



# ENVIRONMENTAL JUSTICE GUIDELINES



**Civil Rights**

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## I. INTRODUCTION

President Clinton issued Executive Order 12898 on February 11, 1994, which reinforces the importance of fundamental rights and legal requirements contained in Title VI of the Civil Rights Act of 1964 and the National Environmental Policy Act (NEPA). The Executive Order directs that "each Federal agency and State Highway Administration/Department of Transportation make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations". Other documents which have been issued to further clarify the Executive Order are: the US Department of Transportation's (DOT) Order on Environmental Justice, whose latest order (USDOT Order 5610.2(a) was issued May 2012; the Council on Environmental Quality's (CEQ) "Environmental Justice: Guidance Under the National Environmental Policy Act", dated December 10, 1997; and the Federal Highway Administration's (FHWA) Order on Environmental Justice, whose latest order (FHWA Order 6640.23A) was issued June 2012.

VDOT is committed to the principles of environmental justice (EJ) and is assessing and documenting the impacts of transportation projects on minority and low-income populations as a normal part of our environmental analysis efforts. A key aspect of an EJ analysis is to ensure the involvement of affected communities in the project development process. These guidelines are meant to provide Environmental, Planning, Right of Way, Location and Design, Civil Rights and any other applicable divisions (from this point forward referred to as "the project team") with a consistent framework for both preparing an EJ analysis and developing an effective public involvement strategy. They contain only principles and general procedures, which means that the specific approach must be tailored to the unique circumstances of each project and those communities affected by it. If the procedures do not seem appropriate for a particular project, then the team should develop a more suitable approach.

The guidelines apply to projects requiring all types of NEPA documentation (Environmental Impact Statements, Environmental Assessments, Categorical Exclusions or environmental reevaluations). The identification of minority or low-income populations actually begins during systems planning by the Metropolitan Planning Organization (MPO) or VDOT's Transportation and Mobility Planning Division but is also carried out by Environmental, Location and Design and Right of Way. This information will be used and supplemented during the environmental inventory and alternatives development phases of the project development process as additional data, analysis and public input are refined. Decision-makers will be better informed about the important issues and concerns of low income and minority populations to be considered along with other factors in determining project location, design and mitigation. The EJ analysis during project development will be conducted concurrently with other technical environmental analyses during the Stage One Reporting stage.

An EJ analysis must be completed for each build alternative. Additionally, the No-Build alternative must be carefully considered as well. For example, it's possible that not building transportation improvements could impact minority or low-income populations (i.e., increased noise or air pollution, limited access to employment, etc.). A clearly written description of all EJ findings must be included in the environmental document.

## II. ENVIRONMENTAL JUSTICE AND TITLE VI

The EJ Executive Order supplements the existing requirements of Title VI of the Civil Rights Act. Title VI says that each Federal agency is required to ensure that no person on grounds of race, color, or national origin is excluded from participation in, denied the benefits of, or in any other way subjected to discrimination under any program or activity receiving Federal assistance. Supplemental legislation provides these same protections from discrimination based on sex, age, and disability.

The concept of environmental justice is intended to ensure that procedures are in place to further protect groups which have been traditionally underserved. The fundamental principles of environmental justice are:

- 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.

The major similarities and differences between the EJ Executive Order and Title VI are described below:

SIMILARITIES	DIFFERENCES
Both address nondiscrimination.	EJ covers minority and low-income, while Title VI and supplemental legislation cover race, color, national origin, sex, age, disability, limited English proficiency and low income.
Both capture minority populations.	
Both are rooted in the constitutional guarantee (14th Amendment) that all citizens are created equal and are entitled to equal protection.	EJ is an executive order (an order of the President of the United States), while Title VI is a law (an act of Congress).
Both address involvement of impacted citizens in the decision-making process through meaningful involvement and participation.	EJ mandates a process, while Title VI prohibits discrimination.

A listing of existing laws and regulations addressing environmental justice and Title VI is included at the end of these guidelines.

### **III. DEFINITIONS**

For your information, the following definitions are provided. They have been taken directly from the US DOT Order on Environmental Justice:

#### **Low-Income**

A person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

#### **Minority**

A person who is:

- Black (a person having origins in any of the black racial groups of Africa);
- Hispanic (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, the Indian subcontinent, or the Pacific Islands); or
- American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition)

#### **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 will be similarly affected by a proposed DOT program, policy or activity.

#### **Minority-Population**

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 will be similarly affected by a proposed DOT program, policy or activity.

#### **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 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
- Denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities

### **Disproportionately High and Adverse Effects on Minority and Low-Income Populations**

An adverse effect:

1. Is predominately borne by a minority population and/or a low-income population, or
2. 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 non-minority population and/or non-low-income population.

## **IV. PUBLIC OUTREACH**

Public involvement is the foundation to effectively integrating environmental justice concerns into transportation decision-making. It is not a separate task, but must be fully integrated within the full range of VDOT's processes. Outreach to the public is already a critical component of VDOT's project development process (as outlined in the Public Involvement Guide); environmental justice simply requires us to ensure that minority and low-income populations are included in this public outreach.

The public can provide valuable input and assist in validating information obtained from secondary sources such as census data. They can play an integral role in identifying issues and concerns of their communities, cataloging community resources and past actions affecting their quality of life, suggesting project alternatives, and negotiating avoidance, minimization, mitigation, and enhancements.

A primary goal of environmental justice is to engage those groups traditionally underrepresented in the project development process. For each project, the team should proactively reach out to the minority or low-income communities identified during systems planning and the environmental inventory and alternatives development stages. It doesn't matter whether the study area is predominantly minority or low-income, or if there is only a small EJ community. Outreach is still required to get them involved in the project development process. This outreach effort begins early in the project (i.e., in the same time frame as focus group formation) and continues throughout the process. In order to be effective, your public involvement strategy should be tailored to use adaptive or innovative approaches that overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making process.

Each project team will need to develop its own outreach strategy thoughtfully, based on the characteristics of the particular study area. There is no 'cookie-cutter' approach, so each project may need to be treated somewhat differently.

Your goal should be to identify minority and low-income populations, bring them into the project development process, and ensure that reasonable efforts are made to address their concerns and provide them meaningful opportunities to influence transportation decisions. It is essential that VDOT visits minority and low income communities prior to the project development stage in order build and establish a relationship so that people in the community will begin to trust VDOT and be willing to share their concerns and their needs. This doesn't mean that your project outreach is directed only toward EJ communities to the exclusion of other communities. The outreach strategies listed below can be applied to all communities, not strictly to EJ communities.

Listed below is a menu of possible tools and strategies which may be useful in identifying, contacting, and engaging the public in the project development process. Remember, you don't have to use all of these strategies; you should use only those which are appropriate for your project and study area:

- For the following agencies, organizations and businesses, consider posting fliers and notices on bulletin boards; including information in church bulletins, homeowner association newsletters, etc.; offering to make project presentations; etc.:
  - Homeowner/community associations
  - Community action agencies
  - Religious organizations (churches, mosques, synagogues, etc.)
  - Civil rights organizations
  - Minority business associations
  - Chambers of Commerce
  - Business and trade organizations (e.g., Washington Board of Trade)
  - Environmental and environmental justice organizations
  - Rural/agricultural organizations
  - Ethnic stores/shops
  - Universities, colleges, vocational and local schools
  - Fraternalities/sororities
  - Senior citizen groups (e.g., senior centers, county Office of Aging)
  - Community/recreational centers
- Publish ads and notices in newspapers, radio and other media, particularly media targeted to minority and low-income populations
- In addition to ads and notices, actively pursue having articles about the project published in local newspapers
- Publish ads not just in the legal section of the newspapers, but also in more 'popular' sections
- Include minority or low-income people on project focus groups
- Depending on the make-up of the particular project area, consider translating documents, notices and hearings for limited English-speaking populations
- For public meetings and brochures:
  - Include a slide asking for input from minority and low-income communities
  - Include wording in brochures soliciting input and information
- If at all possible, hold public meetings in locations that are accessible to transit

- Hold meetings at times and locations that are convenient for the attendees
- If appropriate, consider using an independent facilitator at community meetings, task force meetings, etc.
- Consider providing a minute-taker at key community meetings and providing copies of the minutes to attendees and other interested people
- Hold neighborhood open-houses or small informal group meetings
- In any notices for EJ community meetings, ask if there are unique needs/concerns (i.e., interpreter, etc.)
- Consider adding wording in project Initiation Ads and/or project mail-back cards to solicit input on, and active involvement from, minority/low-income/other populations - wording would have to be sensitive to any perception of discrimination
- Use the internet and other electronic media (e.g., VDOT web-site, some colleges and local schools have web-sites with bulletin boards, local governments)
- Place public meeting/workshop brochures, fliers and newsletters in the management offices of apartment buildings occupied by minority or low-income people
- Provide public meeting/workshop brochures, fliers and newsletters at local festivals and fairs
- Post signs in buses
- Distribute public meeting notices at bus/Metro stops
- Post notices in local libraries
- Contact school PTAs - they may be willing to have a presentation at one of their regular meetings
- Conduct in-street interviews to identify local issues/concerns
- Set up informational kiosks in malls, libraries, etc.

Possible innovative/unique ideas for atypical projects:

- Open a project field office in a minority or low-income area
- Hold workshops with affected populations by focusing more on the alternative(s) having the most impact on them.
- Use questionnaires to identify concerns of affected populations (issues, impacts, benefits, etc.) Any questionnaire would have to be developed and distributed early, so that ample time would be available to compile, analyze and use the data.
- Put out fliers and do a "road show" in communities, parks, festivals, malls, etc.
- To keep impacted communities involved and informed during final design and construction, consider having a community representative attend certain team meetings, developing flyers/brochures, etc.

## **V. IDENTIFICATION OF MINORITY POPULATIONS AND LOW-INCOME POPULATIONS**

The identification of minority or low-income populations will begin during systems planning by the Metropolitan Planning Organization (MPO) or Planning District Commissions and VDOT's pre-construction divisions which include the Transportation and Mobility Planning Division, Location and Design, Environmental and Right of Way. This

information developed during planning will be used and supplemented during the project development process as additional data, analysis and public input are refined to be included in the NEPA and other environmental assessment documents. As more information becomes available and the alternatives are developed, the locations of populations will continue to be refined.

You need to be sensitive to the fact that you are identifying both minority and low-income populations, so don't just concentrate on minority communities. Also, remember that there are many wealthy minority communities and many poor non-minority communities.

## **A. Environmental Inventory**

For environmental inventory purposes, the main sources of information regarding locations of minority or low-income populations are census data.

