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MEETING NOTICE AND AGENDA

SAN DIEGO CONFORMITY WORKING GROUP

The San Diego Conformity Working Group may take action on any item appearing on this agenda.

MEMBER AGENCIES

Cities of
 Carlsbad
 Chula Vista
 Coronado
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 El Cajon
 Encinitas
 Escondido
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 National City
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 Solana Beach
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 and
 County of San Diego

ADVISORY MEMBERS

Imperial County
 California Department
 of Transportation
 Metropolitan
 Transit System
 North San Diego County
 Transit Development Board
 United States
 Department of Defense
 San Diego
 Unified Port District
 San Diego County
 Water Authority
 Mexico

Wednesday, September 12, 2007
10:30 a.m. to 12 noon

SANDAG, Conference Room 8C
 401 B Street, Suite 800
 San Diego, CA 92101-4231

Staff Contact: Rachel Kennedy
 (619) 699-1929
rke@sandag.org

AGENDA HIGHLIGHTS

- **COMMENTS ON DRAFT 2007 REGIONAL TRANSPORTATION PLAN (RTP) AND AIR QUALITY CONFORMITY**
- **PROJECT-LEVEL CONFORMITY DETERMINATIONS AND NEPA ASSUMPTION PROCESS**

Please contact Rachel Kennedy prior to the meeting if you wish to participate by conference call.

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SAN DIEGO CONFORMITY WORKING GROUP (CWG)

Wednesday, September 12, 2007

ITEM #	RECOMMENDATION
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1. INTRODUCTIONS

+2. SUMMARY OF MAY 16, 2007 MEETING

INFORMATION

3. PUBLIC COMMENTS/COMMUNICATIONS

4. COMMENTS ON DRAFT 2007 REGIONAL TRANSPORTATION PLAN (RTP) AND AIR QUALITY CONFORMITY

DISCUSSION

The SANDAG Board of Directors released the Draft 2007 RTP and Air Quality Conformity Determination for public comment on June 22, 2007. A public hearing on the Draft 2007 RTP and Air Quality Conformity Document will be held at the SANDAG Board meeting on September 14, 2007. Staff will provide the CWG with a summary of public comments received to date. The CWG is encouraged to submit comments in writing prior to the close of the public comment period on September 17. The Final Draft 2007 RTP is anticipated to be presented to the SANDAG Board for adoption in November 2007.

+5. PROJECT-LEVEL CONFORMITY DETERMINATIONS AND NEPA ASSUMPTION PROCESS

INFORMATION

Federal Highway Administration (FHWA) staff will provide CWG with information on the changes to the process for obtaining project-level conformity determinations. Correspondence from FHWA highlighting the new process is attached.

+6. EMFAC2007 UPDATE

DISCUSSION

U.S. Environmental Protection Agency (EPA) staff will provide an update on the schedule for approval of EMFAC2007 for use in conformity findings.

7. STATUS OF THE 8-HOUR OZONE ATTAINMENT PLAN FOR SAN DIEGO COUNTY

DISCUSSION

U.S. EPA staff will provide an update on the schedule for a budget adequacy finding for the *8-Hour Ozone Attainment Plan for San Diego County*.

8. OTHER BUSINESS

+ next to an item indicates an attachment

The next meeting of the San Diego Region Conformity Working Group is scheduled for Wednesday, October 17, 2007, from 10:30 a.m. to 12 noon at SANDAG.

San Diego Association of Governments

CONFORMITY WORKING GROUP

September 12, 2007

AGENDA ITEM NO.: **2**

Action Requested: INFORMATION

SUMMARY OF MAY 16, 2007 MEETING

File Number 3001300

Item #1: Introductions

Self-introductions were made. See attached attendance list.

Item #2: Summary of April 18, 2007 Meeting

No comments were made.

Item #3: Public Comments/Communications

There were none.

