

DRAFT

Denver-North Front Range (Northern Subarea) 8-Hour Ozone Nonattainment Area Conformity Determination

for the

North Front Range Metropolitan Planning Area
FY2019-2022 Transportation Improvement Program

The North Front Range Metropolitan Planning Organization
419 Canyon Avenue, Suite 300 Fort Collins, CO 80521

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April 30, 2018



Introduction

This report demonstrates the FY2019-2022 Transportation Improvement Program (TIP) meets the federally prescribed air quality conformity requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS). This demonstration relies on the regional emissions analysis performed for the conformity determination adopted by the North Front Range Transportation & Air Quality Planning Council on March 2, 2017 for the 2040 Regional Transportation Plan Amendment, FY2016-2019 TIP, FY2018-2021 TIP, and the FY2017-2020 Statewide TIP (STIP).

A conformity determination report for the Fort Collins and Greeley Carbon Monoxide (CO) Maintenance Areas was prepared concurrently with this document to have the same effective date.

Background

The North Front Range Metropolitan Planning Organization (NFRMPO) conducts air quality conformity determinations for the Northern Subarea of the Denver-North Front Range 8-Hour Ozone Nonattainment Area. The NFRMPO has 15 local government members, including 13 municipalities and portions of Larimer and Weld counties.

The Denver-North Front Range Nonattainment Area for the 2008 Ozone NAAQS covers the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and portions of Larimer and Weld counties with the highest concentration of emissions. **Figure 1** shows the entire 8-Hour Ozone Nonattainment Area and its two subareas, Northern and Southern. The boundary between the two subareas is the Boulder/Larimer County line, extended at the same latitude eastward through southern Weld County to the Morgan County line.

Under the Clean Air Act, Metropolitan Planning Organizations (MPOs) are required to demonstrate conformity of their fiscally constrained RTPs and TIPs with the applicable State Implementation Plan (SIP) before transportation plans and programs are adopted.¹ Conformity to a SIP is defined in the Clean Air Act (CAA) as conformity to the implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving attainment quickly. Additionally, activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with the timely attainment of required emissions reduction. The EPA transportation conformity rule is located in 40 CFR Part 93, Subpart A.²

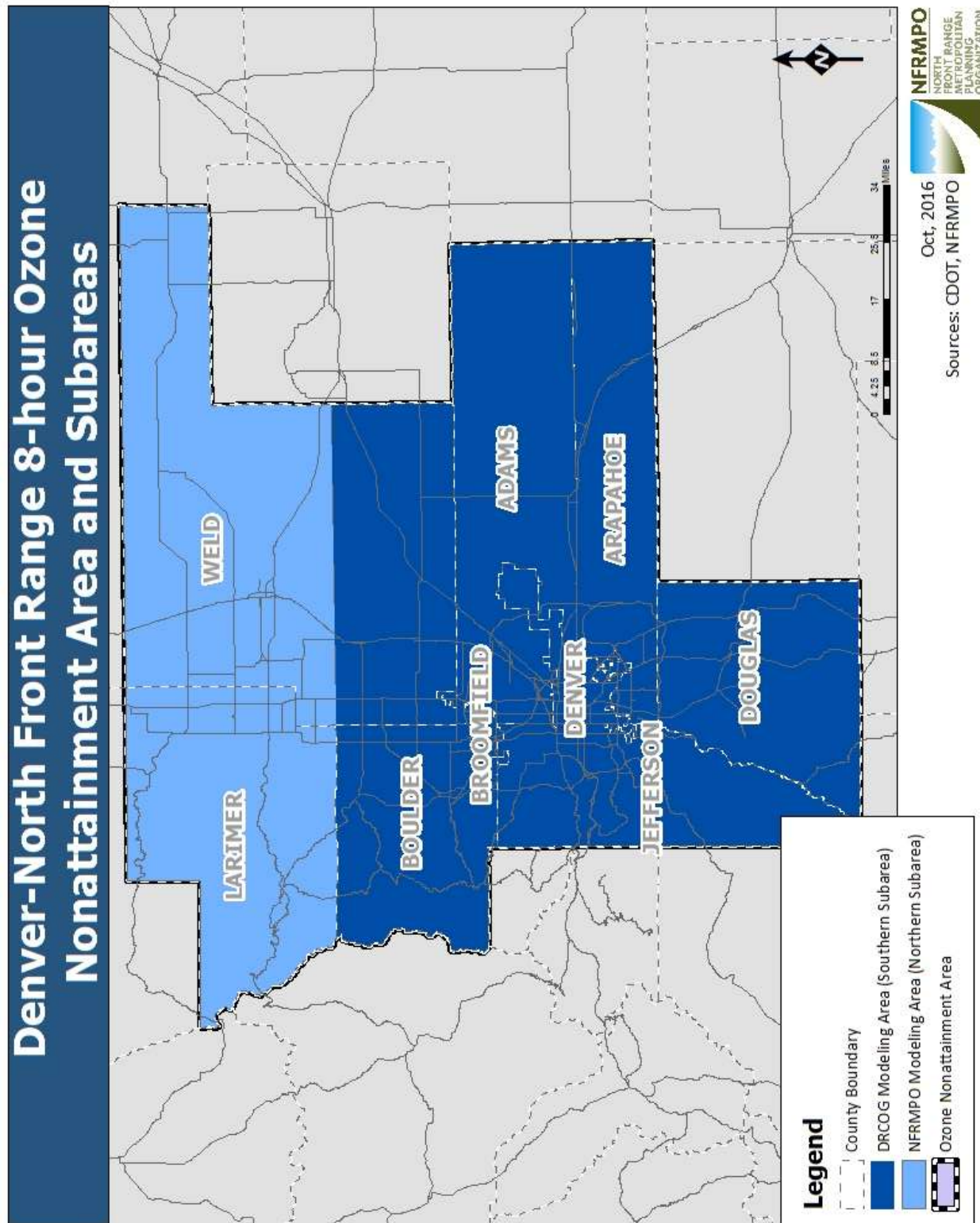
Designations and Emissions Budgets

In 1997, the U.S. Environmental Protection Agency (EPA) established the 8-hour ozone NAAQS of 0.080 parts per million (ppm). Under the 1997 standard, the nine county Denver-North Front Range area was designated as a nonattainment area. A SIP was developed to demonstrate how the region would attain the 1997 8-hour ozone standard by 2010. For the purposes of Transportation Conformity, Motor Vehicle Emission Budgets (MVEBs) were established as part of the SIP. In 2010, EPA found the MVEBs for Nitrogen Oxides (NO_x) and Volatile Organic Compounds (VOC) contained in the Denver-North Front Range 8-Hour Ozone Attainment Plan