## **B. Census Data**

Because census data is so readily available and easy to use, it is typically the first information gathered when trying to determine if there are minority or low-income populations in the project study area. However, census data is just the starting point used to "flag" census areas that potentially contain minority or low-income populations. You have to keep in mind that even census areas with a small minority or low-income percentage may contain a protected population in your study area - in some cases; a group of a few homes could be considered a population. "Disproportionately high and adverse effects", not size, are the basis for environmental justice. A small minority or low-income population in the project area does not eliminate the possibility of a disproportionately high and adverse effect on that population. That's why it is critical to continue gathering additional information from various sources in order to successfully locate and refine the geographic locations of the populations.

- Determine whether you will use census "tracts" or "blocks". Generally, data based on census tracts should be used for larger project areas. For smaller project areas (like intersection improvements), data based on the smaller census blocks would probably be more appropriate. (\* It is the recommendation of FHWA that community profiles be created for each district because it is communities that are being affected.)
- Once the project study area is determined, identify all census tracts/blocks which overlap with it.
- Determine the minority or low-income percentage for each census tract/block.

### 1) Minority Percentage

If there is more than one minority group in your study area, the minority percentage should be based on the aggregate of all minority people. For example, if the percentage of Black persons in the identified census tract/block is 20% and the percentage of Hispanic persons is 20%, then the total of 40% should be used for the minority percentage.

### 2) Low-Income Percentage

Census data provides the percentage of people below the poverty level (but does not actually provide the dollar amount of that poverty level). The dollar amount is defined by the Department of Health and Human Services. The data is revised annually and can be accessed at [www.aspe.hhs.gov](http://www.aspe.hhs.gov) or [www.census.gov](http://www.census.gov). In order to be sensitive to low-income communities, do not include the poverty level dollar amount in the environmental document; you should simply keep the information in your project files. Be sure to identify the poverty level associated with the year of the census data being used (e.g., if you are using 1990 census data, use the corresponding 1990 poverty level).

Keep in mind that local jurisdictions may define their own 'poverty level'; however, you are to use the poverty level defined by the Department of Health and Human Services in order to maintain consistency between various jurisdictions.

- Calculate the average minority percentage and average low-income percentage for your entire study area by averaging the individual tract/block percentages.
- Determine which census tracts/blocks should be "flagged" because they could contain minority or low-income populations by comparing the minority or low-income percentage of each individual census tract/block to the average percentage for the study area. If this individual percentage is "meaningfully greater" than the average percentage, then a minority or low-income population is potentially located within that census tract/block.

On a project-by-project basis, the project team should define "meaningfully greater" and document the rationale. For example, if the minority percentage for a census tract is 10% and the study area average is 5%, this 5% difference could be "meaningfully greater" because it represents a doubling of the average. However, if the minority percentage for a census tract is 75% and the study area average is 70%, this 5% difference is probably not "meaningfully greater" since it represents only a small increase over the average.

- VDOT and Other Agencies

The project team should use a common sense approach when determining what further level of effort is appropriate for identifying EJ populations. For example, if the census data tells you that your project is in a mostly minority area, you may not need to use the other sources discussed below to identify minority populations - in essence, your entire project area would be a minority population. However, you would still need to go beyond just the census data to identify low-income populations.

Even if a census tract/block has a small percentage of minority or low-income persons - and is therefore not identified during Step 1 above - it is possible that a population(s) may still be located in that census tract/block. For example, a 5% Asian American population may be entirely located in one particular community, thus qualifying as a minority population. Therefore, you cannot rely on census data alone to identify populations. A site visit is an essential step to identifying populations.

At a minimum, you should also contact the following sources, via phone conversations, meetings (including project team meetings) or correspondence:

- Local planning and transportation staff, including MPOs
- VDOT Divisions
  - 1) Environmental
  - 2) Transportation and Mobility Planning
  - 3) Right-of-Way and Utilities
  - 4) Location & Design
  - 5) Civil Rights

In any conversations with or letters to the above sources, you must be careful to include the following information so they understand why you are collecting EJ information. Information regarding the locations of EJ communities may raise sensitive issues, so you shouldn't just request locations of EJ communities without explaining why you need the information and what you will be doing with it.

- Provide the purpose/background of environmental justice (reference the Executive Order)
- Emphasize that you are looking for information on both minority and low-income populations - and that they are not the same thing.
- Explain what the four minority groups are and what the poverty level is.
- Request information on the location of minority or low-income populations, based on their knowledge of the project study area.

### **C. Alternatives Development**

After the environmental inventory stage, as preliminary/conceptual alternatives are developed, other sources of information must be used to confirm and further refine the locations of minority and low-income populations. As described earlier, public involvement is a critical component to this effort. The project team will need to determine, based on each particular project, which sources are appropriate to contact.

This contact can be made via formal written correspondence (letters, flyers, etc.), meetings/presentations, phone calls and/or e-mails - the team needs to determine which method is most appropriate for a particular source. Some sources, such as religious groups and schools, in addition to providing race and national origin information about the people attending their services or classes, may also be able to provide information about any low-income communities they may assist. Keep in mind that it's very important to maintain a record of all sources you contact, as well as the input each source provides to you.

Possible additional information sources include, but are not limited to:

- Homeowner/community associations
- Community action agencies
- Religious organizations (churches, etc.)
- Civil rights organizations
- Transportation and Mobility Planning Division (GIS and other data)
- Right of Way and Utilities Division
- Environmental
- State and local tax and financing agencies

- Minority business associations
- Chambers of Commerce
- Business and trade organizations (e.g., Washington Board of Trade)
- Environmental and environmental justice organizations
- Rural/agricultural organizations
- Economic and job development agencies (e.g., Welfare to Work)
- Ethnic stores/shops
- Universities, colleges, vocational and local schools
- Fraternities/sororities
- Senior citizen groups (e.g., senior centers, county Office of Aging)
- Community/recreational centers

NOTE: For purposes of a secondary and cumulative effects analysis (SCEA), census data only will be used to identify minority or low-income populations since this data is existing and readily available. Each census tract which overlaps with the SCEA geographic boundary should be identified. Then the individual minority and low-income percentages for each tract are to be compared to the average study area percentages as determined in FHWA's Environmental Regulations - 23 CFR 771 (you do not need to calculate the average percentages for the entire SCEA boundary). Those individual tracts with percentages meaningfully greater than the study area average percentage will be considered to have minority or low-income populations.

#### **D. Documentation**

In the "Affected Environment" section of the environmental document, you will need to carefully discuss your findings regarding minority and low-income populations. While the project files should include all details of your efforts to identify minority or low-income populations in the study area (letters written to agencies/organizations, phone memos, responses or non-responses, etc.), the environmental document should only provide a summary.

- Clearly state whether minority or low-income populations have been identified in the project study area.
- Describe how you concluded whether or not there are minority or low-income populations.
- Describe the results of the census data assessment.
- List all of the agencies, organizations and/or other groups which were contacted and describe how they were contacted (letter, phone call, meeting, etc.).
- Summarize the responses received and/or issues identified.  
The most effective way to display this information is in a matrix format.
- If minority or low-income populations are identified, characterize them by describing their make-up, size, general location, age, etc. It's recommended that study area mapping showing all locations of EJ populations not be included in the environmental document.

## **VI. ASSESSMENT OF DISPROPORTIONATELY HIGH AND ADVERSE IMPACTS**

The definition of adverse effects (see Section II) encompasses a wide variety of potential impacts, including those to human health, the natural and social environment, the economy, community function, etc. It also includes the denial, reduction or delay in receiving benefits, which should be addressed like any other impact. For an EJ analysis, you'll need to consider all of these.

There is no magic formula for determining if a minority or low-income community will experience disproportionately high and adverse impacts due to your project. Since each project - and each minority or low-income community - is different, the team will have to carefully consider many factors in making its determination. You will need to use an approach that combines both qualitative and quantitative information to support your conclusion.

Keep in mind that the EJ analysis must be done for each alternative, including the No-Build. The No-Build alternative is defined as no other improvements being done except maintenance to the existing road. Even under the No-Build, minority or low-income populations may be affected. Impacts such as increased noise, air pollution, congestion, travel times, etc. must be considered and documented appropriately.

One of the most important factors to consider is whether and how the community itself believes it will be impacted. What one community perceives as an impact, another may perceive as a benefit. It is also possible that, within the same community, the same action may be perceived by various segments as both an impact and a benefit. Therefore, it is imperative that you work with the EJ community to see how they feel about the project.

### **A. Analysis of Disproportionately High and Adverse Effects**

Since a one-size-fits-all approach will not work, the Environmental Division and other pre-construction divisions will need to address a variety of questions and considerations in order to conclude if the project will have disproportionately high and adverse impacts (including denial, reduction or delay in receiving benefits) on an EJ population. You will, in essence, be assessing the context and intensity of effects on EJ populations as compared to non-EJ populations.

- You will need to carefully consider all of the items below, since no single item will lead to a supportable conclusion:
- **Is the adverse effect predominantly borne by the EJ population? For example, are more** minority or low-income people impacted than non- minority or non-low-income people? Is the percentage of minority or low-income people impacted greater than the percentage of minority or low-income people in the study area? Be very cautious when using numbers like this, since numbers alone can be misleading (\*It is important to actually do a site visit of communities and neighborhoods).
- Will the adverse effect on the EJ population be appreciably more severe or greater in magnitude than the adverse effect on the non-minority or low-income population? In

other words, will the EJ population carry an unfair portion of the impact? For example, if there are ten EJ residences and ten non-EJ residences will each experience noise levels above the federal standard, but noise at the EJ residences will increase by twenty decibels and noise at the non-EJ residences will increase by ten decibels, there may be a disproportionate impact.

- Does the project impact a resource that is especially important to EJ populations? Does it serve an especially important social, religious or cultural function for the EJ community? For example, is a park which is used regularly for cultural festivals being impacted by the project?
- Are there mitigations, enhancement measures or offsetting project benefits (see Section VI) to the affected EJ population? These should be taken into account when assessing if there are disproportionately high and adverse effects.
- Have you assessed the type and severity of adverse effects on non-EJ populations? In order to determine if there are disproportionately high and adverse effects on EJ populations, you will have to take into consideration the comparative impacts in non-EJ areas.

Keep in mind that, while the identification of a disproportionately high and adverse effect on a low-income or minority population does not preclude the project from going forward, it should heighten our attention to alternatives (including alternative sites), mitigation strategies, monitoring needs and preferences expressed by the affected community or population.

Note: In the secondary and cumulative effects analysis (SCEA), you will need to consider the same questions and considerations listed above in order to determine if there are disproportionately high and adverse effects on EJ populations within the SCEA boundary.

