

# Determining Project Effect on EJ Populations

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See also: [EM Chapter 458](#)

Effective: April 2020

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

**End task:** Documentation of the impact on an EJ population for each project alternative.

## Methodology Overview:

### *Disparate impact analysis under Title VI*

Considering potential impacts by a project (per alternative) to EJ populations by comparing the groups of negatively impacted against their total population in the study area. We need information per racial/ethnic group (e.g., African American, Asian, Native American, Hispanic, et al) to understand whether the project will have a disparate impact on a particular group(s).

### *Disproportionate impact analysis*

[FHWA Implementing Order 6640.23](#) defines a “disproportionately high and adverse effect” on a minority or low-income population as an adverse effect 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.

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

## Process:

1. **Once you have demographic data for the project area, collect discipline (short-term and permanent) affect data**, including

- a) For CE level projects:
  - a. Noise to surrounding sensitive receivers
  - b. Air toxins
  - c. More than a *de minimis* use of a Section 4(f) property
  - d. Acquisition of property
  - e. Relocations or displacement of residences or business
  - f. Disruptions to Public Services & Utilities

- g. Visual
  - h. Increased exposure to Hazardous Materials
  - i. Cultural Resources
- b) For EA and EIS level projects, the types of impacts listed above and the following:
- a. Economic
  - b. Social (including community cohesion)
  - c. Land Use
  - d. Transportation
  - e. Land Use

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 involvement efforts and comments received 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.

**3. Identify the number of adversely effected people per race and for low-income** for each discipline, per alternative AND the total number of people per race and for low-income in the study area, and calculate the percent affected. See example below.

<b>Minority</b>	<b># of adversely affected</b>	<b>Total # of Persons</b>	<b>Percentage</b>
White Alone	500	3000	16%
Hispanic or Latino (of any race)	200	1000	20%
American Indian and Alaskan Native Alone or in Combination	100	500	20%
Black or African American Alone or in Combination	600	5000	12%
Asian Alone or in Combination	200	500	40%
Native Hawaiian and Other Pacific Islander Alone or in Combination	50	200	25%
Some Other Race Alone or in Combination	100	500	40%
Low-income	700	8000	8%

**4. Perform a disparate impact analysis (per alternative, per discipline)**

1. Divide the least impacted by most impacted to get a percentage.
  - a. *From the example above: 12/40 = 30%*
2. If the percentage is less than 80%, there is a disparate impact on that population.

3. Repeat steps 1-4 for any other adversely impacted populations or different type of effect.
4. Repeat steps a-c for each project alternative.
5. If a disparate impact is found, identify what kind of mitigation could lessen the impact. Specifically relate the mitigation to the adverse impact.

#### 5. Make a preliminary EJ determination.

If the areas where there are adverse effects have a higher percentage of EJ populations than non-EJ 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 populations than non-EJ populations.
- More adverse environmental impacts occur in areas with EJ and low-income populations (regardless of severity) than in areas without EJ populations.
- Proposed mitigation is not sufficient to reduce either the level of severity or number of adverse effects for EJ populations.
- The project benefits do not effect EJ populations to the same degree as other populations.
- The project is controversial and public comment shows that EJ 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 that is supported by the data. Refer back to the definition of an adverse effect in the ‘Methodology’ section.

#### 6. Document findings (per alternative).

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:

“As the adverse effects are minor and there is no controversy for the project, our assessment concludes that 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:

- a) For a CE level project: 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.

b) For an EA/EIS level project: in a right-sized analysis to support the finding.

If the **adverse effects have *the same* impact on all populations and there is no controversy**, document findings. Describe the evaluation process and justify your determination. Take into account that although the impact may be the same, the affect may be felt differently depending on the person. 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 by directly matching to specific impact. 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 if it can be shown that the project serves a significant regional need. 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’s purpose and need.
- Have more severe adverse effects on other areas of the environmental (e.g., Wetlands, Section 4(f)).
- Have greater social, economic, environmental or human health effects.

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.