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MEMORANDUM

TO: PHIL EVENSON, KEN YUNKER, GARY KORB

FROM: KARYN ROTKER

RE: DEFICIENCIES IN SEWRPC'S "EVALUATION OF THE IMPACTS OF THE YEAR 2035 REGIONAL TRANSPORTATION PLAN . . . ON MINORITY AND LOW_INCOME POPULATIONS IN SOUTHEASTERN WISCONSIN"

DATE: MAY 2, 2006

I am sending this memorandum to identify some of the ways in which SEWRPC's draft "Evaluation Of The Impacts Of The Year 2035 Regional Transportation Plan 'TSM Plus Highway' Alternative On Minority And Low_Income Populations In Southeastern Wisconsin" fails to meet the requirements of Title VI of the U.S. Civil Rights Act of 1964 and federal environmental justice laws, regulations, and policies. It is my understanding that SEWRPC will take up this Evaluation at the May 10 meeting of the regional transportation planning advisory committee.

The many deficiencies in the report are of particular concern because transportation equity advocates - including the ACLU of Wisconsin, the NAACP, the Black Health Coalition, the Metropolitan Milwaukee Fair Housing Council, and others - raised most of these issues with SEWRPC staff, in meetings and in writing, prior to the time the report was prepared. ***SEWRPC needs to refrain from finalizing Appendix C - and the Regional Transportation Plan - until it makes the necessary changes and undertakes the legally required analysis of the civil rights effects of this plan.***

On May 16, 2005, I brought to your attention *The Metropolitan Transportation Planning Process: Key Issues - A Briefing Notebook for Transportation Decisionmakers, Officials, and Staff* (A Publication of the Transportation Planning Capacity Building Program, Federal Highway Administration & Federal Transit Administration). In that letter, I specifically noted that this material obligated SEWRPC to:

ensure that its planning process is collecting, disseminating, and using data on low income and minority populations. Again, this needs to occur at ***all*** stages of the planning process.

I also quoted provisions of the *Briefing Notebook* which explicitly state that:

The impact of proposed transportation investments on underserved and underrepresented

population groups must be part of the evaluation process. In particular, the following questions are important in addressing Title VI/environmental justice issues in the planning process: . . .

What statistics are being collected about minority/low-income communities, and how are they used to assess possible inequities? Actions to take include:

- * Evaluating what information is already being collected.
- * Identifying what further information can and should be collected.
- * Analyzing the data to identify potential inequities.

Collecting this information is crucial because without the underlying data, decisionmaking will be flawed. As I told you in the May 2005 letter, the FHWA/FTA *Briefing Notebook* requires consideration of:

How are information and data incorporated into decisionmaking? Questions to ask include: . . .

- * How is Title VI/environmental justice information collected by the MPO and relayed to officials?
- * Is additional information needed to adequately consider the impacts of transportation decisions on low_income and minority communities?

Yet in preparing its current draft evaluation, SEWRPC ignored the concerns we raised. SEWRPC also refused to accept our repeated requests to place environmental justice advocates on the advisory committee; doing so might well have ensured that these issues were addressed up front, as required by federal environmental justice policies.¹

1. Incorrect demographic analysis.

App. C states that freeway reconstruction and expansion does not have a disproportionate impact on low income or minority households. ***This premise is simply incorrect.***

¹“It is FHWA's continuing policy to . . . ensure that social impacts to communities and people are recognized ***early and continually*** throughout the transportation decisionmaking process – from early planning through implementation.” *FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Order 6640.23 (Dec. 2, 1998)(emphasis added).

- a. App. C, Table C-4, shows that *every* minority group is disproportionately represented among groups living in proximity to areas proposed to be widened. Moreover, Table C-4 fails to mention that *minorities comprise 36% of all the people living in proximity to the areas proposed to be widened.*² Because that clearly exceeds the percentage of minorities in the region as a whole, the statement that there is no disproportionate effect on minorities is factually incorrect.
- b. Table C-4 also clearly shows that there are proportionately more families in poverty living in proximity to the proposed widened freeways than in the region as a whole. Although the disparities may be smaller than those for minority and non-minority persons, there is no explanation of why those disparities are not significant. Instead, SEWRPC simply states there is no disproportionate impact.

