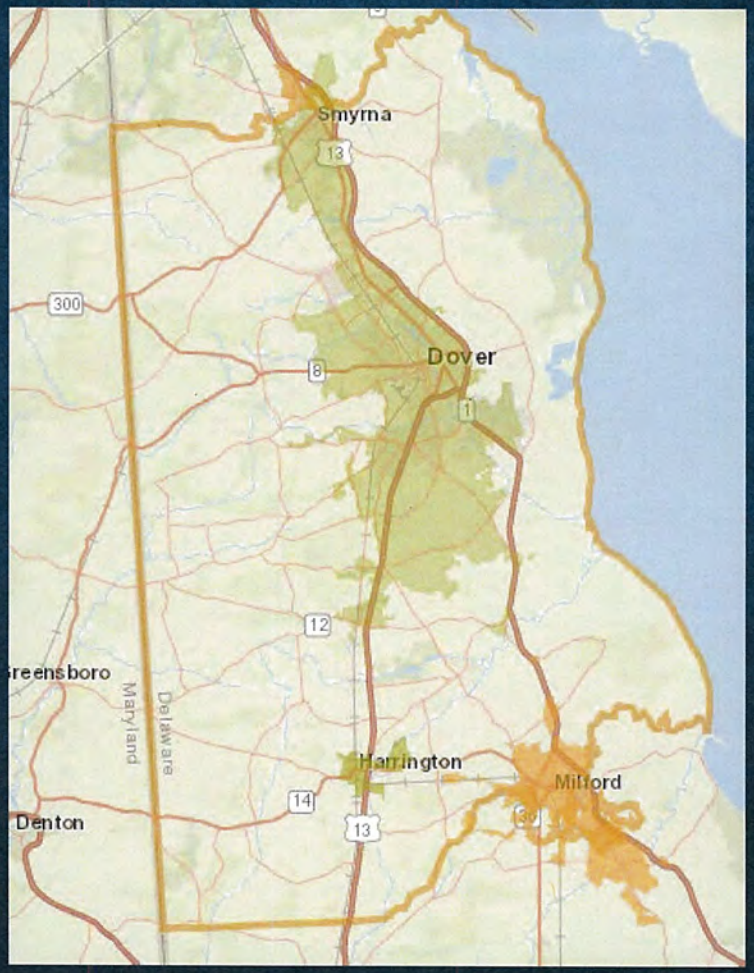
DOVER / KENT COUNTY MPO BOUNDARY



SLIDE #1

Hello PAC, TAC, and Council members. I will be presenting you with a summary brief regarding the Dover/ Kent County MPO Boundary and specifically, how our boundary was established and why we are recommending a clarification to the existing boundary area.

AGENDA

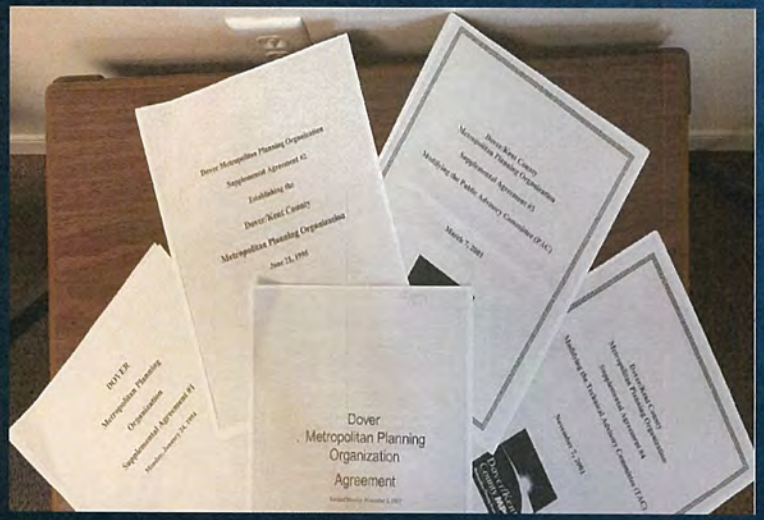
- MPO Boundary Background
  - Agreements
  - US Census Bureau Urban Areas
- Air Conformity
- Issue
- Action Item: D/KC MPO Supplemental Agreement #5 Clarifying MPO Boundary

