

## **DRAFT 12-1-2021 for Public Review**

### **Conformity Report for October 2021 TDOT FY 2020-2023 STIP Amendment #98**

#### Project ID:

1. **STIP ID# 2078220 / KRMP ID# TDOT-101401.01 – SR-35/US-411 (Newport Hwy) from near Sims Rd in Sevier County to near SR-92 in Jefferson County**

#### **Introduction**

This report constitutes a conformity determination being made on an air quality non-exempt project amendment to the FY 2020 – 2023 TDOT State Transportation Improvement Program (STIP). The STIP is a fiscally constrained document that implements projects and programs consistent with TDOT’s 25-Year Policy Plan. As a condition to receiving federal project funds, the STIP must list all regionally significant and public transit transportation projects proposed for funding under Title 23 U.S.C. (highways) and Title 49 U.S.C. (transit), as well as, state and locally funded regionally significant projects.

#### **Transportation Air Quality Conformity Background – 1997 Ozone Donut “Orphan” Area**

Transportation conformity is a mechanism to ensure that federal funding is not used on transportation programs or projects that are not consistent with the air quality goals of the Tennessee State Implementation Plan for maintaining the attainment status of the Knoxville Region with respect to the National Ambient Air Quality Standards (NAAQS) established by the Clean Air Act. The Knoxville Region is currently designated as an Air Quality Maintenance Area for the criteria pollutants of Fine Particulate Matter (PM2.5) and Ozone.

On April 6, 2015, the 1997 8-Hour Ozone NAAQS was revoked for all purposes, including transportation conformity, thus alleviating the affected counties in the Knoxville Region from having to demonstrate the conformity of transportation plans for that NAAQS. However, due to a decision of the U.S. Court of Appeals for the District of Columbia Circuit (South Coast Air Quality Management District v. EPA), as of February 16, 2019, transportation conformity for the 1997 ozone NAAQS will again apply for what is known as the 1997 Ozone “Orphan Area” counties that are outside of the 2008 8-Hour Ozone NAAQS Maintenance Area.

Note, the EPA uses the term “orphan maintenance area” in their guidance because they were used in the court decision but it is not a term used in the Clean Air Act. Instead, EPA refers to areas such as these which lie within the same air quality nonattainment/maintenance area that contains an MPO jurisdiction but are outside the MPO as “donut areas”. Donut and Orphan area terminology are used interchangeably for the purposes of this conformity determination.

Per the court's decision in South Coast II, beginning February 16, 2019, a transportation conformity determination for the 1997 ozone NAAQS is needed in 1997 ozone NAAQS nonattainment and maintenance areas identified by EPA for certain transportation activities, including updated or amended long-range transportation plans and transportation improvement programs (TIP).

### **Project Amendment Details**

Periodically, as needs and conditions change, it becomes necessary to modify the transportation plans described above. The current action involves amending the current STIP to add a new project and specifically to add funding for its construction phase. The project is not new in the sense that it has been undergoing active project development through preliminary engineering and right-of-way acquisition phases over the past several years, however construction funding had not been identified at the time that the FY 2020-2023 STIP was first developed. With construction funds being programmed in the latest TDOT 2022-2024 3-year Program of Projects, this project is now ready to move forward and be let for construction in the near future and needs to be formally programmed in the STIP.

This project, while lying outside of the Knoxville Regional TPO Planning Area, was included in the TPO's current regional Mobility Plan 2045 for the purposes of accounting for transportation conformity requirements for all NAAQS that the Knoxville Region is subject to. The TPO staff believes that the previously programmed horizon year and scope for this project are also still appropriate based on the proposed actions and current project descriptions as shown in the Mobility Plan. A project list excerpt from the 2045 Mobility Plan showing this project is provided in Figure 1 on the following page.