¹ Clean Air Act Requirements and History, <https://www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history>, 2017

² 77 FR 14979, <https://federalregister.gov/a/2012-6207>, 2012

Figure 1: Denver-North Front Range 8-hour Ozone Nonattainment Area and Subareas



as adequate for transportation conformity purposes.³ EPA approved these NO_x and VOC MVEBs with the final rule to approve the *Denver-North Front Range 1997 8-Hour Ozone NAAQS Attainment State Implementation Plan (SIP)* revision.⁴ As a result of the EPA's action, DRCOG and NFRMPO used these budgets for subsequent transportation conformity determinations.

On March 27, 2008,⁵ the EPA lowered the NAAQS for ground-level ozone to 0.075 ppm. The same nine county Denver-North Front Range Nonattainment area under the 1997 standard was designated as Marginal Nonattainment by the EPA under the 2008 standard on April 30, 2012.⁶ As a Marginal nonattainment area, the deadline to attain the 2008 ozone NAAQS was by the end of the 2014 ozone season and a new SIP was not required. The Denver-North Front Range area failed to attain the NAAQS based on the three-year average of ozone data from 2012 to 2014. Because of this, on May 4, 2016, EPA reclassified the area from Marginal to Moderate, extending the attainment year to 2017.⁷ Per federal requirements, the State of Colorado developed a new SIP to demonstrate how the area will comply with the federal CAA for the 2008 ozone NAAQS. The Moderate Area Ozone SIP, submitted to the EPA on May 31, 2017, set MVEBs for each subarea of the Denver-North Front Range nonattainment area. On March 16, 2018, the EPA found the MVEBs in the Moderate Area Ozone SIP adequate for conformity determinations.⁸ On April 6, 2018, the EPA issued a proposed rule to approve the majority of the SIP.⁹

In February 2018, the D.C. Circuit ruled on *South Coast Air Quality Management District v. EPA* (No. 15-1115), partially vacating EPA's March 2015 rule waiving statutory attainment deadlines associated with the 1997 NAAQS. The EPA is evaluating the court's decision and has not yet provided the Agency's interpretation. Though the impact of this ruling is still to be determined, this conformity determination is not impacted because it relies upon the regional emissions analysis conducted using the 1997 ozone NAAQS MVEBs.

The 8-Hour Ozone Attainment Plan (SIP) adopted by the Air Quality Control Commission (AQCC) in 2008 and approved by the EPA on August 5, 2011, did not include any Transportation Control Measures (TCMs). Similarly, the Moderate Area SIP adopted by the AQCC on November 17, 2016, and proposed to be approved by the EPA on April 6, 2018 does not include any TCMs.

Planning Organizations and Memorandum of Agreements (MOAs)

The NFRMPO is the Metropolitan Planning Organization (MPO) for the Fort Collins Transportation Management Area (TMA) which includes Berthoud, Fort Collins, Loveland, and portions of Johnstown, Timnath, and Windsor. The NFRMPO has 15 local government members, including 13 municipalities and portions of Larimer and Weld counties.

The Upper Front Range (UFR) covers the remainder of the Northern Subarea of the 8-Hour Ozone Nonattainment Area. Located in north-central Colorado, the UFR is comprised of portions of Larimer and Weld counties and Morgan County, and excludes the portion of southwestern Weld County included in the DRCOG TMA. **Figure 2** illustrates the Northern Subarea boundaries for the NFRMPO and the UFR.

