

SUMMARY OF STANCOG TIMELY IMPLEMENTATION DOCUMENTATION ISSUE **Updated March 27, 2006**

The following provides a chronological summary of the StanCOG timely implementation documentation issue.

2002 RACM

On March 26, 2002, the Board of Supervisors of the County of Stanislaus adopted a resolution to implement local government control measures (Reasonably Available Control Measures, or RACM) in the Severe Area Ozone Plan for the San Joaquin Valley. The 2002 RACM commitments were incorporated by reference into the PM-10 Plan. EPA finalized approval of the Amended 2003 PM-10 Plan for the San Joaquin Valley effective June 25, 2004 (including the local government RACM and BACM). EPA later issued a clarification, effective October 4, 2004, that the RACM included by reference were approved as Transportation Control Measures (TCMs).

The commitment at issue is ST 9.3 Bicycle/Pedestrian Program – River Road Bicycle Project to be implemented by Stanislaus County Public Works by December 2004 using CMAQ funds.

2004 Conformity

In the 2004 StanCOG Conformity Analysis, 2002 TIP Project 21400000088 (River Rd. Bike Lane from Ninth St. to Mitchell Rd.) was identified in support of timely implementation documentation for the above-referenced RACM commitment. The following description was provided on the status of the project:

“Project underfunded and deleted (ROW and Environmental issues increased cost from \$400,000 to \$1.2 M - additional funding is being pursued). Funds will be re-programmed to another CMAQ eligible project in 04/05. The project status was incorrectly summarized. The County has obligated \$44,000 of PSE funds to this project. The County staff is preparing a project scope amendment to address issues identified in the preliminary design and environmental analysis. The scope amendment will be processed as amendment 1 of the StanCOG 2004 FTIP.” (emphasis added)

8-hour Conformity

The Draft 8-hour Conformity document indicated the following with respect to the status of the project for timely implementation documentation: “Project Scope and TIP Amendment are expected to be completed in 2005. This will shift funds to allow full funding of the School Sidewalk Program.” FHWA submitted the following comment: “Please add explanation as to why the scope changes were not processed with amendment #1 of the FTIP.”

The final document indicated the following with respect to the status of the project for timely implementation documentation: “Project scope changes (deletion) were not included in FTIP

Amendment No. 1 due to staff vacancies and jurisdiction priorities. Funds are expected to be de-obligated and transferred to School Sidewalk Program.”

It is important to note that the conformity rule does allow for the TIP/RTP to project completion of a TCM implementation milestone that is later than the SIP schedule. However, where implementation milestones have been missed or are projected to be missed, agencies must demonstrate that maximum priority is being given to TCM implementation. All possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation—for example, by increasing the funding rate—even though the timing of other projects may be affected. It is not permissible to have prospective discrepancies with the SIP’s TCM implementation schedule due to lack of programming funding in the TIP, lack of commitment to the project by sponsoring agency, unreasonably long periods to complete future work due to lack of staff or other agency resources, lack of approval or consent by local government bodies, or failure to have applied for a permit where necessary work preliminary to such application has been completed.

8-hour Conformity Approval Conditions

On Wednesday, June 8, 2005, FHWA indicated there was a potential issue with the above identified timely implementation documentation related to the County River Road Bike Project.

On Thursday, June 9, StanCOG, 2005, Fresno COG, and valley air quality consultant discussed the issue with FHWA. The following proposed change was provided for review:

“The project scope amendment was not included in amendment 1 of the 2004 FTIP because the preliminary design work resulted in ROW and environmental issues.

It is important to clarify that the RACM commitment was for a “River Road bicycle project”, not the specific project previously identified in the 2002 FTIP. That specific project was identified as one possible option that would satisfy the RACM commitment. As a result of recent annexations, this road is now managed by multiple jurisdictions. Accompanying these annexations and associated residential development are several sidewalk/bike path projects that have been completed along the River Road corridor. In addition, the City of Modesto received federal demonstration funds for refurbishment/widening of the 9th Street/Tuolumne River Bridge. The project includes both pedestrian and bicycle lanes and is currently under construction with expected completion by the end of 2005.”

Subsequently, FHWA requested a map of the area and clarification regarding bike facilities prior to and after 2002. The requested information was provided to FHWA before noon on Friday, June 10. The map indicated that there were no bike facilities on River Road prior to 2002; however, seven bike facilities are currently implemented on the corridor as depicted on the map.

On Monday, June 13, 2005, FHWA/FTA/EPA indicated that they will NOT accept the above-proposed language and map. FHWA has indicated that the original RACM commitment is being interpreted as a 3-mile continuous bike project implemented by Stanislaus County on River

Road. However, they will issue an approval of the StanCOG 8-hour Conformity document with conditions. The conditions will indicate that StanCOG cannot process any FTIP Amendments (including Administrative, except to implement projects identified in Appendix G of the 8-hour Conformity document) until the issue is resolved. FHWA offered the following two options to resolve the issue: (1) a SIP Amendment is processed to remove or modify the commitment or (2) the 2004 FTIP is amended to implement the project.

2004 FSTIP Amendment

In August 2005, StanCOG approved Amendment #8 to reinstate the River Road Bike Project for \$35,000 to revise PE. Stanislaus County will lead the project to address ROW and environmental issues that were identified in the original PSE in coordination with the Cities of Modesto and Ceres. The project will evaluate both bike paths and bike lanes along the corridor from 9th Street to Mitchell Rd. U.S. DOT approved the amendment on August 23, 2005. The approval also eliminated the formal and administrative amendment programming restrictions related to timely implementation of the River Road bicycle project.

StanCOG SIP Amendment

In September 2005, a draft scope of work to conduct a SIP amendment to substitute the Stanislaus County River Road Bike Project was transmitted to the Air District, ARB, EPA, and FHWA for review and comment.

On February 14, 2006, EPA and U.S. DOT issued Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 5 of the guidance addresses the SAFETEA-LU revisions for the Substitution of Transportation Control Measures, which took effect on August 10, 2005.

For a TCM in an approved SIP to be removed and replaced with an alternate TCM SAFETEA-LU requires that:

- the substitute TCM(s) must achieve equal or greater emission reductions;
- the substitute TCM(s) must be implemented on a schedule that is consistent with the schedule for the TCM(s) being removed from the SIP; or, if the implementation date has passed for the TCM(s) being replaced, the replacement TCM must be implemented as soon as practicable but not later than the date on which emission reductions from the TCM(s) are necessary to achieve the purpose of the implementation plan;
- the substitute TCM(s) must be accompanied by evidence of adequate personnel, and funding and authority under state or local law to implement, monitor and enforce the TCM(s);
- the substitute TCM(s) must be developed through a collaborative process that includes participation by all affected jurisdictions (state and local air pollution control agencies and state and local transportation agencies such as the MPO, state and city DOTs, and transit providers); consultation with EPA; and reasonable notice and opportunity for public comment; and

- the equivalency of the substitute TCM(s) must be concurred on by the MPO, the state air pollution control agency and EPA.

Next Steps

The general approach is to (1) propose an approach to meet the collaborative process and concurrence requirements and (2) quantify the existing TCM and substitute TCM. Both items will be transmitted to the San Joaquin Valley inter-agency consultation partners through the Model Coordinating Committee (MCC) for review and comment. All comments will be documented and addressed accordingly as part of the inter-agency consultation documentation supporting the TCM substitution.

It is anticipated that the approach and documentation developed for the StanCOG TCM substitution may be used as a template for other SJV MPOs to use in the future if necessary.