

April 4, 2011

William Mohr, Mega Project Manager
WI DOT SE Transportation Region
141 NW Barstow
PO Box 798
Waukesha, WI 53187

Transmitted electronically only: dotdtsdsezoo@dot.state.wi.us

Dear Mr. Mohr:

The ACLU of Wisconsin, the Black Health Coalition of Wisconsin and Midwest Environmental Advocates, which are and for years have been profoundly concerned about racial equity and the segregation of the Milwaukee-Waukesha region, submit these comments objecting to the Zoo Interchange proposal. We also incorporate by reference the matters raised in the August 10, 2009 comments on the DEIS submitted by the ACLU and others.

I. Introduction

We object to the current Zoo Interchange plan. In particular we object to the racially discriminatory failure to incorporate transit improvements as part of the project and to increase the gap between highway and transit availability in the Milwaukee-Waukesha region.¹

Title VI of the Civil Rights of 1964, 42 U.S.C. §2000d, and its implementing regulations prohibit applicants for or recipients of federal funds - including transportation funds - from discriminating based on race, color or national origin. This means, among other requirements, that federal funding recipients may not, “directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially

¹ At the March 22, 2011 public hearing on the project, in response to a direct question WisDOT explicitly told Atty. Karyn Rotker that the current plan involved two lanes in each direction running east-west to and from the interchange, with a possibility of expanding to three lanes east-west, but that it would not be possible under the recommended plan to expand to four lanes in each direction east-west. In the past few days, we have heard that WisDOT’s statement may not have been factual or accurate and that in fact the plan would permit four lanes (in each direction) running east-west. If it is the case that the plan would permit four lanes in each direction now or in the future on the projected footprint, then, due to WisDOT’s affirmative misrepresentation, we hereby request additional time to submit comments objecting to the racially discriminatory effects precipitated or exacerbated by that ability to expand.

impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.” 49 C.F.R. § 21.5(b)(2). That the state is planning to increase highway spending while cutting transit in the Milwaukee-Waukesha region is unquestionably a method of administering its transportation programs that has a significant racially discriminatory effect.

II. WisDOT Provides Misleading Information on the FHWA Environmental Justice Order

In claiming it is evaluating environmental justice, WisDOT excludes - either deliberately or with reckless disregard for environmental justice requirements - considerations that the Order on Environmental Justice requires. In its list of EJ issues at p. 3-100 of the SDEIS, WisDOT inexplicably omits the following relevant “Adverse Effects” that are expressly listed in the Order:

destruction or disruption of community cohesion or a community's economic vitality;

adverse employment effects;

isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community.²

All of these are problems that already exist in the region and that WisDOT’s plans to rebuild and expand the Zoo Interchange - without including transit as a project component - will exacerbate.

III. WisDOT Provides an Inadequate and Misleading Analysis of Racial Issues

The SDEIS, in discussing racial demographics, fails to adequately or meaningfully acknowledge or address the racial residential segregation in the region, instead focusing on the demographics of those it determines live (or attend school) near the interchange. This is misleading: the purpose of the Zoo Interchange is not only to address (or impair) the circumstances of those living adjacent to the Interchange, but to resolve purported *regional* transportation needs. WisDOT wrongly fails to put demographic data into the context of regional racial residential segregation and regional racial disparity in vehicle usage. Its failure to do so is itself a discriminatory method of analysis.³

² Fhwa Actions to Address Environmental Justice In Minority Populations and Low-income Populations, 6640.23 (Dec. 2, 1998), http://www.fhwa.dot.gov/legsregs/directives/orders/6640_23.htm

³ In addition, WisDOT fails to use readily available data to disaggregate specific minority populations. Our primary concern is with the segregation of African-American and, to a slightly lesser extent, Latino, populations. Discussing purported changes in “minority” populations - which includes persons of color other than African-Americans and Latinos - obfuscates the analysis. So does relying on percentage increases in minority populations, as WisDOT does on, for example, pp. 3-84, 3-86 and 3-100, since even a limited increase in minority populations in virtually all-white suburban communities will appear as a larger percentage increase. WisDOT also failed to acknowledge or address the fact that in Waukesha, and possibly Washington, Counties, the *proportion* of African-American and Latino residents - as a percentage of overall

