



May 13, 2002

Mr. Kirk Brown
Secretary
Illinois Department of Transportation
IDOT Administration Building
Room 300
Springfield, IL 62764-0002

Re: **Phase I Study for I-290 HOV Project and Alternatives**

Dear Secretary Brown:

On March 6, 2002, the Department conducted a stakeholders meeting to discuss the I-290 HOV project currently listed in the Regional Transportation Plan (RTP) for the Chicago Metropolitan area. At that meeting, Department representatives stated that the Department now intends to prepare a "Phase I Study" for the project. In response to a question from counsel for the Village of Oak Park, the Department representatives indicated that the Phase I Study will comply with all applicable federal regulatory requirements for such studies, specifically including the requirements for: (1) major investment studies; (2) congestion management studies; and (3) environmental studies under the National Environmental Policy Act (NEPA).

Recently, I received the attached letter from Ms. Mary Peters, Administrator of the Federal Highway Administration (FHWA). The letter responds to an earlier letter I had sent to Transportation Secretary Mineta expressing our concerns as to how the I-290 project may affect our Village. Administrator Peters assures us that FHWA will work with IDOT officials to ensure not only compliance with applicable requirements, but also "that the result is a safe and efficient transportation system that fits harmoniously into the surrounding environment and community."

With respect to consideration of alternatives and impacts, Administrator Peters states:

Through the NEPA review, we are required to explore and objectively evaluate all reasonable alternatives. The objective is to find transportation solutions that are in the best overall public interest and are based on a balanced consideration of the need for safe and efficient public transportation and the social, economic and environmental impacts of the proposed action.

The NEPA process also requires that potential adverse impacts to the human and natural environment be identified and documented. As a result, the types of issues you raised will be considered during the NEPA process. If any significant adverse impacts cannot be avoided, every effort will be made to minimize and mitigate impacts to the identified resource.

The Village is pleased to confirm that the Department and FHWA intend to work together to conduct the Phase I Study and the rest of the project selection process with these objectives. We urge the Department to include in the Study all reasonable alternatives to the proposed HOV project, including those that have been proposed by the Village and others for inclusion in the 2030 Regional Transportation Plan.

We also believe that the applicable legal requirements leave no doubt that an Environmental Impact Statement (EIS) must be prepared as part of the Phase I Study. We understand that the Department initially intends only to perform an Environmental Assessment (EA) for this project. While it is true that an EA can eventually lead to preparation of an EIS, it is our understanding that EAs generally are less comprehensive analyses reserved for projects with few viable alternatives and impacts not expected to be significant. This is clearly not such a case, and we respectfully suggest that to denote it as such is to give short shrift to the interests of Oak Park and the other local jurisdictions who would be impacted by the selected alternatives for the foreseeable future.

We do not believe that the type of detailed analysis of alternatives and impacts contemplated by Administrator Peters and the FHWA NEPA regulations is possible within the context of an EA. Some of the potential alternatives to the proposed I-290 project that have been suggested for inclusion in the 2030 RTP -- such as expansion of the CTA Blue Line and/or Metra service in the corridor -- are likely to require an EIS. As discussed in the attached legal memorandum, the FHWA regulations also require an EIS for the proposed I-290 project, because an EIS is required for newly constructed HOV lanes. Even if that were not the case, the FHWA regulations require an EIS whenever the impacts are expected to be significant. In this case, the current RTP indicates that the proposed I-290 project alone would increase traffic by approximately 70,000 vehicles per day, about a 35% increase. Even without considering the many other factors relevant to NEPA analyses, the increased vehicle emissions alone would clearly threaten substantial environmental and public health impacts in Oak Park and the other local jurisdictions affected by the Chicago ozone nonattainment area.

