

MEMO

TO: PHILIP EVENSON, SEWRPC
FROM: KARYN ROTKER, ACLU OF WISCONSIN
RE: FOLLOW UP ON May 9, 2006 LETTER
DATE: 5/23/06

I am sending this to follow up on your May 9, 2006 letter to me. I believe that SEWRPC's "'Evaluation Of The Impacts Of The Year 2035 Regional Transportation Plan 'TSM Plus Highway' Alternative On Minority And Low-Income Populations In Southeastern Wisconsin" remains inadequate and should not be approved in its current form. I address the points in your letter according to the item number you supplied.

OVERVIEW ISSUES

1, 2. "Regional" and "systems" planning: You indicated that SEWRPC sought to comply with environmental justice requirements. You also stated that SEWRPC's analyses are "necessarily general in nature and represent the best estimates of impacts that would actually be occurred should transportation projects be implemented . . . [and] cannot be done at the depth and level of precision found in 'project' level planning, engineering decision and environmental impact statement preparation."

However, it is quite clear that federal regulations and policies require SEWRPC - as a Metropolitan Planning Organization - to include the kind of data I requested, as those affect low income and minority communities. Those legal and policy authorities include (but are not limited to) the following, which clearly support the type of public involvement, data collection, and mitigation analyses we have requested.

A. **Chapter 23 of the Code of Federal Regulations (CFR), Section 450.316(a) (4/1/06): (Titled: Metropolitan transportation planning process: Elements.)**

. . . The following factors *shall be* explicitly considered, analyzed as appropriate, and *reflected in the planning process products*: . . .

(4) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans (the analysis should include projections of

metropolitan planning area economic, *demographic*, environmental protection, growth management, and land use activities consistent with metropolitan *and local/central city development goals (community, economic, housing, etc.)* . . .

(6) The effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the source of funding (the analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance *and related impacts on community/central city goals regarding social and economic development, housing, and employment*);
...

(13) The overall social, economic, energy, and environmental effects of transportation decisions (*including consideration of the effects and impacts of the plan on the human, natural and man-made environment such as housing, employment and community development, . . .* and appropriate emphasis on transportation-related air quality problems. . .);

(14) Expansion, enhancement, and increased use of transit services; . . .

B. Chapter 23, CFR Section 450.316(b) (4/1/06): (Titled: Metropolitan transportation planning process: Elements.)

(T)he metropolitan transportation planning process *shall*: . . .

(1) (vi) *Seek out and consider the needs of those traditionally underserved* by existing transportation systems, including but not limited to low-income and minority households; . . .

(2) Be consistent with Title VI of the Civil Rights Act of 1964 and the . . . [Rehabilitation Act], which ensure that no person shall, on the grounds of race, color, sex, national origin, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation;

(3) Identify actions necessary to comply with the Americans With Disabilities Act of 1990. . .

C. Chapter 23 CFR Section 450.322(b) (4/1/06): (Titled: Metropolitan transportation planning process: -Transportation plan.)

. . . (T)he [transportation] plan *shall*: . . .

(7) Reflect a multimodal evaluation of the transportation, *socioeconomic*, environmental, and financial impact of the overall plan, . . .

(9) Reflect, to the extent that they exist, consideration of: the area's comprehensive long-range land use plan and metropolitan development objectives; national, State, and local *housing goals and strategies, community development and employment plans and strategies*, and environmental resource plans; local, State, and national *goals and objectives such as linking low income households with employment opportunities*; and the area's *overall social, economic*, environmental, and energy conservation goals and objectives; . . .

D. **US Department of Transportation Order To Address Environmental Justice in Minority Populations and Low-Income Populations, Vol. 62 Federal Register (4/15/97) (pp. 18377-18381)¹**

4. POLICY:

a. It is the policy of DOT to promote the principles of environmental justice . . . through the incorporation of those principles in all DOT programs, policies, and activities. *This will be done by fully considering environmental justice principles throughout planning and decision-making processes* in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decisionmaking; social, economic, or environmental matters; public health; and public involvement.

b. . . DOT shall observe the following principles:

(1) *Planning and programming activities* that have the potential to have a disproportionately high and adverse effect on human health or the environment *shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the*

¹**FHWA Order 6640.23 FHWA Actions to Address Environmental Justice in Minority Populations and Low-income Populations (12/2/98)**, contains largely identical language and requirements.

identification of potential effects, alternatives, and mitigation measures).

7. PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

b. . . *These [environmental justice] requirements will be administered so as to identify, early* in the development of the program, policy or activity, the risk of discrimination *so that positive corrective action can be taken.* In implementing these requirements, *the following information should be obtained* where relevant, appropriate and practical:

--Population served and/or affected by race, color or national origin, and income level;

--Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin;

--present and proposed membership by race, color, or national origin, in any planning or advisory body which is part of the program.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) *identifying and evaluating environmental, public health, and interrelated social and economic effects* of DOT programs, policies and activities,

(2) proposing *measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits* and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies and activities, where permitted by law and consistent with the Executive Order,

(3) *considering alternatives* to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) eliciting public involvement opportunities and considering the results thereof, including *soliciting input from affected minority*

and low-income populations in considering alternatives.

APPENDIX:

f. *Adverse effects means 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 DOT programs, policies, or activities.

E. **FHWA & FTA: Overview of Transportation and Environmental Justice (5/00):**

. . . To certify compliance with Title VI and address environmental justice, MPOs need to:

Enhance their analytical capabilities to ensure that the long-range transportation plan and the transportation improvement program (TIP) comply with Title VI [of the Civil Rights Act];

Identify *residential, employment, and transportation patterns of low-income and minority populations* so that their needs can be identified and addressed, and the benefits and burdens of transportation investments can be fairly distributed;

Evaluate and - where necessary - improve their public involvement processes to eliminate participation barriers and *engage minority and low-income populations in transportation decision making*.

3. Continuous Planning: You indicated that SEWRPC's planning processes are continuous in nature. That does not, however, justify failing to include all the required information we have discussed in the past - especially since most of these issues were explicitly raised with SEWRPC staff during the planning process and prior to issuance of the draft reports.

4. Advisory Committee Composition: You indicated that the Advisory Committee on

Transportation only includes local government officials. However, the 2035 plan is not starting from scratch. Significant portions are based on the Regional Freeway Reconstruction Study, and the advisory committee for that plan did include corporate and road-building interests, but no organizations representing low-income, minority, disabled or transit-dependent communities. Similarly, the Advisory Committee for the 2005 Population Study upon which this current plan is also based included business groups, but no low income or minority community organizations. Note that, as discussed above, Environmental Justice requires SEWRPC to actually maintain data on the participation of low income and minority groups on advisory committees - a requirement that highlights the importance given to participation of such groups. Instead, however, SEWRPC staff rejected the NAACP's request to participate on the committee, and never even told the advisory committee about the Black Health Coalition's request to make a group presentation to the advisory committee.

SPECIFIC ISSUES

1. Disproportionate Impact on Low Income and Minority Communities: You stated that you would amend the analysis to reflect that in the region “there is a greater minority and low-income population in areas adjacent to freeways proposed to be widened.”² This means, under the laws and policies discussed above, that planning must propose measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and to provide offsetting benefits, to the affected communities.

2: Demographic Data: You stated that “[d]etailed demographic data on minority and low-income populations have been used throughout the preparation of the regional land use and transportation plans.” Chapter I, p. 7a, of the 2035 Transportation Plan makes it clear that the first step in planning is developing a “socioeconomic inventory” followed by employment, population and household forecasts. Yet Chapter V - which includes data on employment, population and household trends - does not even mention race (or disability). Such an analysis would show, for example, whether and how the racial and income composition of county populations has changed over time. It also would include information on the disabled population, and projected changes – which have implications for transportation (and land use, and other) planning. Without that information it is impossible to fully and fairly evaluate the current and potential future circumstances of low income and minority communities in the region, to assess their needs, or to evaluate whether or not they are likely to benefit from or be burdened by particular plans.

3. Employment Data: I repeatedly requested that you consider readily available data on employment patterns, by race and income. Under environmental justice requirements such an analysis is required, particularly since, as noted in the preceding item, SEWRPC itself recognizes the importance of “employment” data in the planning process. Even though before you prepared the draft report I gave you an electronic link to a UWM website on which this information was readily available, SEWRPC staff failed to incorporate it.

²As discussed below (#5), there are other adverse effects which must also be considered, and which are not contingent upon whether or not an individual resides next to the highway.

The data SEWRPC omitted is significant. As just one of many examples, this data shows that only 6523 African-American persons worked in *all* of Waukesha County in 2000 - a fact clearly relevant to an analysis of the extent to which African-Americans may (or may not) benefit from improved highway access to Waukesha County. Again, this is an example - not a full discussion - of information that SEWRPC staff could and should have incorporated in the report and in a meaningful analysis.

4. Transit Dependence: You have modified the language of App. C to include some data on the racially disparate availability of drivers' licenses, as well as racially disparate vehicle access. I note that as of 5/11/06 - the day *after* the 2035 Transportation Plan was approved - the Public Transit section of Chapter VII (pp. 20, 21, 23, 24) still had blanks where data had yet to be developed or included. This is a serious concern, not only because the Advisory Committee apparently approved a plan with missing data, but because it suggests that the level of care and analysis given to public transit planning is inadequate.

