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**Transportation Conformity Determination Report**  
**1997 Ozone NAAQS**

*Transportation Conformity Determination*  
*Erie, PA*

2023-2026 Transportation  
Improvement Program (TIP)  
and 2050 Long Range  
Transportation Plan (LRTP)

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May 2022

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## Executive Summary

As part of its transportation planning process, the Erie County Metropolitan Planning Organization (MPO) completed the transportation conformity process for the 2023- 2026 Transportation Improvement Program (TIP) and the 2050 Long Range Transportation Plan (LRTP). This report documents that the current TIP and LRTP meet the federal transportation conformity requirements in 40 CFR Part 93. Note that conformity for the LRTP is being reaffirmed to address the 4-year frequency requirement for conformity; and there are no changes to the LRTP.

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. 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.

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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked.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 *Erie, PA* area (encompassing Erie County) 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.

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

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### 1.1 Transportation Conformity Process

The concept of transportation conformity was introduced in the 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.

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### 1.2 National Ambient Air Quality Standards

The CAA requires the EPA to set NAAQS for pollutants considered harmful to public health and the environment. A nonattainment area is any area that does not meet the primary or secondary NAAQS. Once a nonattainment area meets the standards and additional redesignation requirements in the CAA [Section 107(d)(3)(E)], EPA will designate the area as a maintenance area.

Erie County is currently designated as a maintenance area under the 1997 8-hour ozone NAAQS. The region is in attainment of the 2008 and 2015 8-hour ozone, 2006 24-hour PM<sub>2.5</sub> and 2012 annual PM<sub>2.5</sub> NAAQS. Transportation conformity requires nonattainment and maintenance areas to demonstrate that all future transportation projects will not prevent an area from reaching its air quality attainment goals.

### 1997 8-hour Ozone NAAQS

The EPA published the 1997 8-hour ozone NAAQS on July 18, 1997 (62 FR 38856), with an effective date of September 16, 1997. An area was in nonattainment of the 1997 8-hour ozone NAAQS if the 3-year average of the individual fourth highest air quality monitor readings, averaged over 8 hours throughout the day, exceeded the NAAQS of 0.08 parts per million (ppm). On May 21, 2013, the EPA published a rule revoking the 1997 8-hour ozone NAAQS, for the purposes of transportation conformity, effective one year after the effective date of the 2008 8-hour ozone NAAQS area designations (77 FR 30160).

On February 16, 2018 the D.C. Circuit reached a decision in *South Coast Air Quality Management District v. EPA*, Case No. 15-1115. In that decision, the court vacated major portions of the final rule that established procedures for transitioning from the 1997 ozone NAAQS to the stricter 2008 ozone NAAQS. By court decision, Erie County was designated as an “orphan” maintenance area since the area was maintenance for the 1997 ozone NAAQS at the time of its revocation (80 FR 12264, March 6, 2015) and was designated attainment for the 2008 NAAQS in EPA’s original designations for this NAAQS (77 FR 30160, May 21, 2012).

### 2008 and 2015 8-hour Ozone NAAQS

The EPA published the 2008 8-hour ozone NAAQS on March 27, 2008 (73 FR 16436), with an effective date of May 27, 2008. EPA revised the ozone NAAQS by strengthening the standard to 0.075 ppm. Thus, an area is in nonattainment of the 2008 8-hour ozone NAAQS if the 3-year average of the individual fourth highest air quality monitor readings, averaged over 8 hours throughout the day, exceeds the NAAQS of 0.075 ppm. Erie County was designated as an attainment area under the 2008 8-hour ozone NAAQS, effective July 20, 2012 (77 FR 30088).

In October 2015, based on its review of the air quality criteria for ozone and related photochemical oxidants, the EPA revised the primary and secondary NAAQS for ozone to provide requisite protection of public health and welfare, respectively (80 FR 65292). The EPA revised the levels of both standards to 0.070 ppm, and retained their indicators, forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours). Under the Clean Air Act, the EPA administrator is required to make all attainment designations within two years after a final rule revising the NAAQS is published. Erie County is in attainment of the 2015 8-hour ozone NAAQS.