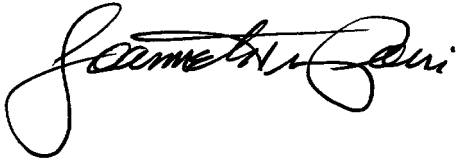
The FHWA regulations also require the NEPA analysis to incorporate measures to mitigate adverse impacts, and require federal funding of mitigation measures when they are determined to be reasonable considering the related benefits and impacts. It seems to us that an EA is clearly not the appropriate vehicle for the type of detailed analysis that must be performed for major metropolitan transportation decisions of this magnitude.

I am enclosing a legal memorandum providing the initial views of the Village on compliance with these and other applicable federal legal requirements. There are many other legal and regulatory requirements that apply, or may apply, to the project depending on its final form, and the memorandum is not intended to be a comprehensive discussion of all potentially applicable legal and regulatory requirements. Rather, it simply states the initial expectations of the Village as to how the Phase I Study will be conducted and the subjects it will examine, based on our reading of the applicable federal regulations. We hope you find this helpful, and we urge you to tell us early in the study process if you disagree with our analysis in any significant respect.

Finally, I note Administrator Peters' statement that FHWA has approved the Department's public involvement process. I would appreciate receiving a copy or other written explanation of the process that FHWA has approved. We encourage the Department to provide regular and meaningful opportunities for public input at all stages of this process. We appreciated the opportunity to participate in the March stakeholders meeting and will surely continue to do so as similar meetings are held in the future. However, as discussed in the attached memorandum, we read the current federal regulations to require an initial scoping meeting on the study to determine the extent of the analyses and the various agency roles. The meeting is to include affected local officials, among others, and we would like to attend. Given that no alternatives to the proposed HOV project were discussed at the March meeting, and there was very little discussion of the extent of the analysis that the Department intends to perform, we do not regard that meeting as having complied with this aspect of the applicable federal regulations.

We would be pleased to discuss these issues further with your staff, and we look forward to attending the initial scoping meeting for the Phase I Study. If you have any questions would like to discuss this matter, please contact Pete Dame of the Village Manager's Office at (708) 358-5778.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanne E. Trapani". The signature is fluid and cursive, with a large loop at the end.

Joanne E. Trapani
Village President

Cc: Edward Gower, Esq., IDOT
Norman R. Stoner, FHWA

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Madrid

Memorandum

To: Joanne E. Trapani, Village of Oak Park President
and Board of Trustees

CC: Village Manager and Staff

From: Kurt Blase

Date: 5/13/2002

Re: **Proposed I-290 Project: Phase I Legal Requirements**

On March 6, 2002, the Illinois Department of Transportation (IDOT) conducted a stakeholders meeting to discuss the I-290 HOV project listed in the current Regional Transportation Plan (RTP) for the Chicago Metropolitan area. At that meeting, representatives of IDOT stated that IDOT now intends to prepare a "Phase I Study" for the project. In response to one of my questions at the meeting, the IDOT representatives indicated that the Phase I Study will comply with all applicable federal regulatory requirements for such studies.

For major projects such as the I-290 HOV expansion, the applicable regulations of the Federal Highway Administration (FHWA) provide three major tools for evaluation of potential alternatives and impacts:

- A *major investment study* (MIS) identifies viable alternative means of attaining the relevant transportation goals and evaluates the costs and impacts of the identified alternatives.
- A *congestion management study* evaluates the most efficient and effective means of alleviating current congestion on I-290.
- A *NEPA study* evaluates the potential environmental impacts of the alternatives identified in the other studies.¹

This memorandum summarizes the current regulatory requirements governing these analyses. There are many other legal and regulatory requirements that apply, or may apply, to the project depending on its final form. Some of those are discussed briefly below, but this memorandum is not intended to be a comprehensive discussion of all potentially applicable legal and regulatory requirements. Rather, it simply states our initial expectations as to how the Phase I Study will be conducted and the subjects it will examine, based on our review of the applicable federal regulations.

