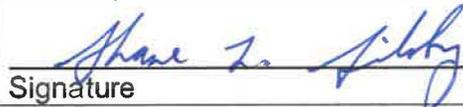


**Attachment 7: County of Orange / OC Public Works Environmental Justice Policy and Guidance****SUBJECT: ENVIRONMENTAL JUSTICE POLICY**

County of Orange / OC Public Works (County) promotes Environmental Justice into its programs, policies and activities to avoid, minimize, or mitigate disproportionately high human health and/or, environmental effects, including social and economic effects on minority and low-income populations. It is the policy of the County to duly emphasize the fair and meaningful involvement of all regardless of race, color, national origin or income. This policy directs the County to appropriately engage the public through public participation forums so that decisions are mitigated and reflect environmental justice for all communities. This commitment strives to inspire environmental justice and equal access. The County shall develop and maintain an Environmental Justice Guidance in compliance with Title VI of the Civil Rights Act of 1964 and EO 12898.

Shane L. Silsby  
Director, OC Public Works

  
Signature

**County of Orange / OC Public Works (County) Environmental Justice (EJ) Guidance Introduction:** Executive Order (EO) 12898 (1994) mandates recipients such as the County to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.

Strategies towards achievement identified by the EO include:

1. Promoting enforcement of all health and environmental authorities in areas with minority and low-income populations.
2. Ensuring greater public participation.
3. Improving research and data collection relating to the health and environment of minority and low-income populations.
4. Identifying differential patterns of natural resources consumption among minority and low income populations.

County has adopted the FHWA definition of EJ that codifies these four strategies of the EO. They are identifying and addressing disproportionately high and adverse effects of County programs, policies, and activities on minority populations and low-income populations to achieve an equitable distribution of benefits and burdens. This also includes the full and fair participation by all potentially affected communities in transportation related decision making processes. This document is an abbreviated version of FHWA guidance on EJ with a focus on:

1. **Data Collection and Analysis:** Assess whether a proposed project, policy, or activity will have disproportionately high and adverse effects on minority or low-income populations.
2. **Project Development:** Planning, environmental review, design, right-of-way (ROW), construction, and maintenance and operations.

These areas of focus within context of the strategies towards EJ goal achievement identified by the EO will be explained in greater detail throughout this document.

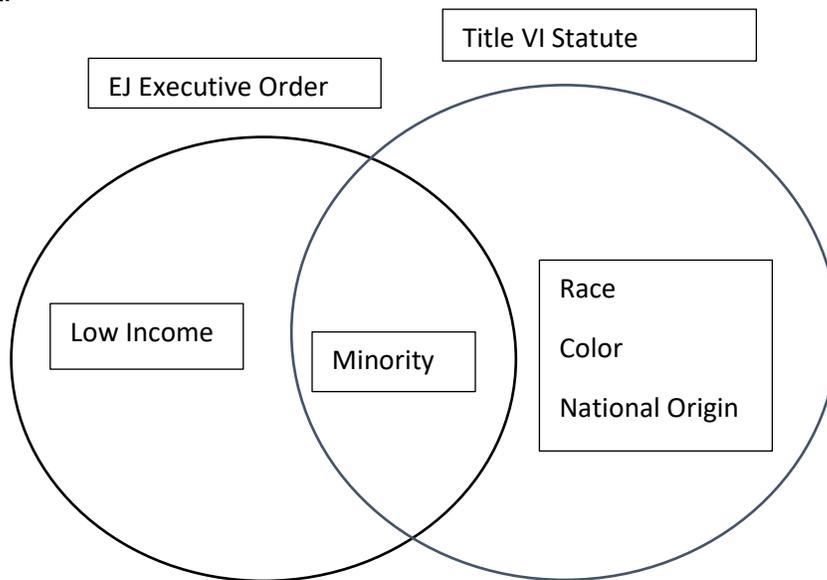
This Environmental Justice (EJ) guidance document is intended for use in County projects in cooperation with the California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA). The reference used in creation of this guidance is the *Federal Highway Administration Environmental Justice*

