Chapter 3

Fair Housing/Opportunity

INTRODUCTION

The second major housing plan category identified in the Regional Housing Plan (RHP) is fair housing and opportunity. SEWPRC provides a discussion of housing discrimination and fair housing practices in Chapter VI of the preliminary RHP. First, it presents a history of housing discrimination and its impacts and an inventory of racial distribution patterns in the Region\(^1\); second, indicators or signs of illegal housing practices including mortgage lending patterns; third, fair housing laws and requirements; and findings that lead to the preliminary recommendations.

As stated in Chapter II of the preliminary RHP, housing discrimination and the concentration (or rather segregation) of minority and low-income communities were identified as three of the seven components contributing to the Regional housing problem:\(^2\)

- Housing discrimination
- Concentration of low-income and minority populations in the Region’s central cities
- A need for accessible housing stock to accommodate persons with disabilities

Fair housing practices require a discussion of Federal and State law, much of which is centered around unlawful housing discrimination against persons in protected legal classes, based on race, color, sex, national origin or ancestry, religion, disability or handicap, familial status, age, marital status, family status, lawful source of income, sexual orientation, and victims of domestic abuse or stalking.

Critical to the fair housing/opportunity component is the provision of affordable housing. SEWRPC’s vision of the Plan is to “provide financially sustainable housing opportunities for persons of all income

\(^1\) Additional information regarding the racial and ethnic composition of the Region’s population is available in Chapter VII (Demographic and Economic Characteristics).

levels, age groups, and special needs throughout the entire Southeastern Wisconsin Region”; this is intimately tied to fair housing practices and opportunity to “ensure that all residents of the Region have equal housing choices...” which is expected to also support “equal employment opportunities [in the Region]”. In this manner, and as illustrated in the above diagram, Fair Housing/Opportunity is also an instrument to accomplish the core objective of the RHP to increase affordable housing opportunities.

This analysis of the RHP first provides a brief summary of SEWRPC’s approach to issues concerning fair housing/opportunity, then provides some background and context regarding current and projected economic conditions and their impact on fair housing and environmental justice communities, and finally provides an analysis of the recommendations set forth within the preliminary RHP in light of current economic conditions (including the Great Recession and housing crisis).

PRELIMINARY REGIONAL HOUSING PLAN AND ISSUES IDENTIFIED CONCERNING FAIR HOUSING/OPPORTUNITY

SEWRPC’s Legacy 1975 Regional Housing Plan

The Legacy Regional Housing Plan addresses the issue of fair housing opportunity in the recommendations section set forth in 1975. Fair Housing was a relatively new concept when the Legacy RHP was undergoing development. The U.S. Department of Housing and Urban Development (HUD) had recently been established in 1965 and was only beginning to implement fair housing practices which were based on the Civil Rights Acts of 1964 and 1968, which prohibited discrimination in housing. In the current RHP, SEWRPC provides a history of fair housing and its impacts within the Region in Part 1 of Chapter VI; this includes a discussion about fair housing practices and oversight including the creation of the Metropolitan Milwaukee Fair Housing Council in 1977 and recent cases involving housing discrimination within the Region. SEWRPC provides a summary of the fair housing and non-discrimination laws in Appendix F of the preliminary RHP.

The current preliminary RHP addresses the recommendations set forth in the Legacy RHP in Chapters III and XII. Tables III-10 and III-11 in Chapter III display the 1975 Legacy recommendations (for unsubsidized and subsidized housing categories) that address many aspects of the defined housing problem, many of which overlap with conditions still prevalent today and that indirectly impact issues of fair housing. However, the specific recommendations that directly promote fair housing are nonsubsidy recommendations and are as follows:

• Nonsubsidy Housing Recommendations
  o Abatement of Social Constraints: Housing Discrimination
    ▪ Expansion of Federal, State and local fair housing laws that prohibit housing discrimination
    ▪ Expansion of public informational programs to spread awareness to discriminated groups about existing legal mechanisms to combat discrimination
    ▪ Regular assessment of fair housing enforcement procedures and processes

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3 Preliminary RHP Chapter II, Objectives et al, page II-3-4.
The recommendations above set forth in the Legacy 1975 RHP were carried over to the current RHP and are discussed in Chapter XII (Recommended Housing Plan for the Region) in addition to some new recommendations for the promotion of fair housing in the Region which are reviewed at the end of this Chapter.

Summary of Fair Housing/Opportunity as it Applies to the Preliminary Regional Housing Plan
Chapter VI of the RHP provides both a history of fair housing in the Region and the context for fair housing and racial housing concentration and discrimination (Part 1), an assessment of the indicators of potential illegal housing practices including discrimination and mortgage lending patterns (Part 2), a discussion of fair housing laws and their applications (Part 3), and a summary of findings (Part 4). A summary of Federal, State and local fair housing laws and practices is presented in Appendix F.

Part 1 of Chapter VI focuses on outlining the history of fair housing and discrimination in the Region, including the effects of practices such as red lining, “white flight”, NIMBYism (Not In My Back Yard), and segregation. Although de jure segregation practices like red-lining, discriminatory mortgage underwriting guidelines, and discriminatory property deeds or subdivision covenants have long been outlawed, many of these practices continue to have lingering and detrimental impacts on low-income and primarily minority communities to this day. Currently, de facto segregation practices such as “white flight” or “NIMBYism” have replaced the old Jim Crow laws, and other seemingly innocuous practices have had the unintended consequence of continuing the segregation status quo. Zoning ordinances are often used to preclude the development of affordable single- and multi-family units. Local officials, including school district officials, will often oppose development that does not contribute significantly to the property tax rolls. Additionally, there is a long standing practice of public opposition to multi-family or affordable housing development; all too often, elected officials will bow to the often very vocal pressure of their constituents and deny permits.

