

Transportation Conformity Determination

Between

**The 2040 Comprehensive Regional Plan Update Companion, as amended and
The Fiscal Year 2018 to 2021 Transportation Improvement Program, as amended**

and

**The Indiana State Implementation Plan for the 1997 Ozone National Ambient Air
Quality Standard (NAAQS) for LaPorte County, Indiana**

February 21, 2019

**Northwestern Indiana Regional Planning Commission
Portage, Indiana**

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Acknowledgements

This *Transportation Conformity Determination* report between the 2040 Comprehensive Regional Plan Update Companion as amended and the Fiscal Year 2018 to 2021 Transportation Improvement Program as amended was prepared by the Northwestern Indiana Regional Planning Commission. Individuals from the following agencies contributed their efforts towards the completion of the Transportation Conformity Determination report. They include:

- Northwestern Indiana Regional Planning Commission (NIRPC)
- Indiana Department of Transportation (INDOT)
- Indiana Department of Environment Management (IDEM)
- Federal Highway Administration (FHWA)
- Federal Transit Administration (FTA)
- United States Environmental Protection Agency (EPA)

Executive Summary

As part of its transportation planning process, NIRPC already completed the transportation conformity process for the 2040 Comprehensive Regional Plan Update Companion and Fiscal Year (FY) 2018 to 2021 TIP for the 2008 Ozone National Ambient Air Quality Standard (NAAQS) nonattainment area for Lake and Porter Counties in Indiana. The 2008 Ozone NAAQS nonattainment area for Lake and Porter Counties completely contains and supersedes the 1997 Ozone NAAQS nonattainment area for Lake and Porter Counties. This report documents that the 2040 Comprehensive Regional Plan Update Companion and FY 2018 to 2021 TIP meet the federal transportation conformity requirements in 40 CFR Part 93 for the 1997 Ozone NAAQS maintenance area for LaPorte County, Indiana.

Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) requires that federally funded or approved highway and transit activities are consistent with (“conform to”) the purpose of the State Implementation Plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or any interim milestones. 42 U.S.C. 7506(c)(1). EPA’s transportation conformity rules establish the criteria and procedures for determining whether metropolitan transportation plans, transportation improvement programs (TIPs), and federally supported highway and transit projects conform to the SIP. 40 CFR Parts 51.390 and 93.

On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Mgmt. District v. EPA* (“*South Coast II*,” 882 F.3d 1138) held that transportation conformity determinations must be made in areas that were either nonattainment or maintenance for the 1997 ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked. These conformity determinations are required in these areas after February 16, 2019. LaPorte County was designated maintenance at the time of the 1997 ozone NAAQS revocation on April 6, 2015 and was also designated attainment for the 2008 ozone NAAQS on May 21, 2012. Therefore, per the *South Coast II* decision, this conformity determination is being made for the 1997 ozone NAAQS on the 2040 Comprehensive Regional Plan Update Companion and FY 2018 to 2021 TIP with respect to the LaPorte County maintenance area.

This conformity determination was completed consistent with CAA requirements, existing associated regulations at 40 CFR Parts 51.390 and 93, and the *South Coast II* decision, according to EPA’s *Transportation Conformity Guidance for the South Coast II Court Decision* issued on November 29, 2018.

1.0 Background

1.1 Transportation Conformity Process

The concept of transportation conformity was introduced in the Clean Air Act (CAA) of 1977, which included a provision to ensure that transportation investments conform to a State implementation plan (SIP) for meeting the Federal air quality standards. Conformity requirements were made substantially more rigorous in the CAA Amendments of 1990. The transportation conformity regulations that detail implementation of the CAA requirements were first issued in November 1993, and have been amended several times. The regulations establish the criteria and procedures for transportation agencies to demonstrate that air pollutant emissions from metropolitan transportation plans, transportation improvement programs and projects are consistent with (“conform to”) the State’s air quality goals in the SIP. This document has been prepared for State and local officials who are involved in decision making on transportation investments.

Transportation conformity is required under CAA Section 176(c) to ensure that Federally-supported transportation activities are consistent with (“conform to”) the purpose of a State’s SIP. Transportation conformity establishes the framework for improving air quality to protect public health and the environment. Conformity to the purpose of the SIP means Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funding and approvals are given to highway and transit activities that will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the relevant air quality standard, or any interim milestone.

LaPorte County, Indiana was designated as nonattainment for the 1997 Ozone NAAQS on April 15, 2004 according to 69 FR 23858. On July 19, 2007, LaPorte County, Indiana was reclassified to attainment with a maintenance plan (became a maintenance area) according to 72 FR 39574. There would have been a new maintenance plan due for the 1997 Ozone NAAQS for the LaPorte County maintenance area on July 19, 2015, but since EPA revoked the 1997 Ozone NAAQS on April 6, 2015, no such maintenance plan was deemed necessary. Furthermore, EPA designated the entirety of LaPorte County attainment for the 2008 Ozone NAAQS on May 21, 2012 according to 77 FR 30087. Furthermore, effective August 3, 2018, EPA designated the entirety of LaPorte County attainment for the 2015 Ozone NAAQS according to 83 FR 25776. This has resulted in LaPorte County, Indiana being affected by the *South Coast II* decision since no Transportation Conformity has been determined on the 2040 Comprehensive Regional Plan Update Companion and FY 2018 to 2021 TIP for LaPorte County.