¹ Section 1308 of the Transportation Equity Act for the 21st Century (TEA 21) requires the federal Department of Transportation (DOT) to promulgate new regulations that eliminate the requirement for a stand-alone MIS and merge it into the NEPA study. However, the NEPA study must conduct the same types of analyses required in the MIS. See *Township of Belleville v. Federal Transit Administration*, 30 F. Supp. 2d 782, 795 (D.N.J. 1998); 65 Fed. Reg. 33927 (May 25, 2000)(proposed new regulations). The new regulations have not yet been finalized and the pre-existing regulations discussed herein remain in force.

Major Investment Study

The federal regulations require an MIS "where the need for a major metropolitan transportation investment is identified and federal funds are potentially involved . . ." (23 CFR 450.318(a)). The regulations define major investment as a "highway or transit improvement of substantial cost that is expected to have a significant effect on capacity, traffic flow, level of service, or mode share at the transportation corridor or subarea scale" (23 CFR 450.104). Specific examples of such projects described in the regulations include "construction or extension of a high occupancy vehicle (HOV) facility or a fixed guideway transit facility by one or more miles . . ." (*id.*). Thus, there is no question that the proposed I-290 HOV project is a major investment for which an MIS must be performed, and IDOT representatives acknowledged this at the meeting on March 6.

The federal regulations define the MIS as a "corridor or subarea" study that "shall be undertaken to develop or refine the plan and lead to decisions by the MPO, in cooperation with participating agencies, on the design concept and scope of the investment" (23 CFR 450.318(a)). To ensure that specific projects are not pursued until the MIS is complete, the regulations require the RTP to specify a "no build" condition for any projects that are listed in the plan before a related MIS has been completed (23 CFR 450.318(a), .322(b)(8)). For this reason, the Village has requested the Chicago Area Transportation Study (CATS), the MPO in the Chicago

area, to either remove the I-290 project from the future (2030) RTP or specify a "no-build" condition until the MIS has been completed.

The MIS is to be conducted as a "cooperative process [which] shall establish the range of alternatives to be studied, such as alternative modes and technologies (including intelligent vehicle and highway systems), general alignment, number of lanes, the degree of demand management and operating characteristics" (23 CFR 450.318(b)). The process is to include "the MPO, the State department of transportation, public transit operators, environmental, resource and permit agencies, local officials, the FHWA and the FTA" and other agencies as appropriate (*id.*). An initial meeting of these parties must be convened "to determine the extent of the analyses and agency roles . . ." (*id.*). A reasonable opportunity to participate also must be provided for citizens and other interested parties (*id.*).

The MIS must be a thorough and comprehensive analysis of all potentially viable alternatives for improving transportation in the corridor or subarea involved. Factors that must be considered include, among others:

- The effectiveness and cost-effectiveness of alternative investments or strategies in attaining local, state and national transportation goals and objectives;
- The direct and indirect costs of reasonable alternatives;
- Mobility improvement;
- Social, economic and environmental effects;
- Safety;
- Operating efficiencies;
- Land use and economic development;
- Financing;

- Energy consumption.²

The MIS may include the congestion management and environmental studies required elsewhere in the federal regulations, as discussed further below (23 CFR 450.318(e), (f)). The regulations contemplate that "major investment studies may lead to decisions that modify the project design concept and scope assumed in the [regional transportation] plan process" (23 CFR 450.318(g)). In such cases, the modified project must be described in sufficient detail to permit a conformity analysis under the governing EPA regulations (*id.*).³

As part of the process of revising the current RTP, the Village and others have suggested a number of projects for inclusion in the future (2030) plan. Some of these are potential alternatives to, or variations of, the proposed HOV project. They include extension of the CTA Blue Line, expansion of Metra and bus services, establishment of a new study corridor that would include I-290 and related transit operations, and construction of a cap over all or part of the portions of I-290 that run through the Village. These and other reasonable alternatives should be thoroughly evaluated in the MIS. In addition, as affected local governments the Village and the other municipalities along the I-290 corridor must provided an opportunity to attend and participate in the initial scoping meetings for the MIS as

² 23 CFR 450.318(c) (2001).

