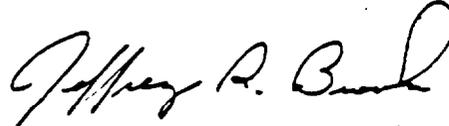




acquisition of right-of-way, environmental documents should coincide with TIP conformity to the extent possible to avoid differences in design concept and scope between the TIP and environmental documents.

If certain features of design scope such as HOV lanes, are not scheduled with initial construction as part of a project, but are Transportation Control Measures (TCMs) included in applicable SIPs, what commitments are necessary at the project level to demonstrate expeditious implementation of TCMs for project conformity? Do they need to be shown as staged in the TIP and/or RTP? Attached for your information is a proposed MOU which attempts to address this issue. What other commitments if any, are needed? What if the MOU is included in the SIP?

We would appreciate any advice you may have as to how to deal with these issues. If you have any questions please contact Jay E. Bates at FTS 484-2616.



Jeffrey R. Brooks, Director -  
Office of Program Development

Attachment

Letter to Caltrans McManus

In response to your letter of July 25, 1991 concerning "Design Concept and Scope of Projects in Environmental Documents", we share your concern that there appears to be a conflict between the way Transportation Improvement Programs (TIPs) are developed and the 1990 Clean Air Act Amendment (CAAA) conformity process. For several years FHWA has been urging the States to define logical termini for projects that have independent utility under the National Environmental Policy Act (NEPA) and we have also encouraged the States to include all impacts associated with the proposed projects. In some cases this led to environmental documents that included projected transportation system development as well as the portion of the project that could be built in the near future with existing funding.

The CAAA requires that plans, programs, and projects must be found to conform by the MPO as well as the Federal Highway Administration. The situation that you have identified is where the program or TIP has a very narrow definition of the project and has termini and/or lane configurations that are quite limited. When an environmental document is written a larger more comprehensive project is studied and is often the preferred alternative. You have asked that we examine our ability to approve environmental document whose actions involve multiple phases, not all of which are in the latest conforming TIP. Unfortunately we do not believe that it is possible under the law to do this.

While we do share your concern that it is quite difficult to comply with the two laws, we believe that it is possible without disrupting the project development process to a great extent. We have two possible ways of dealing with the problem that we would like to offer for your consideration that we believe would recognize project phasing and programming problems.

1. The TIP could be modified to show an "out years" column for projects that there is a reasonable assurance that funding will be available. The larger project could then be described in this TIP. Then a TIP conformity finding could be made according to the CAAA and the project on the TIP would match the one described in the environmental document.

2. The environmental document could include as full alternatives both the larger more comprehensive project and the smaller project that is described on the TIP and for which a reasonable expectation of funding is available. When the final decision is made by FHWA (Record of Decision or Finding of No Significant Impact), it would be done for the smaller project. At the time funding and commitments become available for the larger project and it is placed on a TIP that is found to conform, FHWA could go back to the document and write a ROD or FONSI on that larger project. This assumes that the projects design concept and scope have not changed.

We intend to work with your office, the Environmental Protection Agency, and the MPO's over the next several months to assure that the project development process works as smoothly as possible under both NEPA and the CAAA.



Mr. Roger Borg  
July 25, 1991  
Page 2

This narrow interpretation of "programmed" projects doesn't recognize multiple phased projects when dealing with environmental documents. There is a need to account for the action proposed in the document allowing for a "consistency" finding. Recognition must be given to phasing. What is programmed may be a "programmable" phase.

I am asking that your office examine your ability to approve environmental documents whose actions involve multiple phases, not all of which might be in the latest TIP.

Sincerely,



J. F. McMANUS  
Deputy Chief Engineer  
Division of State and Local  
Project Development

*W. J. ...*

MEMORANDUM OF UNDERSTANDING  
BY BETWEEN  
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS  
AND  
SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY  
REGARDING IMPLEMENTATION OF  
TOLL FACILITY PRICING POLICY

This Memorandum of Understanding ("MOU") is entered as of \_\_\_\_\_, 1991 by and between the Southern California Association of Governments ("SCAG") and the San Joaquin Hills Transportation Corridor Agency ("Agency") in consideration of the following facts.