5. Adverse Effects: You amended App. C to identify as adverse effects "air pollutants and noise." However, the DOT (and FHWA) environmental justice orders require *all* of the following potential adverse effects to be considered, and that clearly did not occur:

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. . . .

Further, some of these adverse effects may be experienced by persons who do not reside in proximity to the highways proposed to be widened; proximity is certainly not the only touchstone for determining whether an individual or community experiences adverse effects.

6. Congestion: In my prior letter, I raised the concern that SEWRPC presupposes that traffic congestion equally burdens all communities, and that reducing congestion equally benefits all communities. The point I was making - which SEWRPC still has not addressed - is that even if traffic congestion increases, it is less likely to burden people who don't drive on freeways. Thus, for example, because African-Americans tend to drive less (#4) and do not work in Waukesha (#3), increased traffic congestion on I-94 to Waukesha would seem not to be a particular burden for them. THIS is the kind of analysis of the racially disparate impacts of congestion that SEWRPC has not undertaken.

7, 8: Job Access: While the plan proposes doubling of transit, SEWRPC needs to acknowledge that it is starting from a very low baseline, and overall transit expenditures will still be

significantly less than those for roads. A comparison of Chapter VIII, Map 11 and Map 12 shows SEWRPC's own prediction that even if *no* highway expansion occurs, an average driver in the region will still have reasonable access to more than 27,000 jobs, while even if *all* transit implementation occurs an average transit user will have only about 1/4 of that (access to 7700 or more jobs) (and that amount only during peak daytime hours). There is no analysis of job access during evening hours, and especially during second and third shift hours. Given the racial and income demographics of transit users, this information is relevant to determining the benefits and burdens of plans, and in particular the priority that the public transportation elements of those plans must be given in order to even attempt to fairly distribute benefits and burdens.

9. Gas Price Increases: Increasing gasoline prices have already led to an increase in transit usage. As we have repeatedly requested, the study should consider whether and how that fact - and possible future price increases - could and should be used to "expand, enhance, and increase use of transit services" as discussed in the federal planning regulations listed above (23 C.F.R. Sec. 450.316(a)(14)), and thereby help provide offsetting benefits to low income and minority communities.

10. Accessibility to other Services: In reviewing the report, I see that accessibility to various facilities and services is included; however, the report does not include accessibility by transit to schools other than colleges and universities even though approximately 1/4 of transit usage is by students.

11. Transit Implementation: While the study includes proposals for future transit increases, the reality is that for decades transit plans have not been fully implemented. Further, the reversals of the limited gains made in the late 1990s have disproportionately burdened low income and minority communities - by, for example, the elimination of transit service for Milwaukee residents to commute to jobs in Washington County, and the fare increases and route reductions in Milwaukee County. The regional transportation plan needs to make it clear that the failure to dramatically improve transit will significantly and disproportionately burden low income and minority communities, and needs to include specific goals, objectives and methods to *prioritize* transit implementation, not just include it as one of many planning items.

12. Health and Pollution Effects: In December, I provided you with an Associated Press report, based on EPA data, that *more than 40% of all African-Americans in Wisconsin* live in "*neighborhoods where air pollution seems to pose the greatest health danger.*" I asked you to evaluate this information, to determine, for example, whether minority communities are already suffering pollution-related health effects, whether those neighborhoods overlap with neighborhoods that are exposed to high levels of transportation-related pollution, and what the health effects are. Even if the baseline pollution is not caused by vehicle traffic, its existence clearly needs to be documented as it may cause minority communities to suffer greater adverse effects (including illness) by any incremental increase in vehicle pollution, as well as by air pollution related to road construction. It is necessary to have this information in order to determine whether and how to mitigate such effects, but this has not occurred.

13. Qualitative Data: The groups meeting with SEWRPC staff repeatedly said that qualitative

data needed to be obtained and included in the report. In addition to the issue of access to jobs, we repeatedly raised housing, health, pollution and other environmental effects. These were not included in the study.

14. Disproportionate Effect on Milwaukee County: As I indicated in my letter, there is no question that the overwhelming majority of low income and minority persons in the region reside in Milwaukee County. There is also no question that Milwaukee County as a whole - and, to a proportionately greater extent, likely the city of Milwaukee - is going to suffer disproportionate burdens from highway construction, including a disproportionate loss of housing, businesses, and tax base, and a disproportionate amount of effects from ongoing construction since every portion of the freeway expansion designated as “major” reconstruction is going to occur in Milwaukee. Regardless of whether or not there are more low income or minority persons living near the freeway in Milwaukee, these burdens on the county as a whole will clearly disproportionately harm low income and minority persons.