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## **2.0 ERIE MPO TIP and LRTP**

MPO/RPOs each develop a TIP at the local level, which reflects the first four years of the Pennsylvania Department of Transportation (PennDOT) Twelve Year Program (TYP). The Statewide Transportation Improvement Program (STIP) covers the entire state and includes the individual TIPs representing each Planning Partner. Federal 4 Law requires TIPs to be updated at least every four years. Pennsylvania’s MPOs and

RPOs update their TIPs every two years during the TYP update process.

The LRTP serves as the official transportation plan for a metropolitan area. The LRTP documents the current and future transportation demand and identifies long-term improvements and projects to meet those needs. The [Erie County LRTP](#) guides decision-making about transportation improvements in the county. The planning factors specified in federal regulations provide the framework for developing an LRTP.

The February 16, 2018 South Coast vs. EPA Court decision did not vacate EPA's revocation of the 1997 ozone standard and the decision does not change the area's attainment status. Therefore, while such areas might be required to meet conformity requirements as part of anti-backsliding controls, such areas are not considered nonattainment or maintenance areas under the Transportation Planning Rule (23 CFR 450.104). Such areas continue to complete 5-year plan update cycles as described in 23 CFR 450.324(c). The 5-year metropolitan transportation plan update cycle continues to apply from the date of the most recent MPO metropolitan transportation plan adoption (not the most recent FHWA/FTA conformity determination). While these areas have a 5-year plan cycle for transportation planning purposes, as a result of the court decision they must still meet the 4-year frequency requirements for conformity determinations on TIPs and LRTPs as required by 40 CFR 93.104.

**Appendix A** provides a listing of the regional significant projects that are funded in the TIP and LRTP within Erie County. Regionally significant projects include transportation projects (other than exempt projects as defined under 40 CFR 93.126-127) that are on a facility which serves regional transportation needs.

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### 3.0 Transportation Conformity 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 EPA<sup>1</sup> for certain transportation activities, including updated or amended TIPs and LRTPs. Once US DOT makes its 1997 ozone NAAQS conformity determination, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the Erie MPO 2023-2026 TIP and 2050 LRTP.

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<sup>1</sup> 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](http://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation).

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## 4.0 Transportation Conformity Requirements

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### 4.1 Overview

On November 29, 2018, EPA issued **Transportation Conformity Guidance for the South Coast II Court Decision**<sup>2</sup> (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 TIPs and LRTPs 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 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 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)

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### 4.2 Latest Planning Assumptions

The use of 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 latest planning assumptions requirement applies to assumptions about transportation control measures (TCMs) in an approved SIP. However, the Erie County SIP maintenance plan does not include any TCMs.

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<sup>2</sup> Available from [Policy and Technical Guidance for State and Local Transportation | US EPA](#)

### 4.3 Consultation Requirements

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

As required by the federal transportation conformity rule, the conformity process includes a significant level of cooperative interaction among federal, state, and local agencies. For this air quality conformity analysis, interagency consultation was conducted as required by the Pennsylvania Conformity SIP. This included conference call(s) or meeting(s) of the Pennsylvania Transportation-Air Quality Work Group (including the Pennsylvania Department of Transportation (PennDOT), DEP, EPA, FHWA, FTA and representatives from larger MPOs within the state).

Meeting and conference calls were conducted on October 28, 2021 and January 27, 2022 to review all planning assumptions and to discuss the template and content for transportation conformity analyses in 1997 ozone orphan areas.

The TIP, LRTP and associated conformity determination has undergone the public participation requirements as well as the comment and response requirements according to the procedures established in compliance with 23 CFR Part 450, Erie MPO's Public Participation Plan, and Pennsylvania's Conformity SIP. The draft document was made available for a 30-day public review and comment period, which included a public meeting.

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### 4.4 Fiscal Constraint

The planning regulations, Sections 450.324(f)(11) and 450.326(j), require the transportation plan to be financially constrained while the existing transportation system is being adequately operated and maintained. Only projects for which construction and operating funds are reasonably expected to be available are included. The Erie MPO, in conjunction with PennDOT, FHWA and FTA, has developed an estimate of the cost to maintain and operate existing roads, bridges and transit systems in the region and have compared the cost with the estimated revenues and maintenance needs of the new roads over the same period. The Erie MPO TIP and LRTP has been determined to be financially constrained.