A. *The Milwaukee-Waukesha Region is Profoundly Racially Segregated.*

The Milwaukee-Waukesha Primary Metropolitan Statistical Region is, overall, the most racially segregated region in the United States for African-Americans.⁴ Milwaukee-Waukesha has also been in the top third of large metropolitan areas for residential segregation of Latinos.⁵ The racial segregation between Milwaukee and the suburbs is particularly severe.⁶ Census data from 2010⁷ confirm the continuing presence of profound racial segregation among the counties most likely to be served by the Zoo Interchange:

	<u>Milwaukee County</u>	<u>Waukesha County</u> ⁸	<u>Washington County</u>
% White Non-Hisp.	60.9%	92.5%	95.8%
% African-American ⁹	23.9%	1.1%	0.8%
% Hispanic	10.8%	3.2%	1.8%

B. *Persons of Color in the Region are Disproportionately Transit-Dependent.*

WisDOT also is aware that minority and low-income populations in Milwaukee are transit-dependent to far greater extents than non-minority and non-low-income populations.¹⁰ In fact, the

population - went down from 2000 to 2010.

⁴ *Residential Segregation of Blacks or African Americans: 1980 to 2000*, U.S. Census Bureau (Dec. 2004), Ch. 5 and Fig. 5.3.

⁵ *Id.* at Ch. 6.

⁶ *See, e.g., Levine, Mark, Two Milwaukees: Separate and Unequal*, UWM-Center for Economic Development (April 2003), at pp. 4-5.

⁷ 2010 Census Redistricting Data, calculated from Table P4. We also object to the fact that WisDOT used dated, 2000, census data, rather than current data, in the SDEIS.

⁸ The percentage of African-American and Latino residents of Waukesha County actually *declined* from 2000 to 2010.

⁹ Including all (non-Hispanics) identified as black alone or black with one or more other races.

¹⁰ WisDOT clearly relies on SEWPRC reports, including *SEWRPC Planning Report 049, 2035 Regional Transportation System Plan (2006)*, for its analysis. That report, at p. 123, confirmed that “[h]ousehold income is strongly correlated with transit tripmaking. Households in the lowest quartile of household income, particularly over the last 10 years, make up a substantial share of total weekly transit trips -- about 64 percent in 1991 and 54 percent in 2001.” *See also, id.*, pp. 137-8. *See, e.g., SDEIS* at p. 1-11.

DEIS confirms the transit-dependent status of low income and minority Milwaukee residents.¹¹ Notably, the proportion of public transit passengers that are persons of color has increased since 1991, and particularly since 1972 when less than 5% to 15% of transit passengers were minorities.¹² Many persons with disabilities are also transit-dependent.

Nor is transit usage simply a “choice” for many persons of color. There are substantial 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 communities; for example, fewer than half of African-American and Hispanic adults in Milwaukee County have valid drivers' licenses, compared to 73% of white Milwaukee County adults.¹³ In the city of Milwaukee, 60% of adult African-Americans have no vehicle in their household, compared to 14% of adult whites.¹⁴ In Waukesha County – the County outside Milwaukee most directly served by the Zoo Interchange – Hispanic households are almost twice as likely as white non-Hispanic households to lack vehicles, and African-American households are more than three times as likely to lack vehicles.¹⁵

WisDOT tries to brush aside the inevitable discriminatory effect of its projects by asserting that most commuting by minorities in southeastern Wisconsin is done by car,¹⁶ and thus that minorities will benefit from the project. But WisDOT's claims run into two obstacles. First, federal environmental justice requirements mandate utilization of “*measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects...*”¹⁷ (emphases added), and the fact that persons of color

¹¹ See, e.g., SDEIS, p. 3-106 - 107 (“two-thirds of bus commuters in the city of Milwaukee are minority.”)

¹² SEWRPC Planning Report 049, p. 138.

¹³ Pawasarat, John, *The Drivers License Status of the Voting Age Population in Wisconsin*, UWM-Employment and Training Institute (June 2005), pp. 1-2.

¹⁴ *Id.*

¹⁵ U.S. Census 2000, Data Set 3, Tables HCT 33B, 33H, and 33I, for Waukesha County (4.1% of white non-Hispanic households, 7.5% of Hispanic households, and 14% of [the very small number of] black households, have no vehicles available). Similar, extremely large disparities exist in West Allis (12.2% of white households, 19.3% of Hispanic households, and 41.5% of black households, lack vehicles), *id.*, data for West Allis. In Wauwatosa, blacks are more likely than whites to lack vehicles, although the disparities are smaller; disparities do not exist for Hispanic households (which comprise only 1.1% of Wauwatosa's population). *Id.*, data for Wauwatosa. It does not appear such data is yet available from the 2010 census.