## **B. Documentation**

Your conclusions regarding impacts on minority or low-income populations must be thoroughly explained in the "Environmental Consequences" section of the environmental document.

- The final environmental document should clearly conclude whether or not a disproportionately high and adverse impact on any minority or low-income population is likely to result. This conclusion must be reached for each alternative, including the No-Build. Remember to take into account mitigations, enhancement measures or offsetting project benefits (see Section VI) to the affected EJ population.
- Whether or not you choose an alternative in disproportionately high and adverse impacts on minority or low-income populations, you need to supply supporting information to document how you reached that conclusion for each alternative - you have to "make your case".
- Present the analysis you completed and the issues you considered in order to reach your conclusions as concisely as possible. Include a description of impacts (type and severity), any offsetting benefits and mitigations/enhancements, comparison of impacts on EJ and non-EJ populations, etc.

- Document the efforts made to interact with the affected communities, the issues/concerns identified, results of the interaction, etc. Examples of interaction could include meetings to determine whether a community considers a project's effects to be impacts or benefits, correspondence discussing potential mitigation or enhancement measures, etc. A helpful way to present this information would be in a matrix format, which should be included in the appendix of the environmental document. The information in the matrix could include meeting dates, correspondence dates, responses received, issues/concerns identified by the community, etc. You may also want to include copies of important minutes in the appendix.
- When mapping is necessary in order to clearly illustrate the effect of a project on an EJ population, mapping may be included in the environmental document; otherwise, document the impacts textually. Remember to be sensitive to the concerns of the affected communities when determining what type of mapping, if any, will be provided.

## **VII. AVOIDANCE, MINIMIZATION, MITIGATION AND ENHANCEMENT**

If you determine that your project appears to have a disproportionately high and adverse impact on a minority or low-income population, you will then need to consider how the magnitude and severity of the impact can be prevented or reduced. The approach is first to avoid impacts if possible, then minimize impacts, then mitigate unavoidable impacts. Enhancements should also be considered. The definitions of these terms and examples (from the Federal Highway Administration's "Community Impact Assessment" booklet) are provided below:

### **A. Definitions**

- Avoid - to alter a project so an impact does not occur (i.e., shift an alignment to avoid displacements, redesign a road segment as an underpass to avoid cutting off access to a community facility, etc.)
- Minimize - to modify the project to reduce the severity of an impact (i.e., shift an alignment to reduce displacements, alter an alignment to increase the distance between the facility and residences to decrease noise impacts, phase the project to minimize impedance to business access during peak shopping periods, limit interchanges to minimize incompatible land use development, etc.)
- Mitigate - to take an action to alleviate or offset an impact or to replace an appropriated resource (i.e., set aside land for a park or add to public recreation areas to replace lost facilities, erect sound barriers to mitigate noise impacts, provide a bicycle/pedestrian overpass or underpass to provide access to public facilities, etc.)
- Enhance - to add a desirable or attractive feature to the project to make it fit more harmoniously into the community; this will not replace lost resources or alleviate project impacts (i.e., provide signing to recognize specific cultural or historic resources, develop bicycle trails or pathways adjacent to roadways, plant trees and add park benches, add public artwork or a façade to a transportation facility to match the aesthetic design goals of the community, etc.)

### **B. Considerations in Determining Appropriate Avoidance, Minimization, Mitigation and Enhancement Measures:**

- Remember to take mitigation, enhancements and project benefits into account when you are assessing if there will ultimately be a disproportionately high and adverse impact on an EJ population.
- Another important consideration is the fairness in distribution of avoidance, minimization, mitigation and enhancement measures between EJ and non-EJ communities. When considering these measures for an EJ community vs. the entire project area, keep in mind that the measures should be proportional to the level of impact on each.
- A disproportionately high and adverse effect on an EJ population can only be carried out if further avoidance, minimization and mitigation measures are not practicable. In determining whether a measure is 'practicable', the social, economic (including costs) and environmental effects of avoiding, minimizing or mitigating the adverse effects can be taken into account.

You can use experience on other projects to determine what measures may be considered practicable. You should also take into account the nature and severity of the disproportionate impacts when determining what is practicable. For example, it may be appropriate to go beyond 'the norm' depending on how disproportionate the impact is.

Throughout this effort, keep in mind that you may be able to eliminate, reduce or mitigate the initial disproportionate impacts to such a degree that the impacts to the EJ population are now proportional.

### **C. Coordination with the Impacted EJ Community**

The most important consideration in developing avoidance, minimization, mitigation and enhancement measures is how the impacted EJ community feels about them. Throughout the process, you must consult with and elicit the views of the affected populations. Otherwise, you might unknowingly propose a mitigation measure which impacts the community in a different way. Also, if the same community is composed of various minority groups or income levels, each component may have separate (and possibly conflicting) issues or concerns to be considered by the project team.

You should be encouraging the members of the EJ communities that may suffer a disproportionately high and adverse impact to help develop and comment on possible avoidance/minimization alternatives as early as possible in the process.

In addition to community meetings and correspondence, you may want to consider using community questionnaires to solicit input on proposed mitigation and enhancement strategies and to suggest their own strategies, based on the EJ community's perception of impacts. Any questionnaire would have to be developed and distributed early, so that ample time would be available to compile, analyze and use the data.

Once you have worked with the affected EJ communities to determine the appropriate avoidance, minimization, mitigation and enhancement measures, you should continue to keep them informed about the project status and progress throughout the design and construction phases.

Possible Mitigation Strategies (to be coordinated with the affected community):

- Keep the impacted minority or low-income population informed (status, progress, design changes, etc.) during final design and construction of the project; this could be accomplished by posting/ mailing notices, meeting with the community, having a community representative serve a liaison role and attend construction partnering meetings, etc.
- Provide noise walls (appropriateness to be discussed with Noise Committee)
- Provide landscaping/visual screening
- Provide lighting
- Provide sidewalk improvements
- Provide multi-modal improvements (i.e., bus shelters, bicycle/pedestrian facilities)
- Build or rehabilitate community parks or recreation centers

- If relocations are required, attempt to relocate to the same area if possible to preserve community cohesiveness
- Documentation - For each alternative, you will need to clearly explain in the "Environmental Consequences" section of the environmental document any avoidance, minimization, mitigation and enhancement measures which have been adopted.
- Document the strategies taken to reduce, avoid or mitigate impacts to EJ communities. The discussion of these strategies should be clearly 'linked' to the associated community impacts. If appropriate, include a discussion of how these strategies helped turn a disproportionate adverse impact into a proportionate adverse impact.
- Include a summary of the public interaction used to develop and/or review the various strategies.
- If necessary in order to clearly illustrate the strategies and results, mapping may be included in the environmental document; otherwise, document the information textually.

Note: Even when VDOT has no responsibility to mitigate impacts not caused by the project, we may encourage other public/private groups to partner together to improve the quality of life in EJ communities.

Once the mitigation commitments have been made in the final environmental document, they are to be recorded in the Environmental Compliance and Considerations Checklists and discussed at the project transition meeting between the planning and design divisions. Planning staff will continue to be involved in the project during final design to ensure that the commitments are incorporated into the construction documents.

## **VIII. EXISTING LAWS AND REGULATIONS**

- Environmental Justice Executive Order 12898
- US DOT EJ Order, April 1997
- FHWA EJ Order, December 1998
- Title VI Act of 1964
- 23 USC 109(h)
- US DOT Title VI Regulations [49 CFR 21.5 (b)(2)(3)] - addresses contracts and site selections
- Civil Rights Restoration Act of 1987
- National Environmental Policy Act of 1969
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- 23 USC 324 - addresses discrimination on the basis of sex
- Section 504 of the Rehabilitation Act of 1973 (29 USC 790) - addresses discrimination of the basis of disability
- Age Discrimination Act of 1975 (42 USC 6101) - addresses discrimination on the basis of age
- Fair Housing Act of 1988 - addresses discrimination on the basis of religion
- Religious Freedom Restoration Act of 1993 - addresses discrimination on the basis of religion
- 23 CFR 450 - FHWA Planning Regulations
- 23 CFR 771 - FHWA Environmental Regulations

## **IX. ADDITIONAL SOURCES OF INFORMATION**

"Community Impact Assessment: A Quick Reference for Transportation" (FHWA, 9/96)

"Community Impact Mitigation Case Studies" (FHWA, 5/98)

"Transportation & Environmental Justice Case Studies" (FHWA, 12/00)

"Assistance for Reviewing the Application of Title VI and Environmental Justice in the Transportation Planning Process" (FHWA, 2001)

"Environmental Justice Guidance Under the National Environmental Policy Act" (CEQ, 12/97)

"Environmental Policy Statement" (FHWA, 1994)

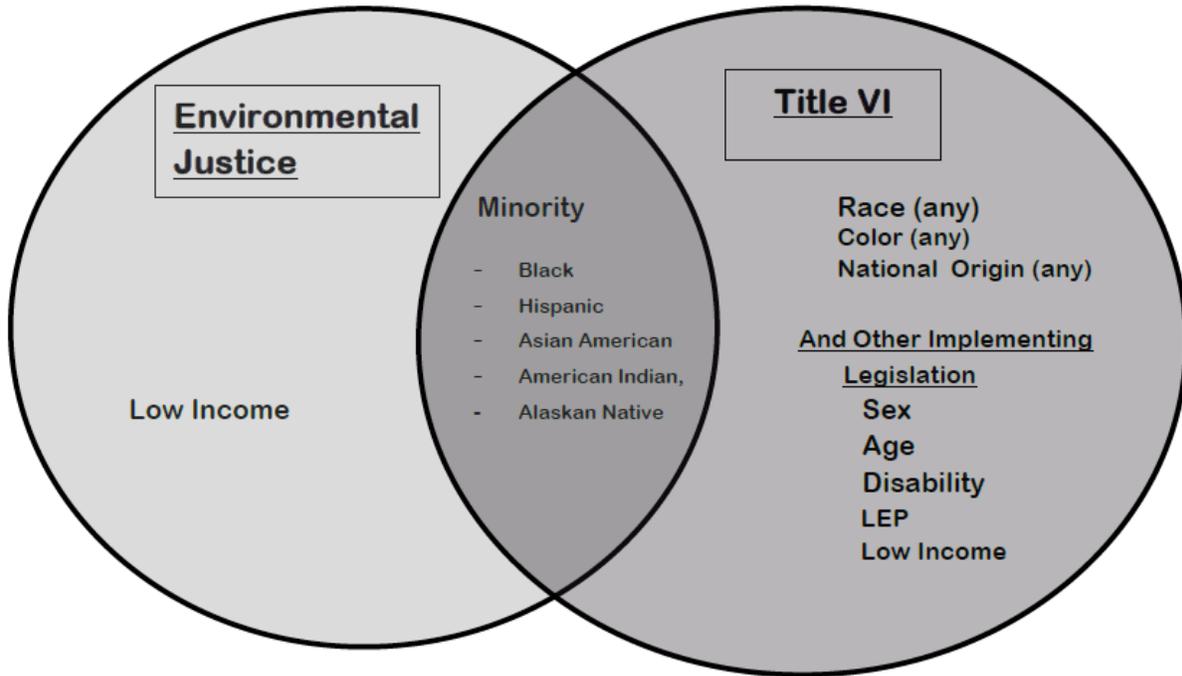
"EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Review" (EPA, 4/98)

OMB Bulletin 00-02, "Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement" (OMB, 3/00)

Technical Advisory 6640.8A "Guidance for Preparing and Processing Environmental and 4(f) Documents" (FHWA, 10/87)

FHWA Environmental Justice web site: [www.fhwa.dot.gov/environment/ej2.htm](http://www.fhwa.dot.gov/environment/ej2.htm)

## X. INTEGRATION OF ENVIRONMENTAL JUSTICE AND TITLE VI COVERAGE



## XI. APPENDIX –A

**FEDERAL-AID POLICY GUIDE**  
October 14, 1997

23 CFR 771

OPI: HEP-31

### **PART 771 - ENVIRONMENTAL IMPACT AND RELATED PROCEDURES**

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771.135 Section 4(f) (49 U.S.C 303).

