

VIRGINIA DEPARTMENT OF TRANSPORTATION
ENVIRONMENTAL DIVISION
NEPA PROGRAM – LOCATION STUDIES

SOCIOECONOMICS AND ENVIRONMENTAL JUSTICE

CONSULTANT RESOURCE GUIDANCE DOCUMENT

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TABLE OF CONTENTS

1.0	INTRODUCTION	1
1.1	Purpose.....	1
2.0	SOCIOECONOMIC EVALUATION	2
2.1	Data Collection	2
3.0	ENVIRONMENTAL JUSTICE	2
3.1	Impact Evaluation	4

1.0 INTRODUCTION

The National Environmental Policy Act of 1969 (NEPA) requires that the potential social, economic, and environmental effects of federal actions be considered. Under the evaluation of potential effects, alternative approaches for addressing project needs, and possible mitigation measures for unavoidable environmental impacts, required by NEPA, consideration of other applicable laws and regulations must be made.

Among other laws and regulations applicable to NEPA evaluations for transportation projects, Title VI of the Civil Rights Act of 1964, as amended, requires no person in the United States shall, on the ground of race, color, or national origin (including individuals with Limited English Proficiency), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Title VI bars intentional discrimination, as well as disparate impact discrimination (i.e., a neutral policy or practice that has an unequal impact on protected groups).

For transportation improvement projects, the Federal Highway Administration (FHWA) has implemented a Title VI program that encompasses other nondiscrimination statutes and authorities, including:

- Section 162 (a) of the *Federal-Aid Highway Act of 1973* (23 USC 324), providing protection against gender-based discrimination;
- The *Age Discrimination Act of 1975*, prohibiting discrimination on the basis of age;
- Section 504 of the *Rehabilitation Act of 1973/Americans with Disabilities Act of 1990*, providing disabled individuals equal opportunities to participate in and have access to Federal programs, benefits, and services;
- Executive Order 13166 – *Improving Access to Services for Persons with Limited English Proficiency*, requiring federal agencies to identify any need for services to those with limited understanding of the English language; and
- Executive Order 12898 – *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations* (1994), to ensure federal programs do not result in disproportionately high and adverse environmental or health impacts to these populations.

Executive Order 12898 – *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations* requires all Federal agencies to:

“...promote nondiscrimination in federal programs substantially affecting human health and the environment, and provide minority and low-income communities’ access to public information on, and an opportunity for public participation in, matters relating to human health or the environment.”

1.1 Purpose

Consideration of potentially social and economic impacts, particularly those effects on communities protected under nondiscrimination statutes, is a critical component of NEPA analyses. The purpose of this guidance document is to provide some background and information regarding the appropriate tools available and general process for evaluating social and economic impacts to support NEPA studies for the Virginia Department of Transportation (VDOT). This guidance document primarily focuses on the

evaluation of minority or low income populations that are protected under the regulations listed in the section above, as “Environmental Justice” populations. However, this document also identifies appropriate sources for data collection and considerations that should be included in socioeconomic evaluations for VDOT NEPA studies.

2.0 SOCIOECONOMIC EVALUATION

The evaluation of potential socioeconomic impacts should generally include consideration of the following:

- Existing and planned land use;
- Population, income, and housing characteristics;
- Economics and employment information; and
- Communities and community facilities.

Specific information regarding potential property impacts and the identification of parks, recreational facilities, wildlife and waterfowl refuges, and/or historic sites may also be necessary to include as part of the evaluation of socioeconomic impacts or may be conducted separately depending on the scope of the NEPA study being conducted. The extent of evaluation for the above listed resources for each individual NEPA study should be discussed and approved by VDOT’s NEPA Program – Location Studies Section.

2.1 Data Collection

The US Census Bureau collects information by census block groups, which should be the primary source for data collection to evaluation potential socioeconomic resources and impacts. The 2010 Decennial Census provides more accurate count data than those available from the American Community Survey (ACS) five-year estimates, which is a sample count that may contain large margins of error. Therefore, the 2010 Decennial Census data should be used whenever appropriate data is available. However, however, ACS data may be used at the census block group level, but it should be noted that the data represents the best available information at the time and/or is more reflective of existing conditions in the study area.

Land use data and other information regarding socioeconomic resources should also be derived from available mapping, GIS information, and locality planning documents.

