

**Transportation Conformity Statement**  
**for the**  
*Long Range Transportation Plan for the Genesee-  
Finger Lakes Region 2045*  
**and**  
*2023-2027 Transportation Improvement Program*

**August 2022**

Prepared by the

GENESEE TRANSPORTATION COUNCIL

and the

NYS Department of Transportation-Region 4



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## Introduction

As part of its transportation planning process, the Genesee Transportation Council completed the transportation conformity process for the *Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045* (LRTP 2045) and *FFY 2023-2027 Transportation Improvement Program* (TIP). This report documents that the LRTP 2045 and the FFY 2023-2027 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 National Ambient Air Quality Standard (NAAQS) or any interim milestones [42 U.S.C. 7506(c)(1)]. The U.S. Environmental Protection Agency's (EPA's) transportation conformity rules establish the criteria and procedures for determining whether LRTPs, 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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked.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 areas are referred to as "Orphan Areas". Such conformity determinations are required in Orphan Areas after February 16, 2019. The Rochester, New York Nonattainment Area (Rochester Nonattainment Area) was classified "nonattainment" 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 and attainment for the 2015 ozone standard on November 16, 2017. Therefore, per the South Coast II decision, this conformity determination is being made for the 1997 ozone NAAQS on the LRTP 2045 and the FFY 2023-2027 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.

For consistency with prior Conformity Determinations, the Rochester, NY air quality Orphan Area will be herein referred to as the Rochester Nonattainment Area. The Rochester Nonattainment Area consists of Genesee, Livingston, Monroe, Ontario, Orleans, and Wayne Counties.

## Air Quality 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 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 LRTPs, TIPs, and transportation projects are consistent with ("conform to") the State's air quality goals in the SIP.

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.

On April 15, 2004 the EPA designated the Rochester Nonattainment Area as being in nonattainment of the National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The Rochester Nonattainment Area consists of Genesee, Livingston, Monroe, Ontario, Orleans, and Wayne Counties.

The Rochester, NY Area is designated attainment for both the 2008 and 2015 ozone standards. The designation for the 2008 standard was announced on May 21, 2012 and effective July 20, 2012. The designation for the 2015 standard was announced on November 16, 2017 and effective January 16, 2018.

### Conformity

The Clean Air Act Amendments of 1990 (CAAA) require transportation agencies in nonattainment areas to ensure that their transportation improvements do not negatively contribute to air quality as a precondition to the continued receipt of federal transportation funds.

The primary geographic focus of the Genesee Transportation Council (GTC) is the Rochester Metropolitan Planning Area (MPA). The Rochester MPA includes all of Monroe County and the adjacent developed areas of Livingston, Ontario, and Wayne counties. Projects outside of the Rochester MPA that are in the Rochester Nonattainment Area are under the purview of the New York State Department of Transportation (NYSDOT)-Region 4. Map 1 on the following page presents the Rochester Nonattainment Area with the Rochester MPA highlighted.