1.0 Recitals.

1.1 SCAG is the metropolitan planning organization for the Southern California region. SCAG has adopted a Regional Mobility Plan ("RMP") which is a long-term plan for transportation improvements in Southern California. The RMP is a component of the 1989 Air Quality Management Plan ("1989 AQMP") approved by SCAG, the South Coast Air Quality Management District and the California Air Resources Board. The RMP includes the San Joaquin Hills Transportation Corridor ("SJHTC") as a proposed new facility. The analysis conducted with regard to the RMP assumed that the SJHTC will be constructed as a facility between the existing terminus of State Route 73 in Newport Beach, California to a connection with Interstate 5 in San Juan Capistrano, and that SJHTC would include eight lanes, including two High Occupancy Vehicle ("HOV") lanes, by the year 2010.

1.2 In March 1990, the SCAG Executive Committee adopted a Transportation Conformity Guidelines Handbook to establish procedures for determining the conformity of transportation projects with the 1989 AQMP in compliance with section 176 of the federal Clean Air Act. The Transportation Conformity Guidelines Handbook interpreted the RMP to allow the construction of HOV lanes on new facilities which are planned to include HOV lanes, including the SJHTC, to be phased so long as such HOV lanes are constructed no later than the year 2010.

1.3. In November 1990, SCAG approved the Fiscal Year 1991-1997 Transportation Improvement Program ("1991 TIP"). The TIP includes the SJHTC.

1.4 On November 15, 1990 the President signed the Clean Air Act Amendments of 1990 which revised the

Transportation Conformity Provisions of the Clean Air Act ("Act") and established special procedures governing a determination of conformity under section 176 of the Act during the interim period prior to the approval of a State Implementation Plan by the Environmental Protection Agency in compliance with the requirements of the Clean Air Act Amendments of 1990 ("CAA Amendments"). In pertinent part, the Transportation Conformity Provisions of the CAA Amendments emphasize that, except as specified, conformity determinations pursuant to the Act shall be made at the plan and program level and that conformity of projects with the requirements of the Clean Air Act "will be demonstrated" if the transportation project comes from a conforming transportation plan and program as defined in section 176(c)(3)(A) of the Act.

1.5 On June 6, 1991, SCAG adopted transportation conformity procedures in accordance with the CAA Amendments and adopted revisions to Transportation Control Measures 2.f and 13 of the 1991 Air Quality Management Plan to provide for the use of a toll pricing mechanism as an interim measure in lieu of the construction of a HOV lane in the initial phase of the SJHTC. The South Coast Air Quality Management District adopted the revisions to Transportation Control Measures 2.f and 13 with certain further revisions concerning the use of toll pricing mechanisms as an interim measure in lieu of the construction of HOV lanes on toll facilities.

1.6 On March 14, 1991 the Board of Directors of the Agency adopted a toll pricing policy as part of the Board's approval of the SJHTC to achieve an equivalent average vehicle occupancy as would be achieved with the construction of the HOV lanes as part of the initial phase of the SJHTC.

1.7 SCAG is presently in the process of preparing the 1991 Conformity Analysis for the 1991 TIP to comply with the requirements of section 176(c)(3)(A) of the Act and the interim guidance prepared by the Environmental Protection Agency and the U.S. Department of Transportation. With the understandings reached in this MOU, SCAG is agreeing to include the SJHTC in the analysis of TIP as a six lane facility with the inclusion of a toll pricing policy as described in Section 1.6.

1.8 This MOU is intended to implement the toll facility pricing policy adopted by the SCAG Executive Committee and the South Coast Air Quality Management District Board of Directors as part of Transportation Control Measures 2.f and 13 of the 1991 Air Quality Management Plan ("1991 AQMP") and to provide assurances to

the Agency that SCAG will determine that the SJHTC is in conformity with the RMP, with the applicable State Implementation Plan and otherwise conforms with the applicable requirements of the federal Clean Air Act, the California Clean Air Act and any other applicable law or regulations.

^  
2.0 Identification of Annual Average Vehicle Occupancy Goal.

