



310 New Bern Avenue, Suite 410
Raleigh, North Carolina 27601



August 22, 2005

North Carolina Division

In Reply Refer To:
HDA-NC

Joe Bryan
TAC Chairman
Capital Area MPO
Professional Building - Suite 406
127 West Hargett St.
Raleigh, NC 27601

Dear Mr. Joe Bryan:

This letter is a reminder that the FY 2004-2010 Transportation Improvement Program (TIP) for the Capital Area Metropolitan Planning Organization (CAMPO) will expire on September 30, 2005.

The planning regulations (23 CFR 450.324) require that TIP's must be updated at least every two years. The transportation conformity regulation relies on the transportation planning regulations; therefore, a conforming FY 2006-2012 TIP must be in place for the CAMPO by October 1, 2005. If the CAMPO and the Governor does not adopt the FY 2006-2012 TIP for inclusion in the State TIP there will be no new authorizations of federally funded transportation projects in Wake County. Another consequence would be that the rest of the entire Triangle non-attainment area (the counties of Durham, Chatham, Franklin, Granville, Johnston, Orange, and Person) would enter into a conformity lapse on October 1, 2005.

In general, federal-aid projects (including transit projects) cannot advance without both a conforming Long Range Transportation Plan and a TIP. Only those project phases (i.e., design, right-of-way acquisition, or construction) that received funding commitments or an equivalent approval or authorization prior to a conformity lapse may continue during a lapse.


Enclosed for your use is a copy of the FHWA and Federal Transit Administration (FTA) January 2, 2002, guidance and FTA April 9, 2003, guidance that address federal funding impacts during a transportation conformity lapse.

Once the CAMPO adopts their MTIP, the FHWA Division office and all other agencies will work with the Triangle area MPO/Rural Planning Organization (RPO) staff to hopefully avoid or minimize the duration of a conformity lapse.



Should you have any questions please contact Mr. Eddie Dancausse at 919-856-4330 extension 112.

Sincerely,



For John F. Sullivan III, P.E.
North Carolina Division Administrator
Federal Highway Administration

Enclosures

cc: (w/encl)

Chip Russell, CAMPO TCC Chair

Kenneth Withrow, CAMPO

Mark Ahrendson, DCHC TCC Chair

Bill Bell, DCHC TAC Chair

Norman Steinman, CDOT

Ron Tober, Chief Executive Officer, Charlotte Area Transit System

Roger Sheats, Deputy Secretary for Environmental Planning and Local Governmental Affairs, NCDOT

Calvin Leggett, P.E., Program Development Branch, NCDOT

Gregory J. Thorpe, PhD, Project Development and Environmental Analysis Branch, NCDOT

Miriam Perry, Public Transportation Division, NCDOT

Mike Kozak, Metropolitan Transportation Branch, NCDOT

Mike Bruff, P.E., Transportation Planning Branch, NCDOT

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Mike Orr, NCDOT, Transportation Planning Branch

Sarah Smith, NCDOT, Transportation Planning Branch

Michael Abuya, NCDOT, Transportation Planning Branch

Adam Snipes, NCDOT, Transportation Planning Branch

Ellen Beckmann, NCDOT, Transportation Planning Branch

Atefe Northcutt, NCDOT, Transportation Planning Branch

Ed Johnson, CAMPO

Felix Nwoko, DCHC MPO

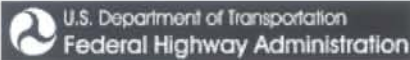
Mike Nunn, BG MPO

Pat Strong, Triangle RPO

Shelby Powell, Kerr Tar RPO

Ann Whitley, Upper Coastal Plain RPO

John Hodges Copple, Triangle J COG



Environment

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Memorandum

U.S. Department of Transportation
 Federal Highway Administration
 Federal Transit Administration

SENT BY ELECTRONIC MAIL

Subject: **INFORMATION:** Revised Guidance for Implementing
 the March 1999 Circuit Court Decision Affecting
 Transportation Conformity

Date: January 2, 2002

From: (Original signed by)
 Mary E. Peters
 Administrator, FHWA

Reply to
 Attn. of: HEPN-10

(Original signed by)
 Jennifer L. Dorn
 Administrator, FTA

To: FHWA Division Administrators
 Federal Lands Highway Division Engineers
 FTA Regional Administrators

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on EPA's August 1997 transportation conformity amendments in response to a case brought by the Environmental Defense Fund. The EPA will be providing revised conformity regulations that implement this ruling in the near future. This memorandum supersedes and replaces all previous FHWA and FTA guidance implementing this ruling, including the Additional Supplemental Guidance issued on June 18, 1999. The FHWA and FTA consulted with EPA on the development of this guidance. This guidance does not supersede any existing settlement agreements that address this subject. In addition, guidance on other issues addressed by the March 1999 court decision can be found in EPA's "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," published on May 14, 1999 (<http://www.epa.gov/otaq/transp/conform/epaguidf.pdf>).