771.137 International actions.

Authority: 42 U.S.C. 4321 et seq.; 23 U.S.C. 109, 110 128, 138 and 315; 49 U.S.C. 303(c), 5301(e), 5323, and 5324; 40 CFR part 1500 et seq.; 49 CFR 1.48(b) and 1.51.

Source: 52 FR 32660, Aug. 28, 1987, unless otherwise noted.

**Sec. 771.101 Purpose.**

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and the regulation of the Council on Environmental Quality (CEQ), 40 CFR 1500-1508. This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and urban mass transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, and 49 U.S.C. 303, 1602(d), 1604(h), 1604(i), 1607a, 1607a-1 and 1610.

**Sec. 771.103 [Reserved]**

**Sec. 771.105 Policy.**

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation. [] FHWA and UMTA have supplementary guidance on the format and content of NEPA documents for their programs. This includes a list of various environmental laws, regulations, and Executive Orders which may be applicable to projects. The FHWA Technical Advisory T6640.8A, October 30, 1987, and the UMTA supplementary guidance are available from the respective FHWA and UMTA headquarters and field offices as prescribed in 49 CFR Part 7, Appendices D and G.

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(d) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

[52 FR 32660, Aug. 28, 1987; 53 FR 11065, Apr. 5, 1988.

## **Sec. 771.107 Definitions.**

The definitions contained in the CEQ regulation and in Titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply.

- (a) Environmental studies--The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.
- (b) Action--A highway or transit project proposed for FHWA or UMTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.
- (c) Administration action--The approval by FHWA or UMTA of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.
- (d) Administration--FHWA or UMTA, whichever is the designated lead agency for the proposed action.
- (e) Section 4(f) -- Refers to 49 U.S.C. 303 and 23 U.S.C. 138. [] Section 4(f), which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified, without substantive change, as 49 U.S.C. 303. This regulation continues to refer to Section 4(f) because it would create needless confusion to do otherwise; the policies Section 4(f) engendered are widely referred to as "Section 4(f)" matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

## **Sec. 771.109 Applicability and Responsibilities.**

- (a) (1) The provisions of this regulation and the CEQ regulation apply to actions where the Administration exercises sufficient control to condition the permit or project approval. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation.
  - (2) This regulation does not apply to, or alter approvals by the Administration made prior to the effective date of this regulation.
  - (3) Environmental documents accepted or prepared by the Administration after the effective date of this regulation shall be developed in accordance with this regulation.
- (b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews

of designs, plans, specifications, and estimates (PS&E), and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(c) The Administration, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administration in accordance with the CEQ regulation:

(1) Statewide agency. If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may prepare the environmental impact statement (EIS) and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(2) Joint lead agency. If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant shall initially develop substantive portions of the environmental document, although the Administration will be responsible for its scope and content.

(3) Cooperating Agency. Local public agencies with special expertise in the proposed action may be cooperating agencies in the preparation of an environmental document. An applicant for capital assistance under the Urban Mass Transportation Act of 1964, as amended (UMT Act), is presumed to be a cooperating agency if the conditions in paragraph (c) (1) or (2) of this section do not apply. During the environmental process, the Administration will determine the scope and content of the environmental document and will direct the applicant, acting as a cooperating agency, to develop information and prepare those portions of the document concerning which it has special expertise.

(4) Other. In all other cases, the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 110, it shall be the responsibility of the State highway agency to ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

**Sec. 771.111 Early coordination, public involvement, and project development.**

(a) Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action. For UMTA, this is normally no later than the review of the transportation improvement program (TIP) and for FHWA, the approval of the 105 program (23 U.S.C. 105).

(c) When FHWA and UMTA are involved in the development of joint projects, or when FHWA or UMTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the Administration, in cooperation with the applicant, may request other agencies having special interest or expertise to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Other States, and Federal land management entities, that may be significantly affected by the action or by any of the alternatives shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will prepare a written evaluation of any significant unresolved issues and furnish it to the applicant for incorporation into the environmental assessment (EA) or draft EIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and area wide air quality and land use implications of the major alternatives. The second tier would address site specific details on project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process.

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive Orders, and regulations.

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives, and major design features,

(C) The social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process.

(E) The State highway agency's procedures for receiving both oral and written statements from the public.

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

(3) Based on the reevaluation of project environmental documents required by Sec. 771.129, the FHWA and the State highway agency will determine whether changes in the project or new information warrant additional public involvement.

(4) Approvals or acceptances of public involvement/public hearing procedures prior to the publication date of this regulation remain valid.

(i) Applicants for capital assistance in the UMTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental documents. For projects requiring EISs, a public hearing will be held during the circulation period of the draft EIS. For all other projects, an opportunity for public hearings will be afforded with adequate prior notice pursuant to 49 U.S.C. 1602(d), 1604(i), 1607a(f) and 1607a-1(d), and such hearings will be held when anyone with a significant social, economic, or environmental interest in the matter requests it. Any hearing on the action must be coordinated with the NEPA process to the fullest extent possible.

(j) Information on the UMTA environmental process may be obtained from: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, DC 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington, DC 20590.

#### **Sec. 771.113 Timing of Administration activities.**

(a) The Administration in cooperation with the applicant will perform the work necessary to complete a FONSI or an EIS and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. However, final design activities, property acquisition (with the exception of hardship and protective buying, as defined in Sec. 771.117(d)), purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been completed:

- (1) (i) The action has been classified as a categorical exclusion (CE), or
    - (ii) A FONSI has been approved, or
    - (iii) A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed;
  - (2) For actions proposed for FHWA funding, the FHWA Division Administrator has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;
  - (3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, Subpart B, and 23 CFR part 630, Subpart A, have been met.
- (b) For FHWA, the completion of the requirements set forth in paragraphs (a)(1) and (a)(2) of this section is considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving official. However, such approval does not commit the Administration to approve any future grant request to fund the preferred alternative.
- (c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

**Sec. 771.115 Classes of actions.**

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

- (1) A new controlled access freeway.
- (2) A highway project of four or more lanes on a new location.
- (3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guide-way transit).
- (4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) Class II (CEs). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A

specific list of CEs normally not requiring NEPA documentation is set forth in Sec. 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to Sec. 771.117(d).

(c) Class III (EAs). Actions in which the significance of the environmental impacts is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

#### **Sec. 771.117 Categorical exclusions.**

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (Section 1508.4) and Sec. 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

- (1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the

Federal-aid highway system.

- (2) Approval of utility installations along or across a transportation facility.
- (3) Construction of bicycle and pedestrian lanes, paths, and facilities.
- (4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.
- (5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.
- (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- (7) Landscaping.
- (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- (9) Emergency repairs under 23 U.S.C. 125.
- (10) Acquisition of scenic easements.
- (11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.
- (12) Improvements to existing rest areas and truck weigh stations.
- (13) Ridesharing activities.
- (14) Bus and rail car rehabilitation.
- (15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
- (18) Track and rail bed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is

not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

**Sec. 771.119 Environmental assessments.**

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through an early coordination process (i.e., procedures under Sec. 771.111) or through a scoping process. Public involvement shall be summarized and the results of agency coordination shall be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. The UMTA applicants may circulate the EA prior to Administration approval provided that the document is clearly labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field

offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, shall be sent by the applicant to the affected units of Federal, State and local government. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in Sec. 771.111.

(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines, for good cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the Administration expects to issue a FONSI for an action described in Sec. 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

#### **Sec. 771.121 Findings of no significant impact.**

(a) The Administration will review the EA and any public hearing comments and other comments received regarding the EA. If the Administration agrees with the applicant's recommendations pursuant to Sec. 771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of availability of the

FONSI shall be sent by the applicant to the affected units of Federal, State and local government and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the other agency's FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed, and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's FONSI. If environmental issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

**Sec. 771.123 Draft environmental impact statements.**

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the Federal Register. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the Administration, in cooperation with the applicant, will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by Sec. 771.111. For UMTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process.

(d) An applicant which is a "statewide agency" may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures. Where the applicant is a "joint lead" or "cooperating" agency, the applicant may select a consultant, after coordination with the Administration to assure compliance with 40 CFR 1506.5(c). The Administration will select any such consultant for "other" applicants. (See Sec. 771.109(c) for definitions of these terms.)

(e) The Administration, when satisfied that the draft EIS complies with NEPA

requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(f) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The draft EIS shall be circulated for comment by the applicant on behalf of the Administration. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. Copies shall be provided directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(h) The UMTA requires a public hearing during the circulation period of all draft EISs. FHWA public hearing requirements are as described in Sec. 771.111(h). Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The Federal Register public availability notice (40 CFR 1506.10) shall establish a period of not less than 45 days for the return of comments on the draft EIS. The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) For UMTA funded major urban mass transportation investments, the applicant shall

prepare a report identifying a locally preferred alternative at the conclusion of the Draft EIS circulation period. Approval may be given to begin preliminary engineering on the principal alternative(s) under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures.

These studies will be used to prepare the final EIS or, where appropriate, a supplemental draft EIS.