Part 2 of the RHP provides a discussion and analysis of illegal housing practices and discrimination, such as refusal to rent, sell, insure, or finance housing to members of protected classes. As stated by HUD, most instances of housing discrimination go unreported indicating that the data on housing discrimination complaints from the Metropolitan Milwaukee Fair Housing Council is inconclusive. It is indicative that discrimination based on race and disabilities is likely the most prevalent.

The following tables in Chapter VI are used to illustrate the trends in housing discrimination complaints and racial concentration in housing for the Region:

- Table VI-1: White and Minority Population in Southeastern Wisconsin Communities: 1970-2010
- Table VI-4: Housing Discrimination Complaints Received by HUD in the Southeastern Wisconsin Region: 2000-2010
- Table VI-5: Housing Discrimination Complaints Received by HUD by Protected Class in the Southeastern Wisconsin Region: 2000-2010
- Table VI-6: Housing Discrimination Complaints Received by HUD by Issue Type in the Southeastern Wisconsin Region: 2000-2010
- Table VI-7: Outcomes of Housing Discrimination Complaints Received by HUD in the Southeastern Wisconsin Region: 2000-2010
- Table VI-8: Relationship Among HUD Housing Discrimination Complaints, Population Characteristics, and Number of Dwelling Units by County
Part 2 provides a discussion of fair lending laws and mortgage lending patterns during the run up to the housing collapse and in its aftermath, including information on legal actions. Home Mortgage Disclosure Act (HMDA) data from 2005 indicates that loan denial rates were disproportionately higher for black and Hispanic populations than whites, and that of the loans that were approved for black and Hispanic persons, there were a disproportionate number that were high-cost, high-risk products such as adjustable rate mortgages (ARMs). SEWRPC summarized a 2009 study that showed that the Milwaukee Metropolitan Statistical Area had the third-greatest racial/ethnic lending disparity in the U.S. with regard to high-cost loans.6

In Part 3, SEWRPC provides a discussion of Fair Housing Laws and includes a list and summary of the laws in Appendix F. SEWRPC points out that there is an obligation for recipients of certain Federal Funds to “affirmatively further fair housing”7 (AFFH) by identifying and taking action to reverse patterns of discrimination and segregation. This obligation is a condition for the receipt of program and department funding from the following Federal programs:

- HUD Community Planning and Development (CPD) programs which include:
  - Community Development Block Grant (CDBG)
  - Home Investment Partnership (HOME)
  - Emergency Shelter Grant (ESG)
  - Housing Opportunities for Persons with AIDS (HOPWA)

Additionally, Public Housing Authorities (PHAs) that administer public housing and/or the Section 8 Housing Choice Voucher Program must affirmatively further fair housing. For PHAs, the AFFH requirement is imposed by the Quality Housing and Work Responsibility Act (QHWRA) of 1998.

As SEWRPC describes8, in order to show compliance with AFFH, an Analysis of Impediments (AI) is how fair housing efforts are determined based on 1) identifying barriers and challenges to fair and open housing choice, 2) taking action to overcome impediments, and 3) maintaining records to show initial analysis and any actions taken. Based on history and racial segregation in the area, SEWRPC acknowledges concerns from housing advocacy groups that some entitlement jurisdictions and sub-grantees may not meet AFFH requirements while also noting that the AI process has its limitations. Appendix I of the RHP includes a summary of impediments to fair housing based on AIs and the

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7 Preliminary RHP Chapter VI, Housing Discrimination et al, pageVI-12
8 Preliminary RHP Chapter VI, Housing Discrimination et al, pageVI-13
Part 4 provides a summary of the findings that lead to the development of the plan recommendations set forth in Chapter XII.

**RATIONALE: FAIR HOUSING AND ENVIRONMENTAL JUSTICE**

**Fair Housing: Segregation, Discrimination, Spatial Mismatch, and Zoning**

**Segregation**

Segregation in housing takes on both a racial or ethnic dimension and an income dimension. SEWRPC provides data on racial and ethnic compositions by tenure for each county and subarea in Chapter VII of the preliminary RHP (Table VII-11). Also provided is data that identifies the number and percent of low-income households (Table VII-13) and household income distribution by county and subarea (Table VII-14). In addition to the tables, maps are provided including concentrations of black population by Census block for 2010 (Map VII-2) and concentrations of Hispanic populations by Census block for 2010 (Map VII-6). In addition, the distributions of other minority groups are shown in Maps VII-3 through VII-5, and the distribution of all minorities combined is shown in Map VII-7. Map VII-8 shows the distribution of white non-Hispanic populations by Census block and Map VII-9 shows a dot map of the distributions by all populations by race and ethnicity. Map VII-10 shows the median annual household incomes by subarea.

Douglas Massey and Nancy Denton are credited with developing a full definition of segregation, outlining the manner in which most social scientists currently view segregation based on a review of 19 different segregation indices. They argue that segregation is not a one-dimensional construct but has five distinct dimensions of spatial variation, as follows:

- **Evenness**: refers to the unequal distribution of social groups across a spatial area (like a neighborhood or census tract)
- **Exposure**: refers to the contact between different groups within neighborhoods of a city
- **Clustering**: the degree or extent to which areas inhabited by minority members adjoin or are clustered together in space
- **Concentration**: the degree to which a group is located near the center of an urban area
- **Centralization**: the density or relative amount of physical space occupied by a minority in an urban environment

Segregation indices measure the degree to which a minority group is distributed differently than non-Hispanic whites across a geographic unit. William Frey, Senior Fellow at the Brookings Institute and Professor at the University of Michigan, has developed what is likely the most highly regarded segregation index, the *dissimilarity index*, which measures the dissimilarity across census tracts, on a scale from 0 (complete integration) to 100 (complete segregation) where the value indicates the percentage of the minority group that needs to move to be distributed exactly like non-Hispanic Whites. Frey’s latest findings, which are discussed in Chapter IV of the RHP, show that, the Milwaukee Metropolitan Statistical Area (includes Milwaukee, Ozaukee, Washington, and Waukesha Counties) is THE most segregated Large Metropolitan Area for African Americans in the U.S. based on 2005-2009 American Community Survey data. Additionally, in 2000, it was second only to the Detroit Metro Area in