No later than nine months prior to the opening the entire length of the SJHTC to traffic ("Opening") and annually each year after the Opening, the Agency and SCAG shall jointly establish a goal concerning Average Vehicle Occupancy on the SJHTC during peak commute periods ("AVO"). The Annual AVO goal shall be established after taking into consideration the following:

- (1) The background AVO within the Southern California region and within Orange County;
- (2) The most recent estimate of the AVO that would have been attained with the construction of two HOV lanes as part of the initial construction phase of the SJHTC;
- (3) The AVO on comparable corridors with free HOV lanes in Orange County;
- (4) The type of vehicle trips projected to use the SJHTC during the year following the establishment of the AVO goal;
- (5) The extent of congestion on the SJHTC and on the I-405 parallel to the SJHTC; and
- (6) Other factors determined to be appropriate by the Agency and SCAG.

3.0 Implementation of Toll Pricing Policy.

3.1 Monitoring of Average Vehicle Occupancy.

The Agency shall establish and implement a program ("Monitoring Program") consistent with monitoring by county transportation commissions and with other regional monitoring programs to monitor AVO on the SJHTC in such a manner so as to document the progress of the Agency in achieving the Annual AVO goal established pursuant to section 2.0 and to allow a comparison of AVO on the SJHTC with (i) the AVO that would have been attained in the event that the two planned HOV lanes had

been built at the same time as the construction of the initial six lanes of the SJHTC, and (ii) with the AVO on comparable Corridors with free HOV lanes in Orange County.

An additional objective of the monitoring program shall be the measurement of progress toward the ultimate objective of achieving an AVO on the SJHTC and in the region generally of 1.5 passengers per vehicle during peak commute periods by 1999. It is recognized and acknowledged that the 1.5 AVO is an ultimate objective for the SJHTC that will be periodically evaluated to reflect information developed in the Monitoring Program and the experience of SCAG in implementing the Regional Mobility Plan. It is recognized that the 1.5 AVO may not be feasible to achieve on the SJHTC by 1999 because of a number of factors outside the control of the Agency including (i) competition from free HOV lanes on parallel corridors in Orange County, (ii) the absence of sufficient congestion on the SJHTC during the early operational years of the SJHTC, (iii) financial limitations on the Agency's ability to increase toll pricing incentives and disincentives to a degree that will adversely affect the ability of the SJHTC to generate sufficient revenues to adequately meet operation and maintenance costs for the SJHTC and otherwise comply with requirements of the Indenture of Trust and other commitments related to the financing of the SJHTC, (iv) delays in the opening of the SJHTC to traffic, and (v) insufficient progress in the implementation of other transportation control measures in the Air Quality Management Plan by the responsible agencies to increase vehicle occupancy in the area of the SJHTC.

#### 4.2 Elements of Monitoring Program.

The elements of the Monitoring Program shall include the following:

- (1) The Agency shall monitor vehicle occupancy on the SJHTC during peak commute periods in a manner that will allow for the calculation of AVO on the SJHTC;
- (2) The Agency shall obtain available information compiled by the California Department of Transportation regarding AVO on comparable free corridors with free HOV lanes in Orange County; and
- (3) Beginning two years after the Opening of the SJHTC, and annually each year thereafter, the Agency shall submit a report to SCAG

which documents the AVO on the SJHTC and compares the annual AVO on the SJHTC with the Annual AVO goal established pursuant to Section 2.0.

#### 4.3 Implementation of Toll Pricing Mechanisms

Prior to the Opening of the SJHTC, the Agency shall, in its sole discretion, adopt toll pricing mechanisms which it determines are necessary to achieve the initial Annual AVO goal established pursuant to Section 2.0. In the event that beginning two years after the Opening of the SJHTC and annually each year thereafter, the Agency has not achieved the Annual AVO goal established for the preceding year, then, in its sole discretion, the Agency shall revise the toll pricing mechanisms, or implement additional mechanisms, to achieve the Annual AVO goal established pursuant to section 2.0 of this MOU. The toll pricing mechanisms available to the Agency include, but are not limited to, the following:

- (1) Reduced toll prices for HOV users;
- (2) Increased toll prices on single occupant vehicles during peak periods;
- (3) Reduced toll prices for HOV users that subscribe to the Automatic Vehicle Identification System; and
- (4) Any other pricing mechanism to provide an incentive to increase AVO or a disincentive to decrease single occupant vehicle usage on the SJHTC.

