U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
650 Capitol Mall, Suite 4-100
Sacramento, CA. 95814
February 12, 2008

IN REPLY REFER TO
Document #: S51409

Mr. Will Kempton, Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

Attention: Federal Resources Office, Room 3500
For Garth Hopkins, Office of Regional and Interagency Planning

Dear Mr. Kempton:

SUBJECT: Transportation Planning Requirements and their Relationship to NEPA Approvals

The Federal Highway Administration recently issued the enclosed guidance to clarify transportation planning requirements. This new guidance allows more flexibility regarding when a project must be fully funded in the Metropolitan / Regional Transportation Plan.

Project sponsors may undertake the NEPA process with federal funds for a project or corridor that is included in the Metropolitan Transportation Plan as a project, corridor study, or NEPA study. However, in order for FHWA (or Caltrans under NEPA assignment) to sign the ROD, FONSI, or approve the CE and make a project level conformity determination, as applicable, all project phases planned within the life of the transportation plan have to be included in the fiscally constrained MTP.

By allowing environmental work to proceed up until the time of the ROD, FONSI, or CE approval as long as the project is reflected in the MTP as a project, corridor study or NEPA study, it allows the project sponsor additional time to identify reasonably available funding sources for the actual construction of the project. This flexibility may also attract more private investors and may lead to more Public Private Partnerships, since many private investors are reluctant to make financial commitments during the early NEPA process.

If you have any questions, please contact your FHWA MPO coordinator.

Sincerely,

/s/ K. Sue Kiser

For
Gene K. Fong
Division Administrator

Enclosure

MOVING THE
AMERICAN ECONOMY

cc: (e-mail)
PAQT
All MPOs
Caltrans:
    Muhaned Aljabiry
    Cindy Adams

Transportation Planning Requirements and Their Relationship to NEPA Process Completion (1/28/2008)

Background

This summary is intended to clarify the statutory and regulatory planning and conformity requirements that must be met with regard to the STIP/TIP, the Metropolitan Transportation Plan (MTP), and the Statewide Long Range Transportation Plan (SLRTP) prior to FHWA signing a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or approving a Categorical Exclusion (CE) for a project. Project sponsors may undertake the NEPA process with federal funds for a project or corridor that is included in the Metropolitan Transportation Plan as a project, corridor study, or NEPA study, if appropriate (some non-regionally significant projects may not need to be in the MTP) (23 CFR 450.324(g)). In the case of the SLRTP, the project, corridor, or NEPA study should be consistent with the SLRTP before proceeding with the NEPA process (23 CFR 450.216(k)). For federally funded NEPA studies, the STIP/TIP shall contain an item for NEPA and/or PE activity costs for the project prior to the authorization/obligation of federal funds to start the NEPA process. If a proposed NEPA study is not in the MTP (in metropolitan planning areas), consistent with the SLRTP (in non metropolitan planning areas), and contained in the STIP/TIP, only funds from non-federal sources can be used to conduct the NEPA process. Regardless of funding sources, the ROD, FONSI, or CE for a project can not be signed or approved by FHWA until the planning requirements described in the Q and A's listed below are met.

Questions and Answers

1. What statutory and regulatory planning requirements and conformity requirements must be completed regarding a proposed project before a ROD or FONSI can be signed, or a CE approved, ***for a project in a Metropolitan area***?

   Metropolitan Transportation Plan (MTP) Requirements: Regulations require that the entire project described in the ROD, FONSI, or CE shall be consistent with the MTP. If phases (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) of the project fall beyond the life of the MTP, they do not have to be included, however it is recommended that those phases (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) beyond the life of the plan and the costs associated with those phases be referenced in the plan for informational purposes. All project phases (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) planned within the life of the transportation plan have to be included in the fiscally constrained MTP in order for FHWA to sign the ROD, FONSI or approve the CE. In the event that there is construction phasing and "multiple or revised RODs" (for independent segments) of a larger project, FHWA can only sign the ROD, FONSI, or approve the CE for those segments of the project that have independent utility and logical termini, while contributing to the function of the overall project, and are included in the MPO's fiscally constrained MTP. The timing of this phasing (construction phases for independent segments) in the MTP should be consistent with

