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# Transportation Conformity Determination Report for the 1997 Ozone NAAQS

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April 2021

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## Executive Summary

As part the transportation planning process, the Michiana Area Council of Governments (MACOG) completed the transportation conformity process for the SFY 2022-2026 TIP. This report documents that the SFY 2022-2026 TIP meet the federal transportation conformity requirements in 40 CFR Part 93.

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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 Ozone NAAQS when the 1997 Ozone NAAQS was revoked. The conformity determinations are required in these areas after February 16, 2019. The South Bend-Elkhart area was a maintenance area at the time of the 1997 Ozone NAAQS revocation on April 6, 2015 and was designated unclassifiable / 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 Transportation Improvement Program (TIP).

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.

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## Background

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 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 the Federal Highway Administration (FHWA) and the 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.

On April 15, 2004, the U.S. EPA designated St. Joseph and Elkhart counties as basic nonattainment and subject to the new 8-hour ozone requirements. This designation required the development of a plan to reduce volatile organic compounds (VOCs) and oxides of nitrogen (NOx) emissions as well as a demonstration that the area will meet the 8-hour ozone standard by June 15, 2009. On April 18, 2007, the U.S. EPA re-designated the South Bend-Elkhart area (including all of St. Joseph and Elkhart Counties) to attainment for ozone based on a request from the Indiana Department of Environmental Management (IDEM) in 2006. Since the re-designation, air quality in the region has continued to improve with the area being found in attainment of the stricter 2008 and 2015 Ozone NAAQS.

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# SFY 2022-2026 Transportation Improvement Program (TIP)

The SFY 2022-2026 Transportation Improvement Program (TIP) is a five year, short-range plan that provides information regarding the transportation projects that are regionally significant and federally funded in the MACOG region. The planning process includes the development of a Metropolitan Transportation Plan (MTP). The MPO adopts the long-range transportation plan. As projects in these long-range plans advance to implementation, they are programmed in the TIP for study, design, and construction, provided they attain environmental permits and other necessary clearances.

The TIP includes projects for all modes of surface transportation including highways and streets, active transportation, and public transportation. Projects listed are developed in cooperation with state and local agencies.

The purpose of the TIP is to set forth the MPO's short-term program for transportation projects. The TIP is prepared according to the MPO's procedures. An MPO Committee works with the State DOT and the appropriate transit operators in soliciting project proposals from the public and cities and towns, and in developing a draft TIP. Following public and agency review, the draft TIP is approved by the MPO, forwarded to the State DOT, then on to federal funding agencies – the Federal Highway Administration, and the Federal Transit Administration.

The approved TIP can be amended or modified to add or delete projects and adjust for changes in scope, cost, or timeframe. Amendments are required to go through Policy Board approval and subject for public review, while minor changes can be made by Administrative Modifications.

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## 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 the EPA for certain transportation activities, including updated or amended Transportation Plans and TIPs. Once the US DOT makes its 1997 Ozone NAAQS conformity determination for the SFY 2022-2026 TIP, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the SFY 2022-2026 TIP.

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# Transportation Conformity Requirements

On November 29, 2018, the EPA issued Transportation Conformity Guidance for the South Coast II Court Decision (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 Transportation Plans 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 Transportation Plans 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 and/or interim emissions tests.

Therefore, transportation conformity for the 1997 Ozone NAAQS for MACOG's SFY 2022-2026 TIP 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)

## Latest Planning Assumptions

The use of the latest planning assumptions in 40 CFR 93.110 of the conformity rule generally applies to a regional emissions analysis. In the 1997 Ozone NAAQS areas, the use of the latest planning assumptions requirement applies to assumptions about transportation control measures (TCMs) in an approved SIP. The SIP for St. Joseph and Elkhart County does not include any TCMs.

## Consultation Requirements

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

Interagency consultation was conducted with the EPA, FHWA, FTA, IDEM, and INDOT. During the preparation of the FY 2022-2026 TIP, the consulting agencies were sent a copy for review via email. Interagency consultation was conducted consistent with the Indiana Conformity SIP.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450. MACOG released the conformity documentation for a public comment period from February 26, 2021 to March 29, 2021.

## Timely Implementation of TCMs

The Indiana SIP does not include any TCMs.

## 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 SFY 2022-2026 TIP is fiscally constrained, as demonstrated in Chapter 4 of the document. Any difference in funds available and the programmed amounts is anticipated to be recovered with other federal funds surplus, project cost savings, and/or additional local contributions.

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## Conclusion

The conformity determination process completed for the Michiana Area Council of Governments SFY 2022-2026 TIP demonstrates that these planning documents meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.