3.0 ENVIRONMENTAL JUSTICE

Environmental Justice analyses are an important component of the overall socioeconomic considerations included in a NEPA study. Executive Order 12898 itself does not define the terms “minority” or “low-income” as they relate to Environmental Justice communities but these terms have been defined in the U.S. Department of Transportation (USDOT) and FHWA Environmental Justice Orders, below:

- Minority Individual – The USDOT and FHWA Environmental Justice Orders define a minority individual as belonging to one of the following groups: (1) Black: a person having origins in any of the black racial groups of Africa; (2) Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; (3)

Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent; (4) American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through Tribal affiliation or community recognition; or (5) Native Hawaiian and Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

- Low-Income Individual – The FHWA and USDOT EJ Orders define a “low-income” individual as a person whose median household income is at or below the latest Department of Health and Human Services (HHS) poverty guidelines. The HHS poverty guidelines should be used, as they are the most appropriate for comparison with the latest available median household income data provided at the block group level by the ACS. Therefore, the HHS poverty guidelines for persons living in the contiguous 48 states and District of Columbia should be used for the identification of low income populations.

For the purposes of identifying minority and low income populations, the following strategies should be used:

- Minority Populations – Any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who would be similarly affected by a proposed USDOT/FHWA program, policy, or activity (USDOT and FHWA EJ Orders). For the purposes VDOT NEPA studies, a minority population should be considered present when: (a) the minority population of the census block group exceeds 50 percent of total study area population or (b) the minority population percentage in the affected area is “meaningfully greater” than the minority population percentage in the general population or other appropriate unit of geographical analysis (CEQ, 1997). The minority population for a census block group should be found to be “meaningfully greater” than surrounding block groups in the study area if its minority population is greater than the value of the block group with the lowest percentage of minority population within the study area, plus an additional 10 percent of that value.

Data for minority population analysis should include a count of minority residents per census block group per racial category. As Hispanics may be of any race, data should be compiled separately for residents of Hispanic ethnicity.

- Low-Income Population – Any readily identifiable group of low-income persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who would be similarly affected by a proposed USDOT/FHWA program, policy, or activity (USDOT/FHWA EJ Orders). In the Transform I-66: Inside the Capital Beltway Eastbound Widening EJ analysis, low-income populations will be identified where the median household income for a census block group within the study area is at or below the HHS poverty threshold.

3.1 Impact Evaluation

The Environmental Justice analysis should identify the potential for adverse and beneficial effects of the alternatives on human health and the environment in minority and low-income population locations in the study area by reviewing all other sections of the NEPA study and by considering all identified potential impacts. In accordance with FHWA guidelines, effects to evaluate include direct and indirect effects and cumulative impacts of the alternatives, including a No Build Alternative. The analysis should generally include qualitative and quantitative assessments of potential effects to Environmental Justice populations such as right-of-way impacts; changes in the neighborhoods or community cohesion in the study area; changes in travel patterns and accessibility; impacts on community facilities and services, including access to those services; and impact of alternatives on public safety (e.g., emergency services).

3.1.1 Disproportionately High and Adverse Impact Assessment

When impacts to Environmental Justice populations are identified, the impacts experienced by the affected population should be compared to those experienced in non-Environmental Justice population areas along the entire study area boundary for alternatives being evaluated. A disproportionately high and adverse effect on minority and low-income population locations should be considered to occur, as defined by the FHWA Environmental Justice Order, when the impact:

- Would be predominately borne by a minority and/or low-income population, or
- Will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or non-low-income population.

Additionally, measures to avoid, minimize, or offset adverse effects and the benefits to minority and low-income populations from the alternatives analyzed should be considered in making the determination of whether an impact is disproportionately high and adverse to EJ populations.

If disproportionately high and adverse effects to a minority or low-income population is identified from an alternative evaluated, and practicable mitigation measures or other feasible alternatives would not further reduce the impact, FHWA would consider whether or not there is substantial need for the project based on overall public interest. FHWA may only approve selection of the alternative with the least adverse effects on protected EJ populations, unless the alternative has either:

- adverse social, economic, environmental, or human health impacts that are more severe; or
- would involve increased costs of an extraordinary magnitude.

As preliminary design and assessment of impacts advances, consideration of an alternative's impacts to individual minority or low-income persons may be necessary. For example, minority or low-income extended families may be located adjacent to each other to assist each other with dependent care. In this type of circumstance, relocation of one household away from another may impose disproportionately high and adverse effects to minority or low-income individuals (see FHWA's 2015 *Environmental Justice Reference Guide* for detailed discussion). Documentation supporting and explaining the determination of disproportionately high and adverse impacts to EJ populations should be included in the NEPA document and supporting technical reports.

