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460.01 Introduction

Environmental Justice (EJ) populations include minority and low-income populations ([DOT Order 5610.2\(a\)](#)). Most areas of Washington State have EJ populations that can potentially be impacted from a proposed WSDOT project by project-related activities such as property acquisition that may displace people or construction effects like increased noise. Your project's strategic engagement with individuals and groups within the study area will help identify impacts to EJ populations. Work with them to determine how best to avoid, minimize, or mitigate disproportionately high and adverse impacts.

New in 2021, we separated the environmental justice requirements and analysis from [Chapter 458](#) Social and community effects to clarify the role of each analysis. An Environmental justice analysis can include the information from a Social and community effects analysis, but should also rely on other analyses to make an effects determination for a project.

New state requirements will take effect July 1, 2023 for transportation projects over \$15 million and other activities. We are developing procedures to comply with the state environmental justice requirements set forth in [RCW 70A.02](#).

This chapter provides direction necessary for project teams to meet EJ requirements during the environmental review process for transportation improvement projects. A detailed environmental justice analysis is required during the environmental review of transportation projects that require a NEPA EIS or EA. Projects that are classified as exempt from a detailed analysis under NEPA still consider impacts to EJ communities following our EJ Decision Matrix and documentation requirements listed in [Section 460.04](#).

The fundamental principles of environmental justice are to:

- Avoid, minimize, and mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- Ensure 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 population.

EJ is a component of Title VI (Civil Rights Act 1964), that was extended through EO 12898 to eradicate, mitigate and avoid disproportionately high and adverse effects to low income and minorities, and Indian tribes during NEPA process, when they are required.

As a recipient of Federal financial assistance, the Washington State Department of Transportation (WSDOT) is subject to the requirements of various Federal nondiscrimination laws and regulations including Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), the Executive Orders for Environmental Justice and Limited English Proficiency (LEP) populations. These laws and Executive Orders are intended to protect the Civil Rights of all individuals affected by programs and/or activities of a Federal recipient/subrecipient.

Title VI has the responsibility to ensure that no person shall on the ground of race, color or national origin, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The Civil Rights Restoration Act from 1987 specifies that recipients of federal funds must comply with civil rights laws in all areas, not just the particular program or activity that receives federal funding. National origin coverage under Title VI was extended to Limited English Proficiency (LEP) people through court decisions and Executive Order.

WSDOT's responsibilities under these laws include, but are not limited to:

- Identifying and addressing disparate impact and disproportionate high and adverse effects associated with our projects, programs, and activities.
- Ensuring that we make every effort to provide benefits, services, and access equally to all groups. Access considerations include multimodal options for all groups relative to their needs, practices, and culture.
- Avoiding, or if not possible, minimizing the hardships associated with displacement or residents and businesses.
- Providing equal access to information and meaningful involvement in the decision-making process regardless of race, color, income, disability, or national origin.
- Ensuring that communications with the public are inclusive of persons with limited English proficiency (LEP).
- Documenting our decision-making processes.

Environmental Justice (EJ) and Title VI of the Civil Rights Act (Title VI) address the distribution of the physical, social, and economic impacts of a proposed project and it's potential alternatives. Protection of the community's civil rights and the fair distribution of a project's burdens and benefits lie at the heart of the environmental justice analysis. The requirements within the Limited English Proficiency Executive Order 13166 helps ensure 'full and fair participation by all potentially affected communities...'

460.02 Applicable statutes, regulations, executive orders, & agreements

The federal and state policies that guide the evaluation of environmental justice for transportation projects, include.

460.02(1) Federal

- 42 United States Code (USC) 4321 National Environmental Policy Act of 1969 (NEPA)
- [Title VI of the Civil Rights Act of 1964](#) as amended in 1987.
- Environmental Justice Presidential [Executive Order 12898](#).
- Limited English Proficiency Presidential [Executive Order 13166](#).
- [Section 504](#) of the Rehabilitation Act of 1973.
- [Title II of the Americans with Disabilities Act \(ADA\)](#) of 1990.
- Tribal Government Tribal considerations are also addressed under both [Section 4\(f\), 49 USC 303](#) and Section 106 of National Historic Preservation Act 16 USC 470f.
- Department of Transportation ([DOT Order 5610.2\(a\)](#)), Final DOT Environmental Justice Order, issued May 2, 2012.
- Advancing Racial Equity and Support for Underserved Communities Through the Federal Government [Executive Order 13985](#) issued January 20, 2021.
- Tackling the Climate Crisis at Home and Abroad Presidential [Executive Order 14008](#).
- Consultation and Coordination With Indian Tribal Governments [Presidential Executive Order 13175](#).