# Appendix A - Interagency Consultation Process

Federal regulation (40 CFR 93.105b) requires that a region’s MPO representatives, state and local air quality planning agencies, state and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the Clean Air Act (CAA) must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of transportation plans and associated air quality conformity determinations. MACOG’s Interagency Consultation Group (ICG) includes representatives from the different stakeholders that oversee air quality analysis in the geographic area.

## Interagency Consultation Group Members

The following individuals are included on invitations to meetings of the Interagency Consultation Group and have been instrumental in reviewing the processes and procedures used to demonstrate air quality conformity.

Name	Organization	Title/Area
Anthony Maietta	EPA	Environmental Protection Specialist
Michelle Allen	FHWA	Planning & Environmental Team Leader
Erica Tait	FHWA	Planning & Environmental Specialist
Cecilia Godfrey	FTA	Community Planner - Region V
Chevonne Madison	FTA	Transportation Program Specialist - Region V
Shawn Seals	IDEM	Senior Environmental Planner
Marcia Blansett	INDOT	LPA Program Director
David Armstrong	INDOT	LPA Program Coordinator
Emmanuel Nsonwu	INDOT	Development Specialist
Frank Baukert	INDOT	Transportation Planner
Jason Casteel	INDOT	Transit Planner
Jay Mitchell	INDOT	Supervisor
Stephanie Belch	INDOT	Development Specialist
James Turnwald	MACOG	Executive Director
Zach Dripps	MACOG	Deputy Directory
Caitlin Stevens	MACOG	Principal Transportation Planner
Ryan DeLine	MACOG	Short-Range Transportation Planner

## Comments Summary

Placeholder for Comments Received



# Appendix B - Public Comments

MACOG made this report and the accompanying conformity documentation available for public review and comment between February 26, 2021 and March 29, 2021. The Michiana Area Council of Governments:

- issued an official public notice to the South Bend Tribune, Elkhart Truth, and El Puente
- included the public comment opportunity in the bi-weekly Gazette e-newsletter
- posted the public comment opportunity to MACOG’s Facebook page

MACOG also held one virtual open houses on March 9<sup>th</sup> to allow time for public comment and discussion.

## Public Comments Summary

Public Comment			
Date	Submitted by	Comment	MACOG Response
March 27, 2021	Melissa Fagerstrom, MM Levitical Ministry Door to Door Service Corporation, Online	<ol style="list-style-type: none"> <li>1. Please include another nonprofit transportation company in your planning for the next four years. MM Levitical Ministry Door to Door Service Corporation is a legal nonprofit charitable organization transportation company both in the State of Indiana and Federally currently specializing in Ride to Work Door to Door Service Transportation in Saint Joseph and Elkhart Counties.</li> <li>2. Please send our corporation an invite to the TAC at <a href="mailto:mmtransportationcompany@gmail.com">mmtransportationcompany@gmail.com</a> and schedule a personal meeting to hear what MM Levitical Ministry Door to Door Service Corporation does already without funding and will do with appropriate, adequate funding.</li> </ol>	<ol style="list-style-type: none"> <li>1. MM Levitical Ministry Door to Door Service Corporation will be included in the transportation inventory for the Equitable Mobility Action Plan.</li> <li>2. Staff will include the corporation in communications in the future.</li> </ol>

Stakeholder Comments			
Date	Submitted by	Comment	MACOG Response
March 19, 2021	Stephanie Belch, INDOT, Email	<ol style="list-style-type: none"> <li>1. INDOT has recently completed its own fiscal constraint exercise for the State project to be included in its draft FY2022-2026 STIP and that has resulted in some changes to the project listings that were provided to the MPOs in December.  The project that now needs to be represented in the draft TIP is:  Des 2100066 - Please add to TIP in FY2022, Construction Phase, \$1,300,000. Project description: US 20 from 3.23 Miles west of SR 19 (St. Joseph/Elkhart County Line) to 2.64 Miles west of SR 15.</li> </ol>	<ol style="list-style-type: none"> <li>1. MACOG Added Des # 2100066 into the Project Listing</li> </ol>

