

# CHAPTER 24

## ENVIRONMENTAL JUSTICE



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ENVIRONMENTAL  
JUSTICE

**O**n February 11, 1994, President Clinton signed Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The Executive Order (EO) requires federal agencies to achieve environmental justice (EJ) by identifying and addressing disproportionately high and adverse human health and environmental effects, including the interrelated social and economic effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EO 12898 and related United States Department of Transportation (USDOT) and Federal Highway Administration (FHWA) orders on EJ expound upon the principles of Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes emphasizing nondiscrimination and equity considerations in the environmental and transportation decision-making processes. The nondiscrimination requirements of Title VI extend to all programs and activities of the District of Columbia Department of Transportation (DDOT) and its respective

subrecipients and contractors; therefore, EJ requirements apply to all DDOT projects, including those that do not involve federal-aid funds.

There are three fundamental environmental justice principles:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations

### 24.1 Summary of Key Legislation

- Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994

- Executive Order 12948, “Amendment to Executive Order No. 12898,” January 30, 1995
- FHWA Memorandum from Associate Administrator for Program Development, “Nondiscrimination, Environmental Justice, and Community Impact Assessment in Planning and Project Development,” July 27, 1995
- USDOT Order 5610.2, “Order to Address Environmental Justice in Minority Populations and Low-Income Populations.” April 15, 1997
- FHWA Order on Environmental Justice, “FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” December 2, 1998
- 42 USC 2000d-2000d-7, Title VI of the Civil Rights Act of 1964
- Ensuring that mitigation measures outlined or analyzed in an Environmental Assessment (EA), Environmental Impact Statement (EIS), and Record of Decision (ROD), whenever feasible, address disproportionately high and adverse environmental effects or proposed actions on minority populations and low-income populations
- Providing opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility to public meetings, official documents, and notices to affected communities

It is critical to note that while EO 12898 on environmental justice specifically identifies minority populations and low-income populations as the focus of consideration, Title VI and related nondiscrimination statutes also prohibit discrimination on the basis of race, color, national origin (includes limited English proficiency), sex, disability, and age. Throughout the NEPA process, special efforts must be taken to ensure that project impacts do not adversely affect individuals and populations belonging to any of the aforementioned protected categories.

## 24.2 Integrating EJ in the NEPA Process

The identification and analysis of disproportionately high and adverse human health or environmental effects on minority populations and low-income populations should occur throughout the National Environmental Policy Act of 1969 (NEPA) process, from the initial phases of the screening analysis through the consideration and communication of all alternatives and associated mitigation measures. Potential impacts to the human environment should drive the processing option decision as much as potential impacts to the natural environment. Impacts to both the natural and human environment are to be given comparable consideration throughout transportation decision making.

Specific actions to integrate EJ considerations into the NEPA process include::

- Analyzing environmental effects, including human health, economic, and social effects on minority populations and low-income populations when such analysis is required by NEPA

## 24.3 General Methodology

The following section provides guidance for identifying and addressing EJ impacts throughout the NEPA process.

### 24.3.1 Incorporating Environmental Justice into the NEPA Scoping Process

The identification of EJ concerns and the incorporation of these concerns into the scoping analysis can help to ensure that the NEPA process is fully utilized to address concerns and enhance protection for EJ populations.

Scoping consists of identifying and defining the range of actions, alternatives, and impacts that will be considered in

an environmental impact statement. During the scoping phase of the EIS process, DDOT must consider connected, cumulative, and similar actions to the proposed action, identify alternatives to the proposed action that may mitigate or avoid potential environmental consequences, and assess potential impacts (direct, indirect, and cumulative.) A similar planning process is used for EAs.

### **Environmental Justice Screening Process**

The objective of an environmental justice analysis is to assess the extent to which the benefits and costs of a proposed transportation system change would be experienced differentially by protected populations and other member of society.

A two-step screening analysis is the first step in identifying environmental justice concerns by determining the existence of a low-income and/or minority population; this should occur as soon as the proposed action is well understood, around the time planning for scoping begins for EISs and planning begins for EAs. The first step in the analysis is to determine if the potentially affected community includes minority and/or low-income populations. The second step in the analysis is to determine if the human health and environmental impacts are likely to fall disproportionately on minority and low-income members of the community and/or tribal resources.

#### **24.3.2 Determine Characteristics of the General Population**

Using the most recent U.S. Census data, determine the demographic and income characteristics of the general population. For projects without a major impact on regional transportation (for example, bridge reconstruction), an acceptable “general population” could be defined by geopolitical boundaries such as a city or county. However, for major projects (those with a sizable influence on regional

transportation, such as a new corridor), it is best to define a project-specific general population—that is, the total population that would be affected, positively or negatively, by the project. For example, for commuter routes, one may use the project’s “travelshed,” the area in which the majority of the facility’s users reside, as the general population. Key data for this analysis include racial characteristics and median household income. These data are best presented in a table or other delineated format, or illustrated by a geographic information system (GIS) graphic.