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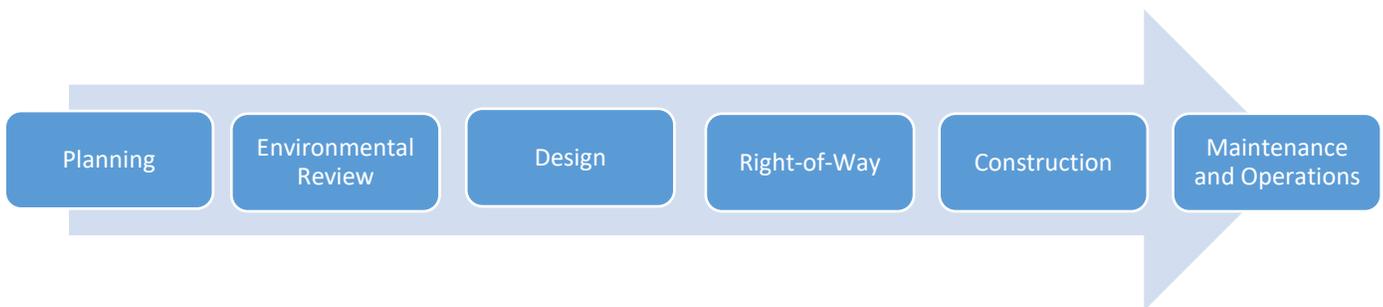
[http://www.fhwa.dot.gov/environment/environmental\\_justice/publications/reference\\_guide\\_2015/fhwahep15035.pdf](http://www.fhwa.dot.gov/environment/environmental_justice/publications/reference_guide_2015/fhwahep15035.pdf)

In the memorandum transmitting EO 12898, then President Clinton encouraged agencies to account for the EO in the implementation of the County Title VI plan, the National Environmental Policy Act of 1969 (NEPA), and all public disclosure laws such as the Freedom of Information Act (FOIA).

It is important to reiterate that although the nondiscrimination principles of Executive Order 12898 and the statute pertaining to Title VI intersect, they are two separate mandates and each has unique requirements. The table below shows similarities and differences. It shows that the term “minority,” which is a protected category under EJ, overlaps with “race, color, and national origin (including individuals with limited English proficiency (LEP),” which the Title VI statute protects. EJ principles, however, also apply to low-income populations, which are not covered under the Title VI statute. The relevancy of this distinction will be explained in greater detail throughout the document.



County considers EJ in all phases of project development towards meeting the four strategies as outlined in the EO as codified in the FHWA guidance. This project development includes: planning, environmental review, design, right-of-way, construction and maintenance and operations (see chart below). Both the data collection/analysis and project development components of the EJ guidance of FHWA within the scope of project development will be explained in greater detail throughout this document.

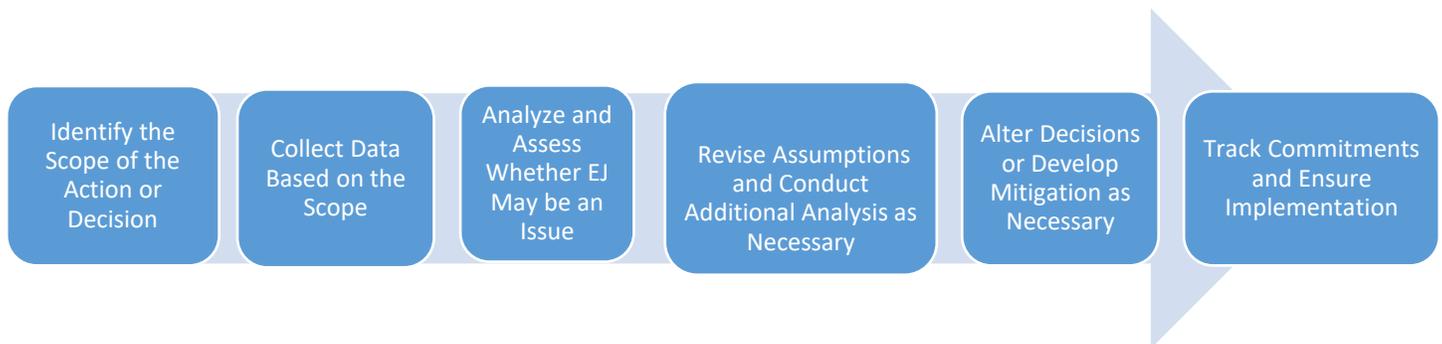


**Data Collection and Analysis:** Data collection and analyses determines whether a proposed County project, policy, or activity will have disproportionately high and adverse human health or environmental effects on minority