Projects That Can Proceed During a Conformity Lapse:

The court decision held that projects that had previously been found to conform and had completed the National Environmental Policy Act (NEPA) process ("grandfathered" projects) may not be advanced (that is, such projects should not be approved) in nonattainment and maintenance areas which do not have a currently conforming transportation plan and transportation improvement program (TIP). Thus, in such areas, no new approvals or grants for further development of projects (i.e., NEPA, final design, right-of-way acquisition, or construction) should be made. The only projects which can receive further approvals or grants during a plan and TIP conformity lapse are: (1) projects exempt from the conformity process; and (2) transportation control measures (TCMs) which are included in an approved State implementation plan (SIP).

A non-exempt project is any project that is not listed as exempt in the transportation conformity rule at 40 CFR 93.126 or 93.127, or the project is not a TCM in an approved SIP.

For FHWA-funded projects, project phases (i.e., design, right-of-way acquisition, or construction) that received funding commitments or an equivalent approval or authorization prior to a conformity lapse may continue during the lapse. The execution of a project agreement (which includes Federal approval of the plans, specifications, and estimates) indicates funding commitment.

For FTA, the largest projects are handled with a full funding grant agreement (FFGA). If the FFGA was executed prior to a conformity lapse, the project can continue to utilize Federal funding during the lapse. If

the FFGA was not completed by the date of the lapse, the project sponsor may only complete the current stage of project development (e.g., final design or land acquisition), but may not use Federal funds to proceed further. Transit projects not handled with FFGAs may proceed during a lapse if, prior to the lapse, FTA approved a grant and the project sponsor awarded a contract for construction or vehicle acquisition. If a local contract was not approved by the date of the lapse, the project sponsor may only complete the current stage of project development with Federal funds.

Subsequent phases of a project for which FHWA or FTA has not taken an approval action or awarded a grant may not proceed in the absence of conformity. For transportation project phases not requiring a project specific project agreement/authorization approval, the State or local transportation agency should not take any action committing the State or local agency to proceed with the project phase during a lapse unless the project phase had already received full approval or authorization for funding before the lapse.

Preliminary engineering for project development activities that are necessary to assess social, economic, and environmental effects of the proposed action or alternatives as part of the NEPA process for a non-exempt project may continue during the lapse, according to 40 CFR 93.126. However, FHWA or FTA cannot approve a categorical exclusion, finding of no significant impact, final environmental impact statement, or a record of decision for a non-exempt project during a conformity lapse. The NEPA process can be completed for exempt projects and TCMs in an approved SIP during a conformity lapse.

When a community is facing a conformity lapse within 6 months, FHWA, FTA, and EPA will meet and jointly evaluate the potential consequences of the lapse and assess any concerns. The FHWA, FTA, and EPA will meet at least 90 days before a conformity lapse to determine which projects could receive funding commitments before the lapse, and which projects could potentially be delayed, and the actions that would be necessary to correct the lapse. In preparation for these discussions, FHWA and FTA offices, in consultation with project sponsors, should review the current TIP to identify the current status of development of non-exempt projects being advanced in the nonattainment or maintenance area. As you know, some nonattainment areas include more than one metropolitan planning organization (MPO).

When a conformity lapse is imminent, FHWA Division Administrators and FTA Regional Administrators shall notify the Governor or the Governor's designee immediately to inform him/her of the consequences, and potential solutions to minimize disruptions to the transportation programs in the respective nonattainment and maintenance areas. The FHWA and FTA will consult with EPA regional offices before notifying the Governor or the Governor's designee of conformity consequences and solutions.

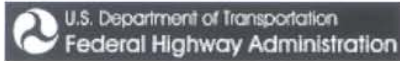
Coordination between FHWA, FTA and EPA prior to a conformity lapse is detailed in the April 19, 2000, National Memorandum of Understanding (MOU) Between the U.S. DOT and the U.S. EPA (<http://www.fhwa.dot.gov/environment/cnfmou.htm>). Appendix A of the MOU also discusses how to meet the transportation planning requirements during a lapse in order to continue funding exempt projects and TCMs until conformity is reestablished. Therefore, in the event of a conformity lapse, an MPO must create an interim plan and TIP for any projects that can be federally-funded and approved during the lapse, including exempt projects and TCMs in an approved SIP. Please see the MOU for more information regarding the requirements for including projects in an interim plan and TIP.

