Environmental Justice FAQs

This document attempts to answer the most commonly asked questions about Environmental Justice (EJ). Please contact WSDOT Environmental Services Office if you have additional questions.

1. **What is the FHWA and WSDOT’s policy direction?**
   The three fundamental EJ principles contained in Presidential Executive Order 12909 are:
   - Avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects (including social and economic effects) on minority and low-income populations.
   - Ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
   - Prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

2. **What is the difference between EJ and Title VI?**
   Both address non-discrimination, identify minority populations, are rooted in the constitutional guarantee that all citizens are created equal and both address involvement of affected citizens in the decision-making process. EJ covers minority and low-income populations while Title VI covers race, color, national origin, gender, age and disability. EJ mandates a process for inclusive decision-making, while Title VI prohibits discrimination.

3. **How should I address EJ during the NEPA process?**
   You should consider and address EJ in NEPA compliance and appropriately document it in the EIS, EA, or DCE. Presidential EO 12898 and accompanying memorandum infer that specific actions should be carried out in the NPEA-related activities. These actions include:
   - Analyzing environmental effects (including human health, economic, and social effects) on minority and low-income populations.
   - Ensuring that mitigation measures are outlined and disproportionately high and adverse environmental effects (or proposed actions) are addressed.
   - Providing opportunities for community input in the NEPA process. This includes identification of potential effects and mitigation measures and accessibility to public meetings, documents and notices.

   In addition, Section 309 of the Clean Air Act, requires EPA to ensure that agencies have fully analyzed the environmental effects (human health, social and economic) on minority and low-income populations by reviewing proposed actions.

4. **Do I need to do an EJ analysis for both NEPA and SEPA?**
You need to an EJ analysis during the NEPA process for projects that receive federal assistance. Section 109(h) of the Federal Aid Highway Act also requires consideration of economic and social effects, which also applies to non-NEPA projects. Because the nondiscrimination requirements of Title VI extend to all programs and activities of State DOTs, the concepts of EJ also apply to State funded projects. There are no state laws protecting low-income populations, so impacts to this group do not have to considered for State funded projects.

5. Where should I discuss Limited English Proficiency (LEP) in the environmental document?
You should discuss LEP in both the EJ and Social reports. The main discussion would appear in the EJ report and be summarized in the Social report. If the demographic analysis identifies all of your LEP population as minority or low-income. The main discussion would be located in the Social report and summarized in the EJ report if the LEP population is not low-income or a minority, such as Ukrainian or Basque. More information is available on our LEP web page.

6. Is there a certain percentage threshold of minority or low-income populations that triggers an EJ analysis?
WSDOT does not use a percentage threshold for several reasons.
- Our populations tend to be very diverse. We seldom have neighborhoods heavily populated by one minority. Therefore, we don’t usually have “EJ communities”.
- The use of a threshold eliminates further analysis and could result in an unknown disproportionate adverse impact.
- We feel our more thorough methodology is consistent with the intent of Executive Order 12898, Title IV and FHWA’s guidance.
A very small minority or low-income population is the study area does not eliminate the possibility of a disproportionately high and adverse effect on these populations. Make your EJ determination based on the effects, not population size. It is important to consider the comparative effect of an action among different population groups. You need to show the comparative effects on these populations in relation to non-minority or higher income populations.

7. Do I do an EJ analysis only on residential effects?
No, an EJ analysis includes more than residential. Businesses, social and cultural resources should also be examined for disproportionate, adverse effects. It is particularly important to identify businesses that are minority owned, employ a large number of minority workers, or serve specific minority or low-income populations.

8. What is an “adverse effect” in the context of EJ?
According to FHWA, “all reasonable foreseeable adverse social, economic and environmental effects on minority and low-income population must be identified and addressed”. As defined in the Appendix of the DOT Order, adverse effects include, but are not limited to:
- Bodily impairment, infirmity, illness or death;
• Air, noise, and water pollution and soil contamination;
• Destruction or disruption of man-made or natural resources;
• Destruction or diminution of aesthetic values;
• Destruction or disruption of community cohesion or a community 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”

9. **What is a disproportionate high and adverse effect?**
   An adverse effect that:
   • Is predominately borne by a minority population and/or a low-income population.
   • 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.

10. **How can I determine appropriate avoidance, minimization, mitigation, and enhancement measures?**
    Consider the fairness in distribution of avoidance, minimization, mitigation and enhancement measure between EJ and non-EJ populations. When considering these measures for an EJ population versus the entire project area, keep in mind that the measures should be proportional to the level of effect on each. Ask the EJ community to help you identify appropriate avoidance, minimization, mitigation, and enhancement measures. Document their responses and how their responses were addressed.