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segregation based on the dissimilarity index.\textsuperscript{10} The Milwaukee MSA also does not rank well (7\textsuperscript{th}) in terms of Hispanic and non-Hispanic White segregation. Methodology for Frey’s segregation index measure is available online.\textsuperscript{11}

Another measure of residential segregation is the Diversity Index which is a common measure of income inequality and has been used extensively as a measure of segregation. The Diversity Index\textsuperscript{12} relies on a Gini Coefficient which measures the likelihood that two persons chosen at random from the same area (such as a Census Block Group or Tract) will belong to different race or ethnic groups. The numeric value of the Diversity Index increases when both the variety of races and ethnic groups and evenness of distribution increases for the area. The Diversity Index score ranges between zero and 100. A score of zero indicates a concentration of one race or ethnicity, indicating perfect inequality, and a score of 100 indicates perfect equality, or a variety of races and ethnicities being substantively represented and evenly distributed. For example, in the Metro Milwaukee area, the Riverwest neighborhood exhibits some of the highest Diversity Index scores, while both the Northshore communities and the Northside neighborhood exhibit very low scores given their lack of diversity among different races.

Maps 1 and 2 (at end of Chapter) illustrate the 2010 Diversity Index by Census tract for the Southeastern Wisconsin Region and Milwaukee County respectively. For the entire Region, where minorities make up 29 percent of the population, Map 1 shows that the Diversity Index is highest in Census tracts located in Milwaukee, Racine and Kenosha where there is the most variety and distribution among race and ethnicity. Map 2 shows Milwaukee County where the total minority population is 46 percent. Map 2 shows that within Milwaukee’s Census tracts, it is evident that although there is more diversity overall, areas that appear to have a high concentration of minority populations do not inherently equate to a high Diversity Index because people of various races are not evenly distributed throughout the County.

In addition to a racial component, residential segregation also has an income component. A recent study by the Pew Research Center (released August 1, 2012) has shown that since 1980, residential segregation based on income has grown significantly.\textsuperscript{13} The long term rise in income inequality has led to a decline in the percent of neighborhoods defined strictly as middle class throughout the U.S. and to a rise in the percent that are majority lower income, and a rise in the number that are majority upper income. These increases are related to the long-term rise in income inequality, which has led to a shrinkage in the share of neighborhoods across the U.S. that are predominantly middle class or mixed income—76% in 2010, down from 85% in 1980—and a rise in the shares that are majority lower income (18% in 2010, up from 12% in 1980) and majority upper income (6% in 2010, up from 3% in 1980).

CED documented the growing income segregation pattern for the metro Milwaukee area in a 2002 study.\textsuperscript{14} Based on income tax data, this study shows that almost all of the Region’s affluence growth


\textsuperscript{12} CED used ESRIs Business Analyst for 2010 data to create the maps (cite here).


(based on household incomes reported at two levels, at least $100K and at least $200K) occurred within
the suburbs of Milwaukee.

**Discrimination**

As stated above, *de facto* segregation practices such as “white flight” or “NIMBYism” have replaced the
old Jim Crow laws. Although no longer institutionalized, it’s the subtle actions of discrimination that
continue segregation. All too often at the local level, there is a considerable amount of public opposition
to multi-family housing; opponents often use coded language (‘increase in crime or drug use’) to convey
their racism – the terms ‘low income’ or ‘workforce housing’ have basically become synonymous with
the term ‘those people’. Community opposition to supportive housing for persons with disabilities also
occurs. And all too often, local politicians bend to the will of their constituents. In Part 2 of Chapter VI
SEWRPC documented recent lawsuits in the Region in which housing discrimination was found to be the
outcome (either direct or indirect) of local land use or development practices.

**Spatial Mismatch**

Spatial mismatch is the term used to describe the socio-economic phenomenon associated with job
opportunities often and increasingly being created far from where concentrations of low-income
populations live, which reduces access to jobs. A 2005 study by Michael Stoll for the California Center for
Population Research indicates that job sprawl has exacerbated racial inequality in the U.S.  
Stoll’s key
findings show: metro areas with higher levels of employment decentralization exhibit greater spatial
mismatch between the relative locations of jobs and black residents; greater job sprawl is associated
with higher spatial mismatch for blacks but not for whites; blacks are more geographically isolated from
jobs in high job-sprawl areas regardless of region, metro area size, or share of metro population; and
metro areas with higher job sprawl also exhibit more severe racial segregation between blacks and
whites.

In southeastern Wisconsin, the spatial mismatch between minority populations within the Region’s
major urban centers (Milwaukee, Racine, and Kenosha) and outlying job centers has been well
documented. In 2010, the Social Development Commission (SDC) released a report that identified
spatial mismatch as one of the key issues impacting job opportunities for black males in the metro
Milwaukee area.

CED has been tracking racial and income disparities within metro Milwaukee and has compared
disparities and changes within metro Milwaukee to similar metropolitan areas. A 1998 study  
compares
and contrasts economic indicators between Milwaukee (both city and metro areas) and 14 other similar
“frost-belt” cities and their corresponding metro areas since the 1950s. This study documents the
pattern of growth within the suburbs and exurbs, the decentralization of jobs, and the growing
segregation (both income and racial segregation) over the nearly 50 year period. The 1998 study notes
that the disparity between black and white unemployment rates in metropolitan Milwaukee remains the

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15 Stoll, Michael *Job Sprawl, Spatial Mismatch, and the Black Employment Disadvantage*, California Center for
16 Celata, Dave *Structural Issues Impacting Black Male Employment Opportunities in Metro Milwaukee*, Social
Development Commission report, June 2010. Center for Economic Development, University of Wisconsin –
17 Levine, Marc *The Economic State of Milwaukee*, Center for Economic Development, University of Wisconsin –
widest among the “frost-belt” cities, as has been the case since 1970. CED updated this study in 2010 to reflect the deindustrialization process since 1990. Over this time period, the trends indicate that although Milwaukee fares comparatively well on some of the economic measures such as real per capita income growth, the metro Milwaukee area continues to score highest in measures of segregation based on both race and income disparities.