#### **24.3.3 Determine the Project’s Area of Influence**

Impacts within the project’s area of influence can include human health impacts such as noise and air quality, environmental degradation, impacts on community cohesion, or displacement and relocation impacts. The impact area can be determined using the project area or “footprint” of the project (this will determine the displacements and right-of-way acquisition associated with the project). Other relevant areas of influence include the 67-decibel (dB) noise contour (noise impacts) or the project “viewshed” (the area visually impacted by the project). The area of influence is project-specific and based on that project’s associated impacts. For example, in the case of major roadway construction through a residential area, one of the major impacts of concern would likely be noise; thus, using defined noise contours to determine the population that would be subjected to noise levels above the 67-dB contour would be a reasonable “area of influence.”

In limited instances, particularly on large or urban projects, EJ impacts could affect an entire community rather than just the immediate project area. This would occur when the impacts to a low-income community or minority group adjacent to a project damage the area as a whole (e.g., removal of a large enough number of affordable housing units so that there is

no longer a sufficient amount of affordable, community-wide housing).

#### 24.3.4 Determine Characteristics of the Impacted Population

To determine the presence of an EJ population, first determine the impacted population's (i.e., population within the area of influence) characteristics. Using U.S. Census data available for block groups or other small geographic areas such as quarter-sections, determine the impacted population's racial/ethnic and income characteristics. Other social program participation, such as school lunch programs, can be helpful in determining income characteristics of a defined population. Determine if the incomes in the area fall below the poverty levels established by the U.S. Department of Health and Human Services (DHHS).

In addition to data derived from the U.S. Census and social program participation, also consider the use of local knowledge, public input, field surveys, and customer surveys in your analysis. These methods can assist in better defining small or emerging populations, as well as lend new perspectives on how impacts may be experienced by different segments of the population.

#### 24.3.5 Compare the Impacted Population to the General Population

Compare the characteristics of the general population to those of the affected population to determine whether there is a disproportionate impact. A table listing the two populations' appropriate demographic characteristics is the clearest way to compare the populations. A GIS graphic should also be considered to represent the comparison.

#### 24.3.6 Addressing and Mitigating Impacts to EJ populations

If the EJ screening analysis does not identify minority communities or low-income communities, and suggests

no disproportionately high and adverse effects on those communities, then the EA and FONSI should describe the analysis and note the conclusion.

If the initial screening identifies an affected community that is minority and/or low-income or identifies a disproportionately high and adverse effect upon a minority and/or low-income community, then a smaller scale scoping analysis (than that undertaken for an EIS) should be conducted, and some level of public participation should be designed and implemented to solicit community involvement and input, and to develop alternatives and mitigation methods. Mitigation measures should be developed and alternatives should be crafted so as to allow an evaluation of the relative disproportionality of impacts across reasonable alternatives. The EA should also include a comparative socioeconomic analysis that is scaled and tailored to evaluate the potential effects to the minority and/or low-income community (i.e., in the case of EJ concerns, the EA should include socioeconomic analyses scaled according to the severity of the impacts.)

All reasonably foreseeable adverse social, economic, and environmental effects on minority populations and low-income populations must be identified and addressed. As defined in DOT Order 5610.2 on EJ, adverse effects include, but are not limited to:

- Bodily impairment, infirmity, illness, or death
- Air, noise, and water pollution and soil contamination
- Destruction or disruption of man-made or natural resources
- Destruction or diminution of aesthetic values
- Destruction or disruption of community cohesion or a community's economic vitality
- Destruction or disruption of the availability of public and private facilities and services
- Vibration

- Adverse employment effects
- Displacement of persons, businesses, farms, or nonprofit organizations
- Increased traffic congestion, isolation, exclusion, or separation of minority or low-income individuals within a given community or from the broader community
- The denial of, reduction in, or significant delay in the receipt of benefits of DDOT programs, policies, or activities

If the environmental effects of a project are deemed significant, the scoping notices (including the notice of intent for an EIS) should include a description of the results of the EJ screening analysis. If the results of the screening analysis do not find a minority community or low-income community, and the effects are not likely to fall disproportionately on a minority community and/or low income community, then the scoping notice should state this finding and request additional information on whether there may be disproportionately high and adverse effects that were overlooked during the screening analysis.