Because the data makes it clear that even using SEWRPC's own information, minority, and to a lesser extent low income, communities are disproportionately affected by proposed highway expansion, the entire evaluation must be reconsidered in light of those factual predicates.

2. *Deficiencies in data collection:*

Separate from the errors in the data SEWRPC has identified, its data collection on race and income issues is inadequate. A more comprehensive data collection is required to allow a meaningful analysis of the relative benefits and burdens of SEWRPC's plans, but this has not occurred.

- a. *Race Data:* Although many SEWRPC planning reports include detailed data disaggregated by gender and age, omissions of race data are common - a problem that limits the ability to evaluate the effect of various proposals on low income and minority communities. In an email I sent you on Sept. 30, 2005, I expressed concerns about the inadequate data collection in the Population Study³ - on which other planning is based - and requested that SEWRPC "develop demographic data by race - and have it as detailed as the other data used in the population study (like gender and age data) before planning on land use or transportation goes forward." Similarly, in an email dated Jan. 30, 2006, I expressed concerns about the inadequate demographic data in SEWRPC's Regional Land Use plan - upon which other planning, including transportation planning, is based - and requested it be amended.⁴ This did not occur.

²Table C-4, and virtually the entire report, also inexplicably fail to identify the number of non-Hispanic whites affected. This would, for example, make it clear that while 72% of the persons in the region are white, only 64% of the people affected by the widening are non-Hispanic whites.

³I also note that the Advisory Committee for the Regional Population and Economic Forecasts study included Wisconsin Manufacturers and Commerce, the Metropolitan Milwaukee

- b. *Data on Occupation & Employment by Race & Income:* In an email I sent you on Jan. 25, 2006, I provided you with the link to a UWM interactive website with extensive data on occupation, employer, race and income for all census tracts in the region, and asked that this data be “run and incorporated into the population study, land use and transportation plans.”⁵ This did not occur.
- c. *Data on Drivers’ Licenses by Race:* In an email I sent you on Sept. 30, 2005, I told you about a UWM study showing that persons of color in Milwaukee are much less likely than whites to have drivers’ licenses,⁶ a problem separate from the availability of vehicles, and requested that you incorporate that finding in your environmental justice analysis. You failed to do so.

Association of Commerce, American Transmission Company, and WE Energies, but not a single organization representing low income or minority communities.

⁴“I am attaching one of the chapters of the Regional Land Use plan - which is entitled ‘Population, Household, and Employment Projections’ but which simply does not include any data on existing populations or projected changes by race or income group - and thus does not provide an adequate foundation to determine who will benefit and who may not benefit from particular trends or plans. http://www.sewrpc.org/regionalplans/pdfs/reg_land_use_plan/pr-48_draft_chapter_05.pdf”

⁵<http://www3.uwm.edu/Dept/ETI/workforce/diversity.cfm>

At that time, I also provided you the following specific example of available information which is clearly relevant to the issue of whether low income and minority persons are benefitted or burdened to the same extent from highway expansion:

“In census tract 203701 (much if not all of Delafield):

-There are 4070 white workers and 65 black workers

-No black worker earns more than \$34,999, while almost 1400 white workers (or more than 1/3 of white workers) earn more than this

-Almost all the black workers are in food prep, protection, health services, and production (with NONE in business, education, and more) - vastly different than the white population

-there are only 105 workers below poverty level, and of these about 25% carpooled (while less than 10% of workers with incomes more than 150% of poverty level carpooled)”

⁶<http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>

3. ***Failure to adequately evaluate benefits and burdens of plan on low income and minority communities:***

There is no question that an MPO must consider the specific effects of its plans - both comparative benefits AND comparative burdens - on low income and minority communities. ***This is part of the process of analyzing whether an MPO's plans disproportionately affect low income or minority communities.*** For example, the FHWA/FTA *Briefing Notebook* requires an MPO to take actions including:

*Developing measures to verify whether there is equitable distribution of the benefits and burdens of transportation services. . . .

*[Determining] How are the specific interests of minority and low_income populations addressed in transportation policies, plans, and projects?

