

## Sound Transit/WSDOT Re-Alignment Issue Paper No. 36

<b>TOPIC:</b>	Implementing environmental justice pursuant to Executive Order 12898 and the Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations.
<b>ACTION SPONSOR TEAM:</b>	Environmental Action Team
<b>PRIMARY AUTHOR(S):</b>	Perry Weinberg and Anne Rees, Sound Transit
<b>APPLICABLE PROJECTS:</b>	Sound Transit co-lead federal agency (FTA and FHWA) and Sound Transit FTA sole-lead projects. For Sound Transit FHWA-only lead projects, this issue paper will be followed with the approval of FHWA and WSDOT on a project-by-project basis.
<b>DATE OF FIRST DRAFT:</b>	August 27, 2001
<b>ISSUE:</b>	How should environmental justice be incorporated into the environmental review process under Executive Order 12898 and the Department of Transportation's Order to Address Environmental Justice in Minority Populations and Low-Income Populations?
<b>CURRENT STATUS:</b>	FINAL
<b>DATE APPROVED:</b>	October 4, 2001

### BACKGROUND:

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations" (Feb. 11, 1994), provides that "each Federal agency shall 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 and low-income populations." In the accompanying memorandum to the Executive Order, President Clinton urged federal agencies to incorporate environmental principles into analyses prepared under the National Environmental Policy Act ("NEPA") and emphasized the importance of public participation in the NEPA process.

The Department of Transportation ("DOT"), in its Order to Address Environmental Justice in Minority Populations and Low-Income Populations, outlined how environmental justice analyses should be performed and how federal transportation project decisions should be made to avoid disproportionately



high and adverse effects on minority and low-income populations. A copy of the DOT Order is attached to this Issue Paper as Exhibit A. The DOT Order requires agencies to (1) explicitly consider human health and environmental effects related to all DOT actions, including transportation projects, that may have a disproportionately high and adverse effect on minority or low-income populations; and (2) implement procedures to provide “meaningful opportunities for public involvement” by members of those populations during project planning and development. DOT Order, § 5(b)(1).

While the DOT Order provides general guidance, there is much room for interpretation in its implementation. In addition, Sound Transit and the FTA are involved in litigation over the Central Link project that includes environmental justice–related issues. Consequently, there is a need to provide Project Managers and consultants with more specific guidance about EJ methodology for impact assessment as well as public outreach.

## **DECISION:**

Environmental justice is an important component of the project development and environmental review processes for federally funded projects. Efforts to implement environmental justice include the accurate identification of the project area and its minority and low-income composition, and the development of effective public involvement opportunities throughout the project planning processes, including efforts directed at minority and low-income populations. They also include the accurate quantification of project benefits and burdens, the identification of potential disproportionately high and adverse effects on low-income or minority populations, and the consideration and implementation of effective mitigation or minimization measures.

The remainder of this Issue Paper describes the processes that Project Managers and/or consultants are to use in implementing environmental justice requirements. The DOT Order should be consulted for key definitions and further detail.

### **A. Public Involvement Processes**

Public involvement is a critical component of successful project planning, the environmental review process, and the achievement of environmental justice. Project Managers should provide, therefore, for the development of a public involvement plan at the outset of each project. This plan should seek to maximize public involvement in project development and environmental processes and provide for effective notification and participation by low-income and minority populations. It should also seek to implement the *Core Values and Guiding Principles for the Practice of Public Participation* stated in the Environmental Protection Agency’s Model Plan for Public Participation, Publication No. EPA-300-K-00-001. A copy of the *Core Values and Guiding Principles*” is attached as Exhibit B. Sound Transit is still developing a specific public outreach protocol; however, listed below are tools and techniques that project teams should consider including in the public involvement plan.