An expanded discussion on spatial mismatch as it relates to housing and employment is provided in SEI Chapter 4 (Job/Housing Balance).

Zoning
Zoning is the practice of regulating land uses and densities, as generally stated, for the health, welfare, and safety of the local community. Separating incompatible uses and regulating for densities or the intensities of land use helps to ensure that new development does not negatively impact existing surrounding development and the character of a community is preserved. Having clearly defined zoning districts and boundaries provides stability to neighborhoods and helps to assure businesses and homeowners that their property values will be preserved or enhanced.

Zoning has its detractors and critics, however, as some have come to view it as an instrument to accomplish segregation. A 2009 study by Jonathan Rothwell and Douglas Massey of Princeton University argues that low-density zoning increases black segregation in U.S. metro areas by reducing the quantity of affordable housing in predominantly white non-Hispanic jurisdictions. The authors developed a regression model that showed a strong and significant relationship (correlation) between low-density zoning and black segregation, even after controlling for other zoning and land use policies and a variety of metropolitan characteristics. A 2010 study, also by Rothwell and Massey, demonstrated that of the top 50 largest U.S. metropolitan areas, the suburbs that restrict the density of residential construction tend to be more segregated on the basis of income than those with more permissive density zoning ordinances, perpetuating and exacerbating racial and class inequality.

A 2006 Brookings Institution study found that planning can both increase or decrease racial and economic segregation in metro areas. The study reviewed a variety of land use regulations including zoning, comprehensive plans, infrastructure plans, urban containment, building moratoriums, and permit caps for the top 50 largest metro areas. They discovered that there is an inordinate amount of variability between land use regulatory ‘regimes’ (or combination of strategies) in metro areas, but they were able to classify these regimes into four broad classes (Traditional, Exclusion, Wild Wild Texas, and Reform) with a dozen subclasses, ranging from exclusionary and restrictive to innovative and accommodating. Each produces “a variety of effects on metropolitan growth and density, and on the

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opportunities afforded to the residents that live there.” Ultimately, this study found that some land use regulation strategies can exacerbate segregation (Traditional and Exclusion regimes) while others can ameliorate it (Reform regimes).

In the Brookings study, metro Milwaukee is classified as ‘Traditional/Middle America’, which is the most common metro area class/subclass. Of the 50 largest metro areas, 32 were classified as such, including most predominantly, Chicago, Buffalo, Pittsburgh, Norfolk, and Atlanta. Planning in ‘Middle America’ metro areas is dominated by local (as opposed to regional or county) zoning and comprehensive plans as the default land use regulations, with very few growth management measures. These metro areas tend to have more restrictive densities in their zoning ordinances than the national norm, and tend to have a greater proportion of land dedicated to low densities than the national norm.

Second, ‘Middle America’ metro areas tend to have more modest commitments to infrastructure-based growth management such as Adequate Public Facilities Ordinances (APFOs) or impact fees than the national average. Similar to impact fees, APFOs tie growth and development to the services that will be impacted by that development, basically a ‘pay as you grow’ strategy. The major difference between APFOs and impact fees are that APFOs are usually tied to the local community’s comprehensive plan and are used as an effort to phase in the provision of public facilities or utilities, in order to assure that adequate levels of service are in place or reasonably assured when the development occurs. Most communities within the Region impose impact fees for development. Although APFOs are not commonly used, communities that provide sewer service are required by the Wisconsin Department of Natural Resources to adopt sewer service area plans. These plans identify areas that are eligible to receive sanitary sewer service based in part on an analysis of the capacity of sewage treatment facilities.

Finally, and most importantly, Middle America metro areas tend to make very little use of affordable housing mechanisms. Although the share of jurisdictions using incentive programs for affordable housing, including housing trust funds, tends to be about the same as the national average, the amount of land and the number of people being supported under such programs is considerably less (tends to be about half as much) in ‘Middle America’ metro areas in comparison to the national averages. According to the Brookings study, this is likely due to the slower than national average growth these metro areas have experienced and also because the central cities of ‘Middle America’ metro areas are characterized by large numbers of low cost rental units. Combined, this makes regulatory and incentive-based approaches to affordability less attractive than the use of standard Federal subsidies.

Like the Rothwell and Massey report, the Brookings study also found that anti-density zoning in the suburbs is highly correlated with racial and economic segregation including concentrated central city poverty, and a lack of affordable housing outside of the central city areas. The densities in metro areas with ‘Traditional’ land use regimes are also falling much faster than areas elsewhere; with the exception of New York, ‘Traditional’ metro areas are losing density.

The Brookings study also discusses other planning regimes (Reform and Wild Wild Texas) and their impacts on segregation. These two regimes tend to include affordable housing programming and have greater allowance for higher density zoning; the results have been less minority segregation and less concentrated poverty. Additionally, the study showed that there was a tendency for a greater concentration of college graduates living in the central cities and that central cities are high-value

22 More forthcoming on ‘incentive-based’ programs.
places, in contrast to Traditional and Exclusion where central cities tend to be the neighborhoods of last resort.