¹⁶ SDEIS at 3-107.

¹⁷ U.S. Dept. of Transportation, *Order To Address Environmental Justice in Minority Populations and Low-Income Populations*, 62 Fed. Reg. 18377 (4/15/07) at 18380 (emphasis added).

are much more likely to be transit dependent than non-minorities means they will be *disproportionately* harmed by the exclusion of transit from this project.¹⁸

Second, persons of color do not commute from (or to) the northern or western suburbs at anything approaching the frequency of whites. As noted above, suburban county residents - and thus their commuters - are almost exclusively white, and thus there will be few, if any, persons of color using the Zoo Interchange to commute from the suburbs to Milwaukee. Neither is there evidence that persons of color commute to Waukesha or Washington Counties at the rates of white persons; to the contrary, census data shows there exists a minimal (absolutely and proportionally) amount of employment commuting by residents of Milwaukee's Enterprise Community (*i.e.*, residents of specified inner city neighborhoods, who are overwhelmingly persons of color) to the most likely destinations for those residents who use the Zoo Interchange to commute to work. Only 8.4% of enterprise community residents commute to Waukesha County for jobs.¹⁹ Nor is there evidence that any significant percentage of those enterprise community residents use the interchange to travel north to jobs in Ozaukee or Washington counties, both because much of the enterprise community is already north of the interchange, and also because a mere 4.4% of enterprise community residents travel to Ozaukee or Washington counties for work. Thus, the Zoo Interchange expansion is much less likely to benefit minority commuters, especially those residing in the central city, than disproportionately white suburban commuters.

IV. Funding Highway Expansion while Decreasing Transit Funding Has a Racially Discriminatory Effect, of which WisDOT is Aware.

The state of Wisconsin's disparate treatment of highway and transit funding – and its refusal to address alternative, transit-supporting uses for the \$800 million that could be saved by implementing the No-Build option of the Zoo Interchange, rather than the current plan - is profoundly discriminatory. This is particularly true in light of the state's current choice - and it is a choice - to seek to *reduce* transit spending while *increasing* highway expenditures. Paying for highway projects, including the Zoo Interchange, indisputably reduces the resources available for mass transit funding, and in particular funding that provides meaningful transportation services to

<http://www.gpo.gov/fdsys/pkg/FR-1997-04-15/pdf/97-9684.pdf>

¹⁸ WisDOT's claim at 3-106 that persons of color benefit from shipment of goods and services on the Interchange suffers from the same flaw, as clearly non-minorities also benefit from such shipments.

¹⁹ See, *e.g.*, Attachment A to the Jan. 25, 2008 comments submitted regarding the I-94 North-South expansion by ACLU of Wisconsin et al. (2000 Census Transportation Planning Package Data analyzed by UWM-Center for Economic Development, Jan. 2008), and also referenced in the Aug. 10, 2009 comments about this interchange. Rather than analyze this information, which it has now had for an extended period of time, WisDOT inexplicably continues to claim that it is difficult to assess or quantify the race of those who would use the interchange.

minority and low income communities.²⁰ WisDOT, however, fails to acknowledge, much less remedy, the insufficiency of resources to pay *both* for the state's long-term highway plans and the required expansion of transit capacity. The Governor's 2011-13 budget proposal makes that conflict even more evident, and worsens the situation for transit users.

Expanding highways in the region without expanding transit provides a *disproportionate* benefit to non-minority, non-low-income, communities. Asserting that the needs of highway commuters are more important or pressing than the needs of transit commuters - the implicit underlying thread of WisDOT's refusal to include a transit component in this plan - is inherently discriminatory. Further, it is the state of Wisconsin, and WisDOT as a whole, that is subject to the Title VI and environmental justice obligations. WisDOT's claims that it cannot increase transit ring false in light of the fact that the state of Wisconsin has set the laws and policies and budgets that prioritize highway expansion over even transit maintenance, much less expansion, and that is planning to further increase the gap between transportation system access of (predominantly white) drivers and (disproportionately, and in many parts of the region, predominantly) African-American and Latino transit users.²¹