2.0 Metropolitan Transportation Plan (MTP)

Metropolitan Planning Organizations (MPOs) operating fully or in part in NAAQS nonattainment or maintenance areas such as NIRPC are required to develop a metropolitan transportation plan (MTP) at least every 4 years that looks out to a horizon at least 20 years in the future according to 23 CFR Part 450.324.

2.1 2040 Comprehensive Regional Plan Update Companion

The 2040 Comprehensive Regional Plan Update Companion was adopted by the NIRPC Full Commission on May 21, 2015.¹ This plan satisfies the requirements mentioned in section 2.0 above and is still the MTP for the Northwestern Indiana region that includes all of LaPorte County, Indiana. FHWA and FTA also determined the 2040 Comprehensive Regional Plan Update Companion to conform to the SIP with respect to the 2008 Ozone NAAQS Lake and Porter Counties nonattainment area. Since at the time of adoption the 1997 Ozone NAAQS had already been revoked, no such conformity determination was made for LaPorte County.

Moreover, since the 2040 Comprehensive Regional Plan Update Companion contains an explicit listing of regionally significant, non-exempt projects that are subject to demonstrating transportation conformity for Lake and Porter Counties on Table II - 17 on page II - 62 but does not explicitly list such projects for LaPorte County, the 2040 Comprehensive Regional Plan Update Companion is concurrently being amended to include such a listing of projects shown in the following table:

2.1.1 Transportation Conformity-Required Projects being Amended into 2040 Comprehensive Regional Plan Update Companion

Projects Complete by 2020	Beginning Point	End Point	Sponsor
US-20 Added Travel Lanes, Construct Turn Lanes	US-421	US-35/SR-212	INDOT
US-20 Interchange Modification at US-35/SR-212	Meer Rd	US-35/SR-212 Interchange	INDOT
US-20 New Interchange at SR-2	1,590 feet from US-20/SR-2 Interchange	1,590 feet from US-20/SR-2 Interchange	INDOT

¹ Available at <https://www.nirpc.org/2040-plan/2040-plan-update-companion/>

3.0 Transportation Improvement Program (TIP)

Metropolitan Planning Organizations (MPOs) such as NIRPC are required to develop a Transportation Improvement Program (TIP), which is a listing of FHWA and FTA funded transportation projects, covering a period of at least 4-years and in cooperation with the state and public transit providers according to 23 CFR Part 450.326.

3.1 Fiscal Year (FY) 2018 to 2021 Transportation Improvement Program (TIP)

The Fiscal Year 2018 to 2021 Transportation Improvement Program was adopted by the NIRPC Full Commission on May 18, 2017.² This TIP satisfies the requirements mentioned in section 3.0 above and is still the TIP for the Northwestern Indiana region that includes all of LaPorte County, Indiana. FHWA and FTA also determined the FY 2018 to 2021 TIP to conform to the SIP with respect to the 2008 Ozone NAAQS Lake and Porter Counties nonattainment area. Since at the time of adoption the 1997 Ozone NAAQS had already been revoked, no such conformity determination was made for LaPorte County.

Even though the regionally significant, non-exempt projects in LaPorte County subject to transportation conformity listed in Table 2.1.1 above are already in the FY 2018 to 2021 TIP as DES numbers 0500480, 1296943, and 1383614/1601711 respectively, the FY 2018 to 2021 TIP is being amended concurrently with this *Transportation Conformity Determination* report in order to show that these projects are referenced to a conformity determination.

² Available at <https://www.nirpc.org/fy-2018-2021-tip/>

4.0 Transportation Conformity Determination: General Process

Per the court's decision in *South Coast II*, beginning February 16, 2019, a transportation conformity determination for the 1997 ozone NAAQS will be needed in 1997 ozone NAAQS nonattainment and maintenance areas identified by EPA³ for certain transportation activities, including updated or amended metropolitan MTPs and TIPs. Once US DOT makes its 1997 ozone NAAQS conformity determination for the 2040 Comprehensive Regional Plan Update Companion and FY 2018 to 2021 Transportation Improvement Program with respect to the LaPorte County maintenance area, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the 2040 Comprehensive Regional Plan Update Companion and FY 2018 to 2021 Transportation Improvement Program with respect to the LaPorte County maintenance area.

³ The areas identified can be found in EPA's "Transportation Conformity Guidance for the South Coast II Court Decision, EPA-420-B-18-050, available on the web at: www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation.

5.0 Requirements

5.1 Overview

On November 29, 2018, EPA issued **Transportation Conformity Guidance for the South Coast II Court Decision**⁴ (EPA-420-B-18-050, November 2018) that addresses how transportation conformity determinations can be made in areas that were nonattainment or maintenance for the 1997 ozone NAAQS when the 1997 ozone NAAQS was revoked, but were designated attainment for the 2008 ozone NAAQS in EPA's original designations for this NAAQS (May 21, 2012).