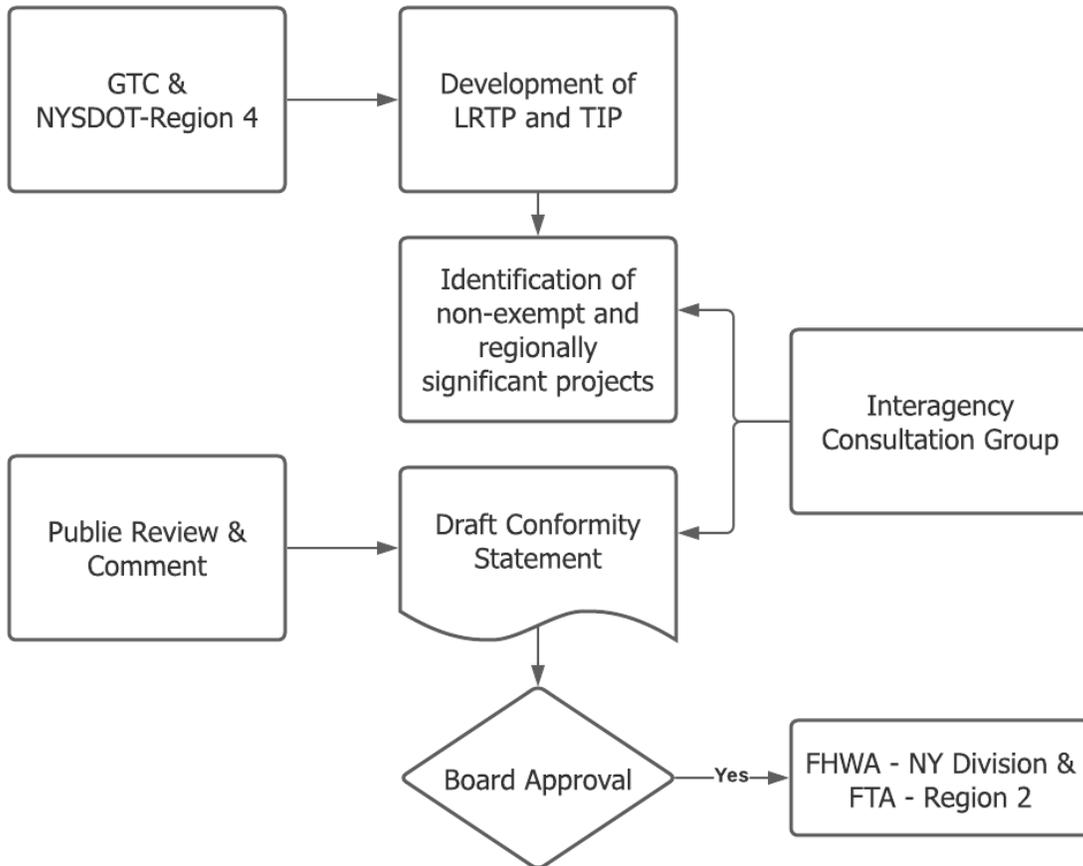
Accordingly, GTC and NYSDOT-Region 4 are required to determine if the current, fiscally-constrained long range transportation plan (LRTP) and transportation improvement program (TIP) conform to federal air quality standards. As established in GTC Resolution 04-41, GTC is responsible for documenting conformity in the Rochester MPA and NYSDOT is responsible for documenting conformity in the remainder of the Rochester Nonattainment Area.



The CAAA and the Infrastructure and Investment Jobs Act (IIJA) define what activities must be undertaken – and what agencies must be involved in each of these activities – to demonstrate conformity of the TIP. Figure 1 below presents the major activities required to determine conformity and the agencies involved in these activities.

Figure 1

**Major Activities to Determine Conformity for LRTP and TIP in Orphan Areas**



Interagency Consultation

To better ensure that all considerations are accounted for, the CAAA requires that each state identify and involve all affected agencies in the conformity process through an Interagency Consultation Group (ICG). In New York State, the members of the ICG are defined in Title 6 Part 240 Section 6 of the New York Codes, Rules, and Regulations as:

- Federal Highway Administration – New York Division (FHWA-NY)
- Federal Transit Administration – Region II (FTA-II)
- U.S. Environmental Protection Agency – Region 2 (EPA-2)
- NYSDOT – Environmental Science Bureau (NYSDOT-ESB)
- NYS Department of Environmental Conservation (NYSDEC)

## 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 EPA for certain transportation activities, including updated or amended LRTPs and TIPs. Once US DOT makes its 1997 ozone NAAQS conformity determination for the LRTP 2045 and the 2023-2027 TIP, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the LRTP 2045 and the 2023-2027 TIP.

## Development of LRTP and the TIP

Transportation policies and improvements utilizing Federal transportation funds in the Rochester Nonattainment Area are identified in the *Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045* (LRTP 2045) and the *2023-2027 Transportation Improvement Program* (2023-2027 TIP). Both the LRTP 2045 and the 2023-2027 TIP must be fiscally constrained – that is, policies, programs, and projects identified in each document must not require expenditures in excess of estimates of reasonably expected Federal transportation funds and required non-Federal matching funds.

Given that the transportation improvements in the LRTP 2045 and 2023-2027 TIP can be implemented with reasonably expected revenues, these transportation improvements can be expected to advance and must conform to Federal air quality standards.