A 2004 study\(^\text{23}\) from the Virginia Polytechnic Institute and State University compared the effectiveness of ‘containment’ policies and strategies (like urban growth boundaries or APFOs) against state-imposed housing mandates (those generally executed through comprehensive planning requirements) that aim to open suburban communities up to low- and moderate-income housing development. Such mandates are generally done through higher density zoning, relaxed zoning requirements, or other affordable housing incentives. The authors found that containment strategies are more effective at achieving desegregation than state-imposed mandates. Urban containment programs rein in the outward expansion of urban areas by restricting development of rural lands outside an established boundary either for a specified period of time or once specific development targets are met. Such programs require a considerable amount of coordination in planning public infrastructure investment, land use planning, and regulation, which is usually carried out at a state or regional level rather than a local or county level. Besides Portland, about 100 other communities or metro areas have adopted urban containment strategies; these include Minneapolis-St. Paul, Boulder, Sarasota, Sacramento, and most communities in Florida, Maryland, and Washington states. The first was Lexington-Fayette County in Kentucky in the 1950s. [Add discussion of unintended consequences of UGBs here; substantially increase housing costs, market manipulation etc]

**Fair Housing: Affordable Housing, the Housing Crisis, Mortgage Regulations, and Impacts on Environmental Justice Communities in Southeastern Wisconsin**

A National Community Reinvestment Coalition study\(^\text{24}\) cited in SEI Chapter 2 showed that the Great Recession and subsequent housing crisis have disproportionately and severely impacted minority and low-income populations with higher unemployment rates, limited accessibility to lines of credit, and increased foreclosure rates. As stated, access to adequate and affordable housing is at the center of the Regional Housing Plan; however, the Great Recession and subsequent housing crisis have restricted access to credit for financing housing development and purchases. The recommendations for affordable housing indicate that it is anticipated that fair housing policies will likely be considered and implemented. Increasing the amount and diversity in housing choices within close proximity to suburban and exurban employment centers is anticipated to provide housing opportunities for environmental justice communities, particularly minorities that are concentrated in the Region’s central cities.

**Fair Housing and Mortgage Regulations: Impact on Owners**

As documented in Part 2 of Chapter VI, minorities within the Region were more likely to have been steered toward and entangled in riskier mortgage products such as Adjustable Rate Mortgages (ARMs) than their majority counterparts during the years prior to the housing crisis. This in turn led to much higher rates of foreclosure for minorities at the same time that minorities were experiencing disproportionately higher unemployment rates due to the Great Recession.


The response to the Great Recession and foreclosure housing crisis in particular has been a tightening up of mortgage lending practices by banks. Prior to the Great Recession, the role of government by way of Government Sponsored Enterprises (GSEs, such as Fannie Mae and Freddie Mac) was thought to have contributed to improving the market for housing finance by guaranteeing the extension of credit lines to households that would otherwise not qualify for traditional mortgages under standard lending practices. Banks responded by flooding the market with ‘innovative’ subprime mortgage lending products such as ARMs that shifted the risk away from the loan originator and on to some other investment entity. The practice of providing credit to households that would otherwise not qualify, especially during a housing market bubble that ran up housing prices, was not financially sound. Too many households got in over their heads, particularly with ARMs. A working paper from the National Bureau of Economic Research (NBER) shows that although there is evidence that the mid 1980s saw an improvement in housing financial markets that may be attributed at least in part to deregulation and the availability of innovative mortgage products, GSEs and their reliance on a secondary housing financial market has “failed to improve the housing finance environment facing low-income and first-time homebuyers.” Federal legislation requiring changes to mortgage lending practices has just started to be implemented under the Dodd-Frank Act (2010). Although lending rates are currently at a historic low, the criterion set up by most mortgage lenders currently makes a mortgage out of reach for many potential homeowners. Chapter IV of the preliminary RHP outlines the issues related to mortgage lending practices and recent and current Federal legislation.

In addition to losing equity, low-income homeowners who experience foreclosures may be forced to relocate into lower quality housing. These households are faced with blemishes on their credit score and depleted savings so that finding adequate housing or accessing financial resources through lending institutions become increasingly challenging or not possible at all. Environmental Justice populations are particularly vulnerable to the housing and foreclosure crisis as well as being affected by the regulatory and policy response since the crisis abated. Even for those households that have not gone through a foreclosure, the tightened mortgage market has made it difficult if not impossible for lower- and even moderate-income households to either enter the housing market or move up the housing ladder. This has disproportionately hit minority and low-income households given the overabundance of foreclosures specifically within predominantly minority neighborhoods and communities (Cities of Milwaukee, Kenosha, and Racine – see preliminary RHP Figure XII-1).

In response to the foreclosure crisis, HUD developed the Neighborhood Stabilization Program (NSP) that supplies formula grants either directly or through the States to communities impacted by foreclosures and abandonment. The Cities of Kenosha, Racine and Milwaukee, and Milwaukee County and Waukesha County each receive direct funding through the NSP, while all other local communities or counties would have to receive funding through the state dispersion. Chapters III and IV of the preliminary RHP discuss NSP funding throughout the Region.

**Fair Housing and the Housing Crisis: Impact on Renters**

As shown in Part 1, there is a significantly higher proportion of minority and environmental justice community renters within the Region. Although mortgage lending and foreclosure problems tend to impact property owners more directly than renters, renters have also been negatively impacted. In the short term, the foreclosure crisis has been disruptive to renters and neighborhoods. More significantly,

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in the long term, it is predicted that the recent trends within the rental market based on the Great Recession and housing crisis will likely increase housing cost burdens for renters, and most disproportionately and negatively impact lower-income households.

Foreclosures of rental units can be very disruptive to the tenants. In a Chicago based study, foreclosures on rental properties are shown to have a disproportionately negative impact on African-American and Hispanic communities. The data found that in 2010, approximately 5,904 apartment buildings in the city were in foreclosure, having an estimated impact on over 17,000 units of rental housing concentrated in underserved minority neighborhoods. Referring to a 2009 study by the Urban Institute, SEWRPC also recognizes that foreclosures contribute to declining property values and physical deterioration, crime, social disorder, and population turnover, and local government financial stress and deterioration of services.

