

**Maryland Commission on Environmental Justice & Sustainable Communities  
(CEJSC) Meeting**

**December 15<sup>th</sup>, 2011, 9:30 a.m.- 11:30 a.m.  
Annie E. Casey Foundation, Baltimore, MD**

In Attendance

**Commissioners:** Lisa Nissley, Nancy Servatius (for Cliff Mitchell) , Delora Sanchez, John Kotoski, Bob Sklar, Karen Forbes, Scot Spencer, Vernice Miller-Travis, Andrew Fellows, Robin Underwood, Jennifer Peterson, Calvin Ball

**Participants:** Mohamed Dumbuya (guest speaker, FHWA), Jeff Fretwell (MDE), Kaley Laleker (MDE), Gordon Outlaw (DHCD), Sandy Talbert-Jackson (FHWA)

Introductions: The meeting began with introductions from everyone in Attendance.

Other Business:

Chairman Scot Spencer began by notifying the Commission of the recent award of a HUD sustainable planning grant for Baltimore City. The \$3.5M, 3-year grant will go toward sustainable planning in areas such as land use and workforce analysis. Government agencies and NGOs will work together to implement the plan. Scot Spencer noted several factors that led to Baltimore's selection for the award. Despite the fact that the Baltimore region is not as distressed as some other communities that have taken the award in the past, the area's racial gap in access to jobs was highlighted in the application for the grant. HUD has named 6 "livability factors" for the program, and Baltimore added an additional factor in its application, sustainability of the Bay. Yesterday was the first post-award meeting of the group that will implement the plan, which includes a variety of members such as 1000 Friends of Maryland, Maryland Department of Planning, several counties, Johns Hopkins University and Morgan State University's Baltimore Regional Environmental Justice Transportation project. A cooperative agreement is expected to be signed in mid-January, at which point the 3-year period for the grant will begin. A Commissioner asked whether the Commission was a signatory. Scot explained that it was not, but that EJ interests were represented and there may be more room for involvement at a later point.

Scot Spencer then discussed a transportation and land use strategies group that is working to identify ways to meet the State's GHG reduction goals. It was noted that Stuart Clark serves as a member of the group, representing the EJ community. The group is currently discussing California's S.B. 345, a climate action bill that lists a series of action items. Maryland is looking to implement some of the same actions. Scot commented that the

outreach section currently needs the most work. It contains four points, but the one calling for public involvement is vague, and another seeking to improve public schools in priority infill areas requires elaboration to explain how it relates to the outreach component. The group is small and meets once per month for the next six months. Spencer stated that he would distribute a link to the website.

The minutes from the September and October meetings, which were previously circulated, were approved unanimously.

#### Guest Presentation:

Mohamed Dumbuya then gave a presentation on Title VI of the Federal Civil Rights Act of 1964. Dumbuya is the Title VI Specialist and Civil Rights Program Manager for the Virginia Division of the Federal Highway Administration (FHWA). The presentation demonstrated how Title VI and Executive Order 12898 serve as vehicles for advancing environmental justice. An overview of the statute, Executive Order, and the Federal Highway Administration's implementation program were provided, and the Commissioners contributed to the discussion throughout the presentation.

Mr. Dumbuya began by noting that Executive Order 12898, which is the presidential mandate directing the executive branch to address environmental justice, was largely a response to grassroots initiatives. Studies were done showing disparate impacts on minority communities in areas of Texas and North Carolina. This increase in awareness of the problem led the Clinton Administration to issue the Executive Order in 1994.

Next, Mr. Dumbuya outlined the core requirement of Title VI, nondiscrimination by recipients of federal financial assistance. He explained that "assistance" includes not only transfers of money, but also provision of training and technical assistance at below-market value. It also reaches public-private partnerships where any federal funds are contributed. He noted that the various ways a party can receive federal financial assistance are found in the FHWA regulations at 23 CFR 200.5(h). It was explained that discrimination includes disparate treatment and disparate impact, so that neutral policies and unintentional discrimination are prohibited. The Commissioners discussed the application of this mandate to the planning and prioritization process. It was noted that if planning documents are so confusingly or technically worded as to prevent laypeople from having meaningful access to public participation, there could be disparate impact. A Commissioner noted that an administrative complaint filed in 1999 was only recently resolved in August, though the statute requires disposition within 180 days. This example was raised as an illustration of lingering widespread noncompliance with Title VI.

Mr. Dumbuya moved on to explain some other aspects of the Civil Rights Act of 1964. He outlined the three impermissible bases of discrimination: race, color, and national origin. He emphasized that the Act covers all persons, including non-citizens, who are within the continental U.S., its territories, or its possessions. A Commissioner raised the point that the Civil Rights Act is not widely studied, though it has widespread impacts on

many aspects of life, including employment. One Commissioner asked whether religion is protected by the Act, to which Mr. Dumbuya responded that it is not. Another Commissioner noted that religion was originally included in the bill, but was removed in order to secure passage.

Mr. Dumbuya then addressed the evolution of Title VI through the Civil Rights Restoration Act of 1987. It was explained that the Supreme Court had interpreted Title VI to apply only to the specific programs and activities that used federal assistance. The Civil Rights Restoration Act legislatively overruled this interpretation, restoring Congress' original intent that Title VI govern all activities of a recipient that receives federal assistance for any activity.