Item #4: 2007 Working Draft 2007 Regional Transportation Plan (RTP) Air Quality Planning and Transportation Conformity Report

Rachel Kennedy, SANDAG, reviewed the conformity criteria and procedures utilized to determine conformity for the working draft of the 2007 RTP. The working draft of the 2007 RTP Air Quality Planning and Transportation Conformity Report was distributed to the CWG on May 9, 2007, for a 30-day comment period. Comments received during the 30-day CWG comment period would be addressed and included in the version included with the Draft 2007 RTP, scheduled for release on June 22, 2007. Ms. Kennedy noted that the Draft 2007 RTP meets all conformity budgets.

Carl Selnick, APCD, noted that the date listed for EMFAC2007 was incorrect and should be listed as November 1, 2006, instead of November 1, 2007. Ms. Kennedy noted this correction. Sandy Johnson, Caltrans, requested clarification on the phasing of two projects that were listed with the conformity year of 2020, but that were located in the 2030 project section.

Item #5: United States Environmental Protection Agency (EPA) Proposed SAFETEA-LU Conformity Rule Modifications

John Kelly, EPA, provided the CWG with an overview of the SAFETEA-LU Conformity Rule Modifications proposed by U.S. EPA. These modifications were posted to the Federal Register on May 2, 2007. The public comment period ends June 1, 2007.

Item #6: EMFAC2007 Transmittal to the U.S. EPA

Ms. Kennedy noted that ARB transmitted EMFAC2007 to the U.S. EPA and requested approval of its use in State Implementation Plans and in conformity analyses, and highlighted some of the differences between the EMFAC 2002 and 2007 programs. The CWG discussed the need to have an item on Conformity SIPs at a future CWG meeting.

Item #7: Other Business

The next meeting of the CWG is scheduled for June 20, 2007, from 10:30 a.m. to 12 noon at SANDAG. The CWG was reminded that the statewide CWG meeting would be held on May 23, 2007, in Diamond Bar.

San Diego Region Conformity Working Group

Meeting Attendance

May 16, 2007

Name	Agency
Sandy Johnson	Caltrans
John Kelly (phone)	EPA
Jean Mazur (phone)	FHWA
Carl Selnick	APCD
Carla Walecka (phone)	TCA
Elisa Arias (phone)	SANDAG
Rachel Kennedy	SANDAG
John Kirk	SANDAG



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
June 21, 2007

IN REPLY REFER TO
HDA-CA
Document #: P57267

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

Attention: Federal Resources Office, Room 35
For Jay Norvell

Dear Mr. Kempton:

SUBJECT: Project-Level Conformity Determinations and NEPA Assumption

The purpose of this letter is to inform the California Department of Transportation (Caltrans) of changes to the process for obtaining project-level conformity determinations. These changes will be effective with the execution of the Memorandum of Understanding between the Federal Highway Administration (FHWA) and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program pursuant to Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Historically, FHWA has made project-level conformity determinations as part of our final decision for the National Environmental Policy Act (NEPA) process. As a result of Caltrans' participation in both the Section 6004 of SAFETEA-LU, State Assumption of Responsibility for Categorical Exclusions, and the Section 6005 Pilot Program, FHWA will be assigning most aspects of the environmental review process to Caltrans. One exception to the assignment is project-level conformity determinations for the projects assumed under the Section 6005 Pilot Program. FHWA maintains the responsibility for making conformity determinations on these projects.

The major changes to the project-level conformity determination process are as follows:

- For categorical exclusions (CEs) under Section 6004 of SAFETEA-LU, Caltrans will be making the conformity determination prior to the approval of the CE classification;



- FHWA will be responsible for project-level conformity determinations for projects processed with a CE, an environmental assessment (EA) or an environmental impact statement (EIS) pursuant to the Section 6005 Pilot Program of SAFETEA-LU;
- For CEs under the Section 6005 Pilot Program, FHWA will make the conformity determination prior to the approval of the CE classification; and,
- For EAs and EISs under the Section 6005 Pilot Program, FHWA will make the conformity determination after the preferred alternative is identified and prior to completion of the final environmental document.