³ 75 FR 9893, <https://federalregister.gov/a/2010-4551>, 2010

⁴ 76 FR 47443, <https://federalregister.gov/a/2011-19807>, 2011

⁵ 73 FR 16436, <https://federalregister.gov/a/E8-5645>, 2008

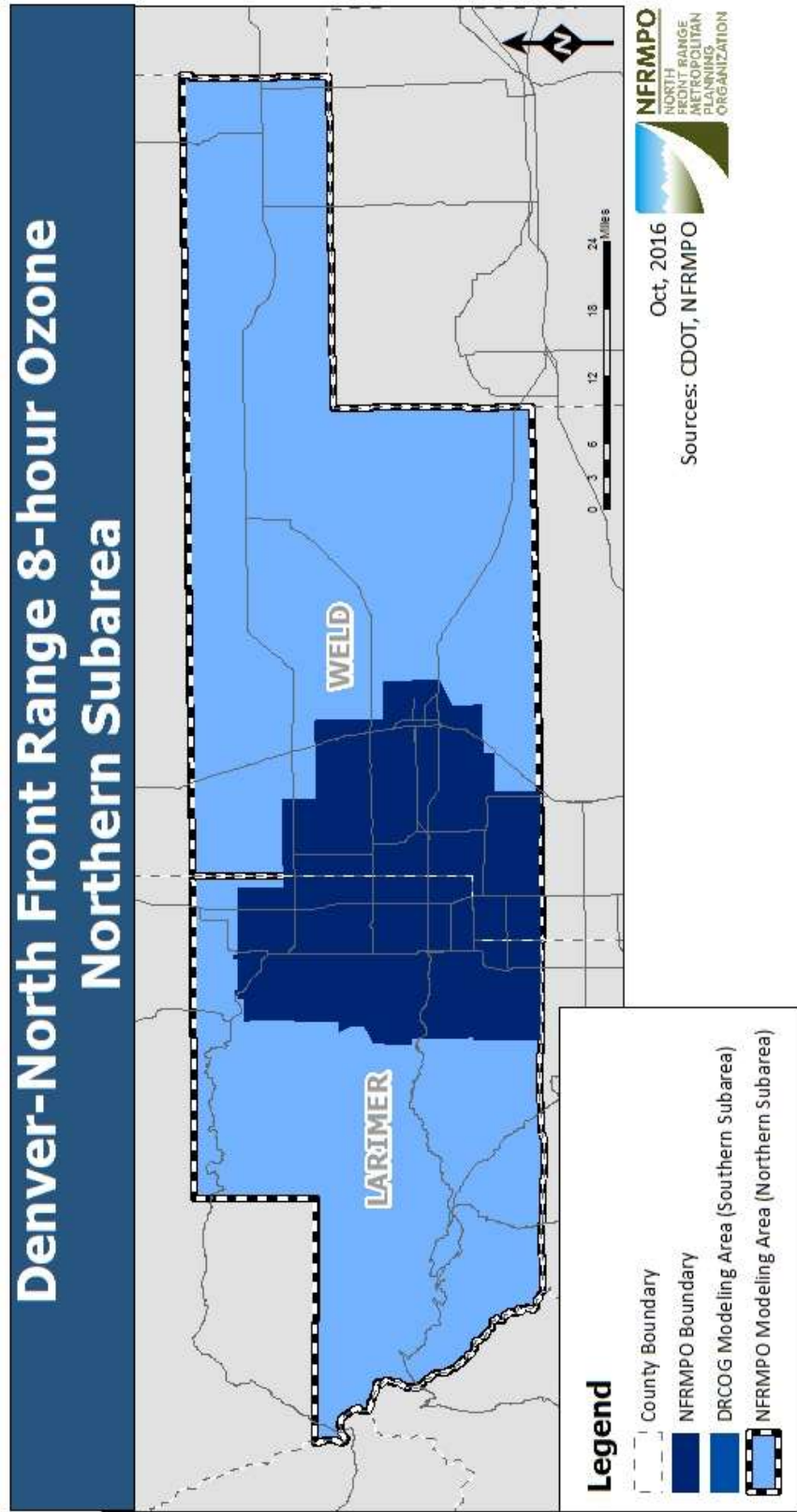
⁶ 77 FR 30098, <https://federalregister.gov/a/2012-11618>, 2012

⁷ 81 FR 26697, <https://federalregister.gov/a/2016-09729>, 2016

⁸ 83 FR 11751, <https://federalregister.gov/a/2018-05406>, 2018

⁹ 83 FR 14807, <https://federalregister.gov/a/2018-06847>, 2018

Figure 2: Northern Subarea



The Regional Air Quality Council (RAQC) is the lead air quality planning agency for the entire Denver/North Front Range 8-Hour Ozone Nonattainment Area.¹⁰ The Denver Regional Council of Governments (DRCOG) is the MPO for the Denver TMA.

A Memorandum of Agreement (MOA) was signed in 2008 by the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE), CDOT, RAQC, UFR, NFRMPO, and DRCOG per federal transportation regulations,¹¹ and is included in **Appendix A**. The MOA allows the option to establish subarea emissions budgets for VOC and NO_x based on subareas, defined in **Figure 1**. The MOA stipulates DRCOG will conduct conformity determinations for the Southern Subarea of the 8-Hour Ozone Nonattainment Area, while the NFRMPO will conduct conformity determinations for the Northern Subarea. It states the course of action to be pursued if one (or both) subareas fail a conformity test or exceed emissions budgets.

In 2015, an MOA was signed by the NFRMPO, CDPHE, RAQC, and DRCOG, replacing an MOA signed in 1998 by the NFRMPO and CDPHE and a similar MOA between DRCOG and CDPHE. The MOA, included in **Appendix B**, identifies the specific roles and responsibilities in conformity evaluations and findings for each agency, including allowing for routine conformity determinations to be performed and approved through the APCD, rather than through a public hearing with the AQCC.

Finding

The FY2019-2022 TIP retains the regionally significant projects programmed in FY19, FY20, and FY21 from the FY18-21 TIP and does not add any new regionally significant projects. Per federal regulations,¹² a new regional emissions analysis is not required since the previous regional emissions analysis conducted for the FY2018-2021 TIP and 2040 RTP, Amended March 2017, applies to the FY2019-2022 TIP. The regional emissions analysis for the FY2018-2021 TIP and 2040 RTP demonstrates conformity with the Northern Subarea budgets established for the 1997 8-hour ozone NAAQS. Additionally, the regional emissions analysis meets the Northern Subarea MVEBs established for the 2008 8-hour ozone NAAQS.

The FY2019-2022 TIP meets all conformity criteria as identified in 40 CFR 93.109 and meets all planning requirements identified in 23 CFR 450.

Public Participation

The Public Involvement Plan (PIP) guides the NFRMPO's public participation activities for all plans and programs. The NFRMPO invited public participation throughout the development of the FY2019-2022 TIP and the associated conformity determinations.

A public hearing notice will be published on May 5, 2018, with the documents made available to the public on April 30, 2018. The documents will be available on the NFRMPO website at <http://nfrmpo.org/air-quality/> and at the NFRMPO Office as a print copy. The public comment period ends at 5:00 p.m. on May 29, 2018.

¹⁰ Executive Order B 2013 007, https://www.colorado.gov/governor/sites/default/files/executive_orders/b_2013-007.pdf, 2013

¹¹ 23 CFR 450.314(c), https://www.ecfr.gov/cgi-bin/text-idx?SID=cb8fc2bb654e58e1c70363164784595b&mc=true&node=se23.1.450_1314&rqn=div8, 2017

¹² 40 CF 93.122(g), https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rqn=div6&view=text&node=40.20.0.1.1.7.1&idno=40#se40.22.93_1122, 2012

The North Front Range Air Quality and Transportation Planning Council (NFRT&AQPC) will hold a public hearing regarding this conformity determination prior to their monthly meeting on June 7, 2018 at the Windsor Public Works Complex at 922 N. 15th St, Windsor, Colorado 80550. Minutes of the NFRMPO Planning Council's public hearing will be available at the NFRMPO office and website: nfrmpo.org.