If the EJ screening analysis concludes that there is a potential for disproportionately high and adverse effects, then DDOT staff should ensure that the EIS scoping process raises EJ concerns and that sufficient data and information are generated to evaluate the potential effects. Prior to the full-scale scoping process, public outreach strategies should be developed.

In the event that a disproportionately high and/or adverse effect has been identified, and impact-avoiding measures are not reasonable, consider mitigation measures. Working with community agencies and relevant not-for-profit groups can help determine appropriate mitigation strategies. Mitigation measures include enhancements or offsetting benefits and opportunities that are reasonable in cost and scope and help the project fit more harmoniously into the community.

(Examples may range from landscaping/green space, sidewalks, or other pedestrian accommodations, and lighting features to the creation of community programs or advisory groups.)

## 24.4 Public Involvement

A proactive and ongoing public involvement program should be implemented to provide meaningful opportunities for EJ populations to participate in the decision-making process. Special efforts may need to be made to ensure that minority and low-income populations are aware of the public involvement process and are able to participate.

Targeted public involvement strategies include, but are not limited to:

- Communicating and seeking the assistance with members of the community and community based organizations who are able to identify minority and/or low-income communities that are affected by the proposed action
- Forming community advisory task forces, and ensuring that representatives from minority, low-income, and limited-English proficient communities are included, as applicable
- Utilizing the Mayor's Offices on Latino Affairs, Asian and Pacific Islander Affairs, and African Affairs, and the DC Language Access Coalition to distribute information to limited-English proficient communities
- Using oral interpreters at public meetings and events, and translating project information into other languages
- Selecting meeting locations and times that are accessible for low-income groups
- Soliciting information from the local community on environmental issues through nontraditional methods (e.g., survey community hot spots where locals gather information, barbershops, and popular restaurants)

- Soliciting public comments on environmental issues through formal/informal public notice and comment procedures tailored to the community

If the proposed activity is deemed significant to warrant the development of an EIS, or if the community has raised significant concerns to be addressed in an EA, DDOT should establish a community advisory board to work with its staff in the development of its NEPA documents.

The public participation plan designed as part of a scoping effort for an EA or EIS should clearly describe any EJ concerns identified by DDOT, and should include opportunities for the public to suggest and comment on alternatives and mitigation measures aimed at reducing or avoiding disproportionately high and adverse effects on EJ populations.

For additional information regarding public involvement requirements and strategies, see Chapter 11.

#### 24.4.1 Limited English Proficient Populations

A limited-English proficient (LEP) person does not speak English as their primary language and has a limited ability to read, speak, write, or understand English. Executive Order 13166 requires recipients of federal assistance to ensure that LEP persons are provided an equal opportunity to benefit or have access to services that are normally provided in English. Discrimination against LEP persons qualifies as national origin discrimination, and is a violation of Title VI. As such, DDOT must provide LEP populations with a meaningful level of access to environmental decision-making processes. In deciding to what extent access must be provided, the following four factors should be considered: (1) the number and proportion of affected LEP persons; (2) the frequency with which LEP persons are affected by the program or activity; (3) the importance of the effect of the program on the LEP persons; and (4) available resources.

Useful strategies to engage LEP populations include, but are not limited to:

- Translating vital documents, such as public meeting notices and posting in foreign language newspapers
- Using oral interpreters and/or hiring bilingual project staff
- Coordinating with community organizations targeting LEP populations
- Use of visual displays or symbols to notify and engage LEP populations in project activities

For more information on translation and interpretation resources, please contact the DDOT Office of Civil Rights.

#### 24.5 Additional Information

- FHWA/Federal Transit Authority (FTA) Website on Environmental Justice: <http://www.fhwa.dot.gov/environment/ej2000.htm>
- Final Guidance for Incorporating Environmental Justice Concerns in the United States Environmental Protection Agency (USEPA) NEPA Compliance Analyses (1998): [http://www.epa.gov/region1/ej/pdfs/ej\\_guidance\\_nepa\\_epa0498.pdf](http://www.epa.gov/region1/ej/pdfs/ej_guidance_nepa_epa0498.pdf)
- National Cooperative Highway Research Program (NCHRP) Report 532: Effective Methods for Environmental Justice Assessment (2004): [http://onlinepubs.trb.org/Onlinepubs/nchrp/nchrp\\_rpt\\_532.pdf](http://onlinepubs.trb.org/Onlinepubs/nchrp/nchrp_rpt_532.pdf)
- USDOT/FHWA: How to Engage Low-Literacy and Limited-English-Proficiency Populations in Transportation Decisionmaking (2006): <http://www.fhwa.dot.gov/hepl/lowlim/index.htm>
- For key legislation and regulations, please also see Chapter 25, Socioeconomic Resources.