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## Proposed Amendment

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**February 2019**

**Michiana Area Council of Governments**  
227 W. Jefferson Blvd. County-City Building, Room 1120  
South Bend, Indiana 46614

### **HOW TO COMMENT**

The MACOG Policy Board will be considering the proposed amendment during its meeting on February 13, 2019. A public open house will be held at the Elkhart County Public Services Building in Dunlap on Wednesday, January 16, 2019. There will also be a public comment period in January for submitting comments on the proposed amendment. Parties can submit written comments to MACOG, 227 West Jefferson Blvd., County-City Building Room 1120, South Bend, IN 46601 or by emailing [macogdir@macog.com](mailto:macogdir@macog.com). The deadline to submit written comments is 4:00pm, February 4, 2019.

[Insert Policy Board Resolution]

## BACKGROUND

The Michiana on the Move: 2040 Transportation Plan is being amended to establish conformity and reflect changes in the Statewide Transportation Improvement Program (STIP) as well as the SFY 2018-2021 TIP adopted by the MACOG Policy Board. The amendment is needed as a result of a recent decision from 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), which struck down portions of the 2008 Ozone NAAQS State Implementation Plan Requirements Rule concerning the Ozone National Ambient Air Quality Standards (NAAQS) as well as the anti-backsliding requirements associated with the revocation of the 1997 Ozone NAAQS.

Areas such as Elkhart and St. Joseph County that were maintenance areas for the 1997 Ozone NAAQS at the time of revocation and are designated as attainment for the 2008 Ozone NAAQS, have not been required to make transportation conformity determinations for any Ozone NAAQS since the 1997 Ozone NAAQS was revoked in April 2015. Under the recent court decision, these areas, referred to as orphan areas rather than non-attainment or maintenance areas, necessitate new regional conformity determinations.

More information about the conformity determination process for orphan areas and about the proposed transportation plan amendment(s) can be found below.

## CONFORMITY

The U.S. Environmental Protection Agency (EPA) has issued guidance to assist in the implementation of the February 16, 2018, decision from 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). The guidance addresses how transportation conformity determinations can be made in areas that were either non-attainment or maintenance for the 1997 Ozone NAAQS when the standard was revoked, depending on their designations for the subsequent 2008 and 2015 Ozone NAAQS. MACOG was defined as an orphan maintenance area in the court decision as the region was a maintenance area for the 1997 Ozone NAAQS at the time of its revocation (80 FR 12264, March 6, 2015) and was designated attainment for the 2008 Ozone NAAQS in EPA’s original designations for the NAAQS (77 FR 30160, May 21, 2012).

The transportation conformity regulation at 40 CFR 93.109 sets forth the criteria and procedures for determining conformity. In orphan areas that have one or more MPOs, transportation conformity for transportation plans and TIPs for the 1997 ozone NAAQS can be demonstrated without a regional emissions analysis pursuant to 40 CFR 93.109(c). Paragraph (c) states:

*This provision applies one year after the effective date of EPA's nonattainment designation for a NAAQS in accordance with §93.102(d) and until the effective date of revocation of such NAAQS for an area.*

The *South Coast II* court decision upheld EPA's revocation of the 1997 Ozone NAAQS, which was effective on April 6, 2015. EPA's current transportation conformity regulation requires a regional emissions analysis only during the time period beginning one year after a nonattainment designation for a particular NAAQS until the effective date of revocation of that NAAQS (40 CFR 93.109(c)). Therefore, pursuant to this regulation, a regional emissions analysis is not required for conformity determinations for the 1997 Ozone NAAQS because that NAAQS has been revoked (80 FR 12264).

As no regional emissions analysis is required in orphan areas, there is no requirement to use the latest emissions model (40 CFR 93.111), or use either the emissions budget test or interim emissions test (40 CFR 93.118 and 93.119). Therefore, transportation conformity for the 1997 Ozone NAAQS can be demonstrated by an MPO and DOT for transportation plans and TIPS by showing that the remaining criteria in 40 CFR 93.109, and 40 CFR 93.108, have been met:

#### **Use of the latest planning assumptions, per 40 CFR 93.110**

These criteria generally apply to regional emissions analyses. In orphan areas, ensuring the latest planning assumptions are used applies to information about TCMs in an approved SIP (40 CFR 93.113). No Traffic Control Measures (TCM) are included in the SIP for the Elkhart and St. Joseph County Orphan Maintenance Area.

Development of the Michiana on the Move: 2040 Transportation Plan included updating the land use assumptions derived from the estimates of current and future population, employment, travel, and congestion. As this amendment is for a state project from INDOT's Policy Based Long Range Transportation Plan, any necessary updates to the latest planning assumptions are assumed to have been included in INDOT's analysis of the project for their Transportation Plan.

