004 Federal Transportation Improvement Program (FTIP) and 2004 Metropolitan Transportation Plan (MTP). A joint FTA/FHWA air quality conformity determination for both the FTIP and MTP is required by the Environmental Protection Agency's (EPA) *Transportation Conformity Rule*, 40 CFR Parts 51 and 93, and the FHWA/FTA *Metropolitan Planning Rule*, 23 CFR 450.

The SBCAG adopted the 2004 FTIP and 2004 MTP and made the corresponding conformity determination on January 20, 2005. The conformity analysis submitted to FHWA/FTA by SBCAG indicates that all air quality conformity requirements have been met. Based on our review, we find that the 2004 FTIP and the 2004 MTP conform to the applicable state implementation plan in accordance with the provisions of 40 CFR Parts 51 and 93. This conformity determination ends the conformity lapse in the SBCAG region.

In accordance with the July 15, 2004, *Memorandum of Understanding (MOU) between the Federal Highway Administration, California Division and the Federal Transit Administration, Region IX*, the FTA has concurred with this conformity determination. Additionally, this approval was made after consultation with the EPA, Region 9 office, pursuant to the *Transportation Conformity Rule*.

In accordance with the above MOU, FHWA's single signature constitutes FHWA and FTA's joint air quality conformity determination for SBCAG's 2004 FTIP and 2004 MTP. If you have any questions pertaining to this conformity finding, please contact Steve Luxenberg, FHWA, at (916) 498-5066.

Sincerely,
/s/ **K. Sue Kiser**

For
Gene K. Fong
FHWA – California Division
Division Administrator