Following is the formal amendment description provided by TDOT and the STIP profile page is included as Attachment 1 to this report:

#### **STIP Amendment No. 98:**

New Sevier and Jefferson Counties Project Number 2078220, SR-35/US 411, (Newport Hwy.) from near Sims Rd. in Sevier Co. to near SR-92 in Jefferson Co. (IA). This project consists of constructing a rural five-lane highway on a new alignment. \$54,600,000 in Surface Transportation Block Grant funds are being programmed for Construction. The project length is 3.78 miles. The total cost of the project is \$54,600,000. The project is to be managed and let to contract by TDOT.

Figure 1: Mobility Plan 2045 Regional “Orphan Area” Project List showing SR-35/US-411 Project

Table D-2 – Projects from the Regional “Orphan Area” Subject to 1997 8-Hour Ozone Standard Conformity

Project Name	KRMPID	FY 2020-2023 TIPID	From	To	Length (miles)	Final Description	Conformity Analysis Year	Exempt Status	Regional Significance
<b>Regional Projects (In 1997 Ozone Maintenance Area but Outside TPO Planning Area)</b>									
Intersection of US 11E and SR 92/Old Andrew Johnson Hwy	LAMTPO-17		Intersection		0	Realign the intersection of US 11E and SR 92/Old Andrew Jackson Hwy; extend Overlook Rd	2026	Exempt	N/A - Exempt
Chucky Pike	LAMTPO-2008		Intersection		0	Reconstruct Chucky Pike with signal modifications at US 11E intersection	2026	Exempt	N/A - Exempt
SR 34/US 11E	LAMTPO-2051		Russell Rd	Odyssey Rd	1.9	Intersection and access management improvements along SR 34/US 11E from Russell Ave to Odyssey Rd	2026	Exempt	N/A - Exempt
Intersection of SR 32 (State St) and SR 113 (Main St)	LAMTPO-2052		Intersection		0	Intersection improvements at SR 32 (State St) and SR 113 (Main St); add left turn lanes on SR 32 (State St) and a left turn lane on	2026	Exempt	N/A - Exempt
Intersection of SR 341 (Roy Messer Hwy) and SR 113 (Main St)	LAMTPO-6003		Intersection		0	Signalize the intersection of SR 341 (Roy Messer Hwy) and SR 113 (Main St)	2026	Exempt	N/A - Exempt
Intersection of SR 34/US 11E and George Ave	LAMTPO-2060		Intersection		0	Intersection improvements at SR 34/US 11E and George Avenue: add NB right turn lane extending to Elmwood St.	2026	Exempt	N/A - Exempt
SR-73 (US-321)	100989.00	2078032	Buckhorn Rd	SR-416	1.4	Widen from 2 to 4 lane divided	2026	Non-Exempt	Regionally Significant
Intersection of SR 34/US 11E and Russell Ave	LAMTPO-2043		Intersection		0	Intersection improvements at SR 34/US 11E and Russell Ave: add right turn lanes on SR 34/US 11E, pedestrian signals and sidewalks on all approaches	2035	Exempt	N/A - Exempt
Intersection of SR 34/US 11E and George Ln	LAMTPO-2044		Intersection		0	Intersection improvements at SR 34/US 11E and George Lane: add right turn lanes on SR 34/US 11E, pedestrian signals and sidewalks on all approaches	2035	Exempt	N/A - Exempt
Intersection of SR 34/US 11E and E. Old Andrew Johnson Hwy and Municipal Dr	LAMTPO-2007		Intersection		0	Intersection improvements at SR 34/US 11E and E Old Andrew Jackson Highway: signalize the intersection	2035	Exempt	N/A - Exempt
Intersection of E. Old Andrew Johnson Hwy and Municipal Dr	LAMTPO-2009		Intersection		0	Intersection improvements at E Old Andrew Jackson Hwy and Municipal Dr: Add turn lanes	2035	Exempt	N/A - Exempt
I-81	LAMTPO-2049		Approximately 1 mile west of I-40 Interchange (Exit 1)	Near SR 341 (Roy Messer Hwy) - Exit 4	3.6	Widen I-81 from 4 to 6 lanes and add acceleration lane on I-40 WB	2045	Non-Exempt	Regionally Significant
Intersection of Old Andrew Johnson Hwy and E. Main St/N. Chucky Pike	LAMTPO-2012		Intersection		0	Intersection improvements at Old Andrew Jackson Hwy and E Main St./N Chucky Pike: realign offset intersection	2045	Exempt	N/A - Exempt
SR-35 (US-411)	TDOT-101401.01		near Sims Rd in Sevier County	near SR-92 in Jefferson County	4.5	Widen from 2-lanes to 3-lanes on existing and new alignment	2026	Non-Exempt	Regionally Significant