SLIDE #2

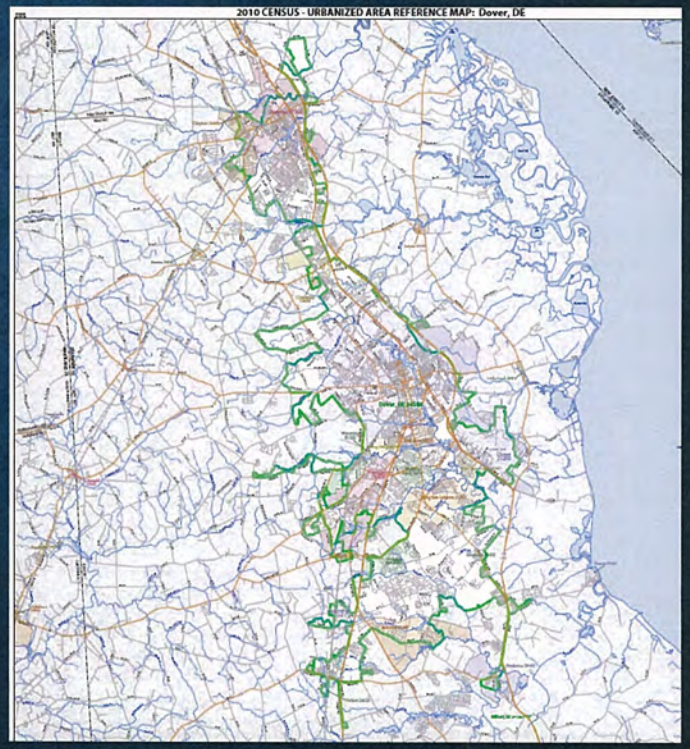
Tonight we will be discussing relevant documents regarding the Dover/Kent County MPO Boundary. How the boundary area is established? How Air Conformity can impact the boundary? The current D/KC MPO Boundary issue and more importantly, the proposed action item which may resolve the issue at hand.

WHAT DETERMINES THE MPO BOUNDARY?

- Agreements



- US Census Bureau Urban Areas



SLIDE #3

There are two ways an MPO establishes its boundary.

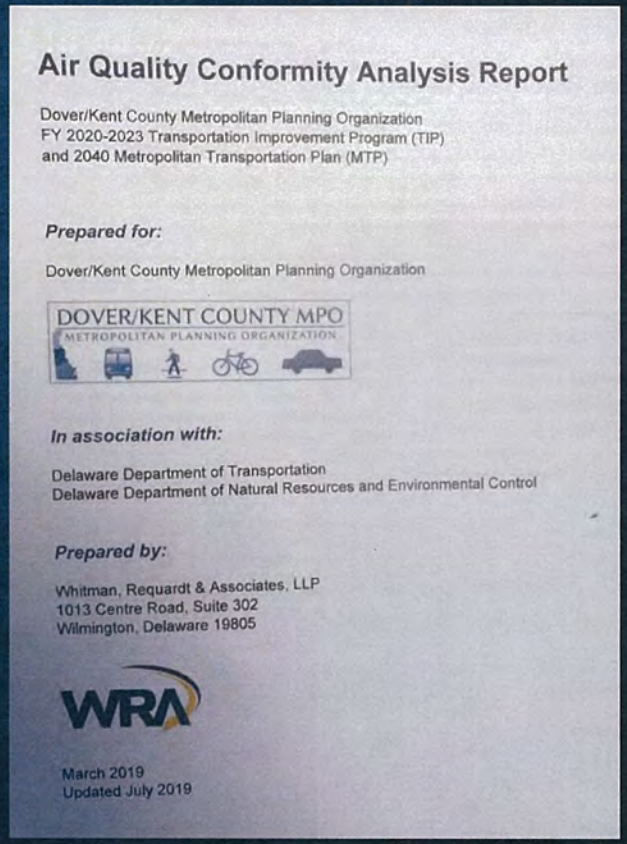
First is through formal agreements. The Dover Area MPO was established via an agreement signed by Governor Mike Castle on December 22, 1992. It formalized our first boundary area as shown in the US Department of Commerce, Bureau of Census 1990 Dover, Delaware Urbanized Area map and consisted primarily of the City of Dover and adjacent unincorporated areas in Kent County. The 1995 Supplemental Agreement #2 signed by Governor Tom Carper on June 21, 1995, changed the name of our MPO to the Dover/Kent County MPO and provided additional information on the MPO boundary by stipulating the planning area shall include the whole of Kent County Delaware, and include those geographic areas of the City of Milford and the Town of Smyrna that area not situated in Kent County. These geographic areas included the Town of Smyrna annexing land into Southern New Castle County and the City of Milford annexing land into Sussex County. The original intent was to have both incorporated areas use one MPO for their transportation needs rather than having to coordinate with multiple metropolitan planning organizations. As we will see later in this presentation, the annexed land into another County which does not meet air conformity standards is problematic.