**Sec. 771.125 Final environmental impact statements.**

(a) (1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The final EIS shall identify the preferred alternative and evaluate all reasonable alternatives considered. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in Sec. 771.109(b). The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS shall identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.

(2) Any action to which a Federal, State or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(3) Major urban mass transportation investments as defined by UMTA's policy on major investments (49 FR 21284; May 18, 1984).

(d) The signature of the UMTA approving official on the cover sheet also indicates compliance with section 14 of the UMT Act and fulfillment of the grant application requirements of Sections 3(d)(1) and (2), 5(h), and 5(i) of the UMT Act.

(e) Approval of the final EIS is not an Administration Action (as defined in Sec. 771.107(c)) and does not commit the Administration to approve any future grant request to fund the preferred alternative.

(f) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 which implements Executive Order 12372. When filed with EPA, the final EIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate.

#### **Sec. 771.127 Record of decision.**

(a) The Administration will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the final EIS notice in the Federal Register or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project and document any required section 4(f) approval in accordance with Sec. 771.135(l). Until any required ROD has been signed, no further approvals may be given except for administrative activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1.

(b) If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which reviewed the final EIS under Sec. 771.125(c). To the extent practicable the approved revised ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS pursuant to Sec. 771.125(g).

### **Sec. 771.129 Re-evaluations.**

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the Administration if an acceptable final EIS is not submitted to the Administration within 3 years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

### **Sec. 771.130 Supplemental environmental impact statements.**

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever the Administration determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared and circulated in accordance with Sec. 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the impacts of the changes, new information, or new

circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required.

(e) A supplemental draft EIS may be necessary for UMTA major urban mass transportation investments if there is a substantial change in the level of detail on project impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.

(f) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily:

(i) Prevent the granting of new approvals;

(ii) Require the withdrawal of previous approvals; or

(iii) Require the suspension of project activities; for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

#### **Sec. 771.131 Emergency action procedures.**

Requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

#### **Sec. 771.133 Compliance with other requirements.**

The final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128.

#### **Sec. 771.135 Section 4(f) (49 U.S.C. 303).**

(a) (1) The Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire site is not significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant. The Administration will review the significance determination to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl purposes. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The Administration will review this determination to assure its reasonableness. The determination of significance shall apply to the entire area of such park, recreation, or wildlife and waterfowl refuge sites.

(e) In determining the application of section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify all properties on or eligible for the National Register of Historic Places (National Register). The section 4(f) requirements apply only to sites on or eligible for the National Register unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(f) The Administration may determine that section 4(f) requirements do not apply to restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) Such work will not adversely affect the historic qualities of the facility that

caused it to be on or eligible for the National Register, and

(2) The SHPO and the Advisory Council on Historic Preservation (ACHP) have been consulted and have not objected to the Administration finding in paragraph (f)(1) of this section.

(g) (1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction except as set forth in paragraph (g)(2) of this section. Where section 4(f) applies to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

(2) Section 4(f) does not apply to archeological sites where the Administration, after consultation with the SHPO and the ACHP, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the Administration decides, with agreement of the SHPO and, where applicable, the ACHP not to recover the resource.

(h) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (g) of this section, the Administration may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(i) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be developed by the applicant in cooperation with the Administration. This information should be presented in the draft EIS, EA, or, for a project classified as a CE in a separate document. The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. A minimum of 45 days shall be established by the Administration for receipt of comments. Uses of section 4(f) land covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

(j) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why the alternatives to avoid a section 4(f) property are not

feasible and prudent; and

(2) All measures which will be taken to minimize harm to the Section 4(f) property.

(k) The final Section 4(f) evaluation will be reviewed for legal sufficiency.

(l) For actions processed with EISs, the Administration will make the section 4(f) approval either in its approval of the final EIS or in the ROD. Where the section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notified by the Administration of section 4(f) approval. For these actions, any required section 4(f) approval will be documented separately.

(m) Circulation of a separate Section 4(f) evaluation will be required when:

(1) A proposed modification of the alignment or design would require the use of section 4(f) property after the CE, FONSI, draft EIS, or final EIS has been processed;

(2) The Administration determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property;

(3) A proposed modification of the alignment, design, or measures to minimize harm (after the original section 4(f) approval) would result in a substantial increase in the amount of section 4(f) land used, a substantial increase in the adverse impacts to section 4(f) land, or a substantial reduction in mitigation measures; or

(4) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) evaluation.

(n) If the Administration determines under Sec. 771.135(m) or otherwise, that section 4(f) is applicable after the CE, FONSI, or final EIS has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental environmental document. Where a separately circulated section 4(f) evaluation is prepared, such evaluation does not necessarily:

(i) Prevent the granting of new approvals;

(ii) Require the withdrawal of previous approvals; or

(iii) Require the suspension of project activities; for any activity not affected by the section 4(f) evaluation.

(o) An analysis required by section 4(f) may involve different levels of detail where the

section 4(f) involvement is addressed in a tiered EIS.

(1) When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary determination is then incorporated into the first-tier EIS.

(2) A section 4(f) approval made when additional design details are available will include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (o)(1) of this section is still valid; and

(ii) The criteria of paragraph (a) of this section have been met.

(p) Use. (1) Except as set forth in paragraphs (f), (g)(2), and (h) of this section, "use" (in paragraph (a)(1) of this section) occurs:

(i) When land is permanently incorporated into a transportation facility.

(ii) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes as determined by the criteria in paragraph (p)(7) of this section; or

(iii) When there is a constructive use of land.

(2) Constructive use occurs when the transportation project does not incorporate land from a section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features or attributes of the resource are substantially diminished.

(3) The Administration is not required to determine that there is no constructive use. However, such a determination could be made at the discretion of the Administration.

(4) The Administration has reviewed the following situations and determined that a constructive use occurs when:

(i) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(ii) The proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. Examples of substantial impairment to visual or esthetic qualities would be location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting.

(iii) The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;

(iv) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as projected vibration levels from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(v) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

(5) The Administration has reviewed the following situations and determined that a constructive use does not occur when:

(i) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places, results in an agreement of "no effect" or "no adverse effect";

(ii) The projected traffic noise levels of the proposed highway project do not exceed the FHWA noise abatement criteria as contained in Table 1, 23 CFR part 772, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria in the UMTA guidelines;

(iii) The projected traffic noise levels exceed the relevant threshold in paragraph (p)(5)(ii) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(iv) There are proximity impacts to a section 4(f) resource, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the Administration approval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of the resource. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register;

(v) There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to:

(A) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource, or

(B) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;

(vi) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);

(vii) Proximity impacts will be mitigated to a condition equivalent to, or better than that which would occur under a no-build scenario;

(viii) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or

(ix) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

(6) When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(i) Identification of the current activities, features, or attributes of a resource qualified for protection under section 4(f) and which may be sensitive to proximity impacts;

(ii) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project;

(iii) Consultation, on the above identification and analysis, with the federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

(7) A temporary occupancy of land is so minimal that it does not constitute a use within the meaning of section 4(f) when the following conditions are satisfied:

(i) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(ii) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;

(iii) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;

(iv) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and

(v) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988, as amended at 56 FR 13279, Apr. 1, 1991]

**Sec. 771.137 International-actions.**

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(2) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

## APPENDIX XII. TECHNICAL ASSISTANCE TOOLS

### VDOT EJ TECHNICAL ASSISTANCE TOOL SOCIAL ELEMENTS

Project Name: \_\_\_\_\_ Project Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Date Received: \_\_\_\_\_ Date Reviewed: \_\_\_\_\_ Reviewer: \_\_\_\_\_

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)

Answers are required for questions that have no N/A box.

The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

#### I. Studies and Coordination

(Applicable laws: 42 USC 2000d-d4. Title VI of the Civil Rights Act of 1964.40CFR. 1500-1508 (CEQ), 23 CFR 771 (FHWA))

**SAT** **INC** **MIS** **N/A**

- A. Describe studies performed and coordination with local agencies. Identify agencies and programs administered.

#### II. Public Involvement/Interaction

**SAT** **INC** **MIS** **N/A**

- A. Description of public involvement/interaction plan.
1. Include any tribal contact and determine if government-to-government consultation is needed.
  2. Include any targeted outreach to minority, disable.
  3. Include any specific efforts to address limited English proficiency, if applicable.

#### III. Affected Environment

Report should include a description of each Section 4 (f) resource:

**SAT**  **INC**  **MIS**  **N/A**

A. Community Cohesion. Describe neighborhood population characteristics (e.g., minority, elderly, disabled, transit-dependent, larger family, income, Level, owner/tenant status). Access and linkages With community facilities/services (churches, schools, community centers, gathering places etc.). (If a low-income and/or minority population is Identified, see Environmental Justice.)

B. Recreation. Describe and show maps of the type and location of parks, recreation areas, recreation areas, recreation trails, and natural landmarks. Include information on:

1. Available activities and facilities.
2. Use and number of users per activity.
3. Unique qualities.
4. Statement of national, state, or local significance as determined by official with jurisdiction.
5. Access.
6. Ownership.
7. Section 4(f) and/or 6(f) applicability.

C. Regional and Community Growth. Consider:

1. Local and regional population-breakdown by towns and communities.
2. Population projected changes
  - a. Ethnic/racial composition.
  - b. Age/family composition.
  - c. Income levels/major employment.
  - d. Limited English composition.
  - e. Disabled composition.
  - f. Status of community, if in transition.

D. Services. Discuss:

1. Educational facilities and attendance boundaries.
2. Religious institutions.
3. Social institutions (community centers, fraternal organizations, children's homes, etc.).
4. Medical services (hospitals, nursing homes, medical and dental clinics, etc.)
5. Fire and police protection.
6. Public services and utilities (energy, telephone, cable, water, sewer, solid waste, storm water, and other appropriate).

**SAT**  **INC**  **MIS**  **N/A**

7. cemeteries.

8. Government institutions and national defense installations.

9. Other governmental services. Particularly social service/aid programs and locations as relates to proposed action.

E. Pedestrian, Bicyclist, and Transit Facilities.

1. Describe location and type of existing facilities, including discussion of local plan.

2. State whether local and land use/recreation plans include bike/pedestrian/transit facilities. Include paratransit where appropriate.

3. Consider travel times (if available), capacity, circulation, and congestion on other facilities in the region.

4. Discuss whether new facilities are proposed, include sufficient information to explain the basis for providing them (e.g., proposed bicycle facility is a link in the local plan, a new bus stop is needed, or sidewalks will reduce project access impact).