The FHWA also identifies an extensive list of adverse effects to be considered in evaluating whether low income and minority communities are disproportionately affected by transportation planning.

Adverse Effects include the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man_made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low_income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of FHWA programs, policies, or activities.

FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Yet rather than analyzing each of these issues, SEWRPC brushes off the concept of adverse effects by stating “Residing in proximity to an arterial street or highway proposed to be widened is ***perceived*** as having potential adverse effects.”⁷ App. C, p. C-4. This simply does not constitute the kind of required analysis of the many potential adverse effects required by the FHWA.

⁷The only adverse effect SEWRPC specifically identifies is whether right-of-way acquisitions will disproportionately affect low income or minority communities. Tables C-7 to C-13. That is important - but not the only issue.

- a. *Comparison of benefits and burdens of congestion:* SEWRPC presupposes that congestion is a problem and that it will worsen without highway expansion. See, Table C-14. However, congestion is not an equal burden: persons who do not drive, or do not routinely drive long distances at all or on highways, or do not use highways at peak traffic hours, are likely much less affected by traffic congestion. Given the residential demographics of our region, as well as racial and economic disparities in vehicle and drivers license access, it is extremely likely that low income families and persons of color experience far fewer problems with traffic congestion - and therefore that relieving traffic congestion is less of a benefit to them. Certainly this is *data* that needs to be collected and an *analysis* that needs to be undertaken before simply concluding that the plan will have the same benefit on low income and minority communities as it may on, for example, white and/or higher income suburban commuters.

- b. *Comparison of benefits and burdens of transportation options:* There is no question that, as Table C-15 shows, minority households are much less likely than white households to have vehicles; similarly, data included in SEWRPC's draft study of "Travel Habits and Patterns" chapter confirms that low income and minority persons disproportionately rely on the bus system. While certainly it would improve the circumstances of low income and minority households if all transit elements of the 2035 plan were fully implemented, the current plan does not adequately evaluate the current situation or future impacts. Such an analysis is necessary in order to provide an adequate basis for determining not only what transit options are necessary, but the order in which projects should be developed and priorities for implementation of various proposals especially if - as some industry officials now argue - there is not enough money to implement all transportation proposals.
 - i. Job Access at Peak Hours: SEWRPC's Evaluation indicates that increased transit would improve job access for transit-dependent communities. However, Maps C-23 and C-37 show that even if all the transit proposals were fully implemented, the maximum accessibility by transit to jobs in the region during *peak* periods would be only 36% of the maximum accessibility by highway (20,700 vs. 57,700 jobs), and that would exist only in a limited portion of Milwaukee. This, therefore, raises concerns about whether more extensive transit proposals are necessary to provide a more equal distribution of the benefits of transportation planning.

 - ii. Second and Third Shift Job Access by Transit: SEWRPC's analysis completely fails to investigate current or proposed accessibility to jobs by transit during 2nd and 3rd shift hours - a glaring omission because, we believe, low income and minority workers are more likely to work these shifts, and because transit is much less available at those times.⁸

⁸The U.S. Census website, Summary data set 4, Table PCT 59, includes data on the hour of the

- iii. Gasoline Prices: In an email I sent you on Sept. 30, 2005, I specifically requested consideration of the impact of then-occurring gas price increases on transportation options, but SEWRPC failed to do so. It is critical that SEWRPC evaluate the effect of recent steep price increases on the transportation circumstances of low income persons - who can less afford those increases - and incorporate this analysis into judging the relative benefits and burdens of transit and car travel.

- iv. Access to Services and Facilities other than Employment: SEWRPC's "Evaluation Of The Impacts Of The Year 2035 Regional Transportation Plan . . ." fails to investigate current or proposed accessibility to services and facilities other than jobs - including schools, medical care, shopping, and recreation. Given that SEWRPC's draft study of "Travel Habits and Patterns" (Ch. IV, Table 4-19) shows that more than half of all bus trips on most of the region's systems are for purposes other than employment and that nearly 1/4 of all trips are for school, SEWRPC must ascertain whether its transit proposals provide meaningful access by transit to non-employment destinations.