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## 5.0 Conclusion

The conformity determination process completed for the Erie MPO TIP and LRTP demonstrates that these planning documents meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.

# Appendix A

## *Regionally Significant TIP and LRTP Project List*

### *(Erie County)*

Project Title	Municipality	Description
Air Quality Significant Projects on 2023-2026 TIP		
US 6: PA 8 to DOT Shed (MPMS 90283)	Union City and Union Township	This project includes 1.50 miles of restoration on State Route 6 (Grand Army of the Republic Highway) from State Route 8 (Main Street) at the Kwik Fill to the PennDOT shed in the Borough of Union City and Union Township. Work involves milling, resurfacing, installing loops with coordinated signals and ADA curb ramps.
Central Bayfront Parkway Multimodal (MPMS 108952)	Erie City	This project is a direct result of the Erie Bayfront Parkway study. This Multimodal/Congestion Reduction/Safety Improvement project will be on the Bayfront Parkway (SR 4034) and will improve safety and access for pedestrian, bicycle, and vehicular traffic. This project will include a potential realignment or roundabout at the State Street/Bayfront Intersection, the Holland and Bayfront Intersection, and the intersection of Sassafra and the Bayfront. Enhanced pedestrian improvements including crosswalks, signage, push buttons (eleven signalized intersections), possible pedestrian bridges, refuge islands in the medians, bump-outs, transit pull-offs and roadway narrowing.
Zuck Road Improvements (MPMS 109147)	Millcreek Township	This project includes 1.96 miles of restoration on SR 4015 (Zuck Road) from State Route 4014 to State Route 20 in Millcreek Township, Erie County. Improvements include milling and overlay of existing bituminous pavement, ADA compliant curb ramps, drainage improvements, signage and pavement markings. Safety improvements will also be made at various intersections throughout the project limits including new signal equipment, synchronizing signals, widening where needed to allow additional left turn lanes and ADA improvements
Air Quality Significant Projects on 2050 LRTP Includes projects from PennDOT's Twelve Year Program (TYP)		
PA 290 Signal Upgrade (MPMS 99056)	Erie City	This project includes 11.27 miles of safety improvements on State Route 290 (Bayfront Connector) from Interstate 79 (Raymond P Shafer Highway) to Interstate 90 (American Veterans Memorial Highway) in the City of Erie and Harborcreek Township. Work involves traffic signal upgrades and timing improvements.

Project Title	Municipality	Description
PA 5 Gorman-Brewster Signals (MPMS 99057)	Millcreek Township	This project includes 15.70 miles of safety improvements on State Route 5 (West Lake Road/12th Street) from Gorman Drive to Brewster Street in the City of Erie and Millcreek Township. Work involves traffic signal upgrades and timing improvements.
West 8th Street two-way conversion and intersection improvements	City of Erie	Intersection improvements at West 8th Street and Cherry Street, Walnut Street, Chestnut Street and Myrtle Street intersections will convert this one way street to 2-way operation in this area. Intersection improvements to include crosswalks, signage, gateway elements.
Implementation of Fairview Township's Master Plan	Fairview Township	Transportation enhancements on US 20 from Old Ridge Road to Linda Ave and at the intersection of Avonia Road and Chestnut Street are the result of the Township's master plan. This project includes streetscape enhancements such as decorative pavement, decorative pedestrian lighting, and street trees. Also included are ADA compliant pedestrian ramps, storm drainage infrastructure, and intersection improvements.
Edinboro Rd @ Old Zuck Rd and Hershey Rd @ Hamot Rd Intersection Improvements	Summit Township	Intersection improvements including roundabout at Hershey Rd and Hamot Rd, realignment of Old Zuck Rd at Edinboro Rd (with signal if warranted)
I-90 @ Perry Hwy (SR 97) Improvement project	Summit Township	Improvements including adding a north-bound right turn lane from Perry Highway to east-bound I-90.
US 19/ Peach Street Intersection improvements and coordination	Summit Township and Millcreek Township	Improvements including alignment, traffic signals, pedestrian access and coordination of signals.
38th Street @ Liberty St., Peach St., Cherry St. and Shunpike Rd. Intersections	City of Erie	Implement preferred recommendations from the 38th Street study, including lane realignment, intersection improvements, signal coordination, addition of bike lanes and pedestrian improvements