Second is through the 10-year Census and in our case, using the Dover, Delaware Urbanized Area map. When the D/KC MPO was established, the 1990 and 2000 Dover, Delaware Urbanized Areas did not extend past the Kent County boundary. However, as the image on the right side of this slide shows, the 2010 Dover, Delaware Urbanized Area extended into southern New Castle County just north of Smyrna. New Castle County is covered by the Wilmington Area Planning Council (WILMAPCO) and Federal Highway Administration (FHWA) regulations allow agreements between MPOs regarding transportation planning oversight for urbanized areas extending into a previously established MPO planning areas. Although FHWA regulations address urbanized areas going from one country into another, there is no FHWA regulation address annexed land outside urbanized area which extends into another county with separate air conformity issues.

Before discussing the issue at hand, the next slide provides a quick overview of our air conformity report.

AIR CONFORMITY
(WHAT HAS OCCURRED)

- 2017 D/KC MPO Metropolitan Transportation Plan (MTP)
  - **13** Regionally Significant and Exempt Projects
  - **3** Regionally Significant and Not Exempt Projects
- South Coast Air Quality Management District versus the EPA
- FHWA Interim Guidance on Air Conformity
- D/KC MPO Air Quality Conformity Analysis Report



Air Quality Conformity Analysis Report

Dover/Kent County Metropolitan Planning Organization
FY 2020-2023 Transportation Improvement Program (TIP)
and 2040 Metropolitan Transportation Plan (MTP)

Prepared for:

Dover/Kent County Metropolitan Planning Organization

DOVER/KENT COUNTY MPO
METROPOLITAN PLANNING ORGANIZATION

In association with:

Delaware Department of Transportation
Delaware Department of Natural Resources and Environmental Control

Prepared by:

Whitman, Requardt & Associates, LLP
1013 Centre Road, Suite 302
Wilmington, Delaware 19805

WRA

March 2019
Updated July 2019

SLIDE #4

You may remember that this past April, I presented a summary of the Air Quality Conformity Analysis report completed in support of **three** Transportation Improvement Projects listed in our FY20 TIP. The results of the D/KC MPO Air Quality Conformity Analysis completed on the three identified regionally significant non-exempt projects listed in our TIP and the STIP **DEMONSTRATE Conformity.** As the next slide shows, the MPO Boundary issue was raised by FHWA when they were reviewing our report this past August 2019.

The following notes were provided to the PAC, TAC, and Council this past April and Council voted to approve the report and forward to the EPA and FHWA for their concurrence.

First point is that the 1990 Federal Clean Air Act requires MPOs to address air conformity within their Long Range Transportation Plans or MTP's for air quality non-attainment areas. Kent County, Delaware is part of the Philadelphia-Wilmington-Trenton **non-attainment area for Ozone** and was considered **non-attainment under the 1997 standards** but **in-attainment under the 2008 standards**. A "conformity determination" is a demonstration that an MPO's plans, programs, and projects are consistent with the State Implementation Plan (SIP) for attaining federal air quality standards (regarding Ozone in our case). The SIP is developed by DNREC and provides Delaware's air quality budget (air emission control measures) for the region. MTP's list proposed projects over a 20 year time frame which are categorized as being "**regionally significant**" (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and **regionally significant projects considered to be "exempt"** from air conformity (as defined in 40 CFR section 93.126- safety, mass transit, etc.…). However, the MPOs must address how "non-exempt" regionally significant projects conform to the CAA. As such, our most recent MTP was adopted in January 2017 concluded among other things that we were considered to be "**in-attainment**" with CAA standards regarding Ozone.

