

## **NDOT Environmental Justice Process**

### **Compliance With Executive Order 12898**

#### *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law. The order also directs each agency to develop a strategy for implementing environmental justice. The order is also intended to promote nondiscrimination in federal programs that affect human health and the environment, as well as provide minority and low-income communities access to public information and public participation. As a recipient of federal financial assistance, the Nebraska Department of Transportation must also comply with Executive Order 12898 and related directives.

Broadly, the primary goals of NDOT with regard to Environmental Justice compliance are as follows:

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.

### **Applicable Orders, Directives, and Guidance**

The Environmental Justice policy of the Nebraska Department of Transportation has been patterned after, and does not deviate from, the processes detailed in the following federal orders and directives:

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*;

US Department of Transportation Order 5610.2A, *Final DOT Environmental Justice Order*;

Federal Highway Administration Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

The federal orders and directives are silent on some aspects of Environmental Justice analysis and compliance. In areas where the federal orders and directives are silent, the Nebraska Department of Transportation has used the following documents for guidance:

Federal Highway Administration Memorandum of December 16, 2011, *Guidance on Environmental Justice and NEPA*;

Council on Environmental Quality guidance document of December 10, 1997, *Environmental Justice Guidance under the National Environmental Policy Act*;

National Cooperative Highway Research Program Report 532, *Effective Methods for Environmental Justice Assessment*;

National Cooperative Highway Research Program Report 710, *Practical Approaches for Involving Traditionally Underserved Populations in Transportation Decision-making*;

Liu, Dr. Feng. *Environmental Justice Analysis: Theories, Methods, and Practice*. Boca Raton: Lewis Publishing, 2001;

US Department of Transportation Publication No. FHWA-EP-01-010, *Transportation and Environmental Justice Case Studies*.

## **Definitions**

**FHWA.** The Federal Highway Administration as a whole and one or more of its individual components.

**Low-Income.** A person whose median household income is at or below the Department of Health and Human Services poverty guidelines. The [DHHS Poverty Guidelines](#) for the 48 contiguous states define the poverty level by dollar amount for individuals and families/households. The U.S. Department of Health and Human Services does not publish tabulations of the number of people below the DHHS poverty guidelines, which are a simplified version of the federal poverty thresholds. The federal poverty thresholds are used for calculating all official poverty population statistics, and are updated annually by the Census Bureau. The best approximation for the number of people below the DHHS poverty guidelines in a particular area is the number of persons below the Census Bureau poverty thresholds in that area.

**Minority.** A person who is:

**Black:** a person having origins in any of the black racial groups of Africa;

**Hispanic or Latino:** a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent;

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

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 Population.* Low-income populations should be identified where:

the low-income population of the affected area exceeds 50 percent;

the low-income population percentage of the affected area is meaningfully greater than the low-income population percentage in the general population or other appropriate unit of geographic analysis (the meaningfully greater standard is fact-dependent and requires professional judgment, but in most cases *meaningfully greater* is about 6%-8% or above);

a readily identifiable group of low-income persons that lives in geographic proximity is present in the affected area; OR

If circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed NDOT program, policy, or activity, are present in the affected area.

*Minority Population.* Minority populations should be identified where:

the minority population of the affected area exceeds 50 percent;

the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis (the meaningfully greater standard is fact-dependent and requires professional judgment, but in most cases *meaningfully greater* is about 6%-8% or above);

a readily identifiable group of minority persons that lives in geographic proximity is present in the affected area; OR

If circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed NDOT program, policy, or activity, are present in the affected area.

*Adverse Effects.* The totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of human-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; and the denial of, reduction in, or significant delay in the receipt of, benefits of NDOT programs, policies, or activities.

*Disproportionately High and Adverse Effect on Minority and Low-Income Populations.* An adverse effect that:

Is predominately borne by a minority population and/or a 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.

*NDOT.* The Nebraska Department of Transportation as a whole and one or more of its individual components.

*Programs, Policies, and/or Activities.* All projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded (in whole or in part), or approved by NDOT. These include, but are not limited to, permits, licenses, and financial assistance provided by NDOT. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of this directive.

*Regulations and Guidance.* Regulations, programs, policies, guidance, and procedures relevant to Environmental Justice analysis and/or compliance.