The FY2019-2022 TIP will be made available for a 30-day public comment period from April 30 through May 29, 2018. Public comments will also be taken at the June 7, 2018 NFRT&AQPC meeting. It is anticipated the TIP will be adopted at this meeting.

***Appendix A: Memorandum of Agreement – Transportation Conformity Evaluations
Conducted Under the 8-Hour Ozone Standard (2008)***

MEMORANDUM OF AGREEMENT

FOR

TRANSPORTATION CONFORMITY EVALUATIONS
CONDUCTED UNDER THE 8-HOUR OZONE STANDARD

BY AND BETWEEN

THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
THE DENVER REGIONAL AIR QUALITY COUNCIL,
THE COLORADO DEPARTMENT OF TRANSPORTATION,
THE UPPER FRONT RANGE TRANSPORTATION PLANNING REGION,
THE NORTH FRONT RANGE TRANSPORTATION AND AIR QUALITY
PLANNING COUNCIL (a.k.a. the North Front Range MPO),
AND THE DENVER REGIONAL COUNCIL OF GOVERNMENTS

March 14, 2008

Abbreviations Guide

APCD – Air Pollution Control Division
AQCC – Air Quality Control Commission, (“the Commission”)
CDPHE – Colorado Department of Public Health and Environment
CDOT - Colorado Department of Transportation
DRCOG – Denver Regional Council of Governments
MOA – Memorandum of Agreement
MPA – Metropolitan Planning Area
MPO – Metropolitan Planning Organization
NFR – North Front Range
NFRT& AQPC – North Front Range Transportation & Air Quality Planning Council (the NFR MPO)
NOx – Nitrogen Oxides
RAQC – (Denver) Regional Air Quality Council
SIP – State Implementation Plan
UFR – Upper Front Range
TIP – Transportation Improvement Program
TPR – Transportation Planning Region
USDOT – United States Department of Transportation
USEPA – United States Environmental Protection Agency
VOC – Volatile Organic Compounds

Terminology

Consulting parties – Those agency parties involved in data and document review for the purposes making or commenting on a Conformity Determination. Includes the Air Quality Control Commission, USDOT and USEPA, who are not signatory parties to this MOA.

Signatories/Signatory parties –The parties signatory to this document. This group of six agencies does not include USDOT or USEPA.

On-road motor vehicle – Refers to cars, trucks, buses, motorcycles, vans and other motorized vehicles that use public highways, streets and roadways; to be distinguished from motor vehicles that may be designed for off-road use, e.g., all-terrain vehicles, and from agricultural and construction equipment.

A. Background and Purpose

The U.S. Environmental Protection Agency (USEPA) has designated an area (See map, Attachment A) inclusive of the Denver Metro Area and portions of both the North Front Range Metropolitan Planning area and the Upper Front Range Transportation Planning Region as nonattainment under the 8-hour ozone standard. The nonattainment designation became effective November 20, 2007. The Upper Front Range TPR is not represented by a Metropolitan Planning Organization as it comprises a largely rural area. Furthermore, the TPR lacks the expertise and wherewithal to provide or purchase transportation and modeling forecasts as part of the Conformity Determination process for the 8-hour ozone area.

Federal Transportation Regulations at 23CFR 450.314 (b) state that where a metropolitan planning area does not include an entire nonattainment area or maintenance area, “there shall be written agreement among the State Department of Transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with EPA’s transportation conformity rule (40 CFR Part 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions...**(and)** (c): In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning...there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning. (d) If more than one MPO has been designated to serve an urbanized area, there shall be written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries....”

Similarly, EPA regulations at 40 CFR 93.105(e) and 51.390 require states to create consultation procedures in the SIP whereby MPO representatives, state and local air quality planning agencies, state and local transportation agencies and other organizations must consult with each other and with U.S. Environmental Protection Agency (USEPA) and U.S. Department of Transportation (USDOT) regarding development of State Implementation Plans (SIPs), transportation plans, transportation improvement programs (TIPs), and Conformity Determinations.

This Memorandum of Agreement (MOA) is designed to allow for and to guide cooperative transportation planning in conformance with State air quality plans, and related review and analysis in the pursuit of transportation Conformity Determinations associated with the 8-hour ozone State Implementation Plan (SIP).

B. Conformity Determinations Prior to/In Lieu of the Establishment of On-Road Motor Vehicle Emission Budgets

The first Conformity Determination for the area of concern is due November 20, 2008, as required by the federal Conformity Rule at 40 CFR 93.102(d). Since adequate or

approved motor vehicle emission budgets will not be available until late 2009, one or more Conformity Determinations for the nonattainment or maintenance area of concern must follow the procedures at 40 CFR 93.109(e)(2)(iii).

The Denver Regional Council of Governments and the North Front Range MPO shall perform transportation emissions forecasting for the respective areas described in Section C.1 and C.2 for Conformity Determinations, regardless of whether emission budgets have been established, and regardless of whether overall nonattainment-or maintenance area emission budgets or sub-area emission budgets are used.

C. Motor Vehicle Emission Budgets for the 8-Hour Ozone Nonattainment (or Maintenance) Area and Sub-Areas

In the SIP development process, the Air Pollution Control Division (APCD), the North Front Range Metropolitan Planning Organization (NFRMPO), and the Regional Air Quality Council (RAQC) shall work together to propose overall area motor vehicle emission budgets for volatile organic compounds (VOC) and nitrogen oxides (NO_x) for the 8-hour ozone nonattainment or maintenance area. Said budgets must be adopted by the Commission and affirmed via USEPA adequacy determinations in order to become viable for use in Conformity Determinations.

