

MEMORANDUM

TO: GTC Planning Committee Members & Alternates
FROM: James Stack, Executive Director JS
DATE: July 8, 2022
SUBJECT: Approval of the Draft *Transportation Conformity Statement for the Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045 and the 2023-2027 Transportation Improvement Program* for public review

As part of its transportation planning process, the Genesee Transportation Council must complete a transportation air quality 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). GTC staff has prepared a Draft of the *Transportation Conformity Statement for the Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045 and the 2023-2027 Transportation Improvement Program* (Conformity Statement).

The Conformity Statement demonstrates that the LRTP 2045 and the FFY 2023-2027 TIP meet the federal transportation conformity requirements in 40 CFR Part 93. Ultimately, the Federal Highway Administration and the Federal Transit Administration will make a Conformity Determination based upon their review of the Statement.

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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked.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. 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 is being 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.

The requirements in 40 CFR 93.112 include interagency consultation and public consultation. Interagency consultation was conducted with the New York Air Quality Interagency Consultation Group (ICG). Relevant information about the projects and proposed air quality conformity codes included in the 2023-2027 TIP were provided to the ICG. Interagency consultation was conducted consistent with the requirements at 40 CFR 93.105.

The Draft Conformity Statement must be made available for public review and comment. Accordingly, GTC staff recommends making the Draft Conformity Statement available for public review concurrent with the public review for the 2023-2027 TIP from July 15, 2022 to August 15, 2022.

The following item is provided for your consideration:

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

Pending Planning Committee review and comment, GTC staff will finalize the Draft Conformity Statement for public review. The public review period will extend from July 15, 2022 through August 15, 2022. GTC will present the final Conformity Statement to the Planning Committee on August 11, 2022, with comments received up to that date. If comments that require significant changes are raised by then, the Planning Committee can adjust the recommendation. If comments that require significant changes are raised between the Planning Committee meeting and August 15, staff suggests the Planning Committee defer to the TIP Development Committee, to determine if significant changes are required. The Planning Committee will make a recommendation for the GTC Board to consider adopting the final Conformity Statement at its August 25, 2022 meeting.

Recommended Action:

Approve the Draft Transportation Conformity Statement for the Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045 and the 2023-2027 Transportation Improvement Program for public review.