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Transportation Conformity Determination Report for the 1997 ozone NAAQS

Triangle Region

Capital Area Metropolitan Planning Organization (CAMPO)

- *2050 Metropolitan Transportation Plan*
- *2020-2029 Transportation Improvement Program*

Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO)

- *2050 Metropolitan Transportation Plan*
- *2020-2029 Transportation Improvement Program*

Burlington-Graham Metropolitan Planning Organization (BG MPO)

- *2045 Metropolitan Transportation Plan*
- *2020-2029 Transportation Improvement Program*

NC DOT (for projects outside of MPO boundaries)

- *2020-2029 Transportation Improvement Program*

Adoption Dates: XXXX (DCHC MPO)
YYYY (CAMPO)
ZZZZ (BG MPO)

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Acknowledgements

This *Transportation Conformity Report* for the DCHC MPO 2050 Metropolitan Transportation Plan (MTP), the CAMPO 2050 MTP, the Burlington-Graham MPO 2045 MTP and the CAMPO, DCHC MPO, BG MPO and NCDOT 2020-2029 Transportation Improvement Programs (TIPs) was prepared by the Triangle J Council of Governments. Individuals from the following agencies contributed their efforts towards the completion of the Transportation Conformity Determination Report. They include:

- NC Capital Area Metropolitan Planning Organization
- Durham-Chapel Hill-Carrboro Metropolitan Planning Organization
- Burlington-Graham Metropolitan Planning Organization
- NC Department of Transportation
- NC Department of Environmental Quality, Division of Air Quality
- US Federal Highway Administration
- US Federal Transit Administration
- US Environmental Protection Agency

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Executive Summary

As part of their transportation planning processes, the North Carolina Capital Area Metropolitan Planning Organization (CAMPO), the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO), the Burlington-Graham Metropolitan Planning Organization (BG MPO) and the North Carolina Department of Transportation (NCDOT) completed the transportation conformity process for the 2050 MTP (DCHC MPO and CAMPO), for the 2045 MTP (BG MPO) and for the 2020-2029 TIP (DCHC MPO, CAMPO, BG MPO and NCDOT). This report documents that the MTPs and 2020-2029 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). U.S. 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. The Research Triangle Region was “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 MTP and 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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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.

U. S. EPA originally declared Durham County, Wake County and Dutchville Township in Granville County non-attainment for ozone (O₃) under the 1-hour ozone standard and Durham County and Wake County non-attainment for Carbon Monoxide (CO) on November 15, 1990. Ozone, the primary component of smog, is a compound formed when volatile organic compounds (VOC) and oxides of nitrogen (NO_x) mix together in the atmosphere with sunlight. NO_x and VOC are referred to as ozone “precursors.” Durham County, Wake County and Dutchville Township were redesignated by U. S. EPA to attainment with a maintenance plan for ozone under the 1-hour standard on June 17, 1994 and Durham County and Wake County were redesignated by U. S. EPA to attainment with a maintenance plan for CO on September 18, 1995. The 20-year CO maintenance requirements for the Triangle expired in 2015.

In 1997, the NAAQS for ozone was reviewed and revised to reflect improved scientific understanding of the health impacts of this pollutant. When the standard was revised in 1997, an eight-hour ozone standard was established that was designed to replace the

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one-hour standard. The U. S. EPA designated the entire Triangle area as a “basic” non-attainment area for ozone under the eight-hour standard with an effective date of June 15, 2004; the designation covered the following geographic areas:

- Durham County
- Wake County
- Orange County
- Johnston County
- Franklin County
- Granville County
- Person County
- Baldwin, Center, New Hope and Williams Townships in Chatham County

On December 26, 2007, the Triangle Area was redesignated as attainment with a maintenance plan for ozone under the eight-hour standard.

The U.S. Court of Appeals for the DC Circuit in the South Coast Air Quality Management District v EPA, No. 15-1115, issued a decision on February 16, 2018. In that decision, the Court struck down portions of the 2008 Ozone National Ambient Air Quality Standards (NAAQS) State Implementation Plan Requirements Rule which vacated the revocation of transportation conformity requirements for the 1997 8-hour Ozone NAAQS.

In November 2018, U. S. EPA issued Guidance for the South Coast v EPA Court Decision. U. S. EPA’s guidance states that transportation conformity for MTPs and TIPs for the 1997 ozone NAAQS can be demonstrated without a regional emissions analysis pursuant to 40 CFR 93.109(c). Transportation conformity for the 1997 ozone NAAQS would be required on MTP and TIP actions as of February 16, 2019.

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2.0 Metropolitan Transportation Plans

The *Connect2050 Metropolitan Transportation Plan* is one part of CAMPO's and DCHC MPO's transportation planning process. The *Connect2050 Metropolitan Transportation Plan* (2050 MTP) was developed by DCHC MPO and CAMPO between 2020 and 2021. Federal law *40 CFR part 93.104(b)(3)* requires a conformity determination of transportation plans no less frequently than every four years. As required in *40 CFR 93.106*, the analysis years for the transportation plans are no more than ten years apart. The 2050 MTP incorporates the 2020-2029 TIP, which received a conformity determination in 2020. The BG MPO *Getting There 2045 MTP* was adopted on June 16, 2020 and also incorporates the 2020-29 STIP.