In 2006, SEWRPC - upon whose research WisDOT relies in developing the Zoo Interchange project - also made it explicit that expansion of and improvements in transit were necessary for economic development, to reduce highway congestion, and in particular to connect low-income and minority residents of Milwaukee's inner city with jobs elsewhere in the region,²² and to ensure access to schools, medical care, and other necessary services for persons who lack vehicles or are unable to drive. Therefore SEWRPC's Regional Transportation Plan recommended a substantial public transit element to help ensure that persons of color and low income persons receive a fair share of the benefits of transportation system investments. This included a Transportation System Management Plan to increase average weekday revenue vehicle miles of the Region's transit systems by almost 75% between 2001 and 2035.²³ The report stated at page 366 (emphasis in original):

²⁰ In 2007, for example, SEWRPC's Regional Transportation Plan revealed an annual gap between revenues and expenditures of \$65 million in southeastern Wisconsin alone, and the Legislative Audit Bureau reported that an annual shortfall of between \$316 million and \$698 million existed in state funding for transportation. That the current plan is to move transit completely out of the transportation fund so that highways can get more guaranteed state funding also emphasizes the conflict.

²¹ See also, e.g., *An Overview of Environmental Justice*, FHWA & FTA (May 2000), (State DOTs achieve environmental justice by "Work[ing] with Federal, State, local, and transit planning partners to create and enhance intermodal systems, and support projects that can improve the natural and human environments for low-income and minority communities...") <http://www.fhwa.dot.gov/environment/ej2000.htm>

²² SEWRPC Planning Report 049, pp. 274-75.

²³ SEWRPC Planning Report 049, p. 300, Table 108

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.

But multi-modal, balanced systems have moved backwards, not forwards. For years, state spending for transit has not followed the plans that were supposed to minimize regional discrimination. Milwaukee County residents - who are disproportionately low income and minority - now suffer annual cutbacks in service, accompanied by ever-increasing fares. As early as 2006, planners noted that “[a]n annual 4 to 5 percent increase may be essential to address rising costs, including inflation and real increases in fuel costs, and to support system improvement and expansion,²⁴” but state operating assistance increased an average of just 2.2% annually from 2000 through 2009.²⁵ The last adopted biennial state budget, for 2009-11, provided only a 1.97% increase for the Milwaukee County Transit System for 2010 and 3% for 2011.²⁶ Further, while proposing to increase highway funding in the 2011-13 budget proposal - including for this project - the state wants to *reduce* transit expenditures by 10% in 2012 and eliminate \$100 million in transit bonding authority, exacerbating existing discrimination.²⁷

CONCLUSION

These comments identify errors, deficiencies, and inadequacies in the SDEIS for this project. The core, underlying issue is this: that the state of Wisconsin and its agencies, including WisDOT, cannot continue to vastly expand highway capacity in Southeastern Wisconsin while failing to concurrently expand transit capacity, without creating - and exacerbating - the significant racial discrimination that exists in the state’s transportation funding system.

²⁴ SEWRPC, *March 2006 Newsletter regarding the Regional Land Use and Transportation System Plans*.

²⁵ See <http://www.legis.state.wi.us/lfb/2009-11Budget/Budget%20Papers/761.pdf>, pp. 2-3. It does not appear that current data is available.

²⁶ See <http://www.legis.state.wi.us/lfb/2009-11Budget/Governor/dot.pdf>, p. 10 of 56.

²⁷ State of Wisconsin 2011-13 Executive Budget, Governor’s Budget Recommendations for Department of Transportation (March 1, 2011): <http://www.doa.state.wi.us/debf/docview.asp?budid=52> WisDOT also misrepresents the nature of transit access in the region, failing to even acknowledge, much less evaluate, the demographics underlying much of the transit access even to the project area. In particular, WisDOT’s discussion at p. 3-28 of transit service fails to acknowledge that essentially all the transit service other than MCTS is for white (non-Hispanic) suburban residents, not persons of color.

Submitted by:

Karyn L. Rotker
Senior Staff Attorney
ACLU of Wisconsin
207 East Buffalo St., Suite 325
Milwaukee, WI 53202

Patricia McManus, PhD., RN
President/CEO
Black Health Coalition of Wisconsin, Inc.
3020 West Vliet St.
Milwaukee, Wisconsin 53208

Dennis M. Grzezinski
Senior Counsel
Midwest Environmental Advocates
312 East Wisconsin Ave., Suite 210
Milwaukee, WI 53202