5. Discuss safety issues as they relate to pedestrians and bicyclists.

6. Discuss whether the project has potential to connect existing bike/pedestrian/transit facilities.

F. Environmental Justice.

1. Document the presence of low-income or minority communities.

**IV. Impacts**

**SAT INC MIS N/A**

A. Community Cohesion. Consider project effects on the community such as:

1. Impacts on community life.

2. Effects on persons and groups.

3. Changes in social relationships/patterns.

4. Isolation-community divided or set apart by project.

5. Redistribution, influx or loss of population.

**SAT INC MIS N/A**

6. Cutting off streets.

7. Separating residences from community facilities.

8. Separating adjoining residential areas.

9. Isolating areas.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. Increasing automobile dependency.
11. Impact to and availability of affordable and accessible housing supply within the study area.

**B. Recreation.** Consider direct and indirect (growth induced, etc.) impacts on:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1. Facilities/capacity.
2. Access.
3. Aesthetics.
4. Air quality.
5. Noise.
6. Water.
7. Land use in the vicinity.

**C. Cultural Resources**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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1. Describe any impacts to tribal areas i.e.:  
Usual and customary

**D. Recreational and Community Growth.** Consider:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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1. Population changes caused by the proposed project. Include estimates on the effects such changes will have on the resource base in his study area. (Where a project induces significant growth, discuss the impacts of such growth under the appropriate headings in this outline. See also E.)
2. Effect on characteristics of population in the study area.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- a. Ethnic/racial composition.
- b. Age/family composition.
- c. Income levels/major employment.

**E. Services.** Consider the following impacts on each of the services listed in II.D., above.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1. Changes in service travel times.
2. Circuitry of access.
3. Changes in services area.
4. Potential new or additional public facilities  
And services needed.

**F. Pedestrian, Transit and Bicyclist Facilities.**  
Consider:

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1. Use projects/capacity – design year data.
2. Safety/travel time.
3. Circulation changes.
4. How changes in accessibility will affect facility users.
5. Describe provisions included in the project for a reasonable alternative route, or

Demonstrate that such a route exists.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>V. Mitigation</b>
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Consider:

**SAT    INC    MIS    N/A**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		A. Community Cohesion. Describe:
					1. Mitigation measures and commitments.
					2. Mitigation measures considered or available but not included, with reasons why.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		B. Recreation. Describe:
					1. Mitigation measures and commitments.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		2. Mitigation measures considered or available but not included, with reasons why.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		C. Regional and Community Growth. Mitigation is normally not applicable.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		D. Services. Describe:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		1. Mitigation measures and commitments.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		2. Mitigation measures considered or available but not included, with reasons why.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		E. Pedestrian, Transit and Bicyclist Facilities. Discuss any proposed measure to avoid or reduce adverse impacts on the facility and its users.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		F. Describe efforts to mitigate impacts on any potentially impacted low-income and/or minority communities in the environmental process. (This can be done in separate EJ report)

<b>VI. Summary</b>
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Summarize the analysis done and conclusions reached. The summary should include enough detail so that it can be included in the environmental document with only minor modification. This summary should include:

**SAT    INC    MIS    N/A**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			A. The objectives of the project.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			B. Current land use patterns.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			C. Impacts of all alternatives including the no-build alternative.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			D. Recommended mitigation.

E. Comparison of alternatives based on impacts and cost effectiveness of mitigation.

F. Describe public involvement/interaction plan, types of public involvement, timing.

General Comments:-

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**VDOT EJ TECHNICAL ASSISTANCE TOOL  
ECONOMIC ELEMENTS**

Project Name: \_\_\_\_\_ Project Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Date Received: \_\_\_\_\_ Date Reviewed: \_\_\_\_\_ Reviewer: \_\_\_\_\_

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)  
Answers are required for questions that have no N/A box.

The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

<b>I. Studies and Coordination</b>
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(Refer to National Cooperative Highway Research Report-I22, Summary and Evaluation of Economic Consequences of Highway Improvements.)

SAT	INC	MIS	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Field interviews with employers in impacted area. Include small, large, minority owned and any unique businesses.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Discuss what kind of adverse impact any relocations could have on employees as well as local economy; i.e.; where do employees live? How do they get to work?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Residents.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	C. County and city government officials.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Local business and economic leaders.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E. Studies of existing conditions.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	F. New industrial and commercial development in various planning or construction phases.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	G. Market feasibility studies.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	H. Real estate transactions.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	I. Property assessment valuations.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	J. County tax rolls.

<b>II. Affected Environment</b>
---------------------------------

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- A. Describe general economic climate of the area.
- B. Include established business districts and Transportation facility related business.

<b>III. Impacts</b>
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<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>
------------	------------	------------	------------

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- A. Describe effects on overall business activity of:
  1. Loss of productive business or farm property through induced development.
  2. Increases or decreases in travel time for shipment of goods.
  3. Changes in business and shopping patterns as a result of changes in accessibility; e.g., effects on highway related businesses.
  4. Loss of business due to construction of alternative on new alignment including any businesses important to low-income and/or minority populations.
- B. Describe increase, decrease, or change in location In permanent jobs after completion, due to:
  1. Basic industry or commercial location and relocation.
  2. Bypass diversions.
  3. Barrier effects.
  4. Induced growth or development.
  5. Facility relocation.
- C. Describe effects on property value trends and the Local economy of:
  1. Traffic volumes.
  2. Competing enterprises and centers.
  3. Visibility.
  4. Physical access to facility or property.
  5. Altered commercial sales potential.
  6. Reduced revenue from loss of taxable property to highway right of way.
  7. Changed revenue from in-migration or out-migration of high tax-producing land users.
- D. Describe these effects on the region:
  1. Effects on bypassed communities and/or businesses.

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Effects on areas in proximity to the facility.
3. Effects on areas near interchanges or transit stops.

<b>IV. Mitigation</b>
-----------------------

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A. Mitigation measures and commitments e.g., control, commitments to minority/low-income affected community.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------

B. Mitigation measures considered or available but not included, with reasons why.

<b>V. Construction Activity Impacts</b>
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(All impacts associated with construction of the project are to be addressed in a “Construction Activity Impacts: section of the environmental document. Provide the following information, as appropriate, for inclusion in that section.)

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>
------------	------------	------------	------------

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A. Under **Impacts**, consider temporary construction effects, such as:

1. Construction expenditures.
2. Temporary construction revisions to business or farm access.
3. Temporary jobs created during construction.
4. Impact of construction expenditures on sales tax revenues (consider multiplier effect).

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. Under **Mitigation**:

1. Mitigation measures and commitments; e.g. access provisions, public information program from construction activities.
2. Mitigation measures considered or available but not included, with reasons why.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------

<b>VI. Summary</b>
--------------------

Summarize the analysis done and conclusions reached. The summary should include enough detail so that it can be included in the environmental document with only minor modifications.

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

A. The objectives of the project.

1. Current economic activity and patterns.



**VDOT EJ TECHNICAL ASSISTANCE TOOL  
RELOCATION**

Project Name: \_\_\_\_\_ Project Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Date Received: \_\_\_\_\_ Date Reviewed: \_\_\_\_\_ Reviewer: \_\_\_\_\_

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)  
Answers are required for questions that have no N/A box.

Use this form if project displaces homes and/or businesses.

The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

<b>I. Studies and Coordination</b>
------------------------------------

(Refer to Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended in 1987.)

Consider:

- | <b>SAT</b>               | <b>INC</b>               | <b>MIS</b>               | <b>N/A</b>               |   |
|--------------------------|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          | A. Census data.                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | B. Social/economic reports.                           |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | C. Contact with community leaders and local officials |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          | D. Field Surveys.                                     |

<b>II. Affected Environment</b>
---------------------------------

Discuss (if necessary)

- | <b>SAT</b>               | <b>INC</b>               | <b>MIS</b>               | <b>N/A</b>               |   |
|--------------------------|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | A. Characteristics of the affected area, such as minority and ethnic, disabled, elderly, family size, income level, owner/tenant status, and long-term stability of the area ( e.g., is the area in transition?)                                    |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | B. Numbers, descriptions, types of occupancy, and sizes (number of employees) of business and farms within the area. Describe business or farm products or services, particular requirements, specific availability of replacement sites/buildings. |

<b>III. Impacts</b>
---------------------

SAT	INC	MIS	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Residential impacts. Include an estimate of the number of households to be displaced and any anticipated relocation problems to the extent such information is available.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Describe:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Dwelling types(s) i.e., single-family, multi-family, Section 8 or other subsidized housing, etc.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2. Occupancy type (owner/tenant).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3. Resident characteristics.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Elderly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Disabled.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Minorities (racial, ethnics, or religious groups).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Income level (low, middle, high).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Large or small families.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Length of occupancy.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Transit dependency.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Limited English speaking.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Summarize how many minority and/or low-income Households are impacted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	C. Business, farm, and nonprofit organization impacts.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Estimate of the number, types, and sizes of business, farms, and nonprofit organizations to be displaced. How many of these are minority owned or operated?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2. The approximate number of employees for each business, farm, and nonprofit organization.

<b>IV. Mitigation</b>
-----------------------

Discuss relocation assistance. (Preparers should consult regional Real Estate Services personnel as early as possible for assistance in preparing relocation information.)

SAT	INC	MIS	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Residential.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Describe available housing in the area and the ability to provide suitable relocation housing for residents being displaced, including moving existing structures to a

- |                          |                          |                          |                          |   |
|--------------------------|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | new location.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2. Describe any special advisory or other services that will be necessary for special relocation problems.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 3. Include a statement of commitment to last resort housing when sufficient comparable replacement housing may not be available.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | B. Business, farm, and nonprofit organizations.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 1. Discuss probable availability of replacement facilities for business and nonprofit organizations, including moving existing structures to a new location.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2. Discuss potential relocation of farm operations.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | C. Include a statement that the acquisition and relocation program will be conducted in accordance with the Uniform Relocation assistance and Real Property Acquisition Policies Act of 1970, as amended, and that resources are available to all residential and business relocates without discrimination.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | D. Describe specific measures or coordination discuss With local governments, organizations, etc., to Reduce general or specific impacts. Special Financial and incentive programs or opportunities (beyond those provided by the Uniform Relocation Assistance Act) available throughout other agencies or organizations for residential and Business relocates may be unidentified. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | E. Describe any additional mitigation measures and commitments.   |

**V. Construction Activity Impacts**

All impacts associated with construction of the project are to be addressed in a “Construction Activity Impacts” section of the environmental document. Provide the following information, as appropriate, for inclusion in that section.

- | SAT                      | INC                      | MIS                      | N/A                      |    |  |
|--------------------------|--------------------------|--------------------------|--------------------------|----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | A. | <b>Impacts</b> Normally not applicable.    |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | B. | <b>Mitigation</b> Normally not applicable. |

**VI. SUMMARY**

Summarize the analysis done and conclusions reached. The summary should include enough

detail so that it can be included in the environmental document with only minor modification. The summary should include.