#### *1. Public Involvement Plan*

At a minimum, a public involvement plan should provide for the following:

- ?? Early notification of affected communities and groups in the project area;
- ?? A thorough search for stakeholders;
- ?? Timely and regular information sharing, including the provision of effective public involvement opportunities;
- ?? Specific outreach efforts to the minority and low-income populations in the affected community (as discussed below);

- ?? Compliance with public participation requirements of the applicable environmental review processes;
- ?? Responsiveness to public comment; and
- ?? Maintenance of records documenting public involvement procedures and processes and their effectiveness.

The scope of specific public involvement activities will vary from project to project. The following is a non-inclusive list of public involvement techniques:

- ?? The use of advisory committees staffed by local representatives;
- ?? Door-to-door canvassing;
- ?? The distribution of fact sheets to transit users and neighborhoods in the project area;
- ?? Public workshops designed to elicit feedback on project alternatives and impacts;
- ?? Small group meetings with residents and groups located in the project area;
- ?? Open house staffed by project team members;
- ?? Site tours;
- ?? Staffing a local information office; and
- ?? Providing updates and information to local groups through “piggybacking” techniques (scheduling brief project presentations at other public meetings).

Further, as discussed below, specific public involvement activities for a project should be tailored to maximize the involvement of minority and low-income populations.

## 2. *Low-Income and Minority Participation*

Providing for the participation of minority and low-income populations in the project planning processes often requires targeted public involvement efforts. To this end, Project Managers and their consultants should implement the following procedures as part of a public involvement plan, as appropriate:

- a. Identify low-income or minority residents and/or non-residential uses in the project area
  - ?? Using the most recent United States Census data, identify the demographic composition of the area or areas likely to be adversely affected or benefited by the project<sup>1</sup>.
  - ?? When appropriate and practicable, use site visits to identify potential pockets of minority or low-income residents and/or non-residential uses that may not be reflected in generalized data. Information may also be obtained from sources within the project area, including, when practicable, residential and non-residential landlords and property managers, social service providers, and school districts (for example, school lunch data and the need for English as Second Language classes may provide information regarding the population the affected area). Local governments may also gather demographic information to supplement federal Census data that could also be considered. This information can be used to develop effective public involvement strategies.

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<sup>1</sup> The United States Census Bureau conducts a decennial census every 10 years, in the years ending in "0," to count the population and housing units for the entire United States. The last United States Census was conducted in 2000. The United States Census Bureau has released population counts and race-based demographic data resulting from that effort. Economic demographic data should be available in the near future.

- ?? Provide public notice of project planning and other meetings to potentially affected residents and non-residential uses. If a specific neighborhood or business area will be particularly impacted by a project alternative (e.g., by displacement effects), consider holding a targeted outreach meeting for the affected individuals (e.g., for the residents of an apartment building that will be displaced). The provision of such public notice may yield information regarding the minority and/or economic status of the affected individuals that would not otherwise be evidenced by generalized data.
- b. Encourage minority and low-income residents to participate in the project planning process and provide effective involvement opportunities.
- ?? Using the demographic information obtained through the procedures described above, tailor public involvement activities to meet the needs of minority and low-income populations and maximize their involvement.
  - ?? Examples of strategies for maximizing the participation of minority and low-income populations in project public involvement activities include the following: (1) the development of partnerships with organizations or leaders in the project area that serve low-income or minority communities, including religious, community, and social service organizations; (2) holding meetings in minority or low-income neighborhoods; (3) using newspaper, radio, internet or other media to reach low-income or minority residents; (4) providing translation services at public meetings and public notice thereof; (5) providing translated versions or summaries of key informational materials; and (6) working with federal, state, local, and tribal governments to develop effective outreach efforts.
  - ?? Recognize that cultural and other variables may serve as a barrier to minority or low-income involvement in the project planning process. For example, cultural norms of a minority community may not support a minority participation in an “open-mike” meeting format. Work to identify such barriers during project development and develop creative modifications to public participation efforts.
  - ?? Provide feedback to all participants in the public involvement processes, including minority and low-income participants, regarding the use of public comments in the project planning process. Knowing that participation in project planning processes makes a difference will encourage further public involvement efforts.
- c. Use information effectively
- ?? Periodically assess the overall effectiveness of procedures used to inform and involve low-income and minority populations in project planning. Use this assessment to adjust ongoing public involvement efforts.
  - ?? Use information obtained through minority and low-income outreach efforts to develop project alternatives and to fully identify potential project impacts and benefits, as well as effective mitigation or minimization techniques. Maintain records of public involvement processes and the levels of minority and low-income participation.