As the Nation and the Region begin to see hints of a recovery in the housing market, there are a few long term trends that have likely been significantly disrupted. First, the Great Recession and housing crisis have reversed the over 5-decades long trend in increasing home ownership. As stated in Chapter 2 of the SEI, housing affordability in the rental market has increasingly become a problem as housing cost burdens have continued to rise. Harvard’s State of the Nation’s Housing study notes that the number of renter households has been increasing since 2004 and that changing demographics, shifting toward a younger and more racially and ethnically diverse population, and changing housing preferences have played a major role in shaping the growth of renter households. Second, the recent growth in the rental market has also been fueled by the growing percentage of adults 25 to 34 years old that are remaining in the rental market, choosing to rent rather than own, including an increase in married couple households as well as middle- and upper-income households remaining in the rental market. Factors such as instability within the job market and reduced credit for purchasing a home are making adults in this age bracket much less likely to move towards homeownership than in past generations, which has increased demand for rental units greatly since the onset of the Great Recession. Third, and most likely impacting low-income and minority populations the most, it is anticipated that housing cost burdens will continue to rise at the same time that the supply of lower-cost units is diminished. Given that the demand for rental units has increased and will continue to increase, the existing stock of rental units (including vacancies) is not going to be sufficient to keep up with demand, therefore it is anticipated that rents will continue to rise. In addition, the tightening credit market that raised rents towards the upper end of the market will likely inhibit or may even prevent development of additional units at the lower end of the market.

American Planning Association on Fair Housing
As stated in Chapter 2, the American Planning Association (APA) is the national organization for planning practitioners and the American Institute of Certified Planners (AICP) is the accreditation and professional development arm for regional and municipal planners in the US. The APA and AICP both require that professional members work to increase social equity, diversity, and minority participation. The Code of

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26 Chicago Study: Rental foreclosures threaten minority areas, June 2011 accessed from the UW Extension Center for Community and Economic Development online at http://fyi.uwex.edu/housing/2011/06/09/chicago-study-rental-foreclosures-threaten-minority-areas/

27 The Impacts of Foreclosures on Families and Communities, Urban Institute, 2009

28 Preliminary RHP Chapter IV, Existing Housing, page IV-12

Ethics set forth by the AICP strongly and explicitly states that planners have a responsibility to support the needs of underrepresented and disadvantaged people (environmental justice communities).

In its Policy Guide on Housing, the APA provides a discussion on housing discrimination based on race and ethnicity, and against persons with disabilities, similar to the one set forth by SEWRPC in Part 1 of Chapter VI. It outlines the historic causes and patterns of segregation and their disproportionately negative impacts on the outcomes for members of environmental justice communities. The APA also notes that housing discrimination against persons with disabilities can take the form of restrictive regulations against group homes, single-family definitions, and burdensome public hearing requirements, and that many communities simply do not understand or enforce Federal fair housing laws including those regarding accessibility, reasonable accommodation, and reasonable modifications.

As its General Policy Position #1, the APA Policy Guide sets forth a national goal to provide housing opportunities to all households, regardless of age, race, and income and states that planners should strive to change or eliminate planning policies, regulations, and programs that have a disparate impact on groups identified by race, ethnicity, economic status, or disability. Under this position, it also states that planners should use comprehensive plans and development regulations to reduce rigid housing stratification and spur the development and preservation of affordable housing. Housing stratification exacerbates the problems associated with concentrating poverty and minorities, therefore planners should strive to provide a wide range of housing opportunities in as many locations as possible. Planners should identify and recommend changes to planning policies and zoning regulations at the State and local levels that are barriers to the creation of affordable housing and supportive housing.

The APA provides a strong rationale for eliminating barriers to housing opportunities:

As long as discriminatory practices continue, society will continue to pay the costs associated with the spatial separation of whole classes of people, great opportunities will be lost, and the full potential of our nation will be unrealized. Traditional zoning and planning and other land use controls may limit the supply and availability of affordable housing, thereby, raising housing prices. The regulatory environment plays a crucial role in housing production. Large lot zoning, restrictive single family definitions, minimum square footage for single family homes, housing location policies, expensive subdivision design standards, prohibitions against manufactured housing, time-consuming permitting and approval processes are some examples of policies and regulations that constrict the development of affordable and supportive housing.

Demographic trends such as an aging baby boomer generation, an increase in minority households, and the changing composition of households will drive the need for new housing configurations.

Affordable housing and supportive housing need to be viewed as integral components of a comprehensive region-wide housing policy and strategy to optimize the potential impact of local housing programs and ensure their effectiveness. Regulatory policies should be reassessed to ensure that they reflect a range of housing choices — a priority to develop more affordable housing linked with essential supportive services.

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In addition, the APA sets forth that planners must educate officials and citizens on housing needs and issues in order to diffuse community opposition to housing proposals that are often based on prejudice and fear. “Planners must work to address legitimate community concerns regarding housing development proposals, but must educate community residents that opposition to affordable housing based on the income of the households is not relevant to issues concerning the appropriateness of land use and density changes.” As stated above, SEWRPC documents some of the recent lawsuits brought about by discrimination in Chapter VI of the preliminary RHP.

Further discussion of this issue is provided in Chapter 4 of the SEI (Job/Housing balance) and in Chapter 5 (Accessible Housing).

PRELIMINARY REGIONAL HOUSING PLAN RECOMMENDATIONS FOR FAIR HOUSING/OPPORTUNITY

Fair Housing/Opportunity Recommendations
In total, there are 5 recommendations related directly to Fair Housing/Opportunity within the preliminary RHP, as follows:

1. Multi-family housing and smaller lot and home size requirements for single-family homes may accommodate new housing that would be more affordable to low-income households. A significantly higher percentage of minority households have low incomes compared to non-minority households. Communities should evaluate comprehensive plan recommendations and zoning requirements to determine if their plans and regulations act to affirmatively further fair housing.

2. Concerns have been raised that the conditional use process can be used to prevent multi-family residential development through excessive conditions of approval or the length of the review period. Multi-family residential uses should be identified as principal uses in zoning districts that allow multi-family residential development, subject to criteria specified in the ordinance.

3. Entitlement jurisdictions should explicitly require sub-grantees to certify that they will affirmatively further fair housing as a condition of receiving Community Planning and Development (CPD) funds, which include the Community Development Block Grant (CDBG) and HOME programs.