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		A. Objectives of the project.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		B. Current housing availability and vacancy rates.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		C. Impacts of all alternatives including the no-build.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		D. Recommend mitigation and reference to the Uniform Relocation Act.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		E. Comparison of alternatives based on impacts and cost effectiveness of mitigation. Total relocations/ displacements including number or percentage of minority/low-income households/business impacted. Separate into households impacted and business impacted.

General Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VDOT EJ TECHNICAL ASSISTANCE TOOL  
ENVIRONMENTAL JUSTICE**

Project Name: \_\_\_\_\_ Project Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Date Received: \_\_\_\_\_ Date Reviewed: \_\_\_\_\_ Reviewer: \_\_\_\_\_

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)  
Answers are required for questions that have no N/A box. The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

<b>I. Studies and Coordination</b>
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Refer to Social and Economic Technical Assistance Tools and the EJ Guidelines. Also refer to 42 USC 2000d-d4, 23 CFR Part 771, Title VI of the Civil Rights Act of 1964, and Presidential Executive Orders 12898 and 13166.

There are three (3) types of environmental documents that require FHWA concurrence and adoption. However, CEs for activities specified under 23 CFR 771.117 (c), normally DO NOT require formal FHWA approval.

**Class I: Environmental Impact Statement (EIS)**

An EIS is prepared when it is determined through environmental studies, public involvement, and coordination with other Federal, State and local agencies that the project will have a significant impact on the environment. The EIS process requires the preparation of a Notice of Intent (NOI), a Draft Environmental Impact Statement (DEIS), a Final Environmental Impact Statement (FEIS), and a Record of Decision (ROD).

**Class II: Categorical Exclusion (CE)**

The CE is the most commonly used environmental processing option. The CE is not an environmental document, but a determination that a project will have no significant individual or cumulative SEE impacts. In other words, the project would not have significant impacts on planned growth or land use for the area; does not require the relocation of significant numbers of people; does not have a significant impact on any natural, cultural recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant environmental impacts.

**Class III: Environmental Assessment (EA)**

The EA is prepared for projects when the significance for the impacts is not known or clearly established. Projects that are not categorical exclusions and do not obviously require an EIS will require the preparation of an EA to determine the significance of the impacts and whether an EIS should be prepared. The amount of information and degree of analysis that should be performed

and included in an EA will depend on the size, type, location, number o reasonable alternatives, potential for significant impacts and other factors of the project.

**II. Introduction**

To be completed as a sub-set of the Socio-Economic Analysis if demographic analysis has identified low-income and/or minority residents in the project area. These are specific to an EJ analysis, but are to be used in conjunction with the overall Social-Economic-Relocation analysis. It is helpful to include maps highlighting the location of alternatives overlaid with any minority and/or low-income populations residing within the primary study area.

- | SAT                      | INC                      | MIS                      | N/A |   |
|--------------------------|--------------------------|--------------------------|-----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     | A. A definition of populations, which are the subject of EJ analysis; Percentage of low-income and minority populations present within impacted census blocks, block groups, or tracts. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     | B. Statement of two-pronged approach; enhanced public involvement (describing outreach to EJ populations), and analysis of impact/avoidance of disproportionate impact.                 |

**III. Affected Populations**

- | SAT                      | INC                      | MIS                      | N/A | Definition of area of potential impact  |
|--------------------------|--------------------------|--------------------------|-----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     | A. Documentation of data sources and methods for determination. Census data alone is generally not adequate. Data from public involvement, local comprehensive plans and “windshield surveys” are some examples of where supplemental data can be obtained. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     | B. Document the presence of low-income or minority populations. (Identification, description, and location of EJ population.)   |

**IV. Enhanced Public Involvement**

- | SAT                      | INC                      | MIS                      | N/A |  |
|--------------------------|--------------------------|--------------------------|-----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     | A. Describe special efforts to address literacy, language, transportation, schedule, childcare, other barriers to involvement.             |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     | B. Description of target outreach efforts to involve low income/minority population. Describe methods Used to overcome potential barriers. |
|                          |                          |                          |     | C. Documentation of strategy and results (attendance, responses, etc.).  |

<b>V. Assessment of Impacts</b>
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SAT	INC	MIS	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		A. Definitions of adverse and disproportionate impacts (as per USDOT order.).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		B. Analysis of impacts of each alternative, including No-Build, on EJ population. (Types of impacts as listed in Social-Economic-Relocation checklists)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		C. Documentation of community perception of impacts, positive and negative and severity.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		D. Description of any disproportionately high and adverse impacts on low-income or minority population.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		E. Description of any offsetting benefits should be described.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		F. Conclusion of impacts on EJ population. Are adverse impacts appreciably more severe or greater in magnitude than the adverse impacts that will be suffered by the non-minority/low-income population?

<b>VI. Avoidance, Minimization, Mitigation and Enhancement</b>
--

SAT	INC	MIS	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		A. Discussion of any alternatives that avoid such impacts as they pertain to the EJ population. Include discussion of practicability.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		B. Description of efforts to avoid, minimize, mitigate, enhance, or offset project as they pertain to the EJ population.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		C. Description of social, economic, and environmental effects of mitigation measures as they pertain to the EJ population
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		D. Mitigation commitments.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		E. Documentation of community perception of suitability of mitigation proposed.

<b>VII. Summary</b>
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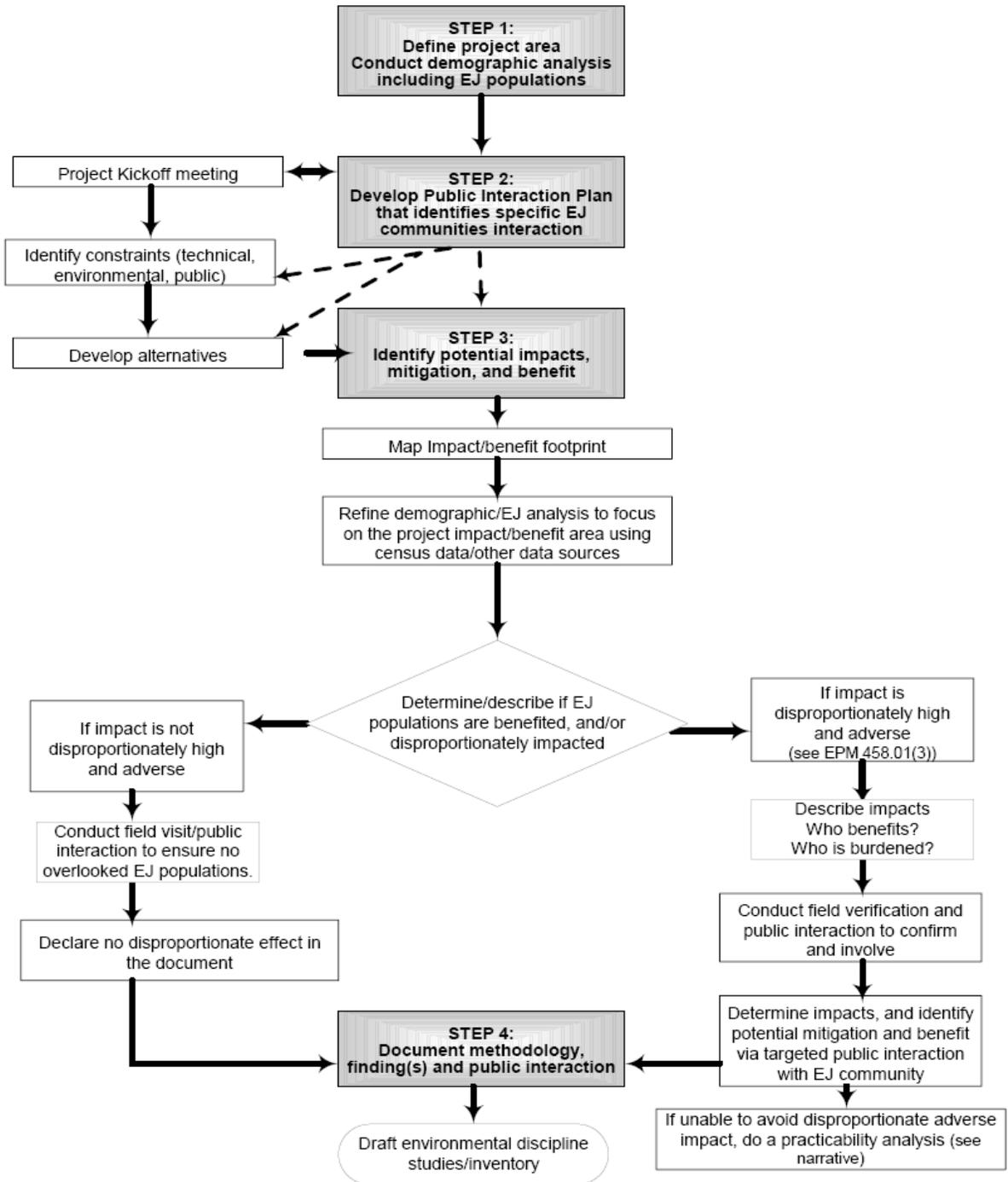
Summarize the analysis done and conclusions reached. The summary should include enough detail so that it can be included in the final environmental document with only minor

modification.

The summary should include:

<b>SAT</b>	<b>INC</b>	<b>MIS</b>	<b>N/A</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		A. The objectives of the project.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		B. Environmental Justice populations and issues involved.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		C. Impacts of all alternative including the no-build alternative.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		D. Recommended mitigation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		E. Comparison of alternatives based on impacts and reasonableness of mitigation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		F. Summarize practicability determination if disproportionately high and adverse effects on minority populations or low-income populations cannot be avoided, minimized or mitigated.

# Environmental Justice Analysis – Step-by-Step Flowchart



## **APPENDIX XIII. CONDUCTING AN ENVIRONMENTAL JUSTICE ANALYSIS STEP-BY-STEP OVERVIEW**

### **Purpose and Requirements**

This step-by-step overview provides directions on how to analyze transportation planning and project development effects on minority and low income communities. This condensed guide was developed in accordance with Title VI of the Civil Rights Act of 1964, National Environmental Policy Act (NEPA), Intermodal Surface Transportation Efficiency Act (ISTEA), and the Presidential Executive Order 12898 of 1994 as applicable throughout all stages of project development and construction. This guide acts a general framework for any environmental justice analysis.