#### 5.0 SCAG Conformity Finding.

In consideration of the Agency's commitments in this MOU to implement procedures to achieve the Annual AVO goal for the SJHTC, SCAG agrees that it will (i) include the SJHTC as a six lane facility in the 1991 Conformity Analysis for the 1991 TIP and (ii) concurrent with a finding by SCAG that the 1991 TIP complies with the requirements of section 176(c)(3)(A) of the Act or otherwise conforms with the Act, provide a written determination to the Agency and the Federal Highway Administration that the construction of six lanes on the SJHTC, including implementation of the toll pricing policy described in this Memorandum of Understanding, is consistent and is in conformity with the RMP, the 1979

State Implementation Plan, the 1989 AQMP, the 1991 AQMP, and otherwise complies with the requirements of section 176(c)(3)(B) of the Clean Air Act, and the California Clean Air Act.

6.0 Toll Pricing Study.

The Agency shall conduct a study ("Pricing Study") evaluating the effectiveness of the use of toll pricing mechanisms to achieve an AVO on the SJHTC which is comparable to the AVO on comparable Corridors with free HOV facilities in Orange County. The Pricing Study shall be conducted in accordance with the scope of work attached hereto as Exhibit 1. SCAG and TCA hereby agree to concur in the results of the Pricing Study; provided the Pricing Study carries out the scope of work. Neither SCAG nor the TCA shall seek to modify or change the scope of work or to recommend or require any other studies or analysis of the effectiveness of the use of toll pricing mechanisms.

Dated: \_\_\_\_\_, 1991 San Joaquin Hills Transportation  
Corridor Agency

By: \_\_\_\_\_  
William Woollett, Jr.  
Executive Director

Dated: \_\_\_\_\_, 1991 Southern California Association  
of Governments

By: \_\_\_\_\_

OR1:R071458

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REFER TO FILE NUMBER

August 8, 1991

190477-004

VIA TELECOPY: (213) 236-1825

Ms. Helene Smookler  
Southern California Association  
of Governments  
818 W. Seventh Street, 12th Floor  
Los Angeles, California 90017-3435

Dear Helene:

In response to your inquiry about whether the HOV pricing policy adopted by the Board of Directors of the San Joaquin Hills Transportation Corridor Agency is binding, I have enclosed Mitigation Measure T/C-8 from the San Joaquin Hills Final EIR. This mitigation measures incorporates the HOV pricing policy included in the resolution of the TCA approving the San Joaquin Hills project. (Resolution No. 91S-06.) The TCA Board explicitly adopted the mitigation measures described in the Mitigation Monitoring Program (Resolution No. 91S-06, para. 5).

In my view, this removes any doubt that the HOV pricing policy adopted by the TCA is binding on the TCA and is enforceable. Public Resources Code section 21081.6 makes it clear that the purpose of a Mitigation Monitoring Program is to "insure compliance during project implementation." In addition, the courts have recognized that mitigation measures specifically adopted in agency project approval resolutions are binding. (See, Citizens for Quality Growth v. City of Mount Shasta (1988) 198 Cal.App.3d 433, 442.)

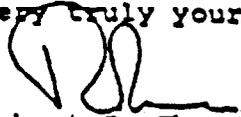
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Ms. Helena Smookler  
Southern California Association  
of Governments  
August 8, 1991  
Page 2

Notwithstanding the foregoing, as we have indicated we are agreeable to enter into memoranda of understanding to implement the provisions of the 1991 Air Quality Management Plan regarding the use of a toll pricing policy to achieve equivalent HOV usage on toll facilities.

I look forward to finalizing the form of the MOU in the next few days.

Very truly yours,



Robert D. Thornton  
of NOSSAMAN, GUTHNER, KNOX  
& ELLIOTT

RDT:lmb  
Enclosure  
081:807:483

cc: William Woollett, Jr.  
Mark Pisano