- v. Prioritization: While SEWRPC has said in the past that all elements of its regional transportation plan are necessary, the reality is that fiscal constraints, among others, are very likely to limit the projects that get developed.⁹ The reality is also that for decades transit plans have not been fully implemented, and that there has been some reversal of the limited gains made in the late 1990s - to the disproportionate detriment of low income and minority communities. Therefore, we have repeatedly asked that SEWRPC evaluate how to prioritize transit implementation, to ensure it is not again shunted aside. For example, in a message sent you on Sept. 30, 2005, we stated: "The 2035 plan calls for much more development of alternatives to highway expansion - given that, plus rising gas prices, plus . . . the limited transportation options of low income and minority communities, plus the recent cutbacks in transit service and fare increases -all highway expansion - including the I-94 widening in [M]ilwaukee - needs to be reconsidered." SEWRPC has not, however, made a serious or meaningful effort to determine how to immediately implement transit improvements; to evaluate how to encourage increased transit use by low income and minority communities and others, especially

day individuals leave home for work, by race. Thus this information could (and should) be calculated. *See also*, "Day care grows at night: More mothers work late shifts, so more centers stay open," *Milwaukee Journal-Sentinel* (posted Apr. 29, 2006).

⁹*See, e.g.*, "Road builders say budget is skimpy," *Milwaukee Journal-Sentinel* (posted Apr. 13, 2006).

in light of rising gas prices and road construction; or to evaluate whether increasing transit usage and limiting road construction (or some other method) could render some of the widening plans unnecessary. These are all issues of concern to low income and minority communities, but not ones that SEWRPC has seriously addressed.

- c. *Environmental Impacts:* As we specifically informed you in an email sent on Dec. 27, 2005, the EPA has mechanisms to measure certain kinds of air pollution in particular neighborhoods. These are concerns because the *baseline* levels of pollution are higher for certain communities in the region, a factor that needs to be considered and the health and other effects of which need to be evaluated. As I indicated at that time, “more than 40% of blacks in Wisconsin live in high-risk neighborhoods. In addition, lower income persons are more likely to live in high-risk neighborhoods.” I asked you to let us know whether SEWRPC has already obtained this data and the uses to which it has been put, and, if not, how SEWRPC would “incorporate these findings in transportation, land use and other plans.” In December I also sent you a web link which would have enabled you to conduct that analysis easily. None of this analysis occurred. It is unclear whether that link is still active, but I believe that it is imperative that SEWRPC reconstruct and incorporate that data into its plans.
- d. *Qualitative impacts:* In a meeting on Sept. 23, 2005, and in a follow up email sent you on Sept. 30, we specifically requested “a plan for what kind of qualitative data on actual conditions in low income and minority communities would be useful for transportation and land use planning, and how to obtain (and act upon) that information (this includes issues like health concerns and how people's actual experiences - like lack of air conditioning in homes - affect their health conditions).” Note that the FHWA/FTA *Briefing Notebook* specifically requires MPOs to “elicit issues of particular concern to low_income and minority communities.” Nevertheless, SEWRPC did not undertake such an analysis.
- e. *Effects of overrepresentation of Milwaukee County in Areas affected by Highway Reconstruction:* Approximately 3/4 of the minority and low income persons, and about 85% of the African-American persons, in the region live in Milwaukee. Therefore, actions disproportionately affecting Milwaukee County will almost inevitably disproportionately affect low income and minority communities. There is no question that Milwaukee County is disproportionately affected by freeway reconstruction and expansion: Table C-4 shows that 79% of the people in proximity to the freeways to be widened live in Milwaukee county, but Milwaukee county only has 48% of the region's population.¹⁰ In addition, Tables C-7 to C-13 show that 78% of the projected residential relocations (147/189) and 52% of the business relocations (12/23) are in Milwaukee County. There is,

¹⁰In addition, 96% of the minorities who live in proximity to the freeways live in Milwaukee County.

however, no evaluation of whether or how the disproportionate impact on Milwaukee County could adversely affect low income and minority communities.

cc: Lee Holloway, Chair, Milwaukee County Bd. of Supervisors, and County Supervisors
Mayor Tom Barrett and City of Milwaukee Aldermen
SEWRPC Regional Transportation Planning Advisory Ctte.
Dwight McComb, FHWA