### *Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045*

The LRTP 2045 was adopted by the GTC Board on June 10, 2021. LRTP 2045 provides a nearly 25-year perspective of existing and projected transportation system capabilities, needs, and objectives, as well as recommendations to meet these objectives for the nine-county Genesee-Finger Lakes Region, which includes the six-county Rochester Nonattainment Area. The LRTP 2045 serves as a framework for guiding Federally-funded transportation planning and investment decision-making. The Recommendations of LRTP 2045 are included in **Appendix A**.

### *2023-2027 Transportation Improvement Program*

Federal regulations require that the metropolitan transportation planning process include the cooperative development of the Transportation Improvement Program (TIP), a staged multi-year program of projects consistent with the current long range transportation plan. This region's TIP is developed cooperatively by a team led by GTC and NYSDOT-Region 4.

GTC and NYSDOT-Region 4 work together to coordinate the programming of the projects in the Rochester Nonattainment Area. The TIP development process is guided by the TIP Development Committee (TDC), which is comprised of representatives from the Rochester MPA Counties (Livingston, Monroe, Ontario, and Wayne), the City of Rochester, the Rochester-Genesee Regional Transportation Authority (RGRTA), and NYSDOT-Region 4.

In December 2021, GTC and NYSDOT-Region 4 jointly solicited applications for new transportation projects which anticipated using Federal transportation funds to be included in the *2023-2027 TIP*, covering the time period between October 1, 2022 and September 30, 2027. The GTC/NYSDOT team presented to the TDC a priority list of projects based upon the

Evaluation Criteria included in the project proposal solicitation package. These criteria were wholly consistent with and derived from the LRTP 2045. The resulting preliminary rankings were reviewed and discussed with the TDC and adjustments to rankings were made as necessary to reflect overall funding considerations, geographic balance, and other factors. Based on estimates of available revenue, funding was assigned to the ranked projects in accordance with funding availability and eligibility restrictions.

The GTC Planning Committee approved the DRAFT *2023-2027 Transportation Improvement Program Project List* for a 30-day public review period on July 14, 2022. During the public review period, three public meetings were held to solicit comments on the program of projects. Advanced notice of the public meetings was sent to over 25 media outlets throughout the region, as well as nearly 200 organizations representing populations not traditionally well-represented in the transportation planning process.

The GTC Community Engagement Hub ([gtcmpo.org/PublicInput](http://gtcmpo.org/PublicInput)) included a dedicated project page to provide information about the TIP, individual projects, and collect feedback via online form, email, text message, and other means.

The *2023-2027 TIP* was adopted by the GTC Board on August 25, 2022. The TIP projects are included in **Appendix B**.

## Transportation Conformity Requirements

### *Overview*

On November 29, 2018, 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 LRTPs 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 LRTPs 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 Genesee Transportation Council's LRTP 2045 and 2023-2027 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 (40 CFR 93.110)
- Consultation (40 CFR 93.112)
- Transportation Control Measures (40 CFR 93.113)
- Fiscal constraint (40 CFR 93.108)

#### *Latest planning assumptions and Transportation Control Measures*

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 State Implementation Plan (SIP). The New York SIP does not include any TCMs applicable to the Rochester Nonattainment Area.

#### *Consultation*

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

Interagency consultation was conducted with the New York Air Quality Interagency Consultation Group (ICG). Relevant information about the policy Recommendations included in LRTP 2045 were provided to the ICG. The ICG concurred with the policy Recommendations on May 4, 2021. Relevant information about new projects included in the 2023-2027 TIP were provided to the ICG with suggested air quality exemption classification and associated justification. The ICG concurred on the Exempt or Non-Exempt classification for each project on **[DATE TBD]**. Interagency consultation was conducted consistent with the requirements at 40 CFR 93.105 and concurrent with public review.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450 and GTC's *Public Engagement Plan*. The draft LRTP 2045 was made available for public review from April 12, 2021 to May 11, 2021. The draft 2023-2027 TIP was made available for public review from July 15, 2022 to August 15, 2022. Comments were considered by the GTC Board prior to adopting both the LRTP 2045 and 2023-2027 TIP.