For project-level conformity determinations, where the NEPA document is being processed under the Section 6005 Pilot Program, Caltrans will need to send FHWA, separate from the environmental review process, a request for a conformity determination. FHWA's role for transportation conformity determinations will now be similar to that of the other federal resources agencies, such as the U.S. Fish and Wildlife Service. Requests for project-level conformity determinations should be sent to the attention of Maiser Khaled, Director of Project Development and Environment.

Additional information regarding this change is provided in the Questions and Answers contained in Attachment 1. A revised project-level conformity determination checklist, contained in Attachment 2, is also included for your use.

Please distribute this information to the Caltrans' District Offices and any other agencies that might be affected by this change. If you have any questions regarding these changes, please contact Ms. Mayela Sosa at (916) 498-5057 or Ms. Jean Mazur at (916) 498-5732.

Sincerely,

/s/ Mayela Sosa

For
Gene K. Fong
Division Administrator

Enclosures

cc: (e-mail w/encl)
Terry Abbott, Caltrans
Germaine Belanger, Caltrans
Mike Brady, Caltrans
Kelly Dunlap, Caltrans
Cindy Adams, Caltrans
Lisa Hanf, EPA
Karina O'Connor, EPA
Mayela Sosa, FHWA
Jean Mazur, FHWA
Maiser Khaled, FHWA
Sue Kiser, FHWA

MSosa/jh enda Item #5a
CWG
September 12, 2007



Transportation Conformity and NEPA Assumption Questions and Answers

1. Who will make the project-level conformity determination?

Under section 6004(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) states are allowed to assume responsibilities for *Class II* actions, or categorical exclusions (CEs), that have been listed by the U.S. Department of Transportation Secretary, including project-level conformity determinations, for federal-aid highway projects. As part of the assumption of these responsibilities, Caltrans will make project-level conformity determinations as part of the categorical exclusion determination and documentation for CEs listed in 23 CFR 771.117(c), the examples listed in 23 CFR 771.117(d), and actions listed in Appendix A of the Section 6004 Memorandum of Understanding.

Under section 6005 of SAFETEA-LU, five pilot states may also be assigned responsibilities for *Class III* (environmental assessments) and *Class I* (environmental impact statements) actions required under the National Environmental Policy Act (NEPA) and those CE actions not qualifying for assumption under section 6004. It does not, however, allow the states to assume project-level conformity responsibilities for these actions. Therefore, FHWA will have to make the project-level conformity determinations independent of these environmental review processes.

2. What projects are subject to project-level conformity determinations?

All non-exempt projects (i.e. projects that are not exempt per 40 CFR 93.126 or 93.128) in federal nonattainment and maintenance areas require a project-level conformity determination prior to the completion of the NEPA process.

3. When will FHWA begin making project-level conformity determinations, independent of the environmental review process, on actions requiring a CE, an EA or an EIS pursuant to the Section 6005 Pilot Program?

This process will become effective once the Memorandum of Understanding (MOU) for the Section 6005 Pilot Program between FHWA and Caltrans is executed and will remain in place until such time as the MOU is terminated. The section 6005 Pilot Program will remain in effect until August 10, 2011, which is six years from the enactment of SAFETEA-LU, however, California's necessary waiver of sovereign immunity currently sunsets on January 1, 2009. Caltrans is working with the Legislature to extend the waiver.

4. When, in the project development process for actions requiring a CE, an EA or an EIS pursuant to the Section 6005 Pilot Program, will FHWA make the project-level conformity determination?

The project-level conformity determination must be completed by FHWA prior to, and included in, the final EA or EIS. Caltrans cannot issue a finding of no significant impact or record of decision without the project-level conformity determination from FHWA. For CEs under the Section 6005 Pilot Program, FHWA must make the conformity determination prior to the approval of the CE classification by Caltrans.