### **Project-Level Environmental Justice Process**

The NDOT Civil Rights Office currently reviews each state and local project for Environmental Justice and Limited English Proficiency concerns during the completion of NDOT Form 53 (NDOT-53), *Probable Class of NEPA Action Form*. This form includes most project specifics, as well as project area and detour maps, as attachments. Because the NDOT-53 is one of the first documents created in the life of a project, the NDOT Civil Rights Office is able to review projects at a very early stage of development. This early review allows the Civil Rights Office to recommend effective public involvement/outreach methods, and also allows the Civil Rights Office to keep a close eye on projects with potential disproportionately high and adverse effects as the project development process progresses. The early Civil Rights Office review is included with the NDOT-53, or in a separate "Civil Rights Memo," and is routed to both the NDOT Public Involvement Office and the NDOT Environmental Unit.

Using localized census tract data and other relevant information sources, the NDOT Civil Rights Office will gather data and list any readily identifiable groups or clusters of minority or low-income persons in the environmental study area. Small clusters or dispersed populations are not overlooked.

In the appropriate section of the NEPA document, typically the section regarding social and economic impacts, demographic information is provided on the general population in the

project study area. Social characteristics include identification of the ethnicity, age, mobility and income level of the population. These data elements, while not all required for an EJ analysis, are important to provide context for understanding area demographics.

When there are no minority or low-income populations in the study area, no Environmental Justice analysis is required.

When minority or low-income populations are present in the environmental study area, the NDOT Civil Rights Office will review the project description and other documents to determine whether or not potential disproportionately high and adverse effects exist. The results of any early public involvement efforts will be considered at this stage as well. The beneficial and adverse effects on the minority and low-income populations are addressed according to the circumstances of the specific project. Topics may include air, noise, water pollution, hazardous waste, aesthetic values, community cohesion, economic vitality, employment effects, displacement of persons or businesses, farms, accessibility, traffic congestion, relocation impacts, safety, and construction/temporary impacts. If no potential adverse effects exist, the Environmental Justice analysis is completed.

If potential disproportionately high and adverse effects exist, then consideration must be given to mitigation (as defined in 40 CFR 1508.20) for all adverse effects. The analysis produced by the NDOT Civil Rights Office discusses what measures are being considered for alternatives to avoid or mitigate any adverse effects. NDOT will follow the protocol of avoidance first, then minimization, and finally measures to offset or rectify the adverse effects. Using opportunities to enhance and increase sustainability in communities and neighborhoods is desirable.

If the effects remain adverse after mitigation is considered, then a determination must be made whether those effects are disproportionately high and adverse with respect to minority and/or low income populations. Disproportionately high and adverse effects are those that:

Are predominately borne by a minority population and/or a 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.

For projects where FHWA retains NEPA responsibility, the NDOT Civil Rights Office does not make the final determination of whether or not disproportionately high and adverse effects exist. The analysis generated by the Civil Rights Office is sent, along with the remainder of the NEPA document, to FHWA for review and approval. For projects where NEPA authority is assigned to NDOT through a Section 326 MOU with FHWA, NDOT makes the final determination of whether disproportionately high and adverse effects exist. For assigned projects, if there is potential for disproportionately high and adverse impacts to a minority population, NDOT will inform and coordinate with FHWA regarding Title VI considerations, which are not assigned.

If new information is learned about the project or existing conditions after the environmental justice review occurred (e.g., hazardous materials are discovered or new information is learned about phasing or access), if the demographics of the community have substantively changed

based on a re-run of the population analysis<sup>1</sup>, or if a reevaluation is needed for a project under NEPA, AND a minority or low-income population is present, the environmental justice review will be revisited. If the project change has no potential to affect the minority or low-income population, the NEPA analyst will state such in the reevaluation. If there is potential for either a new or change in impact, or a change in a commitment, the NEPA analyst will coordinate with the NDOT Civil Rights Office for additional guidance and documentation. If there is known potential for a demographics change within the study area since the time of the NDOT-53 or Environmental Justice review (e.g., change in businesses or community services that could influence the population within the study area), the NEPA analyst will coordinate with the NDOT Civil Rights Office for additional guidance and documentation.

### **Program-Level Environmental Justice Review**

Environmental Justice requires not only a project-by-project analysis, but also a broader look at how the agency extends and maintains services. Are services being extended to and maintained for those persons in minority and low-income communities in a fair and equitable manner? In fulfilling this requirement, the NDOT Civil Rights Office will annually review planning-level NDOT documents to ensure that minority and low-income populations are not being excluded from NDOT programs, activities, or services.

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<sup>1</sup> The population analysis is re-run at the time an Environmental Justice Memo is produced, or prior to NEPA document approval if the NDOT-53 is more than three years old or if 2010 census data was solely used for the population analysis. The population analysis and re-analysis will be documented.