## **1997 Ozone Orphan Area Conformity Requirements**

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 can be demonstrated by showing the remaining requirements in Table 1 in 40 CFR 93.109 have been met as per formal EPA guidance on addressing transportation conformity for the South Coast II court decision that was established in November 2018. 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)

### **Latest Planning Assumptions (93.110)**

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 only to assumptions about transportation control measures (TCMs) in an approved SIP.

The Tennessee SIP does not include any TCMs so this requirement is not applicable.

### **Consultation Requirements (93.112)**

The consultation requirements in 40 CFR 93.112 and as detailed in 40 CFR 93.105 were addressed both for interagency consultation and public consultation. Interagency consultation was conducted with the Knoxville-Area Interagency Consultation group which includes federal partners such as FHWA, FTA, and EPA as well as state and local partners. Interagency consultation was conducted for this conformity determination of the STIP amendment through email submittal of this report for a formal 30-day IAC review period between 10/27/2021 and 11/26/2021. Additionally, an IAC conference call was held on 11/18/2021 to allow for discussion of the project amendment and feedback on this conformity determination.

The minutes from the IAC conference call are included as Attachment 3 to this report and revisions were made based on the comments from this call. No further comments were received from the IAC consultation.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450 and TDOT's public outreach policies established for the STIP and any amendments thereto. A formal 15-day public review period was conducted by the Knoxville TPO staff on behalf of TDOT with a public notice being published in both the Sevier County Mountain Press (12-XX-2021 and in the Jefferson County Standard Banner (12-XX-2021) newspapers and lasting through 12-XX-2021. The following comments were received: TBD

Finally, it should also be noted that Interagency consultation was conducted for the assessment of this project's exempt and regional significance status through the Mobility Plan 2045 conformity process as documented in Chapter 5 of the Conformity Determination Report found at: <https://knoxmobility.org/home/review/final/2021/air-quality-report.pdf>.

#### **Timely Implementation of Transportation Control Measures (TCMs) (93.113)**

The Tennessee SIP does not include any TCMs, therefore this does not apply in the Knoxville Region.

#### **Fiscal Constraint (93.108)**

Transportation conformity requirements in 40 CFR 93.108 require that transportation plans and TIPs must be fiscally constrained consistent with USDOT's metropolitan planning regulations at 23 CFR part 450. TDOT's FY 2020-2023 STIP and this STIP Amendment (#98) are fiscally constrained, as demonstrated in Chapter 4 of the FY 2020-2023 TDOT STIP and with the before/after financial tables prepared by TDOT and provided as Attachment 2 to this report.

#### **Conclusion and Determination of Conformity for the 1997 8-hour Standard**

The conformity determination process completed for the TDOT FY 2020-2023 STIP Amendment #98 demonstrates that the amendment meets the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS. The project amendment has also been found to be consistent with its listing in the current Mobility Plan 2045 was adopted by the TPO Executive Board on April 28, 2021 and the Air Quality Conformity Determination was approved by the U.S. Department of Transportation (U.S. DOT) on May 31, 2021.