4. Funding should be maintained for organizations that advocate for fair housing to continue public informational programs aimed at increasing awareness of fair housing rights and anti-discrimination laws and assessing the procedures utilized by agencies charged with the administration and enforcement of housing laws, to ensure that all complaints of discrimination are fairly and expeditiously processed.

5. It is recommended that programs to help low-income families who wish to move to less impoverished areas be established by counties and communities in the Region to help reduce the concentration of minorities in high-poverty central city neighborhoods. Assistance could include help in finding suitable housing, work, enrolling children in school, and other services. Such a program could be established as part of a regional voucher program. It is recommended that the Governor and State Legislature provide State funding to help establish and administer these programs, typically referred to as assisted housing mobility programs.

Each recommendation was evaluated in light of its potential or probable impact on fair housing/opportunity and reducing discrimination given the existing and projected data provided within
the RHP as well as information documented on current socio-economic and housing trends. CED specifically looked at the potential positive or negative impacts that each recommendation could have on environmental justice communities.

ANALYSIS OF FAIR HOUSING/OPPORTUNITY RECOMMENDATIONS

As stated in Chapter 1, this study is an evaluation of the recommendations set forth in the RHP, to determine their socio-economic impact on the Southeastern Wisconsin Region based on the framework set forth by SEWRPC:

1. What positive social and economic impacts to environmental justice populations, if any, would be expected from implementation of the plan recommendation?
2. If positive social and economic impacts would be expected, would environmental justice populations receive a proportionate share of benefits, compared to the regional population as a whole?
3. What adverse social and economic impacts to environmental justice populations, if any, would be expected from implementation of the plan recommendation?
4. If adverse social and economic impacts would be expected, would impacts on environmental justice populations be disproportionally high, compared to the regional population as a whole?
5. If adverse impacts would be expected, what steps could be taken to mitigate disproportionally high social and economic effects on environmental justice populations?

There is a considerable amount of overlap between the recommendations; additionally, there is a considerable amount of overlap between different recommendations that support different plan categories. In order to evaluate the recommendations in an efficient manner, CED identified key categories or ‘tools’ that the recommendations fall into, that support the overall key objective.

Fair Housing/Opportunity: Key Objective
The proposed recommendations of the RHP related to fair housing/opportunity are designed to further the following principal objective:

- *Increase housing options for low-income and minority residents throughout the seven county Region*

In combination, the 5 recommendations for fair housing/opportunity have been designed to encourage open housing choices within the existing and proposed sewer service areas (areas of existing and planned urban development), which can support higher-density residential and commercial and industrial development.

**Tools that Impact Policy and Zoning:**
*Applies to Recommendations 1 and 2*

These recommendations focus on changes to land use policies or zoning to increase housing options for low-income residents and persons with disabilities. The evaluation focuses on whether or not the legal ramifications behind proposed policies and/or zoning changes could have a disproportionate impact on environmental justice communities. This includes all recommendations that impact laws, policies, and
zoning at state, county, and local levels. Zoning ordinances regulate the use of property, including the height, size, shape, density, intensity of use, and placement of structures or residences within various zoning districts in the community.

As discussed in the previous section on Zoning, if zoning codes are not designed to include a variety of densities and permitted uses, zoning ordinances can and should be construed as exclusionary. The 2006 Brookings Institution study\(^\text{31}\) classified the Milwaukee metro area as ‘Traditional/Middle America’. This category of metro areas tends to have numerous regional problems, including a lack of density due to inadequate zoning, and a lack of opportunities for low-income and minority households to live in the suburbs. They also tend to have fewer opportunities for people to own homes in central cities and their central cities appeal less to college graduates. In addition, this study noted that the Milwaukee metro area has some of the highest rates of concentrated poverty and concentrated black and Hispanic populations (segregation) among large metro areas. In general, this classification describes many of the problems seen in metro Milwaukee, including “a combination of low housing prices, rapid sprawl, a high concentration of disadvantaged people in central cities, and weak home ownership attainment for central city residents compared with their suburban counterparts.” Under such circumstances, the Brookings study recommends significant regulatory reform: “The end result is that these places (Traditional/Middle America) fail on multiple indicators. To the extent that their regulatory environments are in part responsible for those failures, wholesale regulatory reform is probably called for.” Regulatory reform should include widespread overhaul of suburban zoning codes to reflect more inclusion across all of the suburbs and considerably more coordination and oversight of suburban land use decision-making.

Both recommendations 1 and 2 deal with the review and evaluation of zoning requirements and designated districts for the purpose of providing access for low-income and renter households to affordable housing. Although in total numbers, there are more white low-income households in the Region, a greater percentage of black and Hispanic households as well as other protected class members is more likely to rely on lower-cost multi-family housing.

To this end, Recommendation 1 specifies that zoning policies in particular should be reviewed and adjusted accordingly to consider additional multi-family housing, or accommodate affordable single-family housing so that additional units of affordable housing might be possible. Reviewing comprehensive planning documents and zoning land use policies might identify additional opportunities for affordable housing and access for low-income households. The emphasis needs to be placed on how adequately local zoning and development plans for the area address issues of access for open and fair housing practices. Housing discrimination in zoning and land use may occur with policies that prescribe density requirements including lot and dwelling size. Recommendation 1, as long as it ties into zoning districts that allow for affordable housing as stated under Recommendation 1 of the Affordable Housing section, should have a significantly positive impact on environmental justice communities.