The Transportation Plan used the latest adopted planning assumptions as discussed in *40 CFR 93.110*, and were adopted as part of the Plan. Four components combine to represent planning assumptions and translate them into travel:

- a. A single travel demand model was developed for the urbanized portion of the Triangle maintenance area, including all of the DCHC MPO and CAMPO areas and the portion of the Burlington-Graham MPO within Orange County.
- b. A single set of population, housing and employment projections was developed and adopted by the MPOs, using GIS-based growth allocation.
- c. A set of highway and transit projects that was consistent across jurisdiction boundaries was developed and refined through partner cooperation.
- d. Forecasts of travel entering and leaving the modeled area were updated to reflect the most recent traffic count data.

This collection of socioeconomic data, highway and transit networks and travel forecast tools and methods, representing the latest planning assumptions, was finalized through the adoption of the Metropolitan Transportation Plan. Additional detail on planning assumptions is available in the MTP documents, which are available from DCHC MPO, CAMPO and the Triangle J Council of Governments.

The Transportation Plan is fiscally constrained as discussed in *40 CFR 93.108*. The Plan is fiscally constrained to the year 2050 for CAMPO and DCHC MPO and to the year 2045 for BG MPO. The estimates of reasonably available funds are based on historic funding availability, methods used in the NCDOT Strategic Transportation Investments legislation and policy, NC First Commission data and recommendations, county transit sales tax and vehicle fee revenues, and include federal, state, private, and local funding sources. Additional detail on fiscal constraint is included in the MPO transportation plan.

This conformity determination is for the CAMPO and DCHC MPO 2050 MTP and the BG MPO 2045 MTP, along with the 2020-29 TIP conforming subset. Projects are listed in Appendix A.

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3.0 2020-2029 Transportation Improvement Program (TIP)

The 2020-2029 TIP is one part of an MPO's transportation planning process. 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, right-of-way acquisition and construction, provided they attain environmental permits and other necessary clearances.

The purpose of the TIP is to set forth an MPO's near-term program for transportation projects. The TIP is prepared according to an MPO's procedures. An MPO Committee works with the State DOT and the appropriate transit operators in developing a draft TIP. Following public and agency review, the TIP is typically approved by the State DOT (as part of the STIP), and the MPO. The TIP is forwarded to the State DOT, then on to federal funding agencies – the Federal Highway Administration, and the Federal Transit Administration.

This conformity determination incorporates the current 2020-2029 TIP. Projects in each MPO TIP and the NCDOT STIP are available on each MPO's web site and from the NCDOT.

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 EPA¹ for certain transportation activities, including updated or amended metropolitan MTPs and TIPs. Once U.S. DOT makes its 1997 ozone NAAQS conformity determination for the MTP and 2020-2029 TIP, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the CAMPO and DCHC 2050 MTP, the BGMPO 2045 MTP and the 2020-2029 TIP for DCHC MPO, CAMPO, BG MPO and NCDOT in the portion of the Triangle maintenance area outside of the MPO boundaries.

¹ 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 .

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50 Transportation Conformity Requirements

51 Overview

On November 29, 2018, EPA issued **Transportation Conformity Guidance for the South Coast II Court Decision**² (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), 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 DCHC MPO 2045 MTP Amendment and 2020-2029 TIP for DCHC MPO, CAMPO, BG MPO and NCDOT for the portion of the maintenance area outside of MPO boundaries 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)

² Available from <https://www.epa.gov/sites/production/files/2018-11/documents/420b18050.pdf>

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52 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 North Carolina SIP does not include any TCMs, see also Section 5.4.

53 Consultation Requirements

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

Interagency consultation was conducted with DCHC MPO, CAMPO, BG MPO, NC DOT, NC DAQ, FHWA, FTA, and EPA. Interagency consultation was conducted consistent with the North Carolina Conformity SIP.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450, and in conformance with CAMPO's, DCHC MPO's, and BG MPO's adopted Public Involvement Policies. Public comment periods varied for each participating MPO, typically ending on the date of the public hearing. The dates of the public hearings for each MPO were:

XXXX (DCHC MPO)
 YYYY (CAMPO)
 ZZZZ (BG MPO)

Public comments and Agency comments, and responses to these comments, are contained in Appendix E.

54 Timely Implementation of TCMs

The North Carolina SIP does not include any TCMs.

55 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 MTP and 2020-2029 TIP are fiscally constrained, as demonstrated in Chapter 8 of the *Connect2050* MTP for DCHC and CAMPO and in Chapter 5 of the *Getting There 2045* MTP for BG MPO.