**ATTACHMENT 1 –  
TDOT STIP Amendment Profile Page**

New Page

2020 - 2023 State Transportation Improvement Program **Amd #98**

**PNO:** 2078220 **ESTIP:**  **LEAD AGENCY:** TDOT

**PIN:** 101401.01 **TIP #:**  **TOTAL PROJECT COST:** \$54,600,000

**ROUTE:** SR-35/US-411 **COUNTY:** SEVIER-JEFFERSON

**TERMINI:**  **LENGTH (mi.):** 3.78

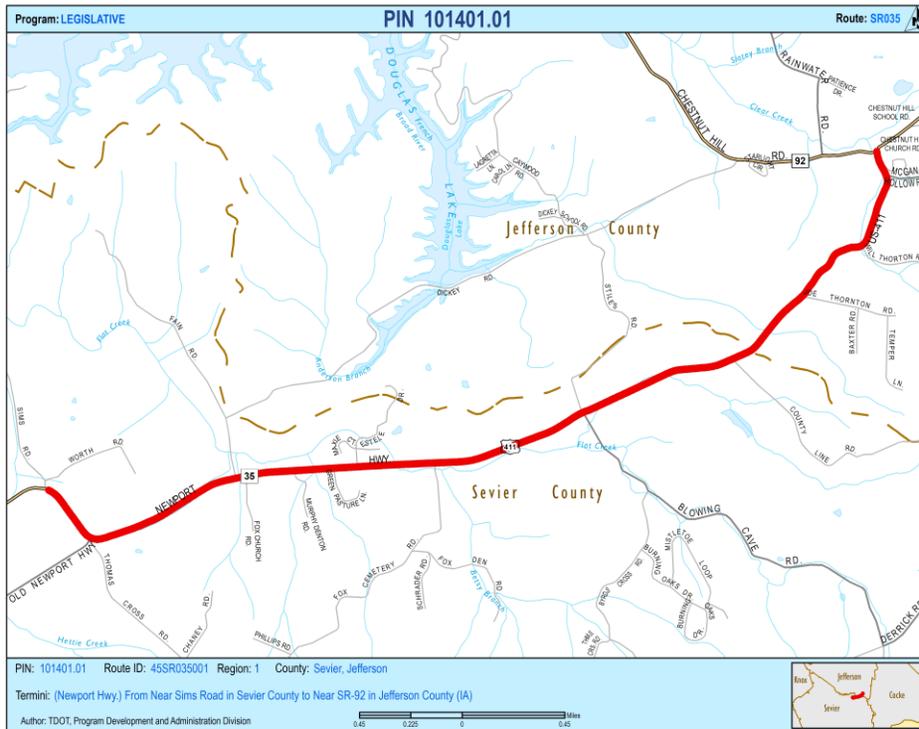
(NEWPORT HWY.) FROM NEAR SIMS ROAD IN SEVIER CO. TO NEAR SR-92 IN JEFFERSON CO. (IA)