5. What information does FHWA need to make the project-level conformity determination?

FHWA prefers that the air quality conformity documentation be a stand alone report. The air quality conformity documentation must include adequate summary information such that a conformity determination can be made on the preferred alternative without having to refer to the environmental document. For additional information regarding documentation, please refer to the updated project-level conformity determination checklist in Attachment 2. The conformity documentation should not include air quality issues that are not required for transportation conformity purposes (e.g. air toxics, asbestos, etc.).

6. How should local project sponsors request a project-level conformity determination from FHWA?

Local project sponsors must submit the conformity documentation to Caltrans' Local Assistance. Local Assistance will submit all requests for project-level conformity determinations to FHWA. Local project sponsors should incorporate this require into their project development schedules.

7. How should the conformity determination be documented in the final environmental document?

The air quality conformity documentation should be included in the technical studies. The environmental consequences section of the environmental document should disclose that FHWA made a conformity determination and to which alternative the conformity determination applies. Additionally, a copy of the FHWA conformity determination letter should be included in the final EA or EIS.

8. How should interagency consultation be carried out for project-level conformity determinations?

Interagency consultation should be carried out as it was prior to NEPA assumption, and should be documented in the conformity documentation.

9. How should public involvement be carried out for the project-level conformity analysis?

Public involvement should be carried out as it was prior to NEPA assumption. Generally, public involvement for transportation conformity is carried out as part of the public involvement process for the environmental document. Project sponsors should make it clear in the circulation information that public comment is being accepted on the conformity analysis, as well as the environmental document. Additionally, the conformity documentation should disclose that FHWA will make a conformity determination on the preferred alternative prior to finalizing the environmental document. Finally, the conformity documentation sent to FHWA should note if there were or were not public comments. If public comments were received, responses to those comments should be provided.

Conformity Analysis Documentation
for Project-Level Conformity Determinations in
Metropolitan Nonattainment/Maintenance Areas¹
June 2007

40 CFR	Criteria	Page	Comments
§93.102	Document the applicable pollutants and precursors for which EPA designates the area as nonattainment or maintenance. Describe the nonattainment or maintenance area and its boundaries.		
§93.104 (d)	Document whether a new conformity determination is required per this section: this is a new project; a significant change in design concept and scope; three years since the most recent step to advance the project; a supplemental EA/EIS was initiated for air quality purposes.		
§93.109 (a, b)	Document which conformity criteria apply based on action, relevant pollutants and the status of the implementation plan.		
§93.109 (f)(1)	In CO nonattainment and maintenance areas, document that the hot-spot test required by 93.116(a) and, as applicable, 93.11(b) are satisfied.		
§93.109 (g)(1)	In PM10 nonattainment and maintenance areas, document that the hot-spot test required by 93.116(a) is satisfied.		
§93.109 (i)(1)	In PM2.5 nonattainment and maintenance areas, document that the hot-spot test required by 93.116(a) is satisfied.		
§93.110 (a,b,f)	Document the use of latest planning assumptions (source and year) at the "time the conformity analysis begins," including current and future population, employment, travel and congestion. Document the use of the most recent available vehicle registration data. Document the date upon which the conformity analysis was begun. Document assumptions for current and future background concentrations.		
USDOT/EPA guidance	Document the use of planning assumptions less than five years old. If unable, include written justification for the use of older data. (1/18/02)		
§93.111(a,c)	Document the use of the latest emissions model approved by EPA.		
§93.112	Document fulfillment of the interagency and public consultation requirements outlined in a specific implementation plan according to §51.390 or, if a SIP revision has not been completed, according to NEPA requirements. Include documentation of consultation on conformity tests and methodologies, summary of comments and the responses to comments.		
§93.114(a)	Document the name of the currently conforming RTP and TIP and the date of the FHWA/FTA conformity determination on those documents.		
§93.115	Document that the project comes from the currently conforming RTP and TIP (i.e. 1) that the project is included in the regional emissions analysis for the RTP and TIP and that the project's design concept and scope have not changed significantly; 2) the open to traffic year is consistent; and 3) the TIP listing includes project-level emissions mitigation, control measures or written commitments as required.)		
§93.116(a) ²	Document that the project does not cause or contribute to any new localized PM or CO violations or increase the frequency of an existing violation during the timeframe of the transportation plan (or regional emissions analysis). For PM nonattainment or maintenance areas, document whether the project was determined, through interagency consultation, to be a "project of air quality concern" per §93.123(b)(1).		
§93.116(b)	In CO nonattainment areas, document that the project eliminates or reduces the severity and number of localized CO violations in the areas substantially affected by the project.		
§93.117 ³	Document that the project complies with any PM10 or PM2.5 control		