the timing of the phasing (construction phases for independent segments) of the future project implementation as described in the environmental document. Examples are given in the attachment to this document. The MTP must be approved by the MPO policy board, found to conform for air quality purposes (if applicable), and fiscally constrained. The MTP must demonstrate that revenues are reasonably expected to be available and sufficient to cover the costs of the entire project (all phases) (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) that are included in the plan.

STIP/TIP Requirements: The planning regulations require that before FHWA can sign a ROD or FONSI, or approve a CE for a regionally significant project, the proposed project or a phase(s) (e.g., PE, final design, ROW, utility relocation, or construction, and/or construction phase(s)) of the project must come from an approved, financially constrained STIP/TIP. This is required because the final Planning Rule requires that both the STIP and TIP shall contain all regionally significant projects requiring an action by FHWA or FTA irrespective of the project's funding source (23 CFR 450.324(d); 23 CFR 450.216(h)). In order for FHWA to sign a ROD or FONSI, or approve a CE for a project or phase (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) of a project with logical termini and independent utility (see CFR 771.111(f)), the STIP/TIP is required to show all phases (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) of the project that are planned within the time frame of the STIP/TIP. This can include or be limited to non-construction funding (e.g., PE, final design, ROW, utilities relocation) and/or construction or construction phases if there are phases (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) of the project that are planned beyond the horizon of the STIP/TIP. Those phases (e.g., PE, final design, ROW, utility relocation, construction, and/or construction phases) of the project beyond the horizon of the STIP/TIP do not have to be shown in the STIP/TIP. At least one subsequent phase (e.g., PE, final design, ROW, utility relocation, or construction) of the project has to be included in the approved STIP/TIP before FHWA can sign the ROD or FONSI or approve a CE. For example, the STIP/TIP might include final design, but not construction, if the construction phase is not planned within the horizon of the STIP/TIP. The timing of these subsequent phase(s) (e.g., PE, final design, ROW, utility relocation, construction, or construction phases) should be consistent with the MTP and the environmental document. In those unusual instances where no subsequent (subsequent to NEPA approval) phases (e.g., PE, final design, ROW, utility relocation, construction, or construction phases) of the project fall within the timeframe of the STIP/TIP, then a description of the project should be included in the STIP/TIP for informational purposes and identified as being beyond the horizon of the STIP/TIP. An example of including subsequent phases of a project in a STIP/TIP is included in the attachment to this document.

Conformity Requirements: Before a ROD or FONSI can be signed, or a CE approved, regulations require that a project level conformity determination shall be made for all projects that are subject to transportation conformity. Project level conformity can be demonstrated if the project is part of a conforming metropolitan transportation plan and TIP and meets all project level conformity requirements (see 40 CFR 93.104(d); 40 CFR 93.109). See also, http://www.fhwa.dot.gov/environment/conformity/feis_rod.htm.

In the event that a "multiple ROD" approach is used, a project-level conformity determination must be completed prior to the signing of each ROD. The portion of the "overall project" being addressed by each ROD must be consistent with what was included in the regional emissions analysis for the MPO MTP and TIP (i.e., the design concept and scope of the project included in the conforming transportation plan cannot be significantly different from what was included in the environmental document). Project level conformity can be demonstrated if the project is part of a conforming metropolitan transportation plan and TIP and meets all project level conformity requirements (see 40 CFR 93.104(d); 40 CFR 93.109). Additionally, the financial plan supporting the MPO MTP and TIP must reflect the portions(s) of the "overall project" prior to the approval of each ROD.