Sub-area emission budgets for ozone precursors under the 8-hour ozone standard may also be proposed to the AQCC for the following two sub-areas:

1. The combined areas of the Denver Metro Region and the southern portion of the Upper Front Range Transportation Planning Region (TPR) as designated nonattainment by USEPA, i.e., the area south of the north line of Township 3 north of the 6th Principal Meridian; said line is the southern boundary of the North Front Range MPO extended to the east line of Weld County. For this sub-area, the budgets for NO_x and VOC shall be proposed during SIP development for the federal 8-hour ozone standard by the RAQC with input from the APCD, CDOT, DRCOG, and UFR to be considered for adoption by the Commission.
2. The combined areas of the North Front Range MPO area and the northern portion of the Upper Front Range TPR, as designated nonattainment by USEPA, i.e., the area north of the north line of Township 3 north of the 6th Principal Meridian; said line is the southern boundary of the North Front Range MPO extended to the east line of Weld County. For this sub-area, the budgets for NO_x and VOC shall be proposed determined during SIP development for under the federal 8-hour ozone standard by the NFR MPO in consultation with the APCD and the RAQC, with input from CDOT and UFR, to be considered for adoption by the Commission.

Sub-area budgets, agreed to by the signatories and approved by the Commission, may be used to measure the conformity of plans and programs for the respective areas, once determined adequate by the USEPA.

Sub-areas as described above and Conformity procedures described in this document shall remain the same when and if the 8-Hour Nonattainment Area is re-designated an "Attainment/Maintenance Area.

D. Granting of Authority, Responsibilities

The Upper Front Range TPR lacks the expertise and wherewithal to provide or purchase transportation and modeling forecasts as part of the Conformity Determination process for the 8-hour ozone area. By this agreement:

1. The DRCOG agrees to provide transportation forecasts and make Conformity Determinations for the area described in Section C.1 above. The area includes the DRCOG MPO area and other 8-hour ozone nonattainment areas within the DRCOG TPR, as well as a portion of the nonattainment area of the Upper Front Range TPR.
2. The North Front Range MPO agrees to provide transportation forecasts and make Conformity Determinations for an area described in Section C.2 above. The area includes North Front Range MPO 8-hour ozone nonattainment areas as well as portions of the Upper Front Range TPR nonattainment area.
3. The Upper Front Range TPR authorizes the DRCOG and the NFR MPO to prepare transportation forecasts and make Conformity Determinations for the relevant nonattainment areas of the Upper Front Range as described in Section C of this document.
4. The agreed-upon transportation forecasting authorities shall continue for the 8-Hour Ozone Area after it is re-designated "Attainment/Maintenance" status by USEPA.

E. Compensation to MPOs for Additional Responsibilities

It is anticipated that over the next one-to-four years, funding will be needed for enhanced transportation forecasting and to perform Conformity Determinations for the Upper Front Range areas of concern. The CDOT has the responsibility to fund required Conformity Determinations and associated transportation modeling efforts for areas outside of the MPOs.

As forecasting and modeling work for the UFR will extend beyond the MPO boundaries, the CDOT will provide necessary funding to DRCOG and NFR based upon a mutually agreeable course of action delineating tasks, schedule, and costs among the signatory agencies. The signatory agencies will look to the USEPA and USDOT to assure consistency with federal requirements regarding tasks. The CDOT will execute separate intergovernmental agreements with the NFRMPO and DRCOG detailing the specific work that will be done for the agreed-to compensation.

F. Conformity Review – Procedural

The agencies shall follow the interagency consultation process and procedures identified in Colorado Air Quality Control Commission Regulation No. 10 for sharing information and conducting review of transportation data, projections, and determining Transportation Conformity to the State Implementation Plan under the 8-hour ozone standard, and generally the process outlined in memoranda of agreement for Transportation Conformity evaluations by and between the CDPHE and the Denver Regional Council of Governments (1998) and with the North Front Range Transportation and Air Quality Planning Council (2003).

The DRCOG and NFR MPO shall provide forecasts for their respective areas as described in Section C. 1 and C.2. In cases where one Conformity finding is to be made for the overall 8-Hour Ozone Nonattainment (or Attainment/Maintenance) Area, and no sub-area emission budgets are to be used, the MPOs, in consultation with the other signatory parties and with USEPA and USDOT, shall sum the ozone precursor emissions from their respective areas for overall-Area totals of VOC and NO_x, to determine whether forecasted emissions meet the appropriate Conformity test(s). In such cases, the MPOs jointly shall produce one Conformity Determination document for the overall 8-Hour Ozone Nonattainment (or Attainment/Maintenance) Area.

The APCD will perform independent emission budget tests and other applicable analyses for the overall Nonattainment (or Attainment/Maintenance) region and, as well as for the sub-areas described in C.1 and C.2 if sub-area budgets are to be used, within 30 days of receiving the final submittal of transportation data, although such data will be submitted to the APCD as early in the process as possible. The APCD may also assist with enhanced emissions forecasting for the Upper Front Range area, or provide other in-kind assistance to emissions forecasting efforts.

Assuming the APCD agrees with a Conformity Determination, it will recommend that the Air Commission comment formally via letter to the relevant MPO and to CDOT regarding its concurrence.

In the event that future sub-area emissions exceed a Conformity test or emission budget, the sub-area MPO shall immediately and diligently pursue actions, e.g., transportation plan and/or TIP amendment, that would bring projected emissions under budget (or in line with the Conformity test being used) and thus to conform to the SIP (and/or not threaten to increase the severity of the 8-Hour Area's nonattainment status). Such endeavor would be pursued as part of standard interagency process. If the sub-area were to fail to meet a Conformity test/make a positive Conformity Determination, all parties to this MOA shall confer on an emergency basis to review emission budgets and to consider the merits of the following actions, which may be needed to achieve or to re-establish Conformity:

- Potential revisions to transportation plans and/or transportation programs
- Potential modeling (by both MPO's) of the entire nonattainment (or Attainment/Maintenance) Area for a Conformity Determination, if allowed by the SIP
- Potential appeal (via the SIP process) for emission budget revisions
- Potential additional SIP revisions.