<p>March 25, 2021</p>	<p>Erica Tait, FHWA, email sent via Stephanie Belch</p>	<ol style="list-style-type: none"> <li>1. The table on page 33 is titled “SFY 2022-2026 Highway Funds Allocations”, but the funding amounts included are for SFY 2020-2024.</li> <li>2. The fiscal constraint and project tables should clearly indicate that projects in 2026 are illustrative (including grouped projects in 2026), and therefore not part of the approved TIP. Such projects cannot be moved forward into the program without an amendment. [23 CFR 450.332 d) Except as provided in § 450.326(e) and § 450.330(f), projects not included in the federally approved STIP are not eligible for funding with funds under title 23 U.S.C. or 49 U.S.C. Chapter 53; 23 CFR 450.330 e) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the financially constrained and conforming metropolitan transportation plan and TIP].</li> <li>3. How are bridge replacement projects outlined in MTP? Projects are listed in TIP, but no clear listing in MTP-projects should be consistent with the MTP (23 CFR 450. 326 (i))</li> <li>4. Review TIP projects to ensure consistency with MTP (23 CFR 450. 326 (i)). There are some projects in the TIP draft that I couldn’t locate in the MTP (for example, Blackport Drive, Woodview Drive).</li> <li>5. The PPM/RRM says that projects without Des#s can't be included in the TIP, but there are transit projects in the draft TIP that have no Des# listed.</li> </ol>	<p>MACOG made several text changes to address comments including:</p> <ol style="list-style-type: none"> <li>1. Updating clerical error in Table 2, labeling columns SFY 2022 to SFY 2026</li> <li>2. Included additional text on pg 31 to state that projects in FY 2026 are illustrative.</li> <li>3. &amp; 4. Bridge replacements and road reconstruction (such as Blackport Dr and Woodview Dr) are not specifically listed in the MTP by location, however they are consistent with policy set forth in the Asset Management section of the MTP. These projects are focused on improving assets and selected utilizing data driven decisions. We consider the TIP projects consistent with the plan because 1.) The project is included in the MTP, or 2.) the project supports the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan. [40 CFR 93.115 (b)] Bridge replacement and road reconstruction projects that do not add travel lanes are considered exempt projects.</li> <li>5. Transit Id’s were received on March 4, 2021 and were added to the TIP</li> </ol>
<p>March 25, 2021</p>	<p>Cecilia Crenshaw, FTA, email sent via Stephanie Belch</p>	<ol style="list-style-type: none"> <li>1. Pg. 31, Urban Funds Section 5339 sentence= “...in a state of good ...” (did you mean state of good repair?)</li> <li>2. Pg. 36, Per Table 5, SFY 2022-2026 Transit Projects Fiscal Constraint, what source of funds will be used for the following difference amounts? South Bend \$39,440; \$528,488; \$576,928 Region \$337,436; \$185,824</li> </ol>	<ol style="list-style-type: none"> <li>1. Clerical error was updated</li> <li>2. For Transit Fiscal Constraint, The difference between funds available and the programmed amounts is anticipated to be recovered with other federal fund surplus, and/or additional local contributions.</li> </ol>

## Appendix C - Regionally Significant Projects

County	Sponsor	Open to Traffic	Route	Beginning Termini	Ending Termini	Type of Work	Length (Miles)
20	Bristol	2025	Bristol Bypass	Bloomington Dr	Industrial Dr	New Road Construction	0.5
20	Elkhart	2020	Jackson Blvd	Waterfall Dr	Johnson St	Road Reconfiguration	0.5
20	Elkhart	2025	2nd St	Harrison St	Jefferson St	Road Reconfiguration	0.5
20	Elkhart	2025	3rd St	Harrison St	Jefferson St	Road Reconfiguration	0.5
20	Elkhart	2025	Bristol St (CR 10)	Jeanwood Dr	CR 15	Added Travel Lanes	1.3
20	Elkhart	2025	Hively Ave	Norfolk Southern Railroad (#510012C)		Grade Separation	0.3
20	Elkhart	2030	Bristol St	Johnson St	Jeanwood Dr	Road Diet	2.0
20	Elkhart	2045	Middlebury St	Prairie St	Goshen Ave	Added Travel Lanes	0.9
20	Elkhart	2045	Northside Connector	Adamsville Rd (CR 7)	Johnson St (CR 9)	New Road Construction	1.0
20	Elkhart County	2025	CR 13	Sunnyside Ave	US 20	Added Travel Lanes	1.0
20	Elkhart County	2025	CR 38 (Kercher Rd)	CR 31	County Line Rd	Added Travel Lanes	6.0
20	Elkhart County	2025	Sunnyside Ave	US 33 / Norfolk Southern Railroad		Grade Separation	0.3
20	Elkhart County	2030	CR 17	CR 142	CR 38	New Road Construction	2.6
20	Elkhart County	2030	Johnson St (CR 9)	Bristol St (CR 10)	CR 4	Added Travel Lanes	2.5
20	Elkhart County	2035	CR 17	CR 46	CR 142	New Road Construction	1.7
20	Elkhart County	2035	CR 6	Ash Rd	CR 10	Added Travel Lanes	1.1