FHWA's Title VI nondiscrimination program was then discussed. Mr. Dumbuya noted that the program consists of activities in place to meet the non-discrimination requirements imposed by a variety of authorities, not just Title VI. Regulations relating to the program can be found at 23 CFR 200.5(p). Other prohibited grounds for discrimination are addressed in several other statutes, such as Section 504 of the Rehabilitation Act (disability), the 1975 Age Discrimination Act (age), and the 1973 Federal Aid Highway Act (sex).

The Commissioners discussed to whom Title VI would apply when a State agency receiving federal assistance has certain interactions with private parties. A Commissioner raised the example of a private owner and developer of land who requires permits from a State agency. Another provided the example of a subcontractor of a project funded by MDOT. Mr. Dumbuya noted that all parties to whom the federal financial assistance flows must comply with Title VI's requirements, including "sub recipients." A subcontractor working on a publically funded project would be a sub-recipient of Federal assistance. Conversely, a private developer working on a privately funded project would not be subject to Title VI simply because it required a permit from the State. In the latter case, the State still may not discriminate in its review of the permit, since it is a recipient of federal assistance.

Mr. Dumbuya presented a list of prohibited grounds for discrimination covered under Title VI and within the Federal Highway Administration's broader nondiscrimination program. A Commissioner asked the definitions of "race," "color," and "minorities," which are all covered within the nondiscrimination program. Race classifications are the same as census definitions. Color simply means pigment, and includes both intra-race and inter-race discrimination. A Commissioner noted that this is an artifact of the time at which the Civil Rights Act passed, when color was possibly as important an issue as race. Minorities are defined by Executive Order 12898.

The Commission moved on to a discussion of Executive Order 12898 on EJ. Mr. Dumbuya noted that the Order's requirement that agencies "identify and address" disproportionate impacts is similar to language in NEPA. The Commissioners discussed a hypothetical situation where a landfill was proposed to be located in a predominantly white, affluent community. It was noted that this situation would not trigger EO 12898's

mandate because (1) the siting of landfills is unlikely to disproportionately impact white or affluent people as a group and (2) white and affluent people, as a group, are not a “minority population” or a “low income population” as those terms are defined in the Order. It was noted that minorities are defined as “black, Hispanic, Asian American, American Indian, and Alaskan Native.” Low income is defined using the U.S. Department of Health and Human Services poverty guidelines.

The Commissioners discussed that the Executive Order is somewhat vague, and that this fact represents a strategy to further an EJ policy in a climate where EJ legislation would have been politically unfeasible. It was noted that the Executive Order mandates a process to implement Civil Rights Act requirements already in place since 1964. Since studies had shown that Title VI was, decades later, still not being enforced or implemented as it should have been, the Executive Order was seen as a way of reinforcing and rekindling the law.

The interaction between EO 12898 and NEPA analysis was discussed. A Commissioner commented that NEPA requires agencies to consider impacts on the “human environment” but that emphasis has always been on the natural and physical environment. A complete environmental impact statement (EIS) should address each of these factors, but in a typical EIS very little space is spent analyzing community and social impacts. Commissioners discussed some of the conflicts that can arise during NEPA analysis and other planning processes. For example, a Commissioner noted that there may be conflicts between disability rights advocates and environmental justice advocates in the analysis of a transportation project. Further, community and social impacts sometimes weigh in the opposite direction of the Endangered Species Act’s requirements. Several Commissioners noted that the current process is often adversary in nature, and a better process would involve a discussion among stakeholders before plans for a project became entrenched. In this way, the solidification of two opposing “camps” could be avoided. A Commissioner noted that in the majority of cases, a “clear loser” is unnecessary.

Mr. Dumbuya explained the responsibilities of recipients under the Executive Order. He stated that the Executive Order is not enforceable in court, but that it encourages enforcement of nondiscrimination laws such as Title VI of the Civil Rights Act of 1964. U.S. Department of Transportation (DOT) and FHWA have their own orders developing processes to incorporate EJ concerns into all decision making. Mr. Dumbuya commented that Title VI and Executive Order 12898 can be seen as a way to redeem ourselves of previous and continuing impacts on disadvantaged persons. He mentioned a documentary called “Divided Highways” that explains some of the ways the planning and construction of our highway system inequitably impacted certain groups.

The Commissioners briefly discussed affirmative action programs and how they fit in with the nondiscrimination mandates of Title VI and other laws. Several Commissioners noted that affirmative action programs must operate to remedy past discrimination and must have a nondiscriminatory rationale. Commissioners discussed how some forms of assistance to minority or low-income groups can actually serve to exacerbate

disproportionate impacts and overconcentration. A Commissioner mentioned that Federal housing assistance directed to low-income areas can sustain concentrated communities of poverty. For example, a lawsuit challenged the practices of the housing authority in Baltimore under this theory. The resulting consent decree charges the Authority, in conjunction with HUD, with dispensing housing assistance so as to distribute low-income households more evenly throughout the city. The recent push toward mixed-income development is another example of an effort to address this problem.

Mr. Dumbuya concluded by noting that fulfillment of ethical, civic, fiduciary, and moral obligations goes a long way toward fulfilling the legal obligations discussed in the presentation. As an example, he read from a code of ethics for environmental professionals, which included the responsibility to discharge one's duties in an equitable manner.

Adjourn- The meeting was adjourned at 11:30 am.

**The next CEJSC meeting is scheduled for January 24, 2012 in Annapolis, MD.**