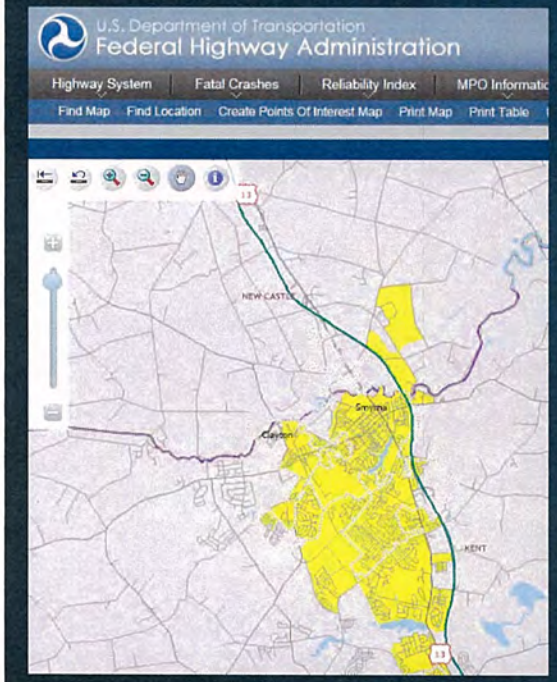
Second point is that in February 2018 a US Court of Appeals issued a decision from a lawsuit filed by the South Coast Air Quality Management District against the EPA regarding the EPA's rule implementing the 2008 ozone (which was the standard used in determining our being "in-attainment"). Basically, reverting back to the 1997 Ozone standards which impacted 82 identified MPO areas (now known as orphan areas) and the D/KC MPO is part of these 82 areas due to our being considered not in attainment with the 1997 Ozone standards.

Third point is that on April 23, 2018 and again on October 1, 2018 the Federal Highway Administration (FHWA) issued Interim Guidance on Conformity requirements for the 1997 Ozone National Ambient Air Quality Standards (NAAQS). The most recent October 2018 guidance, "strongly encourages all impacted areas to make every effort to complete their 1997 ozone conformity determinations as soon as possible to prevent delays of transportation plans, programs, and non-exempt projects." Furthermore, **conformity determinations for the 19967 Ozone NAAQS will be required on plan, TIP and project actions after February 15, 2019**.

Lastly, to meet the FHWA Interim Guidance the MPO contracted with WRA to conduct air conformity determination on three **Regionally Significant Non-Exempt projects** listed in our current TIP and within the STIP (US Route 13 Widening Phase 1; US Route 13 Widening Phase 2; and US Route 13 Connector Road (Scarborough Road to Leipsic Road)). This way the three projects will comply with the Interim Guidance and continue to be funded while the EPA works on final implementation rules addressing the 1997 and 2008 Ozone Standards.

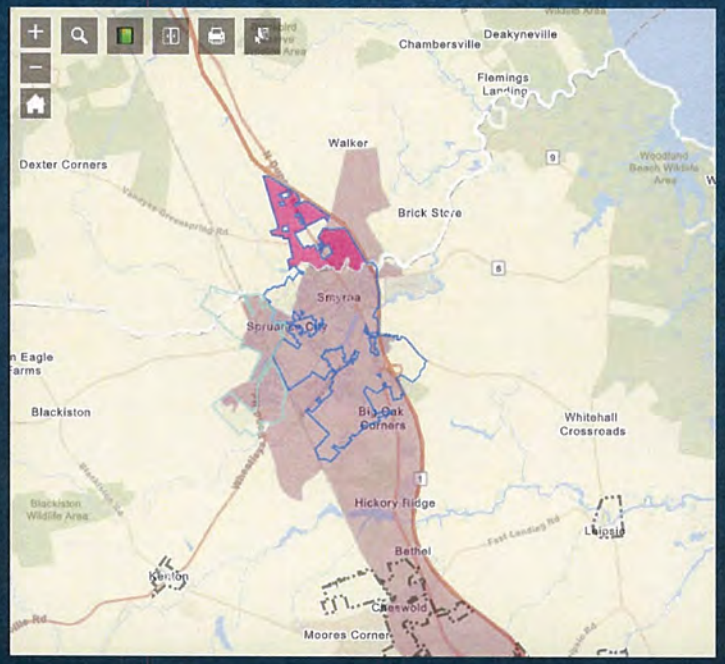
DOVER/KENT COUNTY MPO BOUNDARY / AIR CONFORMITY ISSUE

FHWA D/KC MPO Boundary MAP



Shows MPO boundary as County line.

D/KC MPO Boundary Map



Shows MPO boundary to include Smyrna annexed area in NCC.

EPA Non-attainment Map

Shows non-attainment area boundary as the County line.

SLIDE #5

As mentioned on the previous slide, in August 2019, the D/KC MPO submitted its Air Quality Conformity Analysis Report (1997 Ozone standard) on three regionally significant transportation improvement projects. The report was reviewed by the EPA and Federal Highway Administration (FHWA). In reviewing our report and our FY20 TIP, FHWA air conformity staff noticed we included the Town of Smyrna annexed areas into NCC as part of our MPO boundary area as seen in the center of this slide in purple. FHWA compared our boundary to their "official MPO boundary" as seen on the left side of this slide and began to raise concerns about the D/KC MPO boundary going into NCC (annexed areas). The 2010 Dover, Delaware Urbanized Area as depicted in **yellow** on the FHWA map and **burgundy** on the D/KC MPO map was covered through a 2016 memorandum of Agreement between WILMAPCO and the D/KC MPO and thus, not as concerning to FHWA as the annexed areas.