2. What planning and conformity requirements must be completed regarding a proposed project before a ROD or FONSI can be signed, or a CE approved ***for a project that is in a rural area?***

Statewide Long Range Transportation Plan Requirements: Before FHWA can sign a ROD/FONSI, or approve a CE, a project in a rural area must be found to be consistent with the Statewide Long Range Transportation Plan. The Planning Regulations allow Statewide Transportation plans to be policy plans and not project specific. In such cases, the project does not have to be specifically listed in the plan but should be consistent with the overall goals and objectives of the Statewide Plan. The Statewide Transportation Plan, by regulation, <u>does not</u> have to be fiscally constrained.

STIP Requirements: Before FHWA can sign a ROD or FONSI, or approve a CE for a <u>regionally significant</u> project, the proposed project or a phase (e.g., PE, final design, ROW, utility relocation, or construction) of the project must come from an approved, financially constrained STIP. The planning regulation requires that the STIP shall contain all regionally significant projects requiring an action by FHWA or FTA irrespective of the project's funding source (23 CFR 450.324(d); 23 CFR 450.216(h)). In order for FHWA to sign a ROD or FONSI, or approve a CE for a project or phase of a project with logical termini and independent utility (see CFR 771.111(f)), the STIP is required to show all phases (e.g. PE, final design, ROW, utilities relocation, or construction) of the project that are planned within the 4 year time frame of the STIP. This can include or be limited to non-construction funding (e.g., PE, final design, ROW, utilities relocation) if there are phases of the project that are planned beyond the 4 year horizon of the STIP. Those phases of the project beyond the 4-year horizon of the STIP do not have to be shown in the STIP. At least one subsequent phase of the project does have to be included in the approved STIP before FHWA can sign the ROD or FONSI or approve a CE. For example, the STIP might include final design, but not construction. The timing of these subsequent phases should be consistent with the SLRTP and the environmental document (if it is a regionally significant project). In those unusual instances where no subsequent (subsequent to NEPA approval) phases of the project fall within the timeframe of the STIP, then a description of the project should be included in the STIP for informational purposes and identified as being beyond the horizon of the STIP/TIP.

Conformity Requirements: The conformity regulations require that before FHWA signs a ROD/FONSI or approves a CE for a project that is in a nonattainment or maintenance area, the project must be found to be in conformity (see 40 CFR 93.104(d); 40 CFR 93.109). In nonattainment and maintenance areas, for a project in a "donut[1]" area, the project must be included in a regional emissions analysis that supported the conformity determination of the associated metropolitan transportation plan and TIP and meet all applicable project level conformity requirements before a project level conformity determination can be made. See 40 CFR 93.104(d); 40 CFR 93.109.

In isolated rural nonattinment and maintenance areas[2] a project level conformity determination must meet all the requirements in 40 CFR 109(l) prior to FHWA signing a ROD or FONSI or FHWA approval of a CE.

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[1] A "donut" area is a geographic area outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

[2] Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in a statewide transportation improvement program. These areas are not donut areas. (40 CFR 93.101).

Project examples regarding fiscal constraint and NEPA approvals

The following are project examples that highlight some scenarios where Divisions encountered challenges with fiscal constraint issues with pending, active or concluding NEPA processes. These examples are not included here to suggest that fiscal constraint issues can only be dealt with using the remedies described. Each project will have its own unique context. As a best-practice approach, fiscal constraint issues should be considered throughout the planning and NEPA processes, and if any issues are encountered, they should be considered before the NEPA process is initiated and addressed long before NEPA approval is considered.

Intercounty Connector (ICC), Maryland
Example of securing additional funding from new sources early in NEPA process

The ICC is a $2.4 billion project in Maryland, just north of Washington, DC. The project was not in the metropolitan transportation plan (MTP) at the time NEPA was initiated. Early in the process, it was recognized by FHWA and the State Highway Administration that the estimated cost of the project, and competing priorities in the region, would present challenges to demonstrating fiscal constraint by inclusion of the project in the MTP. Early in the NEPA process, a decision was made (for both fiscal and operational reasons) to explore tolling as an aspect of the alternatives being evaluated. The revenues from tolling enabled FHWA and SHA to address the fiscal issues, and the ICC was added successfully to the fiscally constrained MTP, and the ROD signed in May 2006.
For more information, contact Marlys Osterhues, 202-366-2052.