**PROJECT DESCRIPTION**

CONSTRUCT RURAL 5-LANE HIGHWAY ON NEW ALIGNMENT

**REMARK:**

FY	PNO	PHASE	FDCODE	TOTDOLLARS	FED\$	STA\$	LOC\$
2022	2078220	CONST	STBG	54,600,000	43,680,000	10,920,000	



**ATTACHMENT 2 –  
TDOT STIP Amendment Before/After Financial Tables**

**FY: 2022 Tennessee Department of Transportation STATEWIDE Fiscal Constraint Worksheet**

Date 10/7/2021 Amendment Number 98

**BEFORE AMENDMENT #98**

<b>Fund Code</b>	<b>Estimated Revenue</b>	<b>Programmed Funds</b>	<b>Federal Funds</b>	<b>State Funds</b>	<b>Local Funds</b>	<b>Balance</b>
ACINFRA	30,000,000	9,200,000	0	9,200,000	0	20,800,000
ACNHPP	130,000,000	20,800,000	0	20,800,000	0	109,200,000
ACSTBG	0	0	0	0	0	0
APD	20,000,000	20,000,000	20,000,000	0	0	0
CMAQ	149,022,358	5,000,000	4,000,000	1,000,000	0	144,022,358
HIP	141,862,500	0	0	0	0	141,862,500
HPP	2,400,000	2,400,000	1,920,000	480,000	0	0
HRRR	0	0	0	0	0	0
HSIP	66,351,575	56,978,490	51,280,641	5,697,849	0	9,373,085
HSIP-R	30,287,782	1,542,000	1,387,800	154,200	0	28,745,782
NHFP	130,313,428	0	0	0	0	130,313,428
NHPP	931,601,308	718,875,000	586,627,000	132,248,000	0	212,726,308
PHSIP	27,223,624	5,154,126	5,154,126	0	0	22,069,498
RCTR	32,970,892	1,500,000	1,200,000	300,000	0	31,470,892
R-PHSIP	0	0	0	0	0	0
STA	300,000,000	5,000,000	0	5,000,000	0	295,000,000
<b>STBG</b>	<b>344,070,203</b>	<b>251,085,000</b>	<b>200,953,000</b>	<b>50,132,000</b>	<b>0</b>	<b>92,985,203</b>
STBG-L	0	0	0	0	0	0
TAP	10,028,479	8,701,500	6,961,200	1,740,300	0	1,326,979

**FY: 2022 Tennessee Department of Transportation STATEWIDE Fiscal Constraint Worksheet**

Date 10/7/21 Amendment Number 98

**AFTER AMENDMENT #98**

<b>Fund Code</b>	<b>Estimated Revenue</b>	<b>Programmed Funds</b>	<b>Federal Funds</b>	<b>State Funds</b>	<b>Local Funds</b>	<b>Balance</b>
ACINFRA	30,000,000	9,200,000	0	9,200,000	0	20,800,000
ACNHPP	130,000,000	20,800,000	0	20,800,000	0	109,200,000
ACSTBG	0	0	0	0	0	0
APD	20,000,000	20,000,000	20,000,000	0	0	0
CMAQ	149,022,358	5,000,000	4,000,000	1,000,000	0	144,022,358
HIP	141,862,500	0	0	0	0	141,862,500
HPP	2,400,000	2,400,000	1,920,000	480,000	0	0
HRRR	0	0	0	0	0	0
HSIP	66,351,575	56,978,490	51,280,641	5,697,849	0	9,373,085
HSIP-R	30,287,782	1,542,000	1,387,800	154,200	0	28,745,782
NHFP	130,313,428	0	0	0	0	130,313,428
NHPP	931,601,308	718,875,000	586,627,000	132,248,000	0	212,726,308
PHSIP	27,223,624	5,154,126	5,154,126	0	0	22,069,498
RCTR	32,970,892	1,500,000	1,200,000	300,000	0	31,470,892
R-PHSIP	0	0	0	0	0	0
STA	300,000,000	5,000,000	0	5,000,000	0	295,000,000
<b>STBG</b>	<b>344,070,203</b>	<b>305,685,000</b>	<b>244,633,000</b>	<b>61,052,000</b>	<b>0</b>	<b>38,385,203</b>
STBG-L	0	0	0	0	0	0
TAP	10,028,479	8,701,500	6,961,200	1,740,300	0	1,326,979

**ATTACHMENT 3 –  
IAC Conference Call Minutes**

**Knoxville Air Quality Interagency Consultation Conference Call  
Meeting Minutes for 11/18/2021**

**Roll Call**

**Call Participants:**

Knoxville TPO:

Mike Conger  
Craig Luebke

EPA:

Dianna Myers  
Richard Montieth  
Josue Ortiz

FHWA:

Sean Santalla

FTA:

None

Tennessee Department of Transportation:

Michelle Christian  
Deborah Fleming

Tennessee Department of Environment & Conservation:

Marc Corrigan

Knox County Air Quality Management:

Coby Webster

Lakeway Area MTPO:

None

National Park Service:

Jim Renfro

## **Discussion Items:**

### **Discuss Draft Conformity Report for TDOT FY 2020-2023 STIP Amendment #98: STIP ID# 2078220 / KRMP ID# TDOT-101401.01 – SR-35/US-411 (Newport Hwy) from near Sims Rd in Sevier County to near SR-92 in Jefferson County**