#### *Fiscal Constraint*

LRTP 2045 is primarily a policy-focused plan with no specific transportation projects mentioned. This is a result of the recognition that the existing transportation system in the region generally has sufficient capacity for our needs. While there may be projects that allow for more traffic throughput, they are not what would typically be considered capacity improvement projects, rather they are operational improvements. The vast majority of projects undertaken in this region are focused on attaining a State of Good Repair of the existing transportation system. Accordingly, while LRTP 2045 identifies anticipated revenue in Year of Expenditure dollars (YOES), specific project expenditures are identified within the TIP.

On March 28, 2022, NYSDOT issued the TIP/STIP Policy Guidance and Instructions for the Update Period Beginning October 2022. The Guidance included the amounts of Federal Highway Administration (FHWA) funds by program that are being made available to the GTC/NYSDOT-

Region 4 TIP area (Planning Targets) for Federal Fiscal Years (FFYs) 2023 through 2026. On April 26, 2022, NYSDOT provided estimated amounts of FTA Section 5307 and FTA Section 5339 funding to be allocated to RGRTA as the designated recipient for the Rochester, NY Urbanized Area. GTC staff discussed the NYSDOT estimates with RGRTA and all agreed that the estimates were reasonable.

The GTC adopted *FFY 2023-2027 Transportation Improvement Program* contains a financial summary indicating reasonably available revenues by source and year along with expenditures by source and year to demonstrate fiscal constraint consistent with Title 23 Section 450.326(j) of the Code of Federal Regulations.

### Identification of classified/Non-Exempt and Regionally Significant Projects

#### *Exempt/Non-Exempt Projects*

All federally-funded transportation projects in the Rochester Nonattainment Area must be included in the *2023-2027 TIP*. GTC and NYSDOT-Region 4 staffs evaluated the projects in the *2023-2027 TIP* to determine their exempt or non-exempt status as defined by the criteria of the federal conformity rules and guidance ("Table 2 - Exempt Projects" in 40 CFR Part 93.126 and "Table 3 - Projects Exempt from Regional Emissions Analysis" in 40 CFR Part 93.127 dated July 1, 2009).

Typically, projects that improve the safety of the highway network, preserve/maintain existing transportation infrastructure, contribute to minor increases in the efficiency of public transportation services, or enhance non-motorized travel are considered exempt. Non-exempt projects are those projects that do not meet the criteria of exempt projects and must be identified to recognize their potential impact on air quality.

The listing of the aforementioned transportation projects and their associated exempt/non-exempt status is provided in Appendix A. The ICG has concurred with the exempt/non-exempt status of each project on **[DATE TBD]**. New projects subsequently added to the TIP via amendments will be provided to the ICG for concurrence.

#### *Regionally Significant Projects*

A regionally significant project is defined as a project that is expected to impact regional travel patterns but will be implemented without using federal funds. Although these projects may not be included in the MPO process, they have the potential to impact regional air quality and therefore must be included in the Conformity Statement as part of a conformity determination.

For the purposes of this conformity determination, GTC and NYSDOT-Region 4 staffs reviewed the current and pending capital improvement programs (CIPs) of the City of Rochester, Monroe County, RGRTA, and Ontario County. None of the projects reviewed for this conformity determination were deemed to be regionally significant.

### Public Review

This document was made available for public review from July 15, 2022 to August 15, 2022 concurrent with the draft *FFY 2023-2027 Transportation Improvement Program* to discuss the conformity statement and gather input from the public. The public review period and meeting

were advertised via a legal notice in the Rochester *Democrat & Chronicle* and on the GTC website. GTC did not receive any comments on this document.

#### Statement of Conformity

The analysis documented above demonstrates that the *LRTP 2045* and *2023-2027 TIP* in the Rochester Nonattainment Area is in conformity with the rules and regulations established by EPA and NYSDEC, and as such the State Implementation Plan (SIP) for air quality.

This statement was adopted by the Genesee Transportation Council Board on August 25, 2022. A scanned copy of the adopting resolution is included at the beginning of this document.