## B. Analyzing Potential Disproportionately High and Adverse Effects

An environmental justice analysis must assess whether the project would result in disproportionately high and adverse effects on minority or low-income populations. Project Managers and their consultants should follow the steps set forth below in making this determination.

1. *Using information developed during the environmental review and/or project planning process, identify any impacts, such as displacements, that have the potential to fall disproportionately on low-income or minority populations.*

Using information developed during the environmental review and/or planning processes, identify those project impacts that could be differentially distributed among different population segments. Project impacts that are not typically capable of differential distribution include impacts to water resources, energy, and geology and soils. Impacts that are capable of differential distribution include displacements; land use impacts; socioeconomic impacts; noise impacts; air quality impacts; aesthetic impacts; impacts to historic/archeological resources or parklands; and construction impacts.

Project Managers should also consider whether the project could potentially result in a denial or, reduction in, or significant delay in the receipt of benefits of Department of Transportation programs, policies, or activities. Such a result could constitute a potential disproportionately high and adverse effect under the DOT Order. Because such an analysis will typically require a consideration of other system elements, Project Managers are advised to consult with the Sound Transit's Diversity Division in completing this analysis.

2. *Projects that will result in beneficial effects or only minor impacts that do not require application of mitigation or other measures will not result in disproportionately high and adverse effects and do not require further environmental justice analysis.*

Projects that, as a result of their nature and design, will result only in minor or beneficial impacts, even without considering potential mitigation measures, would not result in "disproportionately high and adverse effects" that require consideration under the Executive and DOT Orders. Under these circumstances, further analysis of the distribution of the project's impacts is not necessary. Generally, the number of projects that fall into this category will be small.

If the project would result in only minor or beneficial effects, the environmental justice analysis should provide the following: (1) a summary of the public involvement efforts implemented in connection with the project, including those efforts directed at minority and low-income populations; and (2) a full description of the project's impacts that supports the conclusion that the project would not cause any adverse effects under the DOT Order.

3. *For other projects, more detailed analyses of a project's potential disproportionately high and adverse effects should be completed, taking into account associated mitigation measures, and project benefits.*

When a project's impacts are not limited to minor or beneficial effects, a more detailed environmental justice analysis is required under the DOT Order. In considering whether such projects could result in disproportionately high and adverse effects, project impacts, mitigation measures, and project benefits should be taken into account as follows:

- a. Consider who will be affected by project potential impacts and whether the effects will be reduced or eliminated through the application of effective mitigation measures.

- ?? Identify the geographic areas in which the adverse impacts would be concentrated. The extent of the impacted areas could vary, depending on the nature of the impacts at issue. The area adversely impacted by project displacements, for example, would be limited to the locations in which displacements would occur. The area affected by air quality impacts could consist of a larger geographic area.
  - ?? Using the most recent United States Census data available, identify the demographics of the area(s) expected to be impacted by adverse impacts. The most accurate level of information should be used (e.g., Census block level rather than Census tract level, if appropriate). If other demographic sources are used, their reliability should be confirmed and documented. Implementation of the public involvement processes discussed above should yield this information.
  - ?? United States Census data alone may not be a reliable indicator of minority or low-income status of the owners, tenants, and other parties that may be affected by non-residential displacements. For example, whether a business is or is not minority-owned may not be ascertainable by reference to the surrounding residential population. Generalized population data may also understate the impact of non-residential displacements that have particular significance to a minority or low-income community (e.g., historic community resources or a grocery store that serves a particular minority community). When practicable, actual information regarding the minority-ownership and other site-specific information should be obtained for non-residential uses. Public input obtained through the public involvement processes described above could be a source of such information.
  - ?? Assess whether the project impacts identified will be reduced or eliminated through the application of mitigation measures. Input obtained through the public involvement processes described above should be used, to the extent useful, in assessing the effect of mitigation measures. This assessment may provide an impetus for considering the implementation of mitigation measures not previously considered in the environmental review process.
  - ?? Project impacts that would be effectively mitigated will not result in disproportionately high and adverse effects and it will not be necessary to conduct a statistical analysis of the affected population (see Section 4, below).
- b. Assess whether project benefits support the conclusion that no disproportionately high and adverse effects will result.