460.02(2) State

- [RCW 70A.02 Environmental Justice](#), also referred to as the Healthy Environment for All (HEAL) Act.
- Secretary's EO [E 1018](#) Environmental Policy Statement.
- [Governor's Executive Order 93-07 Affirming Commitment to Diversity and Equity in the Service Delivery and the Communities of the State](#) (1993).
- Secretary's EO [E 1087](#) Title VI Policy

460.03 Considerations during project development**460.03(1) Planning**

Project teams should check to see if a planning study has been done in their project area, and if so, refer to any EJ information documented in that study.

Planning teams should contact the Multimodal Planning and Data Division for direction on how to address environmental justice in a planning study. See [Chapter 200](#) for agency policies on engaging EJ communities if you are using a Planning and Environmental Linkages (PEL) approach and consult with the NEPA/SEPA program and your federal lead agency.

460.03(2) Scoping

Determine if there are any Environmental Justice populations in the project area. If present, follow our EJ Decision matrix to scope the expected impacts and analysis for NEPA. Use this information to determine what level of community engagement should be conducted to inform the project elements. Demographic information should also inform the project's communication strategies to reach those who may need interpretation and translation services.

460.03(3) Design

Follow the Analysis and document direction in section 460.04 below. Conduct community engagement when appropriate for the project following agency Community Engagement Plan. Revisit the analysis if the project elements change that could impact the community including detour routes.

460.03(4) Construction

Track commitments made to the community to ensure they are carried out.

460.03(5) Maintenance and Operations

Track commitments made to the community to ensure they are carried out.

460.04 Analysis & documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

460.04(1) Analysis & documentation for NEPA

It is WSDOT practice to analyze environmental justice impacts for all projects. Project teams must use demographic data and community outreach to inform their EJ analysis. Project teams must use demographic data from the U.S. Census and the Office of the Superintendent (OSPI) to inform their EJ disproportionate impacts and Title VI disparate impacts analyses. To add community health context to your analysis, use the WA Environmental Health Disparities (EHD) Map to find the health ranking(s) for the project area.

The demographic profile should identify the existence of minority groups (by race, color, national origin) and low-income populations. Native Americans are designated as a minority population under the Civil Rights Act. They are also protected under the Environmental Justice Executive Order ([Presidential Executive Order 12898](#)). Section 4-401 of the executive order requires consideration of the potential human health risks associated with the consumption of pollutant bearing fish or wildlife. Use the tribe's consultation area maps available on the WSDOT Environmental GIS Workbench to evaluate a project's potential effect on natural resources.

The demographics also provides information on the percentage of the population with Limited English Proficiency (LEP). In accordance with the Limited English Proficiency Executive Order ([Presidential Executive Order 13166](#)) WSDOT requires that all vital documents identified through a Four Factor analysis be provided if the demographic analysis shows that five percent of the population, or 1,000 individuals within the study area, speak English 'less than "very well"'. See our [Environmental Justice](#) webpage for how to make this determination.

The LEP data should inform your project's communication and outreach need for language services including interpretation and translation.

If the demographic analysis shows a presence within the study area and identifies likely impacts, the environmental document should contain information broken down by race. The EJ analysis should discuss potential impacts identified in various studies in. Once you have determined the level of documentation required, conduct the analysis concurrently with, or slightly after, the following discipline studies:

- Air
- Noise
- Transportation (including goods movement)
- Public Services
- Social and community (health, economics, relocations, utilities, cohesion)
- Stormwater
- Floodplains
- Cultural Resources
- Section 4(f)
- Hazardous Materials
- Visual Impacts

The project team must document what engagement activities took place, how they were made accessible to EJ populations and how the project outcomes were influenced by the people potentially being impacted.

Some Categorical Excluded (CEs) projects require a review for impacts to Environmental Justice communities, but do not require a detailed study because, by definition they:

- Do not have any significant environmental impacts.
- Do not change access control or affect traffic patterns.
- Do not require more than minor right of way acquisition or displace residents or businesses.
- Do not require temporary road closures or detours during construction.

Determine the level of documentation CE level projects by using the following steps:

1. Check our list of 'Projects Exempt from Detailed EJ Analysis' on the [Environmental Justice](#) webpage and document exemption status on the ECS form, if applicable. Attach demographic data and note any LEP populations.
2. If the project is not exempt and no EJ populations are present in the project area, attach the EJ Decision Matrix and demographic data showing the absence of an EJ population.
3. If the project has an EJ population present, but does not impact that population, attach the EJ Decision Matrix, demographic data and write to the ECS how the project will not have affects. No memo is required.
4. If the project may impact an EJ population, define project effects on EJ populations in an EJ Memo using the resources on our [Environmental Justice webpage](#). Refer to community engagement activities to inform your determination.