- Mike Conger provided a summary of the conformity report background information and the proposed project.
- Sean Santalla asked to review the fiscal constraint demonstration tables. Mike presented them and showed that the STBG funding source had remaining balance of funds with the amendment added. Mike also stated that there was apparently some possibility of special Covid funding (potentially American Rescue Plan Act funds) being used on this project but that he was not clear on which source exactly and that if indeed it were the case then the funding source could be switched later as needed through a simple STIP modification. Deborah Fleming responded that she was not familiar with the potential other funding source and that TDOT wanted to stay with STBG funding at the present time.
- Marc Corrigan asked for explanation of the STIP/TIP interplay as it relates to this project.
  - Sean Santalla responded that this project is carried in the STIP, but is not in the TPO TIP. This project is outside the TPO Planning Area.
  - Mike Conger provided further details on the regional conformity process, and "Orphan/Donut Area" project inclusion in the conformity process for the Mobility Plan.
- Marc Corrigan pointed out a discrepancy in the project length referenced between how it was shown in the Mobility Plan list versus the STIP project page. Mike responded that it was a common occurrence for project length to change from its initial estimate to the exact number that is derived once design is complete and that the main factor we use is if the termini points are still identical for how the project is described which in this case they are.
- There was additional discussion regarding the STIP process and how projects are included in the STIP only when funding is identified.
- Conformity Determination report public review process requirements were then discussed. This will need further clarification to resolve how to proceed.
  - Dianna Myers suggested that the public review process would likely follow those as for "Donut Area" projects in the Regional Mobility Plan and if it is addressed in the Memorandum of Agreement set up for the regional air quality conformity process. She also noted that "Donut Area" was the

technical term used by EPA for the counties subject to 1997 Ozone Standard conformity rather than "Orphan Area".

- Mike Conger responded that additional conversation will be pursued with TDOT on how to satisfy the public review requirements. He also followed up with further discussion about the Conformity MOA, which is very old and likely needs to be updated to address the situation we're in now with the South Coast litigation requirements. He also mentioned that he will clarify verbiage in the Conformity Report about donut versus orphan area terminology.
- Deborah Fleming mentioned that she did not know of anywhere in TDOT's public participation process that speaks to public engagement requirements for air quality conformity review matters. She indicated that their plan does require advertising in newspapers for public notices and not just online postings in response to a comment by Marc Corrigan about state and local air agencies being able to post their notices online instead of in newspapers.
- Sean Santalla suggested a follow up call to resolve the public review requirements as well as review of the MOA to clarify how it speaks to this matter.
- There were several post-IAC meeting emails regarding next steps between TPO, TDEC, TDOT, EPA and FHWA staff. Following is a summary of decisions that were made to move forward:
  1. Sean Santalla reviewed current STIP/TIP amendment procedures that may have bearing in this situation with the following findings:
    - a. TN's conformity rules, which define TDOT as the agency responsible for conformity determinations outside MPO areas and require a minimum 14 day public comment period, but also note that these rules do not supersede the processes required in participation plans;
    - b. TDOT's Public Involvement Plan, which does not outline procedures for conformity determinations specifically, but does call for a minimum 15-calendar-day public comment period and advertisement in a local newspaper for STIP amendments; and
    - c. the Knoxville TPO's Outreach Plan, which calls for a minimum 30-day public comment period for TIP amendments requiring a conformity determination.
  2. Since we are not in the TPO's planning area, and for consistency with the State's established public engagement procedures the draft conformity determination should be advertised in local newspapers for a minimum 15-calendar-day public review and comment period.
  3. Following discussions between TPO and TDOT staff it was determined that TPO staff would handle the public noticing and posting of the conformity report on its website since TPO wrote the document and is familiar with the

overall conformity process in the event that questions are raised from the public.

4. As we move forward we need to address this gap in our procedures and will look to convene a meeting between TDOT, the TPO, TDEC, EPA, and FHWA to review and update (1) the TDOT/TPO MOA for conformity outside the TPO's planning area, and (2) the State's public involvement procedures, to fully integrate this into our documented processes.