Project benefits may be taken into account when assessing whether disproportionately high and adverse effects will result under the DOT Order. Even when project impacts will be effectively mitigated, project benefits can provide further support for the conclusion that no disproportionately high and adverse effects would result. When mitigation measures will not fully eliminate a project's potential adverse effects, the provision of project benefits may justify a conclusion that no disproportionately high and adverse effects will result. In assessing the effect of project benefits, Project Managers and their consultants should proceed as follows:

- ?? Identify the transportation and other benefits expected to result from the project. Project benefits could include, for example, decreased travel times, increased accessibility to employment, and other transportation accessibility advantages.
- ?? Identify who will realize the expected benefits. For example, a conservative estimate of the population that would be benefited by new light rail service would be the population residing within .5 mile of the station locations (the distance that captures most non-motorized access ridership<sup>2</sup>). Whether project enhancements will benefit a wider area than the immediate travelshed or improvement area(s) should also be assessed. Document the assumptions used to define the population benefited by the project. As set forth below, this information could result in the conclusion that minority or low-income populations will benefit from the project.
- ?? Using the most recent United States Census data available, identify the demographics of the benefited population. The most accurate level of information should be used (e.g., Census block level, rather than Census tract level). If other demographic sources are used, their reliability should be confirmed and documented.
- ?? Qualitatively assess whether project benefits that will accrue to minority or low-income individuals offset project impacts on minority or low-income individuals (impacts to minority or low-income populations should be identified pursuant to the process set forth in subsection B(3)(a), above). In the case of beneficial transit projects, this evaluation will often demonstrate that the project's impacts are balanced by substantial transit benefits. In those circumstances where impacts are already reduced through the application of mitigation measures, benefits that accrue to minority or low-income individuals can further justify a conclusion that no disproportionately high and adverse effects will result.

c. Document conclusions clearly in a detailed written analysis.

Documentation of an environmental justice analysis that concludes that no disproportionately high and adverse effects will result after undertaking the analyses set forth above should provide the following: (1) a summary of the efforts made to ascertain the demographics of the affected area; (2) a summary of the public involvement efforts implemented in connection with the project, including those efforts directed at minority and low-income populations; and (3) a full description of the project's impacts and the ways in which such impacts will be reduced or eliminated through the application of mitigation measures; and (4) a description of the project benefits, details regarding how the benefits will accrue to minority or low-income individual, and, if applicable, an analysis of how the benefits support the conclusion that no disproportionately high and adverse effects will result.

4. *When necessary, consider whether adverse effects associated with the project will be disproportionately distributed to minority or low-income populations.*

In some circumstances, substantial project impacts may not be reduced through mitigation measures or balanced by project benefits. For example, unmitigated impacts that will occur in an area which will not be benefited by the project at issue could be considered adverse effects that require further environmental

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<sup>2</sup> Section 10.3; "Mode of Access and Catchment Areas of Rail Transit", Transit Cooperative Research Program Project H-1: Transit and Urban Form; PBQD and Howard/Stein-Hudson Associates, Inc.; March 1996.