For EA and EIS level projects, the analysis should include an examination of the effects for each alternative, including the No-build. The environmental document must include a comparison of the distribution of a project's burdens and benefits by the social groups

identified in the demographic analysis. The effects on these groups should be described to the extent these effects can be reasonably predicted. There is no need to be exhaustive with this comparison. Discuss impacts to the groups in proportion to the severity of the related impacts.

EISs should include a Title VI disparate analysis. This analysis determines if the project is likely to have a disparate impact by comparing the least impacted group to the most impacted group in the study area. If the project team, in consultation with the federal NEPA lead, determines it will have a “disparate impact” they must either choose a “less-discriminatory alternative” or document a “substantial legitimate justification”. WSDOT’s procedures for a combined Title VI and EJ analysis are on the [Environmental Justice](#) web page.

The EJ analysis compares the adverse impacts (burdens) to the EJ population to the adverse impact to the non-EJ population within the study area. The discussion should address:

- Whether minority or low-income populations bear a “disproportionately high and adverse impact”.
- Possible mitigation measures to avoid or minimize any adverse impacts.
- Special relocation considerations for affected groups and the measures proposed to resolve these relocation concerns.
- Public response to the project and proposed mitigation. Include a discussion of how the project design was changed to address public concerns.

A “disproportionately high and adverse” determination may be made if the:

- Severity of the adverse impact is appreciably greater for protected populations than for non-protected populations.
- Adverse environmental impacts occur more in areas with protected populations (regardless of severity) than in areas without protected populations.
- Proposed mitigation is needed to reduce either the level of severity or number of adverse effects for protected populations.
- Project benefits do not affect protected populations to the same degree as other populations.
- Project is controversial and public comment shows that protected populations: do not feel that the project benefits them or that the proposed mitigation is inadequate.

A determination of “disproportionately high and adverse impacts” does not preclude the project proceeding. However, it will require additional community engagement to ensure that:

- Alternatives have been discussed and are clearly understood.
- Mitigation strategies have been explained and are understood.
- The effectiveness of mitigations will be monitored, if needed.
- The community has an opportunity for meaningful participation in the process to select the alternative and mitigation measures and their preferences are taken into consideration.

Refer to [FTA's Title VI](#) web page for Title VI and EJ compliance information when a project has a federal nexus with FTA. This [FTA FAQ](#) provides additional clarification on EJ analysis and requirements.

Analysis & documentation for SEPA only (No federal nexus)

It is WSDOT practice to analyze environmental justice impacts for all projects. SEPA does not contain requirements for conducting an EJ analysis; however, WSDOT is implementing new state environmental justice policy requirements contained in [RCW 70A.02](#). Many of the requirements will take effect July 1, 2023, including the requirement to conduct an assessment of transportation projects over \$15 million. We are developing procedures to comply with the new law, these will be posted on the website.

Note that SEPA documentation is not required if you have documented NEPA.

460.05 External engagement

Presidential Executive Order 12898 and Title VI of the Civil Rights Act of 1964 require WSDOT “to promote nondiscrimination” to the “greatest extent allowed by the law”. This includes equal access to information and an equal opportunity to participate in the decision making process. WSDOT tracks its performance with this requirement and submits an annual report to FHWA documenting efforts to engage all persons, regardless of color, race, gender, age, income, disability, or national origin. See the WSDOT [Community Engagement Plan](#) for considerations to make during your outreach.

Project teams should develop outreach and engagement strategies to reach all of the populations affected by their project. Tailor outreach techniques to reach the EJ, low income, and LEP populations in your study area. Document what you did and how public input affected the project design. Guidance for how to write a public involvement plan is available from the WSDOT Communications Office and is available to WSDOT employees.

WSDOT policy requires staff to follow the [Model Comprehensive Tribal Consultation Process](#) when working with tribal governments. Contact the [WSDOT Tribal Liaison Office](#) for assistance. Refer to Chapters [400](#), [456](#) and [530](#) for more direction on engaging with tribal communities.

460.06 Internal roles and responsibilities

460.06(1) *Project Engineer*

Scopes the appropriate level of community engagement by working with the Title VI Liaison and their Communications office to ensure potential impacts are identified early in project development. Government to government consultation with the affected Tribes as well as environmental justice requirements must be incorporated into the project’s delivery process.

The [WSDOT LEP Plan](#) requires project managers to:

- Make every effort to provide services, either through translation or interpreter, prior to scheduled meetings, such as public hearings, or project meetings.
- Pay for the translation of vital documents and interpreter services including summary newsletters, brochures, public notices for meetings and summary documents for open houses or environmental hearings. Interpreter services should be provided upon request for open houses and hearings.

