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Civil Rights/Environmental Justice Complaint:

MPO Approval of IH 94 and CTH P interchange in Oconomowoc, Wisconsin

INTRODUCTION

1. On 2/28/08, the Southeastern Wisconsin Regional Planning Commission (SEWRPC) amended the *Transportation Improvement Program for Southeastern Wisconsin: 2007_2010* to accelerate the construction of an expanded interchange at IH 94 and CTH P in Oconomowoc, Waukesha County, Wisconsin.
2. For the reasons set forth in detail below, the process by which SEWRPC made this decision, and the underlying decision itself, are actions and methods of administration that have a discriminatory effect on persons of color in the region under SEWRPC's jurisdiction.

PARTIES

3. The Complainant, Good Jobs and Livable Neighborhoods Coalition, is a nonprofit entity dedicated to public policy advocacy and community organizing. The purpose of the GJLN Coalition is to promote accountable development policy and practice through enhanced civic participation and transparency in the development process. GJLN Coalition seeks to ensure that the community benefits from public investment in development projects. Its vision is equity in the development of the Milwaukee region, and an economy that works for all. The GJLN Coalition's offices are located at 633 S. Hawley Road, Suite 115, Milwaukee, Wisconsin 53214.
4. SEWRPC is the designated Metropolitan Planning Organization (MPO) for seven counties in southeastern Wisconsin, including Milwaukee, Kenosha, Ozaukee, Racine, Walworth, Washington and Waukesha Counties.
5. SEWRPC's governing body, the Commission, consists of three representatives from each of the region's counties, despite the fact that the region's largest county, Milwaukee, has more than 10 times the population of the region's smallest county.

6. Milwaukee County has no more representation than any of the other SEWRPC counties despite the fact that approximately 77% of the region's residents of color and 87% of the region's African-American residents live in Milwaukee County.
7. The city of Milwaukee, the region's only majority-minority community, has no representation on SEWRPC's Commission, even though the city of Milwaukee has more residents than any of the six SEWRPC counties outside Milwaukee.
8. SEWRPC does not include any transit provider representation on its Commission.
9. SEWRPC receives federal funding, including but not limited to a \$3,200,000 grant from the Federal Transit Administration, as well as funding from the Federal Highway Administration.

BACKGROUND

10. The U.S. Census Bureau has identified the Milwaukee-Waukesha region as, overall, the most racially segregated region in the United States for African-Americans.¹
11. There are significant disparities in the prevalence of auto ownership and drivers licensure between the predominantly low income and minority residents of Milwaukee's central city and the predominantly white residents of suburban counties.
12. For example, 60% of African-American adults in the city of Milwaukee live in households with no vehicles, compared to 14% of adult whites in the city of Milwaukee.²
13. Fewer than half of African-American and Hispanic adults in Milwaukee County have valid drivers' licenses, compared to 73% of white Milwaukee County adults.³
14. SEWRPC has, and prior to the time it made the decision at issue, had, actual knowledge of racial disparities that have resulted in persons of color in the region being disproportionately dependent on public transportation.

HIGHWAY PLANNING HISTORY

15. In 2004, SEWRPC selected an Advisory Committee to prepare its 2035 Regional Transportation System Plan.
16. Attempting to remedy some of the lack of minority representation that had occurred with prior SEWRPC planning, members of the Milwaukee Branch of the NAACP repeatedly requested that SEWRPC appoint an NAACP representative to the Regional Transportation Plan 2035 Advisory Committee.
17. SEWRPC refused to permit the NAACP to participate on the Advisory Committee because, SEWRPC asserted, the Advisory Committee was composed only of government officials and adequately represented city of Milwaukee residents by "population proportional" representation.
18. SEWRPC *Planning Report No. 49, A Regional Transportation System Plan for Southeastern Wisconsin: 2035* ("2035 Plan") recommended a Transportation System Management Plan that included highway and

¹U.S. Census Bureau, *Racial and Ethnic Residential Segregation in the United States: 1980-2000*, Ch. 5 (Aug. 2002) (averaging five separate measures of segregation, the most "segregated metropolitan area[] for Blacks in 2000 [was] . . . Milwaukee-Waukesha . . .")

²Pawasarat, John, *The Driver License Status of the Voting Age Population in Wisconsin*, (University of Wisconsin Milwaukee Employment and Training Institute, June 2005), at p. 16.

³*Id.*, pp. 1-2, 22.

non-highway elements, including a public transit element.