A course of action employing one or more of the above-listed actions shall be determined by the parties to this agreement. Parties may appeal to the USDOT and USEPA for guidance in establishing Conformity.

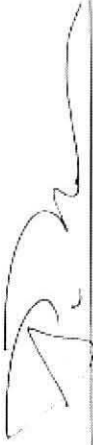
G. Dispute Resolution

Any protracted disagreements between consulting parties reviewing a Conformity Determination shall be elevated to the Commission, per the provisions in AQCC Regulation No. 10. Any continuing dispute that devolves or threatens to devolve into a situation of official non-conformance of transportation plans with the State Implementation Plan may be elevated to the Governor, just as a disputed Conformity Determination may be elevated to the Governor, as provided in AQCC Regulation No. 10 and at 40 CFR Section 93.105(d).

H. Termination of Agreement

This agreement shall be binding upon the signatory parties-until the 8-hour ozone area has achieved attainment status and maintains said status for a period of at least 20 years, unless the undersigned agencies revise or replace this MOA via unanimous, written agreement.


The undersigned hereby agree to the delegations, responsibilities and procedures described above.



Paul Tourangeau, Director, Air Pollution Control Division, CDPHE Date 3/14/08



Jennifer Finch, Director, Transportation Development Division, CDOT Date 3/14/08



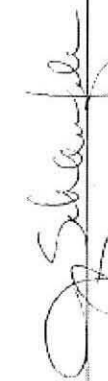
Kenneth H. Lloyd, Executive Director, Regional Air Quality Council Date 3/14/08



Robert D. Masden, Weld County Commissioner,
Chairman, Upper Front Range TPR Date 3/24/08

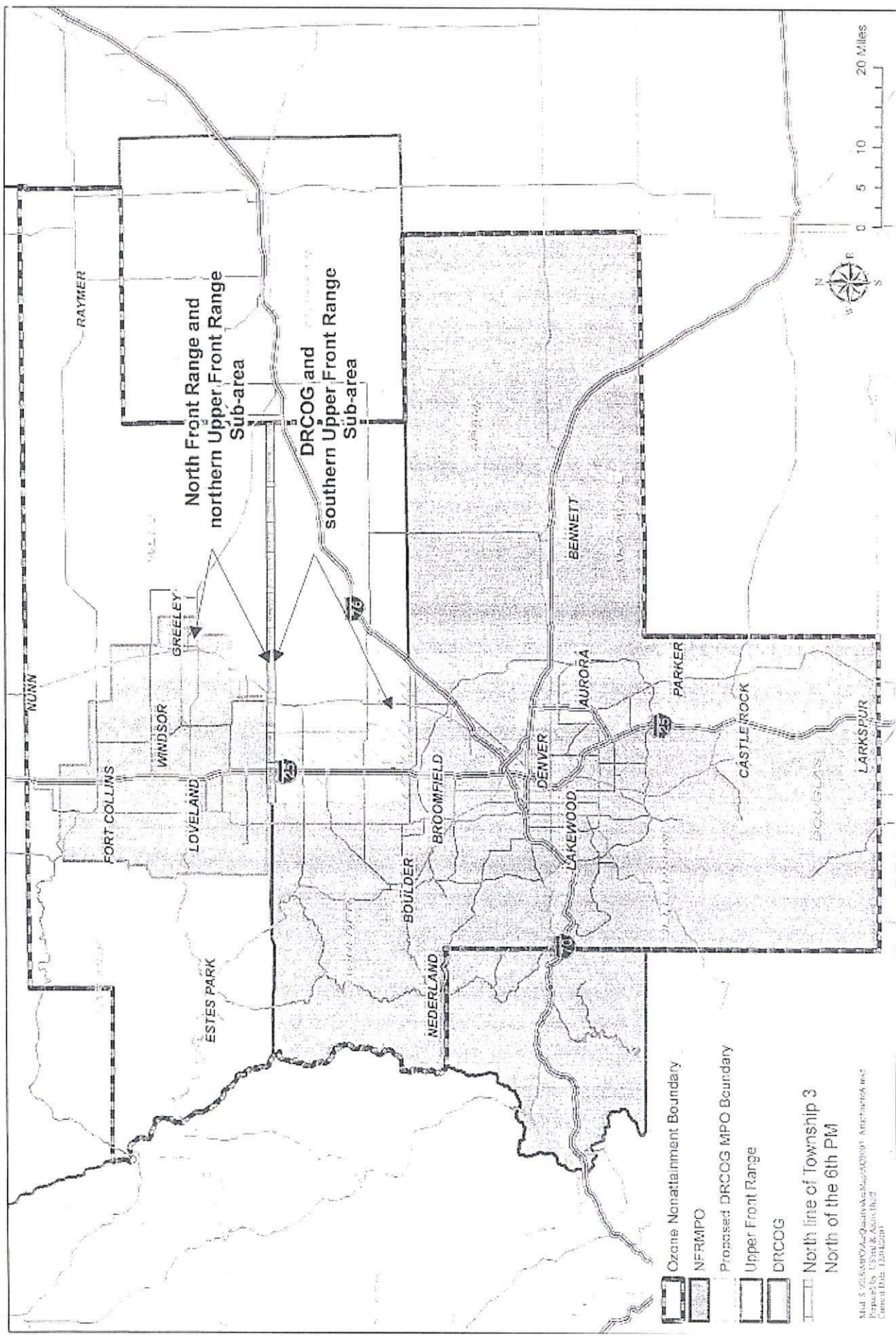


Cliff Davidson, Executive Director, North Front Range MPO Date 3/00/08



Jennifer Schaufele, Executive Director,
Denver Regional Council of Governments Date 3/14/08