³ Formerly, the MIS also served as the required analysis of alternatives and other factors for transit projects under the Federal Transit Act (see 23 CFR 450.318(d)). However, the Federal Transit Administration has revised its regulations to reflect the TEA 21 MIS provision discussed above. See 65 Fed. Reg. 76863 (December 7, 2000).

discussed above, and the public must be allowed regular and meaningful opportunities for input throughout the process as required by the FHWA regulations (see 23 CFR 450.318(b)).

Congestion Management Study

The federal regulations provide that in transportation management areas (TMAs), the planning process must include a congestion management system (CMS) that "provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational strategies" as required under more detailed regulations codified in 23 CFR part 500 (23 CFR 450.320 (c)). A TMA is an urbanized metropolitan planning area with a population that exceeds 200,000 (23 CFR 500.103). Congestion is defined as "the level at which transportation system performance is no longer acceptable due to traffic interference" 923 CFR 500.109).

In the case of new projects, a congestion management study is the vehicle through which the project is evaluated for consistency with the CMS.⁴ The federal regulations describe a CMS as follows:

An effective CMS is a systematic process for managing congestion that provides information on transportation system performance and on alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet state and local needs. The CMS results in serious consideration of

⁴ See *Buckingham Township v. Wykle*, 157 F. Supp.2d 457, 468 (E.D. Pa. 2001).

implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities (23 CFR 500.109(a)).

As discussed above, the CMS is to be implemented as part of the metropolitan planning process and the congestion management study for a new project can be incorporated into the MIS (see also 23 CFR 500.109(b)). The CMS "shall include:"

- Methods to evaluate the multi-modal transportation system, identify the causes of congestion, and identify and evaluate alternative actions;
- Definition of parameters to measure congestion and evaluate the effectiveness of reduction measures;
- Monitoring to determine the cause of congestion and the effectiveness of implemented solutions;
- Identification and evaluation of "traditional and nontraditional congestion management strategies that will contribute to more efficient use of existing and future transportation systems . . . [such as] growth management and congestion pricing, traffic operational improvement, public transportation improvements, ITS technologies and, where necessary, additional system capacity;"
- Identification of an implementation schedule, agency responsibilities and funding options for proposed strategies,
- In ozone nonattainment areas (such as the Chicago area), analysis of all multi-modal strategies that are reasonable alternatives to an increase in single occupancy vehicle (SOV) capacity.⁵

⁵ 23 CFR 500.109(b)(2001).

In performing a congestion management study for a specific project or corridor subject to the MIS requirements, each of the factors listed above must be considered.

NEPA Study

As mentioned above, the MIS "will include environmental studies which will be used for environmental documents" required under the National Environmental Policy Act (NEPA) and implementing FHWA regulations (23 CFR 450.318(f)). "As a minimum, the participating agencies will use the major investment study as an input to an environmental impact statement or environmental assessment prepared subsequent to the completion of the study. In such a case, the major investment study reports shall document consideration given to alternatives and their impacts" (23 CFR 450.318(f)(1)). Alternatively, "the participating agencies may elect to develop a draft environmental impact statement or environmental assessment as part of the major investment study" (23 CFR 450.318(f)(2)).⁶

At the meeting on March 6, representatives of IDOT indicated that the agency currently intends to prepare an environmental assessment (EA) as part of the MIS for the I-290 project, but does not intend to prepare an EIS. We believe that

⁶ As noted above, although DOT has not yet adopted implementing regulations, Section 1308 of TEA 21 requires the MIS to be integrated into the NEPA analysis, making the NEPA analysis even more important

such an approach would be unlawful and that an EIS is clearly required in this case. The FHWA NEPA regulations require an EIS for any action that significantly affects the environment, expressly including HOV lanes not located within an existing highway facility (23 CFR 771.115(a)). In this case, it is clear that the HOV lanes would not be included within the existing facility within the meaning of the regulations. When the regulations were adopted, this provision was explained as follows:

