TSK 458–d: Determining Project Effect on EJ Populations

See also: EM Chapter 458, ESO Discipline Specialist
Effective: April 2011

Start task: Completion of the preliminary impact analysis. The analysis may include the following disciplines: Noise, Air, Section 4(f), Public Services & Utilities, Economics, Relocations, Land Use, Transportation, Visual, Hazardous Materials and Cultural Resources.
End task: Documentation of the project impact on an EJ population.

Methodology Overview:
FHWA Implementing Order 6640.23 defines a "disproportionately high and adverse effect" on a minority or low-income population as an adverse affect that:

- Is predominately borne by a minority and/or a low-income population; **or**
- Will be suffered by the minority and/or low-income population at an *appreciably more severe* magnitude than the adverse effect suffered by the rest of the population.

This task employs a 4-step probabilistic model based on a comparison of the demographic data and the geographic extent of identified adverse impacts. The 4 steps are:

- Determine the EJ/low-income population percentage in areas with adverse effects.
- Determine the EJ/low- income population percentage in areas without adverse effects
- Compare the two percentages. If the areas where there are adverse effects have a higher percentage than the area without adverse effect, then the effect is disproportionate.
- Verify or refute the determination by comparing the severity of the impact, mitigation and project benefits that may offset the impact. Include public perception of the severity of the impact in your analysis.

"Right-size" the analysis effort to match the size and complexity of your project.

Process:

1. **Collect discipline affect data** for Noise, Air toxins, Section 4(f), Relocations, Public Services & Utilities, Lane Use, Transportation, Land Use, Visual, Hazardous Materials and Cultural Resources.
    - Only disciplines that have an adverse effect will need to be considered in the analysis. If none of the disciplines have adverse effects, **skip to Step 6**

2. **Review public comment** and summarize issues of concern to the EJ population by neighborhood or location.
    - Review technical analysis. Make sure that you have data for the disciplines mentioned as areas of concern.
    - If the EJ and/or low-income population does not feel that the project effects are adverse, or there is no controversy, **skip to Step 6**.

3. **Overlay the adverse effects** for each discipline on the map showing the demographic data created in TSK 458-b.
    - Show demographic data for each census block as a percentage (% of each minority, the % of low-income and the % of non-EJ population).
    - Show the adverse environmental effects (Noise, Air, etc.) in a way that allows you to see both the type of effect and the severity of the effect. The complexity of the graphics will vary depending on the project. You may have to create a series of maps or a series of overlays if the data is complex. Contact the WSDOT Graphics Office for assistance.
    - Double check the map to confirm that the geographic data, discipline data, severity ratings, and demographic data are correct. Include the data sources on the map and note if you are using preliminary findings for any of the disciplines.

4. **Determine** the EJ and low-income population percentages in areas *with and without* adverse effects.
    - Determine the percentages for each discipline.
    - Determine the location and severity

5. **Compare the percentages and make a preliminary determination.**
    - If the areas where there are adverse effects have a higher percentage of EJ and low-income populations there may be a "disproportionately high and adverse" effect.
    - A "disproportionately high and adverse" determination may be made if:
        - The severity of the adverse impact is appreciably greater for EJ and low-income populations.
        - More adverse environmental impacts occur in areas with EJ and low-income populations (regardless of severity) than in areas without EJ and low-income populations.
        - Proposed mitigation is not sufficient to reduce either the level of severity or number of adverse effects for EJ and low-income populations.

    - The project benefits to not effect EJ or low-income populations to the same degree as other populations.
    - The project is controversial and public comment shows that EJ and/or low-income populations do not feel that the project benefits them, or that the proposed mitigation adequate.
- Use your best judgment and professional expertise to make a final determination.

6. **Document findings.**
    - If there are **no adverse effects**, document findings in a letter to file that describes the evaluation process and justifies your determination. Conclude the letter with the following required wording:

      "No minority or low-income populations have been identified that would be disproportionately adversely affected by this project as determined above. Therefore, this project has met the provisions of Executive Order 12898 as it is supported by Title VI of the Civil Rights Act."

    - If the **adverse effects are *minor* and there is no controversy**, document findings in a letter to file. The letter should describe the evaluation process and justify your determination. Conclude the letter with the following required wording shown above.

    - If the **adverse effects are *the same* for all populations and there is no controversy**, document findings in a letter to file. The letter should describe the evaluation process and justify your determination. Conclude the letter with the following required wording shown above.

      If such a finding is controversial, discuss your findings in the environmental document. Include a description of the evaluation process and how you engaged the public in the decision-making process. Support your determination with evidence and reference technical analysis. Scale the level of documentation to reflect the complexity of the project and level of controversy.

    - If there are **disproportionately high and adverse effects to EJ and/or low-income populations, but they can be mitigated or off-set by the project benefits**, discuss your findings in the environmental document. The mitigation and/or project benefits must *primarily* serve the EJ/low-income population to off-set disproportionate impacts. Describe the evaluation process and include a

discussion of level of acceptance of the mitigation/benefits by the EJ/low-income population. Support your determination with evidence and reference technical analysis. Scale the level of documentation to reflect the complexity of the project and level of controversy. Provide supporting documentation and reference technical analysis.

- If you determine that **the effects are disproportionately high and adverse**, discuss your finding in the environmental document. A finding of "disproportionate high and adverse" will not stop the project. But such a determination requires additional analysis to demonstrate that further avoidance, minimization, mitigation and enhancement measures are not practicable. Alternatives may be considered "not practicable" if:
    - They would not satisfy the project needs.
    - Have more severe adverse effects on other environmental elements (e.g., Wetlands, Section 4(f))
    - Have greater social, economic, environmental or human health effects.
    - Would reach costs of extraordinary magnitude.

  Support your determination with evidence and reference technical analysis. Include the results of public outreach efforts to EJ/low-income populations in the environmental document. Scale the level of documentation to reflect the complexity of the project and level of controversy.