FHWA determined that the D/KC MPO boundary encompassing Smyrna's annexed areas not in the designated Dover, Delaware Urbanized Area in NCC would by default, make Kent County as being non-attainment (regarding air conformity) with the **2006 PM2.5 standard and the 2008 Ozone Standard** for **the entire Kent County.** You will note on the far-right side of the slide, the EPA map shows New Castle as being not in attainment for the 2006 PM2.5 and 2008 Ozone Standards (shown in blue) whereas Kent County is in attainment for the 2008 Ozone Standard (despite having to perform conformity for the 1997 standard). FHWA suggested updating agreements would help resolve the conformity concern.

Specifically, updating the 1995 Supplemental Agreement to establish the D/KC MPO boundary as consisting of "**whole of Kent County**" excluding any annexed parcels into New Castle County for these examples on the slide and also annexed parcels in the southern Kent County line (i.e. City of Milford into Sussex County). Again, Urbanized Area's may change overtime with each Census and the Dover, Delaware Urbanized Area can be addressed with updated MOA's as depicted in FHWA regulations. However, FHWA does not have any regulations which address municipalities located in a country considered in conformity annexing land in a county considered not in conformity.

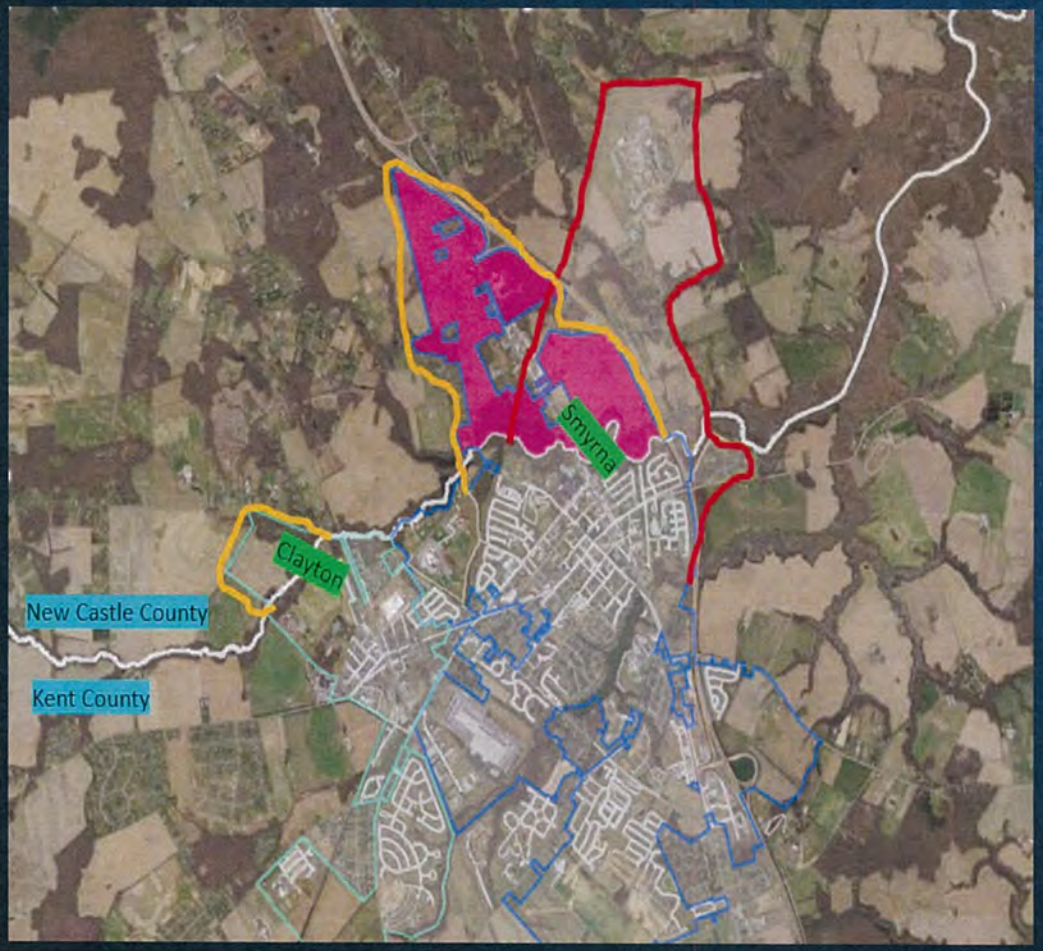
Map sources:

