

ATTACHMENT 3

“Advisory”? Role of SEWRPC

(Karyn Rotker, Jan. 23, 2012)

There have been numerous assertions by SEWRPC that they have no more than an “advisory” role, so they lack the ability to make binding decisions. However, federal law delegates certain legal obligations to SEWRPC as the MPO.

Chapter 23 of the U.S. Code (USC) relates to highway projects (a category much broader than the Interstate or “National Highway System¹”), and Chapter 53 of Chapter 49 relates to public transportation projects.

Under Ch. 23 Code of Federal Regulations (CFR) Section 450.324(a), it is explicit that **“[t]he MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a [Transportation Improvement Program] TIP² for the metropolitan planning area.”** (emphasis added).

Under 23 CFR Section 450.330(c), “In areas designated as TMAs,³ all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the National Highway System (NHS) and projects funded under the Bridge, Interstate Maintenance, and Federal Lands Highway programs) **shall be selected by the MPO** in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. Projects on the NHS and projects funded under the Bridge and Interstate Maintenance programs shall be selected by the State in cooperation with the MPO, from the approved TIP.” (emphasis added).

Thus federal regulations are explicit that it is the MPO – SEWRPC – that “shall” develop the TIP and “shall” select most federally funded highway and public transportation projects in the region. It is in fact the State and public transportation operators that have the consulting (“advisory”) role under these federal regulations, NOT the MPO. The exception to this is the NHS projects, and Bridge and Interstate Maintenance programs, which the State selects in cooperation with the MPO (thus for those projects – but only for those projects - giving the MPO the advisory role).

¹Maps of the National Highway System in Wisconsin are available here: <http://www.fhwa.dot.gov/planning/nhs/maps/wi/index.htm> , and an explanation here: <http://www.fhwa.dot.gov/planning/nhs/>

² Under 23 CFR 450.324(c) , the “TIP shall include [at least] capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State’s Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities)...” SEWRPC’s most recent TIP clearly includes many projects in addition to the NHS projects. http://www.sewrpc.org/SEWRPCFiles/Publications/TIP/TIP_2011-2014.pdf

³Southeastern Wisconsin is so designated.