19. The *2035 Plan* stated, at page 366: “All elements of the plan are considered to be of equal priority, and each element needs to be fully implemented to meet existing and forecast future year 2035 transportation needs and to provide a comprehensive, multi-modal, balanced, high quality transportation system in southeastern Wisconsin.”
20. The *2035 Plan*, at page 300, Table 108, recommended a Transportation System Management Plan that would increase average weekday revenue vehicle miles of the Region’s transit systems by almost 75% between 2001 and 2035.
21. Despite these recommendations, by the time the *2035 Plan* was issued SEWRPC knew that funding for transit service had been inadequate, and that transit service already had been significantly reduced between the years 2000 and 2005. *Id.*, at page 372.
22. Additional transit service cuts and fare increases occurred after 2005, increasing the pre-existing disparities between transit and highway plan implementation.
23. In or about 2006, SEWRPC created Intergovernmental Coordinating and Advisory Committees to develop a *Transportation Improvement Program for Southeastern Wisconsin: 2007-2010 (TIP)*.
24. SEWRPC claimed that the Intergovernmental Coordinating and Advisory Committees adequately represented city of Milwaukee residents by using “population proportional” representation.
25. Despite the statements in the *2035 Plan* regarding the need for “equal priority” and concurrent transit and highway improvements, only 22% of the funding for the first year of the TIP in the Milwaukee area was budgeted for public transit preservation, improvement and expansion, while 69% of the TIP funding in the Milwaukee portion of the region, which includes Waukesha County, was budgeted for highway preservation, improvement and expansion.⁴
26. In the Kenosha/Racine/Walworth portion of the region, only 15% of the funding for the first year of the TIP was budgeted for public transit preservation, improvement and expansion, while 78% was budgeted for highway preservation, improvement and expansion.⁵
27. Upon information and belief, at least as large a percentage, if not more, of the funding in the remaining years of the 2007-2010 TIP is budgeted for highway projects, rather than for transit projects.
28. The transit expenditures for the first year of the TIP were overwhelmingly budgeted for transit preservation, rather than for transit improvement or expansion.
29. Upon information and belief, the transit expenditures for the remaining years of the 2007-2010 TIP are disproportionately for transit preservation, rather than for transit improvement or expansion.
30. Prior to its decision to amend the TIP to accelerate construction of the Pabst Farms Interchange, SEWRPC had actual knowledge that transit service was not available for Milwaukee County residents to travel to many jobs and activity centers in surrounding counties.⁶
31. Prior to its decision to amend the TIP to accelerate construction of the Pabst Farms Interchange, SEWRPC had actual knowledge that by 2010 Milwaukee County Transit System service could be cut by 35% or more due to inadequate funding.⁷

⁴TIP, at p. 18.

⁵*Id.*

⁶SEWRPC, *Milwaukee County Transit System Development Plan: 2007-2011, Newsletter 1* (Feb. 2007), at p. 1.

⁷*Id.*

PABST FARMS INTERCHANGE AND WAUKESHA BUS SERVICE REDUCTIONS

32. The 2007-2010 TIP did not include reconstruction or expansion of the IH 94 and CTH P interchange near the Pabst Farms development in Waukesha County (hereinafter, "Pabst Interchange.")
33. On or about Aug. 29, 2007, Waukesha County officials proposed eliminating one of the only existing bus routes that transported city of Milwaukee residents to employment in Waukesha County, in order to save Waukesha County approximately \$100,000.⁸
34. Waukesha County ceased supporting the bus route at the end of 2007, and it was eliminated.
35. On or about Sept. 3, 2007 - less than a week after raising the possibility of eliminating the bus route in order to save itself money - Waukesha County unveiled an agreement for, *inter alia*, the County to spend \$1.75 million as a contribution to the cost of constructing the Pabst Farms Interchange in order to support development of a proposed high end shopping mall.⁹
36. The planned Pabst Farms Interchange is in Waukesha County, which according to the 2000 census was 94.2% non-Hispanic white.
37. The planned Pabst Farms Interchange is in Oconomowoc.
38. As of 2000, the city of Oconomowoc's population was 96.7% non_Hispanic white, and the town of Oconomowoc's population was 98.3% non_Hispanic white.
39. As of 2000, Milwaukee County's population was 62.1% non-Hispanic white.
40. As of 2000, the city of Milwaukee's population was 45.4% non-Hispanic white.
41. The *2035 Plan*, at page 276, Map 54, recommended developing public transit service to and from Oconomowoc, but this has not occurred.
42. Oconomowoc has no mass transit other than a commuter bus route leaving Oconomowoc in the morning and returning to Oconomowoc in the evening; there is no transit service for Milwaukee residents to get to and return from employment in Oconomowoc.
43. In amending the TIP to approve accelerated construction of the Pabst Farms Interchange, SEWRPC did not take any actions to evaluate whether and how the public transit recommendations of its *2035 Plan* would be implemented in Oconomowoc or elsewhere in Waukesha County.
44. In amending the TIP to approve accelerated construction of the Pabst Farms Interchange, SEWRPC did not take any actions to evaluate whether and how a fair portion of any financial resources Oconomowoc and Waukesha County were providing to build a highway interchange could or should be used to ensure implementation of the public transit recommendations of its *2035 Plan*, so that persons of color and transit-dependent persons would receive a fair share of the benefits of the transportation plan.
45. In amending the TIP to approve accelerated construction of the Pabst Farms Interchange, SEWRPC did not meaningfully consider civil rights or environmental justice issues, and in particular failed to meaningfully

⁸Scott Williams, "Bus route may be eliminated," *Milwaukee Journal Sentinel* (Posted Aug. 29, 2007).