**Attachment A:
8-Hour Ozone Nonattainment Area
and Sub-areas**



- Ozone Nonattainment Boundary
- NFRMPO
- Proposed DRCOG MPO Boundary
- Upper Front Range
- DRCOG
- North line of Township 3
- North of the 6th PM

Map 5: Ozone Nonattainment Area and Sub-areas
 Prepared by: URS & Associates
 Council Date: 12/04/2004

***Appendix B: Memorandum of Agreement – Transportation Conformity Evaluations
(2015)***

2015
MEMORANDUM OF AGREEMENT
FOR
TRANSPORTATION CONFORMITY EVALUATIONS

BY AND BETWEEN
THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AND
THE REGIONAL AIR QUALITY COUNCIL
AND
THE DENVER REGIONAL COUNCIL OF GOVERNMENTS
AND
THE NORTH FRONT RANGE TRANSPORTATION AND
AIR QUALITY PLANNING COUNCIL

PURPOSE

This Memorandum of Agreement (MOA) is established for the purpose of defining the specific roles and responsibilities of the Air Pollution Control Division (APCD) of the Colorado Department of Health and Environment (CDPHE), the Regional Air Quality Council (RAQC), the Denver Regional Council of Governments (DRCOG), and the North Front Range Transportation and Air Quality Planning Council (NFRMPO) for transportation conformity evaluations and modeling for the Denver and North Front Range regions. Hereafter, the above are referenced as “parties,” and DRCOG and NFRMPO are referenced to as the “MPO(s)” (Metropolitan Planning Organization(s)).

Section 176(c) of the Clean Air Act Amendments of 1990 calls for conformity evaluations to be made for transportation plans, programs, and projects, and for these conformity determinations to be developed through an interagency consultation process. Title 23, Part 450 of the Code of Federal Regulations calls for a continuing, cooperative and comprehensive transportation planning process, including provision of complete information, opportunity for early and continuing public involvement, and access to technical and policy information used in developing transportation documents. These federal mandates are best carried out with the explicit understanding of how the state air quality agency and the MPOs will coordinate efforts, especially with regard to transmitting and analyzing data, and identifying key assumptions used in planning documents.

This MOA augments interagency consultation requirements set forth in federal law and Colorado Air Quality Control Commission (AQCC) Regulation Number 10, Section III. The MOA is to be used in conjunction with these federal and state requirements for transportation conformity determinations required under the Clean Air Act. Specifically, this MOA identifies the roles and responsibilities of RAQC, DRCOG, NFRMPO and APCD in conducting conformity evaluations and sets forth a procedural framework to ensure appropriate consultation and coordination between RAQC, DRCOG, NFRMPO and APCD in carrying out these responsibilities. It also clarifies what key assumptions and data are expected in draft documents and materials used in the interagency consultation process.

This MOA supersedes the prior agreements between the parties dated November 19, 1998 (DRCOG and APCD) and November 24, 1998 (NFRMPO and APCD).

CONFORMITY EVALUATIONS RESPONSIBILITIES

Conformity evaluations are conducted in association with new conformity determinations. The evaluations require the modeling and calculation of pollutant emissions.

MPO RESPONSIBILITIES

As defined in Regulation 10, Section III, MPOs are responsible for the development, maintenance, accuracy, and operation of the regional travel demand models which provide input data to the official emissions model. MPOs will notify APCD and RAQC staff once a need for a new conformity determination is identified and a schedule for conformity modeling has been established. The estimated time period over which APCD modeling work would be required will be defined. Any changes in the schedule will be discussed with APCD staff as soon as such changes are known by the MPO. When requesting APCD to model emissions, MPO staff will forward all necessary travel model data, for each staging year that will be modeled. The NFRMPO is responsible for travel modeling in the Ozone Northern Subarea and DRCOG is responsible in the Ozone Southern Subarea, as defined in the March 14, 2008 Memorandum of Agreement.

APCD RESPONSIBILITIES

The APCD is responsible for the development, maintenance, accuracy, and operation of the official emissions model. After receiving travel model inputs to the emissions model, the APCD will inform the parties regarding an estimated schedule for completion of the emissions results. After the APCD performs emissions modeling, it will provide the parties with the emission model output results as soon as possible.

RAQC RESPONSIBILITIES

The RAQC shall review travel and emissions modeling inputs and outputs and provide comments to the parties. The RAQC will provide technical support and advice regarding model modifications.

MODEL MODIFICATIONS AND CORRECTIONS

Once travel and emission models have been established, modifications and updates to those models by the APCD or MPO may occur for some of the following reasons: updated models, updated input information, such as fleet mix or travel demand model changes, or other issues that are discovered.

If a modification or correction is required in the travel or emissions model, the following steps should be led by the agency making the identification:

- Identify all affected parties and potential work items
- Notify the affected parties and provide an initial explanation
- If needed, call a meeting to review and explain the issue to all parties
- Establish timeline and assigned duties for implementing the modification or correction
- Obtain concurrence and approval for the process for implementation from all parties
- Ensure that the APCD or MPO updates the model with the new information for use with the next applicable conformity cycle
- Share and/or discuss model results with all parties

Changes to the models will be documented and provided to the affected parties and, if needed, may be incorporated into the applicable conformity determination report.

INTERAGENCY CONSULTATION PROCESS (OR GROUP)

An Interagency Consultation Group (ICG) has been established for consultation purposes as identified in Regulation 10. The APCD, DRCOG, and NFRMPO staff will submit technical data for review and recommendation by the ICG that is comprised of representatives from Federal Highway Administration (FHWA), Colorado Department of Transportation (CDOT), Environmental Protection Agency (EPA), Regional Air Quality Council (RAQC), Air Pollution Control Division (APCD), Upper Front Range Transportation Planning Region (UFR), Denver Regional Council of Governments (DRCOG), and North Front Range MPO (NFRMPO).