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Conclusion

The conformity determination process completed for the 2050 CAMPO and DCHC MPO MTP, the 2045 BG MPO and the 2020-2029 TIP for DCHC MPO, BG MPO, CAMPO and NCDOT demonstrates that these planning documents meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.

APPENDIX A: 2050 MTP Projects

Roadway Project List

MTP ID	Highway Project	From	To	Existing Lanes	Proposed Lanes	Improvement Type(a)	Length (miles)	Estimated Cost	STI Tier	Reg. Sig.(a)	Exempt (b)	TIP#
2030 Horizon Year												
2040 Horizon Year												
2050 Horizon Year												

These footnotes clarify the table data on the previous pages.

- (a) Reg. Sig. means Regionally Significant.
- (b) Projects that are exempt may continue to move forward in the case of a plan lapse whereas non-exempt projects will not receive federal action until there is an approved MTP. In this column, exempt projects are indicated by the regulation section that provides the exemption, e.g., 93.126.

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Major Transit Capital Projects

Project Title	Emissions Analysis Status	Programming Description	MTP Horizon Year and TIP #	MPO
	Regionally Significant			
	Regionally Significant			
	Not Regionally Significant			
	Not Regionally Significant			
	Regionally Significant			

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APPENDIX B: Conformity Process Schedule

Initial conformity partner consultation - request comment on schedule & report format:	October 21, 2021
MPOs provide tables of MTP and TIP projects:	xxx, 2021
Draft CDR complete and sent to MPOs and agency partners for review and comment:	xxx, 2021
MPO Authorization to release draft conformity report for public comment:	xxx, 2021 (BG MPO) Xxx, 2021 (DCHC) Xxx 2021 (CAMPO)
Target date for receipt of all FHWA, FTA, EPA and DAQ comments:	xxx, 2021
Updated Draft of CDR with agency comments and responses:	xxx, 2021
Target date for NCDOT Conformity Finding for the donut areas:	xxx, 2022
Public Hearing and Action on TIP, MTP amendment(s) and Conformity Determination:	xxx, 2022 (BG MPO) Xxx, 2022 (DCHC) Xxx 2022 (CAMPO)
Federal Action (USDOT determination and letter to State/MPO):	February 18, 2022
Conformity Process complete:	February 18, 2022

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APPENDIX C: Interagency Consultation

Interagency consultation followed a process similar to that used in recent conformity determinations:

1. The MPOs, NCDOT, Triangle J COG and FHWA staff discussed the areas and plans to be covered by the CDR, propose a tentative schedule and prepare a template for the report.
2. The report template and tentative schedule was circulated to agency staff by FHWA, seeking any initial comments.
3. The draft report with the schedule was released for public and agency comment, with the draft report sent to agency partners by FHWA staff.
4. Comments received were forwarded to Triangle J COG staff who summarized the comments and prepared comments in consultation with the applicable MPOs and incorporated the responses in the final Conformity Determination Report.

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APPENDIX D:

Public Participation and Notification

Public participation and notification for the Air Quality Conformity Determination Report followed each MPO's Public Participation Plan, which can be viewed at the following sites:

<https://www.campo-nc.us/get-involved/public-participation-plan>

<http://www.dchcmpo.org/involvement/public.asp>

https://www.dropbox.com/s/epd2x6u8wtwvshc/Public%20Involvement%20Policy_BGMPO_PART2014.pdf?dl=0

Each MPO posted the draft CDR on its website and MPOs that use social media included notification of the CDR in its social media communications. Each MPO conducted a public comment period and held a public hearing on the Conformity Determination Report. If required as part of the Public Participation Plan, this appendix includes copies of public notifications and affidavits from media organizations.

The dates of the public hearings for this CDR for each MPO were:

Xxx, 2022 (DCHC MPO)

Xxx, 2022 (CAMPO)

Xxx, 2022 (BG MPO)

In addition to public participation on the air quality process, each MPO had a parallel public process for input and review of the relevant MTP and TIP documents. Although not specifically a part of the air quality work, the MPOs have information related to the public engagement on their MTP and TIP documents on their websites.

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APPENDIX E:

Public & Agency Comments and Responses

Appendix E contains any comments on the draft conformity report and responses to these comments. Each commenter is assigned a code and each comment a number. Responses follow each comment. In certain instances, the respondent may insert italicized, bracketed wording to clarify the comment, using the format [*clarifying comment*]. Except as noted by any italicized, bracketed comments, or in the case of minor spelling or grammatical corrections, no changes are made to the comments as received. Comments submitted in digital formats may have altered formats from the original due to the mechanics of importing and combining these files within this appendix.

The following organizations and individuals provided written responses to the request for comments on the draft conformity determination report; no comments on the Conformity Determination Report were received from the general public:

1. to be added

2. to be added, etc.

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APPENDIX *F*:

Adoption, Endorsement Resolution and Agency Determinations

The following pages in the final report will contain adoptions, endorsement resolutions and agency determinations after all of the agencies have completed the process.