The transportation conformity regulation at 40 CFR 93.109 sets forth the criteria and procedures for determining conformity. The conformity criteria for MTPs and TIPs include: latest planning assumptions (93.110), latest emissions model (93.111), consultation (93.112), transportation control measures (93.113(b) and (c), and emissions budget and/or interim emissions (93.118 and/or 93.119). For the 1997 ozone NAAQS areas, transportation conformity for MTPs and TIPs for the 1997 ozone NAAQS can be demonstrated without a regional emissions analysis, per 40 CFR 93.109(c). This provision states that the regional emissions analysis requirement applies one year after the effective date of EPA's nonattainment designation for a NAAQS and until the effective date of revocation of such NAAQS for an area. The 1997 ozone NAAQS revocation was effective on April 6, 2015, and the *South Coast II* court upheld the revocation. As no regional emission analysis is required for this conformity determination, there is no requirement to use the latest emissions model, or budget or interim emissions tests.

Therefore, transportation conformity for the 1997 ozone NAAQS for the 2040 Comprehensive Regional Plan Update Companion and FY 2018 to 2021 Transportation Improvement Program with respect to the LaPorte County maintenance area can be demonstrated by showing the remaining requirements in Table 1 in 40 CFR 93.109 have been met. These requirements, which are laid out in Section 2.4 of EPA's guidance and addressed below, include:

- Latest planning assumptions (93.110)
- Consultation (93.112)
- Transportation Control Measures (93.113)
- Fiscal constraint (93.108)

5.2 Latest Planning Assumptions

The use of latest planning assumptions in 40 CFR 93.110 of the conformity rule generally apply to regional emissions analysis. In the 1997 ozone NAAQS areas, the use of latest planning assumptions requirement applies to assumptions about transportation control measures (TCMs) in an approved SIP.

The Indiana SIP with respect to LaPorte County does not include any TCMs, see also Section 5.4. Therefore, no additional latest planning assumptions are required for this *Transportation Conformity Determination* report.

⁴ Available from <https://www.epa.gov/sites/production/files/2018-11/documents/420b18050.pdf>

5.3 Consultation Requirements

The consultation requirements in 40 CFR 93.112 were addressed both for interagency consultation and public consultation.

Interagency consultation was conducted with NIRPC, INDOT, IDEM, FHWA, FTA, and EPA. NIRPC sent an email to representatives from each of these agencies with a draft copy of this *Transportation Conformity Determination* report on January 9, 2019. Representatives from each of these agencies offered feedback and recommended edits as appropriate, and these are reflected in this *Transportation Conformity Determination* report. Interagency consultation was conducted consistent with the Indiana Conformity SIP. See section 7.1 for details of the interagency consultation correspondence.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450. NIRPC followed its 2014 Public Participation Plan.⁵ The *Transportation Conformity Determination* report was made available to public comment on the NIRPC website from January 11, 2019 to February 9, 2019, fulfilling the 30-day public comment period that the 2014 Public Participation Requires for Conformity Determinations.

5.4 Timely Implementation of TCMs

The Indiana SIP with respect to LaPorte County does not include any TCMs.

5.5 Fiscal Constraint

Transportation conformity requirements in 40 CFR 93.108 state that transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450. The 2040 Comprehensive Regional Plan Update Companion and FY 2018 to 2021 TIP are fiscally constrained, as demonstrated on pages II - 50 to II - 61 of the 2040 Comprehensive Regional Plan Update Companion⁶ and Appendix D of the FY 2018 to 2021 TIP.⁷

⁵ Available at https://nirpc.org/media/48081/nirpc_2014_ppp_final_adopted_12.11.2014.pdf

⁶ Available at <https://www.nirpc.org/2040-plan/2040-plan-update-companion/>

⁷ Available at <https://www.nirpc.org/fy-2018-2021-tip/>

6.0 Conclusion

The conformity determination process completed for the 2040 Comprehensive Regional Plan Update Companion and Fiscal Year 2018 to 2021 Transportation Improvement Program demonstrates that these planning documents meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS with respect to the LaPorte County, Indiana maintenance area.

7.0 Appendices

7.1 Appendix A-1: Interagency Consultation Group Correspondence

NIRPC staff emailed members of the Interagency Consultation Group on Air Quality, comprised of NIRPC, INDOT, IDEM, FHWA, FTA, and EPA, a draft of this *Transportation Conformity Determination* report on January 9, 2019. Joyce Newland (Federal Highway Administration) replied on January 11, 2019 that because the EPA and FTA were on furlough during a significant portion of the comment period and were unable to comment prior to NIRPC being able to fulfill its 2014 Public Participation Plan in time for approval by the NIRPC Executive Board on February 21, NIRPC should be allowed to continue without EPA and FTA's full 30-day review until after the Executive Board Meeting. Shawn Seals (IDEM) replied on January 14, 2019 that IDEM concurred with FHWA's advice. Thus, and hearing no other replies from the Interagency Consultation Group on Air Quality, NIRPC satisfies the Interagency Consultation requirements.

NIRPC staff posted this Transportation Conformity Determination report document to the NIRPC website for public comment on January 11, 2019 through February 9, 2019, and no comments were received.