I-25 Valley Highway, Colorado
Example of using a "phased decision-making" approach to address fiscal constraint issues

It was recognized early on in the NEPA process that the planning requirements regarding fiscal constraint must be satisfied prior to FHWA approving a ROD. Total funding for the entire project would not be available at the time the ROD was to be signed. Because the fiscally-constrained MTP did not contain the entire Preferred Alternative for the Valley Highway project, FHWA and Colorado DOT determined that it was appropriate to identify a phased project implementation process. The Draft and Final EIS discussed a phased implementation approach and presented six logical project phases. Phased implementation was discussed with the public and agencies. FHWA and CDOT identified a set of criteria to be used as guidelines in establishing independent project phases, which included, but were not limited to, logical termini and independent utility, contributing to accomplishing elements of the over all project purpose and need, and fiscal constraint (demonstrated by inclusion in the MTP). The phases of the project were included in the RTP before the ROD was approved in June 2007 on Segments 1 and 2.
For more information, contact Keith Moore, 202-366-0524.

I-83 Master Plan, Pennsylvania
Example of consideration of fiscal issues and project phasing in planning studies

The I-83 Master Plan, prepared by the PennDOT in 2003, is a transportation planning study to identify, plan, and program future transportation improvement projects for an 11 mile section of I-83. The entire

corridor upgrade is estimated to cost at least $1.5 billion. It was immediately clear that construction could not take place simultaneously on the entire corridor, in part because fiscal constraints would reduce the ability to fully fund all required projects at one time. Upon review and analysis of constructability and safety issues, the corridor was divided into four sections that could be funded through the MPO, advanced through PennDOT's project development process, and designed and constructed independently. Each section has both logical termini and independent utility. The corridor will have four independent (but related) environmental processes. Although a NEPA analysis is currently being conducted for the first phase of the study (I-83 East Shore Section 1 Project), this project provides an example of the consideration of phasing and fiscal constraint issues early, in pre-NEPA planning studies.
For more information, contact Spencer Stevens, 202-366-0149.

Project example regarding including subsequent phases of a project in the STIP and/or TIP

The following example shows how subsequent phases (subsequent to NEPA) of a regionally significant project were shown in the TIP (and STIP). The project is also included in the Philadelphia area MPO's (DVRPC) MTP. This example also shows construction funding that is outside of the 4-year horizon of the TIP for the project but the TIP still includes it for information purposes in later years. For more information, please contact Spencer Stevens, 202-366-0149.

State Route 309 Project, Pennsylvania
Example of subsequent project phases (subsequent to NEPA) included in a STIP/TIP (continues on the next two pages).

DVRPC FY 2007-2010 TIP for PA

Final Version

Pennsylvania - Highway Program

Montgomery

MPMS# 16438 ***PA 309 Connector Project***

AQ Code 2020M — PA 309 to PA 63, Sumneytown Pike

Major SOV Capacity — New/Upgraded Connector Roadway

Subcorr(s): 2A, 11A, 14C — Hatfield Township; Franconia Township; Lower Salford Township; Towamencin Township

Provide an adequate two lane roadway connection by upgrading two existing two lane roads (Wambold Rd. and Township Line Rd.) and connecting them with a two lane roadway approximately one mile in length. This project will correct the disjointed and inadequate road system serving the north/south movement between PA 309 and the PA Turnpike Lansdale Interchange. This project will proceed in 2 phases.

The Right-Sized Phase 1 Project includes the proposed realignment of Sumneytown Pike (PA 63) from Old Forty Foot Road to Freed Road and improvements to Wambold Road from Sumneytown Pike (PA 63) to Allentown Road. The proposed work includes a three lane relocation of PA 63 with shoulders (11' lanes and 8' shoulders) on Wambold Road and a two lane runaround around Mainland Village.