In the NPRM, UMTA proposed eliminating exclusive busways as Class I actions because of the potential to construct and operate a busway on or within an existing highway without significant environmental impacts. A number of commenters supported this change. Busways are frequently established by dedicating an existing highway lane for exclusive bus and high occupancy vehicle use and the regulation affords the flexibility to handle such projects with an EA instead of an EIS. The NPRM noted UMTA's intention to continue to require an EIS for construction of a new roadway for buses which is not integrated in an existing highway. This type of project is now listed in the regulation as a Class I action. Other types of busway projects will be reviewed individually to determine the appropriate environmental document, e.g., busways on existing lanes or medians which have off-line facilities such as stations, park-and-ride lots, transfer points, etc. 52 Fed. Reg. 32660 et seq. (August 28, 1987).

Thus, the only case in which an EIS is not required is the one in which an existing lane is merely converted to an HOV and/or bus only lane. An EIS must be prepared for any HOV project requiring new lane construction.

as a vehicle for ensuring compliance with federal requirements. See *Township of Belleville v. Federal Transit Administration*, 30 F. Supp. 2d 782, 795 (D.N.J. 1998).

Even if that were not the case, the federal regulations require an EIS if any of the following criteria are satisfied: (1) significant environmental impacts; (2) substantial controversy on environmental grounds; (3) significant impact on historic properties; (4) inconsistency with environmental requirements. Each of these factors is present in the case of the case of the I-290 proposal, as we shall demonstrate in a separate memorandum we are now preparing. Most importantly, however, it is clear that the environmental and public health impacts of the proposed I-290 project are likely to be substantial. For example, the current RTP projects that the proposed project would increase traffic by approximately 70,000 vehicles per day, about a 35% increase. Even without considering the many other factors relevant to this analysis, the increased vehicle emissions alone would clearly threaten substantial environmental impacts.

Accordingly, we believe the federal regulations clearly require an EIS for the proposed I-290 project and potential alternatives to be evaluated. This is supported by the letter you recently received from FHWA Administrator Peters, and is particularly true given that the Phase I study apparently will merge the NEPA analysis with the MIS requirements to examine other multi-modal alternatives in addition to the proposed HOV project.⁷ The FHWA regulations likewise state that in preparing NEPA analyses, "it is the policy of the Administration that . . .

Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced

⁷ Letter from Mary E. Peters to Joanne E. Trapani (April 24 2002).

consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, state and local environmental protection goals” (23 CFR 771.105(b)).

The FHWA regulations also require the NEPA analyses to incorporate measures to mitigate adverse impacts, and require federal funding of mitigation measures when they are determined to be reasonable considering the related benefits and impacts and the extent to which they would assist in compliance with federal laws, regulations, orders or policies (23 CFR 771.105(d)). The EIS process also would help to ensure meaningful public input at this critical stage of the process.

Other Factors

The FHWA regulations also provide a separate list of factors that must be considered in all of the products of the metropolitan planning process, including the studies discussed above (23 CFR 450.316). Some of these are repeated in the MIS, congestion management and NEPA requirements discussed above, but others are not. The list includes:

- Preservation of existing facilities and, where practicable, ways to meet transportation needs by using them more efficiently;
- Consistency with federal, state and local energy needs and goals;
- Congestion relief as discussed above;
- Likely effects on land use and development, including consistency with land use plans, including analysis of

"economic, demographic, environmental protection, growth management and land use activities consistent with metropolitan and local/central city development goals;"

