

August 27, 1999

TO: Mike Brady, Caltrans
FROM: Doug Eisinger
RE: Issues Regarding Transportation vs. General Conformity
(in the context of the San Francisco Bay Bridge)

Why “non transportation federal actions” related to the Bay Bridge project do NOT need a general conformity finding.

- General conformity rule 51.853 (Applicability) says

“Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.”

Implies that any federal action “related to” plans, programs, and projects must meet transportation conformity, instead of general conformity.

- Transportation conformity rule 93.101 (Definitions) says

“FHWA/FTA project... is any highway or transit project which... requires FHWA or FTA approval for some aspect of the project...”

Implies that “project” is broadly defined. So, transportation project-level conformity finding would cover the entire project.

“Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation.”

Implies that construction phase is covered under the definition of the project. Implies that if project is found to conform, then that includes the construction phase.

- Transportation conformity rule 93.102(c) (Applicability) says

“Projects... for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations... All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.”

Implies that once you have a conformity determination, and it includes the construction phase, you do not need further determinations.

- Transportation conformity rule 93.119(f) and 93.119(f)(3) (Areas without emissions budgets) say

“The regional emissions analysis required...must estimate the emissions that would result from the “Baseline” scenario in each analysis year...The “Baseline” scenario is the future transportation system that will result from current programs, including...(3) Completion of all regionally significant projects...which are currently under construction...”

Implies that project emissions of concern are the “built” emissions, rather than the construction emissions. This is under the section addressing areas without emissions budgets, but helps to explain the logic of the conformity rule.

- Transportation conformity rule 93.122(d)(1) (Procedures for determining regional transportation-related emissions) says

“For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.”

Implies that if the SIP does NOT identify construction emissions as a problem, then regional analyses do not need to consider construction emissions.

- Transportation conformity rule 93.123(c)(5) (Procedures for determining localized CO and PM₁₀ concentrations) says

“CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions... Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.”

Implies that construction emissions are not required for consideration if they last less than five years.

- Transportation conformity rule 93.125(a) (Enforceability of design concept and scope) says

“Prior to determining that a transportation project is in conformity, the MPO... must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project...any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP...”

Implies that if transportation conformity was determined, it must have considered the construction CO and PM₁₀ impacts and found them to meet NEPA.

- Transportation conformity rule 93.126 (Exempt projects) says

“...highway and transit projects of the types listed in Table 2... are exempt...”

Table 2 includes under the “safety” category: “Widening narrow pavements or reconstructing bridges (no additional travel lanes).”

Implies that reconstructing the Bay Bridge as an earthquake retrofit is exempt if no additional travel lanes are added.

Note that without some of the specifics about the Bay Bridge project (e.g., will construction last more than 5 years? will the project add travel lanes?) it is not clear about the direct applicability of some of this language. However, these provisions seem to be the specific ones of interest.