FHWA: https://hepgis.fhwa.dot.gov/fhwagis/#

D/KC MPO: https://dkcmpo.maps.arcgis.com/apps/webappviewer/index.html?id=b03ad5243aae4de995ab8ac5a401b3eb

EPA: https://www.epa.gov/outdoor-air-quality-data/interactive-map-air-quality-monitors

DOVER/KENT COUNTY MPO BOUNDARY / SUPPLEMENTAL AGREEMENT #5



DOVER/KENT COUNTY METROPOLITAN PLANNING ORGANIZATION
SUPPLEMENTAL AGREEMENT #5
CLARIFYING THE DOVER/KENT COUNTY METROPOLITAN PLANNING ORGANIZATION
(D/KC MPO) PLANNING AREA

THIS AGREEMENT is made and entered into by and between the State of Delaware hereinafter called the STATE; the Kent County Levy Court, hereinafter called the COUNTY; and the City of Dover, hereinafter called the CITY.

WITNESSETH

WHEREAS, the parties hereto did on December 22, 1992 established the Dover MPO, which is responsible for metropolitan planning under the requirements of USC 23 and 49; and

WHEREAS, the parties hereto did on June 21, 1995 changed the name of the Dover MPO to the Dover/Kent County MPO; and

NOW, THEREFORE, the STATE, the COUNTY, and the CITY do agree among themselves as follows:

1. That, the planning area for the D/KC MPO shall be the whole of Kent County, Delaware;
2. That henceforth the D/KC MPO Council may, by unanimous vote, change the planning area boundary without having to revise this D/KC MPO Agreement, or any preceding D/KC MPO agreements;
3. That, except as modified herein, all aspects of the original Agreement of 12/22/92 and of Supplemental Agreements #1, #2, #3, and #4 to said Agreement, shall remain in force and effect; and
4. The effective date of this Supplemental Agreement #5 shall be the date of execution of the last party to sign it.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be EXECUTED.

STATE OF DELAWARE:

_____ ATTEST: _____
John Carney, Governor

DATE: _____

KENT COUNTY:

_____ ATTEST: _____
P. Brooks Banta, President
Levy Court of Kent County

DATE: _____

CITY OF DOVER:

_____ ATTEST: _____
Robin R. Christiansen, Mayor
City of Dover

DATE: _____

SLIDE #6

In summary:

The D/KC MPO has to update some agreements for FHWA to approve the Air Conformity Analysis completed on three MPO projects in our FY20 TIP. The main area of concern is our northern Kent County boundary area with New Castle County.

The **Red** line on this map image shows the 2010 Dover, Delaware Urban Area (UA) in NCC and was determined by the 2010 census which extended the D/KC MPO boundary into NCC. There was a 2016 Memorandum of Understanding (MOU) between D/KC MPO and WILMAPCO indicating all air conformity and transportation projects would be completed by WILMAPCO however, FHWA requested this MOU be updated. This **MOU has been updated and signed**.

The **Orange** lines show Smyrna and Clayton annexed areas into New Castle County. The plan is to update the 1995 Supplemental Agreement to **clarify** the D/KC MPO boundary as consisting of "whole of Kent County" and Kent County municipalities with geographic areas not situated in Kent County, will have to coordinate transportation needs with WILMAPCO or DelDOT as applicable. This should resolve the current and future air conformity concern raised by FHWA. Again, any Urbanized Areas (as seen by the red line on the map) which extended outside the Kent County boundary can still be managed through updated MOU's. The currently drafted Supplemental Agreement #5 will be forwarded to the Governor for signature after the MPO Council approved the action in November

DOVER/KENT COUNTY MPO BOUNDARY / SUPPLEMENTAL AGREEMENT #5

Action Item: Recommend the Dover Kent County MPO Council approve Supplemental Agreement #5 which clarifies the Dover Kent County Metropolitan Planning Organization's planning area boundary to be the "whole of Kent County" Delaware.

SLIDE #7

In conclusion:

Recommend the Dover Kent County MPO Council approve Supplemental Agreement #5 which clarifies the Dover Kent County Metropolitan Planning Organization's planning area boundary to be the "whole of Kent County" Delaware.