460.06(2) Environmental Coordinator / Consultant

Meets with technical leads for the related disciplines listed above and uses information gathered during community engagement to conduct the Environmental justice analysis, as needed.

460.06(3) WSDOT HQ Environmental Services Office

Reviews all Environmental justice analyses, including methodologies and oversees the related guidance.

460.06(4) Office of Equal Opportunity

The WSDOT Office of Equal Opportunity (OEO) serves as a resource to project teams through their Title VI Liaisons who can help make connections with communities.

OEO also participates in FHWA's annual review of the Environmental Justice analyses done for projects Categoricaly Excluded from NEPA. OEO makes recommendations for improving the methods to help ensure the analyses adequately address any disproportionately high and adverse impacts to EJ communities.

460.06(5) Communicator

Help scope and support community engagement activities related to a project and help provide language services, interpretation or translation, based on the languages determined in the LEP analysis.

460.07 Applicable permits & approval process

There are no permits or signatory approvals associated with compliance with federal or state Environmental Justice requirements. Federal and state permits and approvals require satisfactory documentation of Tribal consultation and compliance with civil rights and cultural resources laws and federal environmental justice executive orders.

460.08 Mitigation

NEPA, SEPA, the federal Environmental Justice Executive Orders and the Secretary's Executive Order (E 1018.03) contain clear policy direction regarding the mitigation of project impacts – this includes mitigating impacts to the human environment (community mitigation) in addition to the natural environment.

If you determine that the project's effects are disproportionately high and adverse, disclose your finding in the environmental document. A finding of "disproportionate high and adverse" will not stop a 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 (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. Do this by considering the mitigation measures, including those suggested by the impacted community to address their specific needs. The proposed mitigation must match the type of impact the project has on the individuals to be considered appropriate. For example, an impact to community cohesion may not be mitigated by reducing noise levels.

WSDOT uses community input when considering appropriate mitigation measures to address the transportation impacts as required by Federal and State laws. The project team then pursues and negotiates reasonable project related mitigation in good faith with the community.

460.09 Abbreviations and acronyms

Abbreviations and acronyms used in this chapter are listed below.

ADA	Americans with Disabilities Act
CEP	Community Engagement Plan
CFR	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ	Environmental Justice`
FHWA	Federal Highway Administration
LEP	Limited English Proficiency
RCW	Revised Code of Washington
Title VI	Title VI of the Civil Rights Act of 1964
WAC	Washington Administrative Code

460.10 Glossary

These definitions apply in the context of Environmental Justice analysis. Some terms may have other meanings in a different context.

Adverse Effects (Environmental Justice) – 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 caused by air, noise, water pollution, vibration, 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; access to public and private facilities and services.
- Adverse employment effects.
- Displacement of persons, businesses, farms, or nonprofit organizations.
- Increased traffic congestion.
- Isolation, exclusion or separation of minority or low-income individuals from the broader community.
- Denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities.

Adverse effects are determined by both the individuals affected and the judgment of the analyst.

Disproportionately High and Adverse Effect – An adverse effect that: (a) is predominantly borne by a minority population and/or a low income population; or (b) is 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.

Environmental impacts - Environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

Environmental Justice (Federal Definition EPA) – The fair treatment and meaningful involvement of all people regardless of race, color, culture, national origin, income, and educational levels with respect to the development, implementation, and enforcement of protective environmental laws, regulations, and policies.

Environmental Justice (State Definition) – The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.

Limited English Proficient – Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. Federal laws particularly applicable to language access include Title VI of the Civil Rights Act of 1964, and the Title VI regulations, prohibiting discrimination based on national origin, and Executive Order 13166 issued in 2000.

Low Income – A household income that is at or below the federally designated poverty level for a household of four as defined the U.S. Health and Human Services.

Low-Income Population – Any readily identifiable group of low-income persons who live in a geographic area, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who would be similarly affected by a proposed DOT program, policy, or activity.

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 the Spanish culture or origin, regardless of race).
- Asian/Pacific Islander (a person having origins in the Far East, Southeast Asia, or the Indian subcontinent).
- Pacific Islander (a person having origins in any of the Pacific Islands).
- American Indian or Alaskan Native (any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition).

Minority Population – Any readily identifiable group 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.

Overburdened community - A geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in [RCW 19.405.020](#).

Transportation Equity – The fairness with which benefits and costs are distributed.

Vulnerable populations - Population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms and sensitivity factors, such as low birth weight and higher rates of hospitalization.

“Vulnerable populations” includes, but is not limited to:

- Racial or ethnic minorities
- Low-income populations
- Populations disproportionately impacted by environmental harms
- Populations of workers experiencing environmental harms

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