Other Issues:

To address other issues related to the Court ruling, on May 14, 1999, EPA issued "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision" which provides more details about using submitted budgets, projects requiring Federal approval, non-Federal projects, SIP disapprovals, and reallocation of a SIPs safety margin. Areas should reference this guidance for specific information on these other issues. The EPA, in coordination with DOT, will be working to formalize the guidance through the rulemaking process to amend the conformity regulation.

If you have questions on this guidance, please contact Ms. Cecilia Ho (202) 366-9862 or Mr. Gary Jensen (202) 366-2048 of FHWA, or Mr. Abbe Marner (202) 366-4317 of FTA.

cc: Directors of Field Services

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Environment

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Memorandum

U.S. Department of Transportation
Federal Transit Administration

Subject: **INFORMATION:** Revised FTA Procedures for a Conformity Lapse

Date: April 9, 2003

From: Jennifer L. Dorn
Administrator

Reply to:

To: Regional Administrators
Regions 1-10

In January 2002, FHWA and FTA issued revised guidance for implementing a March 1999 court decision which overturned certain provisions in EPA's transportation conformity regulation (40 CFR Part 93). Among other things, the court decision overturned a key provision in the regulation that allowed us to 'grandfather' a non-exempt project when the National Environmental Policy Act process was completed. In response to the court ruling, the January 2002 joint guidance set forth the policy that non-exempt project phases cannot be implemented during a conformity lapse unless a federal approval or funding commitment for that project phase was made prior to the lapse.

Based on recent experiences with conformity lapse situations, we have identified two instances which require revision or clarification of our project development procedures in the event of a conformity lapse. The first instance concerns the final design stage for New Starts projects. If FTA has approved a project into final design while a conforming plan/TIP existed, the project sponsor can incur costs for final design under pre-award authority should a conformity lapse occur. However, in keeping with the court ruling, FTA is precluded from approving a grant for final design or further project development until conformity is reestablished.

The second instance concerns the point at which FTA makes a commitment to construct a project. The joint guidance states that after a construction commitment is made, the project will not be delayed in the event of a conformity lapse. For a New Start project, the construction commitment is made when we approve a full funding grant agreement (FFGA) while a conforming plan/TIP is in place. For projects not handled with FFGAs, the guidance stipulated that a commitment to construction involved not only an FTA construction grant but a local contract for construction or vehicle acquisition as well. After reviewing the court decision again, it is our view that if the federal grant for construction was approved prior to a conformity lapse, that is sufficient to demonstrate full compliance with the court decision. The second condition for demonstrating a federal construction commitment—the award of a local contract for construction or vehicle acquisition—is simply not necessary, thus, we are eliminating it.

Following is the current FTA policy on advancing federally-funded projects during a conformity lapse. For the most part, this supplements the January 2002 joint guidance which remains in effect:

Because preliminary engineering is exempt from the conformity requirements, FTA may approve entry into preliminary engineering and may approve a grant for preliminary engineering regardless of whether a conforming plan/TIP exists. During a conformity lapse, FTA is prohibited from approving entry into final design. Without this approval, any local funds expended for final design during the lapse will not be eligible for federal reimbursement or use as local share after conformity is reestablished. If a conformity lapse occurs after FTA's approval, the project sponsor is allowed to proceed with final design using its own funds under pre-award authority. However, FTA is prohibited from approving a grant for final design or subsequent stages of project development until conformity is reestablished. FTA is also precluded from issuing a letter of no prejudice for further project development during a conformity lapse.

Federally-funded projects are protected from the consequences of a conformity lapse after FTA makes a commitment to construction. For a New Start project, the construction commitment is made when a full funding grant agreement (FFGA) is approved while a conforming plan/TIP is in place. A FFGA cannot be approved during a conformity lapse. If the FFGA was not completed by the date of the lapse, the project sponsor may

only complete the current phase of project development (e.g., final design or land acquisition). Transit projects not handled with FFGAs may proceed during a lapse if FTA approved a grant for construction or vehicle acquisition prior to the lapse. If a construction grant was not approved before the lapse, the project sponsor may only complete the current phase of project development. If the project sponsor begins a subsequent phase of development with local funding, any expenditures during the lapse will not be eligible for reimbursement or use as local share after conformity is reestablished.

We have coordinated these revisions with FHWA and EPA and the revisions are acceptable to them. EPA will be amending the conformity regulation to incorporate all elements of the 1999 court decision into the regulation. This policy change will be reflected in their rule amendments.

Please contact Abbe Marnier (202-366-4317) in the Office of Planning or Scott Biehl (202-366-0748) in the Office of the Chief Counsel with any questions or issues that arise.

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