This project is integral to the Delaware Valley Freight Corridors Initiative.

SAFETEA DEMO #613 - $1.280 MILLION

		TIP Program Years ($ 000)				Later FYs
Phase	Fund	FY2007	FY2008	FY2009	FY2010	
FD	HWY	2,240				
FD	H-STATE	560				
FD	HWY		400			
FD	H-STATE		100			
ROW	HWY		480			
ROW	DEMO		1,280			
ROW	H-STATE		120			
ROW	H-STATE		120			
CON	SSPIKE		4,000			
CON	SPIKE		16,000			
CON	HWY					36,000
CON	H-STATE					9,000
	Fiscal Year Total	**2,800**	**22,500**	**0**	**0**	45,000
				Total FY 07-10	**25,300**	

Construction funding outside timeframe of TIP, but included for information

2030 Major Regional Transportation Projects

ID	FACILITY	LIMITS	BRIEF DESCRIPTION	TIME PERIOD 2005 - 2010	TIME PERIOD 2011 - 2020	TIME PERIOD 2021 - 2030	LOCATION PA BUCKS	LOCATION PA CHESTER	LOCATION PA DELAWARE	LOCATION PA MONTGOMERY	LOCATION PA PHILADELPHIA	LOCATION NJ BURLINGTON	LOCATION NJ CAMDEN	LOCATION NJ GLOUCESTER	LOCATION NJ MERCER	COST (IN MILLIONS)
HIGHWAY RECONSTRUCTION/REHABILITATION/RESURFACING/RESTORATION																
1	I-95	in Bucks County	Reconstruct		X		X									$545.0
2	US 422	Berks County line to Sanatoga	Reconstruct		X			X		X						210.0
3	US 1	Baltimore Pike to Maryland state line	Reconstruct		X			X								200.0
4	US 30 (Downingtown Coatesville Bypass)	PA 10 to Exton Bypass	Reconstruct			X		X								187.5
5	US 1 (Media Bypass)	I-476 to Baltimore Pike	Reconstruct			X			X							20.0
6	I-476 (Blue Route)	PA Turnpike to Delaware County line	Reconstruct	X						X						70.0
7	PA 309	Greenwood Ave to Welsh Rd	Reconstruct	X						X						280.0
8	I-95	in Philadelphia	Reconstruct (see also 61)	X							X					500.0
9	I-295	US 1 to I-195 and CR 561 to CR 607	Reconstruct		X							X		X	X	89.0
10	NJ 42 Freeway	I-295 to Atlantic City Expressway	Reconstruct		X								X	X		15.0
HIGHWAY SAFETY/OPERATIONAL IMPROVEMENTS																
11	PA 113 Heritage Corridor	Schuylkill River to PA 611	Intersection and Corridor Improvements			X	X			X						$25.0
12	PA 413	PA 611 to Delaware River	Access Management Improvements			X	X									25.0
13	US 13	Levittown Parkway to Philadelphia line	Access Management & Corridor Improvements			X	X									25.0
14	Street Rd	at I-95 Interchange	Reconstruct Interchange			X	X									30.0
15	Bristol Rd	Old Lincoln Highway to Hulmeville Rd	Add Center Turn Lane	X			X									5.3
16	PA 52	PA 926 to US 1	Realign; Safety Improvements; Construct New Bridge	X				X								8.0
17	US 30, PA 82, and Train Station	within Coatesville Redevelopment Area	Construct New Bridge and Access Improvements		X			X								10.0
18	I-95	at US 322	Reconstruct Interchange & Extend Bridgewater Rd	X					X							40.0
19	I-95	at I-476 and Chestnut St On-Ramp	Reconstruct Interchange		X				X							15.0
20	Ridge Pike	Butler Pike to Norristown	Intersection Improvements/Widen to 5 lanes		X					X						25.0
21	US 202-Sec. 500 (Markley St)	Main St to Johnson Hwy	Signal Improvements; Add Center Turn Lane; Widen	X						X						22.8