justice analysis. Under these circumstances, it will be necessary to assess whether any such adverse effects will be disproportionately distributed to minority or low-income populations under the DOT Order. The DOT Order defines “disproportionately high and adverse effect on minority or low-income populations” as an adverse effect that will either be (1) predominantly borne by a minority population and/or a low-income population; or (2) suffered by a minority 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 or non-low-income population. In conducting such analyses, Project Managers and their consultants should implement the following:

- ?? Whether adverse effects are *disproportionately* distributed to minority and low-income populations should be determined by comparing the minority and low-income representation in the population(s) that will be adversely impacted to an appropriate reference population. It is first necessary, therefore, to identify an appropriate reference population. Typically, the reference population should be determined by evaluating the locations where the project could feasibly be sited and still meet the project’s purposes. For example, in the light-rail context, an appropriate reference population would be based on the corridors in which light rail is deemed feasible. The mean minority and low-income composition of these areas could then serve as the reference population for the environmental justice analysis. Appropriate statistical methods for evaluating the data must be used; it may be advisable to consult a statistician to ensure that this analysis is performed correctly.
- ?? Whether the minority and low-income representation in the affected population meaningfully exceeds the representation of these groups in the reference population should be ascertained. In some cases it may be appropriate to use the concept of a standard deviation, a statistical tool, to assess whether differences between the demographics of the affected population and the demographics of the reference population are significant. In such instances, the minority and low-income representation in the affected population should exceed the representation of these groups in the reference population by at least two standard deviations as a condition precedent to any conclusion that the project would have disproportionately high and adverse effects. Again, it may be advisable to consult a statistician to ensure that this analysis is performed correctly.
- ?? If the minority and low-income representation in the affected population does not meaningfully exceed the representation of those groups in the reference population, the analysis should conclude that the project would not have disproportionately high and adverse effects on minority or low-income populations.
- ?? Whether similar project system elements would be located in non-minority and non-low-income areas may also be considered in determining whether disproportionately high and adverse effects will result from the project. This will require an analysis of whether other similar system elements (from *Sound Move*) will be or have been sited and, if so, an assessment of the demographics of the affected area(s) (again, typically using the United States Census data).

?? The distribution of all adverse effects associated with a project should be taken into account in any such analysis. For example, if adverse effects comparable in scope or quality will occur in both minority and non-minority area and/or low-income and non-low-income areas, the environmental justice analysis should conclude that no disproportionality exists.

C. Documentation

As discussed above, a project's environmental justice analysis should provide details regarding: (1) the public involvement efforts for the project and specific outreach efforts directed at minority and low-income populations; and (2) an analysis of whether the project would result in disproportionately high and adverse effects on minority or low-income populations. The analysis should detail the analytical steps performed in reaching its conclusions.

The Executive Order and the implementing DOT Order do not specify the format for environmental justice analyses. Consistent with the Executive Order, a project's environmental justice analysis should be incorporated into a project's EIS, EA, or other environmental documentation whenever possible. In order to maximize the accessibility of the document, the analysis should typically be drafted as an appendix to the environmental document.

Project Managers are encouraged to discuss methodologies and approaches used in specific environmental justice analyses with Sound Transit's Environmental Compliance Division and legal staff. In addition, Project Managers should provide preliminary drafts of all environmental justice analyses to the Environmental Compliance Division and legal staff for review and comment. Finally, Project Managers should inform the Environmental Compliance Division and legal staff as early as possible of any potential disproportionately high and adverse effects in order to ensure that such effects are appropriately addressed under the Executive and DOT Orders.

**ENVIRONMENTAL ACTION TEAM DECISION ON ISSUE PAPER NO. 36:  
Environmental Justice**

**AGREED TO ON OCTOBER 4, 2001 BY:**



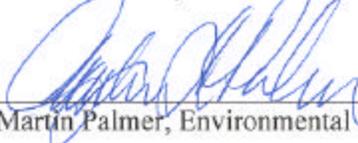
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