40 CFR	Criteria	Page	Comments
	measures in the applicable attainment plan.		
§93.123(a)	In CO nonattainment/maintenance areas, document how the required procedures, including the CA <i>Project-Level Carbon Monoxide Protocol</i> , were met for CO hot-spot analyses. The analysis should document that the hot-spot analysis covered the most congested intersections affected by the project in the year representing the maximum CO contribution.		
§93.123(b)	In PM nonattainment and maintenance areas, document how the required procedures were met for PM hot-spot analyses. If the project was determined not to be a "project of air quality concern", document that no hot-spot analysis is required.		
§93.123(c)(3)	Document that the assumptions used in the hot-spot analysis are consistent with those used in the regional emissions analysis.		
§93.123(c)(4)	Include written commitments, consistent with §93.125 or an approved conformity SIP, for mitigation or control measures assumed in the hot-spot analysis.		
§93.123(c)(5)	Document the length of the project construction period and whether or not construction emissions were considered in the hot-spot analysis.		

¹ The checklist does not apply to projects in "donut" areas (40 CFR 93.105(c)(3)).

² Applies for hot-spot analyses in CO and PM nonattainment and maintenance areas only.

³ Applies for project-level conformity determinations in PM10 and PM2.5 nonattainment areas only.

Disclaimer

This checklist is intended solely as an informational guideline to be used in reviewing documentation for project-level conformity determinations. It is in no way intended to replace or supersede the Transportation Conformity regulations of 40 CFR Parts 51 and 93.



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
650 Capitol Mall, Suite 4-100
Sacramento, CA. 95814
July 23, 2007

IN REPLY REFER TO
HDA-CA
Document #: P57480

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

Attention: Federal Resources Office, Room 3500
For Mr. Jay Norvell

Dear Mr. Kempton:

SUBJECT: Emission Model for Project-Level Conformity Determinations

The purpose of this letter is to notify the California Department of Transportation (Caltrans) of changes to the emissions model for project-level conformity determinations. Any emissions analysis for project-level conformity determinations beginning on or after August 1, 2007, should use the California Air Resources Board (CARB) model EMFAC2007.

In November, 2006, the CARB released the updated version of the EMFAC model, EMFAC2007. Because EMFAC2007 is the only emissions model to contain the latest vehicle fleet and age distribution data, it must be used for any new conformity analysis. If the project-level emissions analysis was started prior to August 1, 2007, the conformity determination can be made using EMFAC2002, but the starting date of the analysis should be clearly stated in the environmental documentation.

Caltrans' assistance in distributing this information to both Caltrans' staff and local agencies would be greatly appreciated. This information is important to staff preparing environmental documents and air quality studies as well as Caltrans' staff with responsibility for conformity determinations on categorical exclusions.

Sincerely,

/s/ K. Sue Kiser

For
Gene K. Fong
Division Administrator



cc (email):

Terry Abbott, Caltrans
Cindy Adams, Caltrans
Mike Brady, Caltrans
Kelly Dunlap, Caltrans
PD&E

Jmazar/ac