#### **Consultation requirements, according to 40 CFR 93.112**

An Interagency Consultation Group meeting was held to discuss the draft copy of this document prior to the start of the 30-day public comment period to ensure all requirements of the conformity determination and transportation plan amendment have been met.

#### **Timely implementation of any approved SIP transportation control measures (TCMs), according to the requirements in 40 CFR 93.113**

No Traffic Control Measures (TCM) are included in the SIP for the Elkhart and St. Joseph County Orphan Maintenance Area.

## Fiscal constraint, according to 40 CFR 93.108

The Michiana on the Move: 2040 Transportation Plan includes a financial plan that demonstrates how the adopted plan can be implemented. The financial plan compares the estimates of funds that are reasonably expected to be available for transportation uses, including transit, and the cost of constructing, maintaining and operating the total (existing, plus planned) transportation system over the period of the plan.

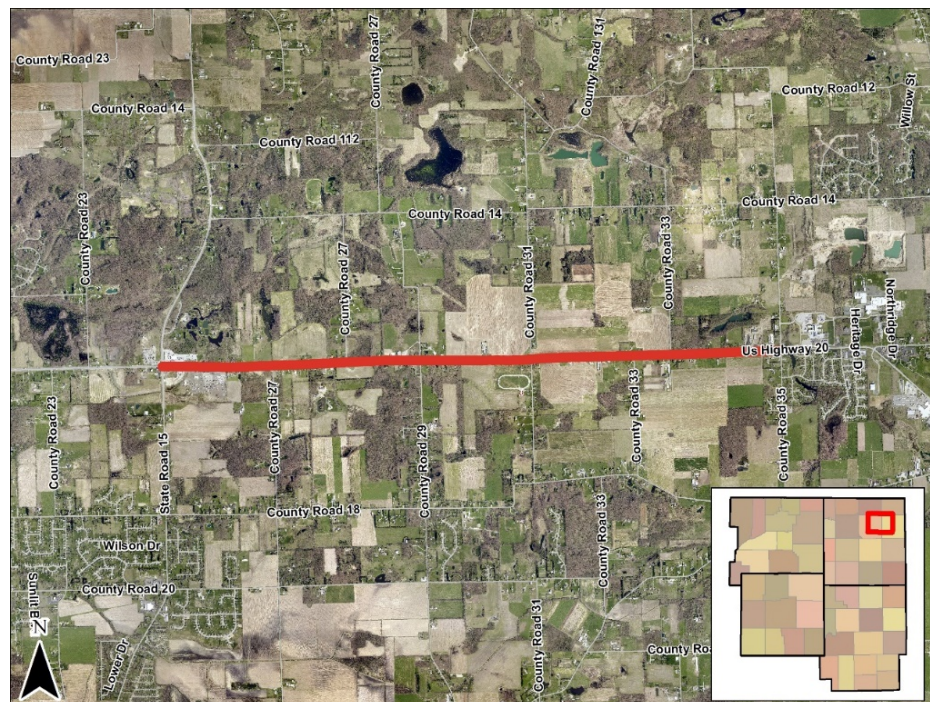
The SFY 2018-2021 TIP includes a summary of the fiscal constraint analysis for local highway projects listed in the Transportation Improvement Program. The details for the federal funds and programmed amounts are also located in the document. The difference between funds available and the programmed amounts is anticipated to be recovered with other federal fund surplus, project costs savings, and/or additional local contributions. The local match required for federally funded projects is supplied from a variety of local sources including LRSA, CBF, MBF, EDIT, COIT, LOWHUT, MVHA, TIF and others. The LPA is required, prior to beginning projects, to have identified the specific source and amount required for their local match.

## AMENDMENT

As part of the Indiana Department of Transportation's (INDOT) Policy-Based Long Range Plan, a regionally significant added travel lanes project was identified in 2018 on US 20 from SR 15 to 4.14 miles east of SR 15 (approximately CR 35). The proposed project is a continuation of the US 20 Bypass in Elkhart County and the recently completed added travel lanes project on US 20 west of SR 15. While INDOT finalized the specific scope of the project, it was

amended into MACOG's Adopted SFY 2018-2021 TIP to allow for the start of preliminary engineering on the project.

As a result of the court decision for the 1997 Ozone NAAQS orphan areas and in order to allow for the US Department of Transportation to approve the National Environmental Policy



Act (NEPA) document, the project is being amended into the Michiana on the Move: 2040 Transportation Plan as a 4-lane added travel lanes project with a two-way center turn lane from SR 15 to 4.14 miles east of SR 15 (CR 35) in Elkhart County. The project should be open to traffic prior to the 2025 horizon year of the model.