- The effectiveness and cost-effectiveness of alternatives in meeting transportation goals "and related impacts on community/central city goals regarding social and economic development, housing and employment;"
- Access to airports, intermodal facilities, recreation areas, monuments and historic sites;
- Connectivity with transportation facilities outside of the planning area;
- Preservation of future rights of way and transportation corridors;
- Life cycle cost analyses;
- The overall social, economic, energy and environmental effects, including effects on "the human, natural and man made environment such as housing, employment and community development," and including "early and continued coordination" with environmental protection and management plans, and particularly air quality plans;
- Expansion and increased use of transit services;
- Capital investments to increase transit security;
- Recreational travel and tourism;
- A proactive public involvement process;
- Consistency with Title VI of the Civil Rights Act of 1964, including environmental justice requirements;
- Compliance with the Americans With Disabilities Act;
- Preparation of detailed and reasonably available technical and other reports on all key aspects of the process.

The Phase I Study should include a thorough evaluation of and/or compliance with each of these factors with respect to each of the alternatives addressed in the study.



U.S. Department
of Transportation
**Federal Highway
Administration**

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Office of the Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

April 24, 2002

Refer to: HEPE

Ms. Joanne E. Trapani
Village President
The Village of Oak Park
Village Hall
Oak Park, IL 60302-4272

Dear Ms. Trapani:

Thank you for your March 25 letter to Secretary of Transportation Norman Y. Mineta about the proposed reconstruction of I-290 through the village of Oak Park, Illinois. I appreciate your letting us know of your concerns about how the project may affect the village.

You asked the Secretary to ensure compliance with all Federal requirements for major highway projects. The authority for meeting those requirements on Federal-aid highway projects has been delegated to the Federal Highway Administration—and I can assure you that we will comply with them. Further, we take our responsibilities very seriously, not just to comply with all applicable laws and regulations, but to ensure the result is a safe and efficient transportation system that fits harmoniously into the surrounding environment and community.

On projects such as the I-290 reconstruction that are developed with Federal-aid funds, we work cooperatively with State transportation officials to ensure Federal requirements are met, including the National Environmental Policy Act of 1969 (NEPA) and other environmental and related laws, regulations, and policies. Through the NEPA review, we are required to explore and objectively evaluate all reasonable alternatives. The objective is to find transportation solutions that are in the best overall public interest and are based on a balanced consideration of the need for safe and efficient transportation and the social, economic and environmental impacts of the proposed action.

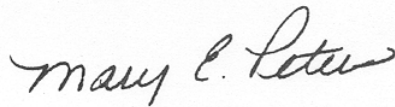
The NEPA process also requires that potential adverse impacts to the human and natural environment be identified and documented. As a result, the types of issues you raised will be considered during the NEPA process. If any significant adverse impacts cannot be avoided, every effort will be made to minimize and mitigate impacts to the identified resource.

As reflected in the issues you raised at this early stage in project development, finding the proper balance is not always easy. For that reason, public and civic involvement is an integral element in the NEPA review of any Federal-aid highway improvement. The Illinois Department of Transportation (IDOT) has a process for ensuring the public has an opportunity to comment during the review. Through the public involvement process, which we have approved as meeting Federal requirements, the IDOT will be holding public meetings and will discuss specific concerns with individual groups throughout development of this project. To further expand on its public outreach efforts, the IDOT has established a project hotline (312-803-6750) and will soon have a web site available to the public that will provide information on the study.

Involvement of local officials is also important. For the proposed I-290 project, the IDOT has established a Stakeholders Group, which held its first meeting last month, with more to follow throughout project development. I understand the village of Oak Park is part of this group. I encourage the village to continue working with IDOT through the Stakeholders Group and in other ways.

Our Illinois Division Administrator, Mr. Norman R. Stoner, has the delegated authority to work with the IDOT throughout the NEPA review and is responsible for all approvals. Please feel free to contact Mr. Stoner if you have any questions about the NEPA review. His telephone number is 217-492-4640.

Sincerely,

A handwritten signature in cursive script that reads "Mary E. Peters".

Mary E. Peters
Administrator