Recommendation 2 stresses the importance and significance of multi-family housing to housing plans that incorporate fair housing principles by addressing the manner in which zoning and approval under the conditional use process can act as a barrier to multi-family development. Community zoning

\(^{31}\) Pendall, Puentes, and Martin From Traditional to Reformed: A Review of the Land Use Regulations in the Nation’s 50 largest Metropolitan Areas, Brookings Institute, 2006. Accessible online at http://www.brookings.edu/~/media/research/files/reports/2006/8/metropolitanpolicy%20pendall/20060802_pendall
ordinances typically identify principal and conditional uses in each zoning district. Permitted uses are typically allowed subject to the restrictions applicable to the zoning district. Conditional uses require additional review and scrutiny compared to principal uses due to the demands placed on infrastructure or other factors that make the use more intense than the principal uses allowed in the district. A conditional use approval typically requires a case-by-case review by the local plan commission, and approval is often contingent on specific “conditions” attached to the permit intended to mitigate adverse impacts of the conditional use on the surrounding area. Concerns have been raised that the conditional use process can be used to prevent certain land uses, such as multi-family residential development, through excessive conditions of approval or the length of the review period. In addition to providing more opportunities for scrutiny, lengthening the process can provide greater opportunity for the public to voice opposition to the project.

SEWRPC correctly identifies that some of the reasoning behind the regulatory-based opposition to multi-family zoning, why it is often challenged and tightly regulated, is based on the perception that multi-family housing places an undue burden on property taxes, in the need to support additional services including the school district. If a community is found to be stalling or halting multi-family developments under CUP, a case may be made for housing discrimination. Implementation of Recommendation 2 would provide preemptive action and movement towards more fair and accessible housing for environmental justice communities throughout the Region, and therefore would have a positive impact on environmental justice populations.

Tools that Impact Planning and Programs
Applies to Recommendations: 1, 3, and 5

Similar to the tools that impact policy and zoning, these recommendations focus on changes to public planning tools or programs that would impact environmental justice populations.

Recommendation 1 states that communities should evaluate their local comprehensive plan recommendations as well as zoning codes to determine if their plans and regulations act to affirmatively further fair housing. This reaffirms and goes hand in hand with the findings for Recommendation 1 set forth under ‘Tools that Impact Policy and Zoning’. In addition to the regulatory issues (zoning ordinances), planning and policy issues such as those set forth under the local comprehensive plans should be reviewed to ensure that they foster the promotion of fair housing goals. This should have a significantly positive impact on environmental justice populations.

Recommendation 3 calls for explicit requirements to affirmatively further fair housing as part of the conditions for entitlement jurisdictions and subgrantees receiving Federal funding from programs such as CDP, CDBG and HOME. When implemented, this Recommendation would provide accountability for funding recipients including all subgrantees that receive pass-through funds from an entitlement jurisdiction (such as local governments receiving pass-through funds from a county or the State). HUD Community Planning and Development (CPD) funds are used for a variety of economic development and

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33 Entitlement cities within the Region include: Cities of Kenosha, Milwaukee, Racine, Waukesha, Wauwatosa, and West Allis. Entitlement Counties within the Region include: Milwaukee County and Waukesha County. All county and local governments that are not entitlement jurisdictions may apply for HUD funding administered by the State of Wisconsin, which is also an entitlement jurisdiction.
urban revitalization programs. HOME funds are used to build, buy, or rehabilitate affordable housing or provide rental assistance, while CDBG funds have broader uses for economic development. Ultimately, the accountability requirement would act as an incentive for subgrantees of CDBG and HOME funds to act to further fair housing, and therefore could have a significantly positive impact on environmental justice populations (a key recommendation, given the CDBG requirement).

Recommendation 5 calls for coordination among counties and communities in the Region to establish a program supported by the State to facilitate mobility among low-income households to less impoverished areas. Under this recommendation, the proposed Assisted Housing Mobility Program would be region wide and cross county and local jurisdictional boundaries. The creation of an Assisted Housing Mobility Program highlights the importance of increasing levels of access and opportunities for environmental justice communities in the preliminary RHP. There are fundamental problems within the Section 8 Housing Choice Voucher program that inhibit the ease of crossing jurisdictional boundaries. The proposed Assisted Housing Mobility Program would help alleviate this problem and open up housing opportunities outside of the Region’s major cities, and therefore would likely have a significantly positive impact on EJ populations.

**Tools that Impact Education and Outreach**  
**Applies to Recommendation 4**

This recommendation focuses on providing continued funding for outreach programs and agencies (Metropolitan Milwaukee Fair Housing Council, for example) that would promote fair housing education to both the public as well as to official local or county decision-makers including planners and politicians.

Recommendation 4 maintains that funding should be made available for continued community outreach, awareness and education, and advocacy aimed at issues relating to fair housing rights, anti-discrimination laws and access to legal support for accountability and enforcement. This is an important recommendation set forth to further fair housing policies and would have a significantly positive impact on members of environmental justice communities and their advocates in order to redress illegal discriminatory activity.

**SUMMARY**

FORTHCOMING
Environmental Justice Impact Matrix: Fair Housing/Opportunity

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>No Impact</th>
<th>Significantly Adverse Impact</th>
<th>Adverse Impact</th>
<th>Positive Impact</th>
<th>Significantly Positive Impact</th>
<th>Key Recommendation</th>
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- No Impact: recommendation will not have any direct impact, adverse or positive, on environmental justice populations
- Significantly Negative Impacts: environmental justice populations are likely to be negatively impacted in greater proportion to the regional population as a whole
- Adverse Impacts: environmental justice populations are likely to be negatively impacted in proportion to the regional population as a whole
- Positive Impacts: environmental justice populations are likely to receive benefits in proportion to the regional population as a whole
- Significantly Positive Impacts: environmental justice populations are likely to receive a greater proportion of the benefits compared to the regional population as a whole.
- Key Recommendations: CED identifies these select recommendations as likely having the greatest positive impact on environmental justice populations
Map 2: Diversity Index for Milwaukee County, 2010

Census Tracts
2010 Diversity Index
- 75.1 - 100.0
- 60.1 - 75.0
- 25.1 - 50.0
- 00 - 25.0

1 Box = 2
- 2010 Pop: Race: Black
- 2010 Total Hispanic Population

Total minority population in Milwaukee County = 46%
Source: SEWRPC, 2012

Overview: The Diversity Index from ESRI represents the likelihood that two persons, chosen at random from the same area, belong to different race or ethnic groups. The value of the Diversity Index increases both when the number of minority and majority increases.