⁹Amy Rinard, "Freeway deal struck for Pabst Farms mall," *Milwaukee Journal Sentinel* (Posted Sept. 3, 2007).

consider whether the decisions of Waukesha County and/or Oconomowoc to financially support the Pabst Farms Interchange, especially at the same time that Waukesha County was reducing transit service, was an action with the intent or effect of discriminating against persons of color, who are disproportionately dependent on transit.

46. In amending the TIP to approve accelerated construction of the Pabst Farms Interchange, SEWRPC did not create or consult any advisory group, much less one that was “population proportional” or on which Milwaukee officials or residents, persons of color, or transit dependent persons, were fairly or adequately represented.
47. In December 2006, SEWRPC established an Environmental Justice Task Force, (EJTF) in order to help “(1) Ensure public involvement of low-income and minority groups in decision making; (2) Prevent disproportionately high and adverse impacts of decisions on low-income and minority groups; and (3) Assure low-income and minority groups receive proportionate share of benefits.”¹⁰
48. Despite having received information regarding concerns regarding the racially disparate effect of the TIP amendment, SEWRPC never informed its own EJTF of the existence of the TIP or requested input from the EJTF on whether the TIP should be amended to approve accelerated construction of the Pabst Farms Interchange.
49. Instead, in amending the TIP to approve accelerated construction of the Pabst Farms Interchange, SEWRPC’s executive director stated that it was up to local governments to decide which projects to prioritize, and claimed that it would be an abuse of discretion for SEWRPC not to accept a project sought by a local government.
50. The city of Milwaukee is the only majority-minority community in the SEWRPC region.
51. In contrast to its deferential approval and acceleration of the Pabst Farms Interchange, SEWRPC has rejected various requests by local government officials in the city of Milwaukee to include or exclude particular projects in its planning documents.

CLAIMS

52. SEWRPC is subject to Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, and its implementing regulations, including Title VI regulations administered by the Department of Transportation, 49 C.F.R. Ch. 21.
53. SEWRPC’s decision to amend the TIP to accelerate construction of the Pabst Farms Interchange at the same time that transit service - including but not limited to transit service in the same county - was being reduced, is contrary to the planning and implementation principles set forth in its *2035 Plan* and has a discriminatory effect on persons of color, in violation of 42 U.S.C. § 2000d and its implementing regulations.
54. SEWRPC’s failure to “seek[] out and consider[] the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services” as required by 23 C.F.R. § 450.316(a)(vii), before amending the TIP to approved accelerated construction of the Pabst Farms Interchange, is a method of administration that has a discriminatory effect on persons of color and that defeats or substantially impairs accomplishment of program objectives, in violation of 49 C.F.R. § 21.5(a)(2).
55. SEWRPC’s decision to amend the TIP to approve accelerated construction of the Pabst Farms Interchange without obtaining input from local governments representing minority communities; without submitting the proposal to any population-proportional advisory entity; and without submitting the proposed amendment to its own Environmental Justice Task Force or even notifying the EJTF of the amendment’s existence and

¹⁰Background document establishing SEWRPC Environmental Justice Task Force (Dec. 7, 2006).

potential effect, is a method of administration that has a discriminatory effect on persons of color and that defeats or substantially impairs accomplishment of program objectives, in violation of 49 C.F.R. § 21.5(a)(2).

56. SEWRPC's failure to ensure that transit as well as highway elements of its plans in Waukesha County were implemented, and its decision to approve accelerated construction of the Pabst Farms Interchange at the same time SEWRPC had knowledge that public transit - including public transit in Waukesha County - was being reduced, is a method of administration and a method of determining the site or location of facilities that has a discriminatory effect on persons of color and that defeats or substantially impairs accomplishment of program objectives, in violation 49 C.F.R. §§ 21.5(a)(2), (a)(3), (d).
57. SEWRPC's disparate treatment of projects sought by local officials in overwhelmingly white Oconomowoc and Waukesha County and those sought by local officials in majority-minority Milwaukee is a method of administration that has a discriminatory effect on persons of color and that defeats or substantially impairs accomplishment of program objectives, in violation of 49 C.F.R. § 21.5(a)(2).

RELIEF REQUESTED:

Wherefore, complainant requests the following relief:

58. That OCR accept this complaint pursuant to 49 C.F.R. § 21.11(b);
59. That an investigation and compliance evaluation of SEWRPC be conducted pursuant to 49 C.F.R. § 21.11(a),(c);
60. That SEWRPC be ordered to:
 - a. Ensure that there is meaningful and effective representation of minority and transit dependent communities on all advisory committees, and for all decisions, that address transportation issues;
 - b. End the practice of absolute or substantial deference to local governments that seek highway improvements or expansions; and
 - c. Research - with full and active participation of minority and transit dependent persons and organizations representing such persons - law, regulations, best practices and other methods to ensure actual implementation of transit proposals included in its regional plans, and then take the steps necessary to implement such laws, regulations and best practices.
61. That SEWRPC be ordered to develop a method to require that transit expansions and improvements benefitting minority and transit-dependent communities be implemented in Waukesha County by the time the construction of the interchange occurs;
62. That in the alternative, OCR suspend or terminate federal financial assistance to SEWRPC, pursuant to 49 C.F.R. § 21.13.

Respectfully submitted:

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