VDOT intends this guidance to:

- Provide a consistent approach to conducting an environmental justice analysis.
- Ensure transportation planning and project development are done in a manner that does not have the effect of excluding persons from participation in or receiving program benefits.
- Promote the exchange of lessons learned.
- The step-by-step is a general process to refine an environmental justice (EJ) analysis throughout project development through the planning, environmental, project development, construction, and maintenance process.

### **Environmental Justice Analysis Overview**

The EJ analysis process is composed of four basic steps:

1. Conduct a demographic analysis of the Study Area.
2. Develop a Public Interaction/Involvement Plan (PIP).
3. Determine impact(s), appropriate mitigation, and benefits(s) with regard to EJ populations via public interaction with the potentially affected communities.
4. Document the EJ analysis process.

### **Step 1 - Demographics**

Prior to the project kick off meeting, but after the project is defined, conduct a demographic analysis of the project area, map the results, and develop a PIP based on this analysis. The analysis must identify any environmental justice (EJ) populations, and should include other data elements relevant to the PIP – e.g., age, disability, limited English proficiency, income level.

An EJ community includes individuals and minority populations, i.e., Asians, Blacks, Hispanics, Native Americans, and Pacific Islanders, as well as, low-income populations as defined by Presidential Executive Order 12898.

### **Step 2 – PIP Development**

The PIP will be developed and modified to meet specific public and project needs as the project proceeds through the planning, environmental, project development, construction, and maintenance process.

The project team, assisted by this step-by-step overview, needs to decide how and where public interaction will occur in addition to circulating the usual reports for review and comment – as required or appropriate for project scoping; constraint identification; alternative development; and impact, mitigation, and benefit identification.

The PIP should:

1. Set public interaction goals and objectives.
2. Identify people and organizations to be reached based on demographics and relevant information.
3. Develop a strategy based on the goals/objectives and characteristics of the target audiences.
4. Incorporate strategies and techniques to aid decision-making.
5. Be evaluated and modified as more information is obtained from the impacted community.
6. Document the public interaction process and its results.

### **Step 3 - Impact/Mitigation/Benefits**

When alternatives are developed, potential impacts, mitigation, and benefits should be identified and mapped prior to producing a draft document. Map the affected geographic areas, and refine the demographic analysis to determine if EJ communities are affected. A disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

1. Is predominately borne by a minority population and/or a low-income population; or
2. 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 non-minority population and/or non low-income population.

Disproportionately high and adverse effects on minority populations or low-income populations will only be carried out if further mitigation measures of alternatives that would avoid or reduce the disproportionately high and adverse effects are not “practicable.” To determine the practicability of a mitigation measure or an alternative, take into account the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects. This process should be documented.

The analysis also needs to ensure that any potential for disproportionately high and adverse effects on populations protected by Title VI and EJ (“protected populations”) will only be carried out if:

1. A substantial need for the program, policy or activity exists, based on the overall public interest; and
2. Alternatives that would have less adverse effects on protected populations have either:
  - a) Adverse social, economic, environmental, or human health impacts that are more severe; or
  - b) Would involve increased costs of an extraordinary magnitude.

A PIP is implemented within these affect EJ communities to obtain feedback on the alternatives, impacts, mitigation and benefits. A correlation should be made between the results of the public interaction, particularly with an adversely impacted EJ community, and the proposed mitigation and benefits.

#### **Step 4 - Document the Process**

The EJ analysis process is documented as follows:

- Summarize related laws, regulations and guidance,
- Define “adverse” and “disproportionate” impacts (per USDOT order.)
- Document data sources and methods for determination.
- Describe the study area and its demographics using narrative and maps,
- Summarize public interaction strategy,
- Describe and map impacts, mitigation and benefits and those populations affected,
- Describe specific interactions with the affected communities and results,
- Make an EJ determination(s),
- If the determination result is high and disproportionately adverse, another determination should be made taking into consideration the effect that mitigation and benefits will have.
- If disproportionately high and adverse effects on minority populations or low-income populations cannot be avoided, minimized or mitigated, a practicability determination should be made.

Draft the environmental discipline studies/inventories, and produce a draft environmental/planning document. The EJ determination is done concurrently with preparation of other environmental documents to allow for the inclusion of any related impacts such as noise, air, etc.

## **APPENDIX L**

### **Data Collection Guidelines**

The diversity of Virginia's population reflects the diversity of the population of the entire nation. It is critically important that VDOT and its sub-recipients be innovative in engaging historically under represented populations and businesses in the planning, project development and maintenance processes. According to the census bureau 2010 data, Virginia's total population estimate for 2013 was 8,260,405; females made up 50.1% of the population; people 65 years and older made up 13.4% of the population; Whites (not Hispanic or Latino) made up 63.6% of the population; Blacks or African Americans made up 19.7% of the population; Asians made up 6.1% of the population; Hispanic or Latinos made up 8.6% of the population, Native Hawaiian and Other Pacific Islanders made up 0.1 % of the population and American Indians and Alaska Native made up 0.5% of the population.

#### **Purpose of Collecting Data:**

23 U.S.C, 200.9(b)(4) requires the state "develop procedures for the collection of statistical data of participants in and beneficiaries of State highway programs, i.e., relocatees, impacted citizens (race, color, disability, sex, age and national origin) and affected communities." In addition, data collection provides measurable evidence of the Department's performance as it relates to Title VI for annual reports to the FHWA and the Department's efforts to ensure compliance with Title VI.

Objective data is necessary to identify:

1. Transportation needs of all persons within boundaries and plans or projects.
2. Impacts and persons impacted.
3. Persons to include in the decision making process.
4. "Champion(s) for various modes and transportation options.
5. Strategies to address impacts.
6. Alternatives to modes and locations and types of facilities (transit, light rail, van and carpooling, HOV lanes, etc.).
7. Priorities for investments.
8. Sources for financing investments.
9. Strategies to disseminate information.

Based on Title VI implementing regulations, each division/district is required to:

1. Provide for the collection of data and information to permit effective enforcement of Title VI.
2. Collect data about beneficiaries.
3. Analyze the data and information collected.
4. Eliminate discrimination when it is found.
5. Take affirmative measures to ensure nondiscrimination.

Types of data and analysis:

Each division develops a process to collect data with regard to race, color, national origin, sex, disability and age. Data that will be helpful in determining compliance with Title VI:

DATA	ANALYSIS
Population	District and statewide population and growth rates
	District and statewide ethnic composition
	Sex and age distribution
	Number of households by income group
	Median household by income
	Percent of persons below poverty level
	Percent of persons with mobility limitations
	Percent of mobility limitations
	Percent of elderly persons
	Language(s) spoken
	Percent of disabled by types of disability
Mode Choice	Number of trips per capita
	Percent of households with no automobiles
	Percent of households by income groups using various modes of transportation (e.g., bus, carpool, commuter rail, automobile)
	Percent of persons by ethnic, gender and disability group using various modes of transportation (e.g., bus, carpool, commuter rail, automobile)
Transportation System	Transportation system congested
	Delay as a percentage of travel time
	Travel time
	Exposure to transportation hazards (environmental, safety, crime)
	Access to jobs, churches, synagogues, mosques, medical care, schools, emergency services, grocery stores, family
Employment	Present and future location of jobs
	Present and future location of housing
	Present and future location of low-income communities
Other	Public investment per capita (Federal, State and Local)
<b>These are recommendations; data should not be limited to these categories.</b>	

Types of analysis to address compliance with Title VI:

1. Percent of benefits allocated to persons below poverty line vs. persons above poverty line.
2. Distribution of benefits (dollars, facilities, systems, projects) by groups and communities.
3. Impact of investments on income, race, gender, disability and age groups.
4. Allocation of funds by mode (highway, bus, commuter rail, etc.)
5. Projected population increases versus planned facilities and types of facilities.
6. Language needs assessment.

Types of performance indicators:

1. Mobility – ease of movement of people and goods.
2. Accessibility – access to opportunities (jobs, medical care, emergency services, family, shopping, entertainment).
3. Environment – sustainable development and preservation of the existing system and the environment.
4. Cost-effectiveness – maximized return on investment, direct as well as indirect costs associated with air pollution, congestion delay for individuals/businesses.
5. Reliability – system reliability (probability of arriving at destination or even making the trip).
6. Safety – physical design and operation of system (measured in accidents per person a mile) also includes security related to criminal activities on highways as well as on transit systems.
7. Equity – transportation investments and benefits are invested in a manner that meets the needs of all persons.
8. Customer Satisfaction – increased ability to make trips, improved travel time, safety and security, improved access to system.
9. Livable Communities – enhancement of living conditions for communities through transportation policies that provide multi-modal options including non-motorized modes.

Resources for collecting data:

1. Census Data
2. School Districts
3. Transit Ridership Surveys
4. Management Systems (Pavement and Congestion)
5. Land Use Plans
6. Geographic Information Systems
7. Transportation Models
8. Metropolitan Planning Organization Committees (e.g., Citizen Advisory Committees)

How to collect data:

Each division develops a process to collect data for the following basis:

Race	White/Caucasian
	Black/African American
	American Indian/Alaskan Native
	Asian
	Hawaiian/Pacific Islander
	Hispanic/Latino
National Origin	Born in United States, Puerto Rico, Guan, The U.S. Virgin Islands, Northern Marianas or
	Born Abroad of American parent(s)
	Born outside U.S., Puerto Rico, Guam, the U.S. Virgin Islands or Northern Marianas
Does the Person Speak a Language other than English at home?	If yes, what is the language? _____
	No
Sex	Male
	Female
Disability	Yes
	No
Age	_____

How to present/allocate multiple race responses is addressed in Office Management and Budget Bulletin No. 00-02. 1

All of the data collection considerations above apply directly to VDOT programs and when administering new or renewal contracts or applications for grants, permits or loans, an oversight perspective of your sub-recipients must be recognized and applied.

In addition, the U.S. Department of Justice regulations offer the examples below for determining compliance with Title VI:

1. The manner in which services are or will be provided and the related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination.
2. The population eligible to be served by race, color, national origin, sex, disability

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1 Office of Management and Budget Bulletin No. 00-02 establishes multiple race response is acceptable.

- and age.
3. Data regarding, covered employment, including use of planned use of bilingual public contact employees servicing beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English.
  4. The location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination.
  5. The present or proposed membership, by race, color, national origin, sex, disability and age, in any planning or advisory body which is an integral part of the program.
  6. Where location is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, national origin, sex, disability or age.

Additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, may be necessary or appropriate for understanding information requirements listed above. This type of data is required to the extent that the data is available.

The Title VI Specialist or the Division Administrator of Civil Rights must be promptly notified of any complaint filed against any program and its sub-recipients alleging discrimination on the basis of race, color, national origin, sex, disability or age.