County	Sponsor	Open to Traffic	Route	Beginning Termini	Ending Termini	Type of Work	Length (Miles)
20	Elkhart County	2035	CR 6	CR 10	John Weaver Parkway	Added Travel Lanes	0.9
20	Elkhart County	2040	CR 17	CR 50	CR 46	New Road Construction	1.5
20	Elkhart County	2045	CR 118	Old CR 17	CR 19	New Road Construction	1.7
20	Elkhart County	2045	CR 17	US 6	CR 50	New Road Construction	1.5
20	Elkhart County	2045	CR 26	SR 15	CR 31	New Road Construction	3.0
20	Elkhart County	2045	CR 31	CR 36	CR 26	New Road Construction	4.0
20	Elkhart County	2045	CR 43	County Line Rd (1400 N)	US 6	Added Travel Lanes	1.0
20	Elkhart County	2045	Kerryhaven Dr	Current Termini	CR 10	New Road Construction	0.8
20	Goshen	2025	Waterford Mills Parkway	CR 40	SR 15	New Road Construction	0.3
20	Goshen	2025	Wilden Ave	Current Terminus	Middlebury St	New Road Construction	0.2
20	INDOT	2020	US 6	CR 29		Grade Separation	0.3
20	INDOT	2025	US 20	CR 35	SR 13	Added Travel Lanes	2.1
20	INDOT	2025	US 20	SR 15	CR 35	Added Travel Lanes	4.2
20	Nappanee	2030	CR 150	SR 19	CR 3	New Road Construction	1.0
20	Wakarusa	2045	Orchard Park Dr	Current Termini	SR 19 (Nappanee St)	New Road Construction	0.9
71	Mishawaka	2025	Veteran's Parkway	Douglas Rd	Cul-de-sac	New Road Construction	0.3
71	Mishawaka	2030	Twelfth St	Campbell St	Dodge St	Added Travel Lanes	0.9
71	Mishawaka	2035	McKinley Ave	Division St	Elder Rd	Added Travel Lanes	1.7
71	Mishawaka	2035	Union St	Ireland Dr	Sixth St	Added Travel Lanes	1.9
71	Mishawaka	2035	Veteran's Parkway	Cul-de-sac	Cleveland Rd	New Road Construction	0.7
71	South Bend	2030	Hickory Rd	Hepler St	SR 23	New Road Construction	0.9
71	South Bend	2035	Bendix Dr	Bertrand Rd	Lathrop Dr	Road Diet	1.8

County	Sponsor	Open to Traffic	Route	Beginning Termini	Ending Termini	Type of Work	Length (Miles)
71	South Bend	2045	Bertrand Rd	Meade St	Bendix Dr	Road Diet	0.3
71	South Bend	2045	Meade St	Orange Rd	Bertrand Rd	Road Diet	0.2
71	South Bend	2045	Sample St	SR 23	Mayflower Rd	Road Diet	3.2
71	St. Joseph County	2025	Douglas Rd	Ivy Rd	SR 23	Added Travel Lanes	1.1
71	St. Joseph County	2025	Mckinley Ave	Birch Rd	Ash Rd	Added Travel Lanes	1.2
71	St. Joseph County	2030	Larrison / Snowberry Rd	SR 2	US 20	New Road Construction	3.0
71	St. Joseph County	2030	Portage Dr	Bendix Dr	Brick Rd	Added Travel Lanes	0.8
71	St. Joseph County	2035	Bittersweet Rd	Anderson Rd	SR 23	Added Travel Lanes	0.7
71	St. Joseph County	2035	Douglas Rd/ Cleveland Rd Connector	Bittersweet Rd	Beech Rd	New Road Construction	1.9
71	St. Joseph County	2035	Pierce Rd	Miami Rd	SR 331	New Road Construction	2.0
71	St. Joseph County	2040	Day Rd	Fir Rd	SR 331	Added Travel Lanes	1.1
71	St. Joseph County	2040	Portage Rd	Brick Rd	Adams Rd	Added Travel Lanes	1.1
71	St. Joseph County	2045	Cleveland Rd	Bittersweet Rd	Ash Rd	Added Travel Lanes	2.5
71	St. Joseph County	2045	Cleveland Rd	Canadian National		Grade Separation	0.3
71	St. Joseph County	2045	Douglas Rd	Canadian National		Grade Separation	0.3
71	St. Joseph County	2045	Edison Rd / Early Rd Connector	Walnut Rd	Timothy Rd	New Road Construction	2.7
71	St. Joseph County	2045	Larrison/Snowberry Rd	Johnson Rd	SR 2	New Road Construction	3.8
71	St. Joseph County	2045	Larrison/Snowberry Rd	US 20	Hamilton Trl	New Road Construction	3.5