22	West Side Connector	Ben Franklin Bridge to Vine St	Bridge Egress Improvements		X						X					35.0
23	National Highway System Connectors	at Intermodal Freight Facilities	Pavement, Geometry, Operations and Signing Improvements	X	X	X	X		X		X		X	X		25.0
24	NJ 73 and NJ 70	at Marlton Circle	Construct Grade-Separated Interchange	X								X				36.0
25	CR 530 (South Pemberton Rd)	US 206 to Magnolia Rd (CR 644)	Add Center Turn Lane on CR 530	X								X				15.0
26	NJ 73	Marlton Circle to I-295	Intersection Improvements		X							X				10.0
27	US 130 and US 30	at Collingswood Circle	Eliminate Circle		X								X			20.0
28	NJ 73 and US 30	at Berlin Circle	Eliminate Circle and Operational Improvements	X									X			47.0
29	US 130 and CR 551	at Brooklawn Circle	Redesign Intersection		X								X			14.0
30	I-295	at CR 620	Reconstruct Interchange		X									X		3.0
HIGHWAY NEW CAPACITY																
31	I-476 (PA Turnpike Northeast Extension)	Lansdale to Allentown	Widen to 6 Lanes *, ***			X	X			X						$ 0.0
32	US 202-Sec. 700	Montgomeryville to Doylestown	Construct New Parkway and Improve Intersections		X		X			X						200.0
33	County Line Road	PA 309 to PA 611	Widen; Reconstruct **			X	X			X						30.0
34	I-95	at I-276 (PA Turnpike)	Construct New Interchange and Delaware R. Bridge; Widen *, **		X		X					X				145.6
35	I-95 at Scudders Falls Bridge	PA 332 to CR 579	Widen		X		X								X	0.0
[redacted]																
41	US 202-Sec. 300	PA 252 to US 30	Widen; Reconstruct **	X				X								50.0
42	US 1	within East Marlborough Township	Widen to 6 Lanes	X				X								5.0
43	PA 41	Delaware state line to PA 926	Widen; Reconstruct **			X		X								22.5
44	US 30	Exton Mall to US 202	Widen to 5 Lanes		X			X								15.0
45	I-76 (PA Turnpike)	at PA 29 Interchange	Construct Electronic Interchange *	X				X								0.0
[redacted]																
51	PA 23	US 202 to US 422	Construct New 2-Lane Highway			X				X						60.0
52	I-76/Henderson Rd	Henderson Rd (South Gulph Rd to US 202)	Construct Ramps to I-76; Widen; Reconstruct **			X				X						18.0
53	Lafayette St	Norristown to Conshohocken Rd	Road Extension and Improvements; New PA Turnpike Interchange		X					X						75.0
54	US 202-Sec. 600	Johnson Hwy to PA 309	Widen; Reconstruct **	X						X						70.0
55	PA 309 Connector Road	PA 309 to Sumneytown Pike	Upgrade Roads/Construct New Road; Reconstruct **		X		X			X						40.0
[redacted]																
61	I-95	"Cottman, Girard, Allegheny, Bridge, & Betsy Ross Bridge"	Interchange Improvements (see also 8)	X							X					200.0
62	North Delaware Ave	Lewis St to Bridge St	Construct Arterial Road Extension	X							X					10.0
63	Delaware Ave & Penrose Ave/26th St	to Navy Yard Business Center	New Access Roads from the East and West	X							X					10.0
64	Adams Avenue Connector	I-95 and Aramingo Ave	Extend Road to New Ramps		X						X					10.0
65	PA 63 (Woodhaven Rd)	US 1 to Philmont Ave	Traffic Flow Improvements			X				X	X					25.0