The ICG will meet as needed to review data pertaining to conformity determinations and advise in a timely fashion. In this way, the assumptions and procedures used in transportation and air quality modeling can be reviewed by staff before the final modeling is performed. Data to be submitted to the ICG for review as part of the regular transportation planning process should be sufficient for making decisions and may include transportation network and land use assumptions, descriptions of any calibrations or updates to the travel model, and updates or changes to the air quality model. If changes which could affect air emissions modeling or evaluations are made after the above data have been reviewed by the ICG, these differences will be disclosed to the ICG and to the other parties to this MOA prior to initiating the final air quality modeling.

Per Regulation 10 section III.H.2, the APCD, shall decide if the conformity determination needs to be reviewed by the AQCC (non-routine) or solely by APCD (routine).

AQCC CONFORMITY REVIEW

The MPO will follow the procedures identified in the AQCC Procedural Rules calling for a public meeting by the AQCC for purposes of commenting on the MPO's non-routine conformity determinations. The parties acknowledge the initial conformity determination document must be available to the Commission office at least 15 days prior to requesting that the AQCC schedule a public meeting, and the final conformity determination document must be available to the Commission office at least 30 days prior to the AQCC's public meeting at which the conformity determination is scheduled to be discussed. The initial document should contain all modeling results and the appropriate supporting materials, and the final documents should contain any updates, revisions or corrections. The Commission can entertain deviations from this schedule on a case-by-case basis.

The Division will provide the MPO with a copy of its written comments, if any, on the conformity determination at the same time it provides them to the AQCC. All AQCC comments on determinations of conformity shall be forwarded to the MPO by APCD. Any AQCC appeal of such conformity determination will follow the procedure outlined in Regulation 10. After review, the APCD will send the MPO a letter of concurrence of a positive conformity determination. If the AQCC does not concur on the conformity determination made by the MPO, this disagreement is forwarded to the Governor's Office unless the parties revise the conformity determination.

LIMITATIONS

1. Nothing in this MOA impairs or otherwise affects the authority of the heads of the signatory party over their organizations.
2. This MOA is intended to outline an agreement among the parties and does not create or confer any right or benefit on any person or party, private or public. Nothing in this MOA is intended to

- restrict the authority of any signatory to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority and jurisdiction.
3. This MOA in no way restricts signatory parties from participating in similar activities with other public or private agencies, organizations, and individuals.
 4. Nothing in this MOA shall obligate any signatory party to obligate or transfer any funds, nor does it supplement existing statutory authorities of the signatory party agencies.
 5. This MOA, consisting of five (5) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements concerning this MOA, whether written or oral.

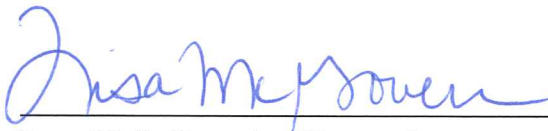
EXECUTION, MODIFICATION AND TERMINATION OF AGREEMENT

It is mutually agreed and understood by all signatory parties that:

1. Any party to this agreement may suspend it by a 60-day written notice to the other parties. If this occurs, the parties agree to consult further to determine whether the issues can be resolved and the agreement re-implemented in an amended form.
2. Changes to the scope of this MOA shall be made by the issuance of a multilaterally executed modification. These changes are to be mutually agreed upon between the parties to this MOA, shall be incorporated by written instrument, executed and signed by all parties to this MOA and are effective as of the date of the last signature obtained.
3. This MOA may be executed in counterparts. A copy with the original signature pages affixed will constitute the original MOA. The effective date shall be the date of the final signatory party agency's signature, and the MOA shall remain in effect until modified or dissolved.
4. This MOA may not serve as the basis for any challenges or appeals.
5. Colorado Open Records Act (CORA). Any information furnished by any parties under this Memorandum is subject to the Colorado Open Records Act (24-72-201 to 24-72-309, C.R.S.).
6. **RESPONSIBILITIES OF PARTIES.** The subject parties intend to handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party intends to carry out its separate activities in a coordinated and mutually beneficial manner.
7. **NON-FUND OBLIGATING DOCUMENT.** Nothing in this MOA shall obligate the subject parties to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. This MOA does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
8. **ESTABLISHMENT OF RESPONSIBILITY.** This MOA is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against any of the signatory parties, including but not limited to, their agencies, their officers, or any other person.
9. **AUTHORIZED REPRESENTATIVES.** By signature below, the signatory party certifies that the individuals listed in this document as representatives of the signatory party are authorized to act in their respective areas for matters related to this agreement.
10. **GOVERNMENTAL IMMUNITY:** The parties do not waive their governmental immunity by entering into this MOA and retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOA.

11. The parties agree that exclusive venue for any action related to performance of this agreement shall be in the City and County of Denver, Colorado.

The undersigned parties hereby agree to the responsibilities and procedures described above.

for


Larry Wolk, Executive Director &
Chief Medical Officer
Colorado Department of Public Health and Environment

5-28-15

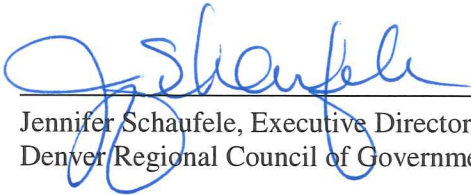
Date



Ken Lloyd, Executive Director
Regional Air Quality Council

March 31, 2015

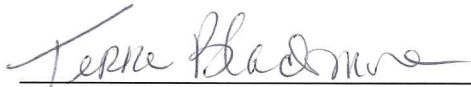
Date



Jennifer Schaufele, Executive Director
Denver Regional Council of Governments

March 25, 2015

Date



Terri Blackmore, Executive Director
North Front Range MPO

May 7, 2015

Date

***Appendix C: Resolution 2018-XX North Front Range Transportation & Air Quality
Planning Council (NFRT&AQPC) Adoption
(to be provided)***

***Appendix D: Colorado Air Quality Control Commission Conformity Concurrence
(to be provided)***

***Appendix E: U.S. Department of Transportation Conformity Finding
(to be provided)***