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populations or low income populations. Every analysis will be customized to the project to include: 1) The order in which data is collected 2) the quality and quantity of the data 3) the scale of analysis 4) the level of effort expended, and; 5) the level of certainty with respect to the conclusions.

An EJ analysis is developed by identifying the scope of the action based on the identified purpose and need. After determining this, County begins to collect demographic and socio-economic data for the affected community and surrounding communities. The figure below outlines County approach to EJ analysis and data collection through project development as described above. Public involvement informs all steps of the analysis to determine “disproportionately high and adverse” effects and should be incorporated at all stages as new information becomes available.



County considers whether EJ persons or populations exist on a case-by-case basis – depending on the context, this could mean one person, multiple families, or entire communities. For example, in **planning analyses**, it may be sufficient to identify populations at the Census-tract level. In **project analyses**, practitioners should go beyond this first level to identify minority and low-income persons or populations at a more detailed level using multiple sources of information. County only identifies individual persons or households as information becomes available regarding the likelihood, severity, location, and extent of impacts. For example, in the project development phase, County may identify local impacts such as relocation, noise, or vibrations.

County makes its own determinations and assumptions to identify persons, populations and other data and then documents its assumptions in planning and environmental documents. In addition, the FHWA guidance list of resources serves as an important guide to gather baseline data. County defines low-income persons as those whose household income is at or below the Department of Health and Human Services (HHS) poverty guidelines.

Key Questions to Consider for Data Collection and Analysis
<p>The following key questions for consideration towards data collection and analysis. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:</p> <ul style="list-style-type: none"> <li>• Is data on race, color, national origin, limited English proficiency (LEP), and income current? Has it been overlaid with transportation data to consider the relationships between them?</li> <li>• Are the geographic boundaries for analysis reasonable and logical? Note: It is recommended that County personnel work closely with the FHWA Division office towards establishing appropriate units of geographic analysis.</li> <li>• Does the program, policy, or activity create an adverse effect in the short-, medium-, or long term that is predominately borne by minority and/or low-income individuals or is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the general population?</li> <li>• Was input from potentially impacted minority and low-income populations solicited and integrated that into the analysis? Has documentation to support and explain decision making been provided?</li> </ul>

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After collecting the necessary data, practitioners need to determine whether the transportation benefits and burdens are equitably distributed and whether low-income and minority populations in the study area will experience disproportionately high and adverse effects as a result of the proposed program, policy, or activity. Per FHWA guidance, the term “disproportionately high and adverse” may extend to a few individuals. Factors that determine “disproportionately high and adverse” include: planned mitigation measures, offsetting benefits to the affected minority and low-income populations, the design, comparative impacts and offsetting benefits to the affected minority and low-income populations. If data analysis determines a “disproportionately high and adverse effect” on minority populations or low-income populations, a project, policy or activity may only be carried out if further mitigation measures or alternatives that would avoid, minimize, or mitigate the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is "practicable," County considers the social, economic (including costs), and environmental effects of avoiding or mitigating any adverse effects. If there is no way to reduce the effects so that they are no longer disproportionately high and adverse and the affected population is a minority population protected under Title VI, the project should not be approved unless: a substantial need for the program, policy, or activity exists, based on the overall public interest and alternatives that would have less adverse effects on protected populations, either would have other adverse social, economic, environmental or human health impacts that are severe or would involve increased costs of extraordinary magnitude. County considers potential imbalances in both the benefits and burdens of transportation projects on EJ targeted populations in determining “disproportionately high and adverse” impact. Some examples include:

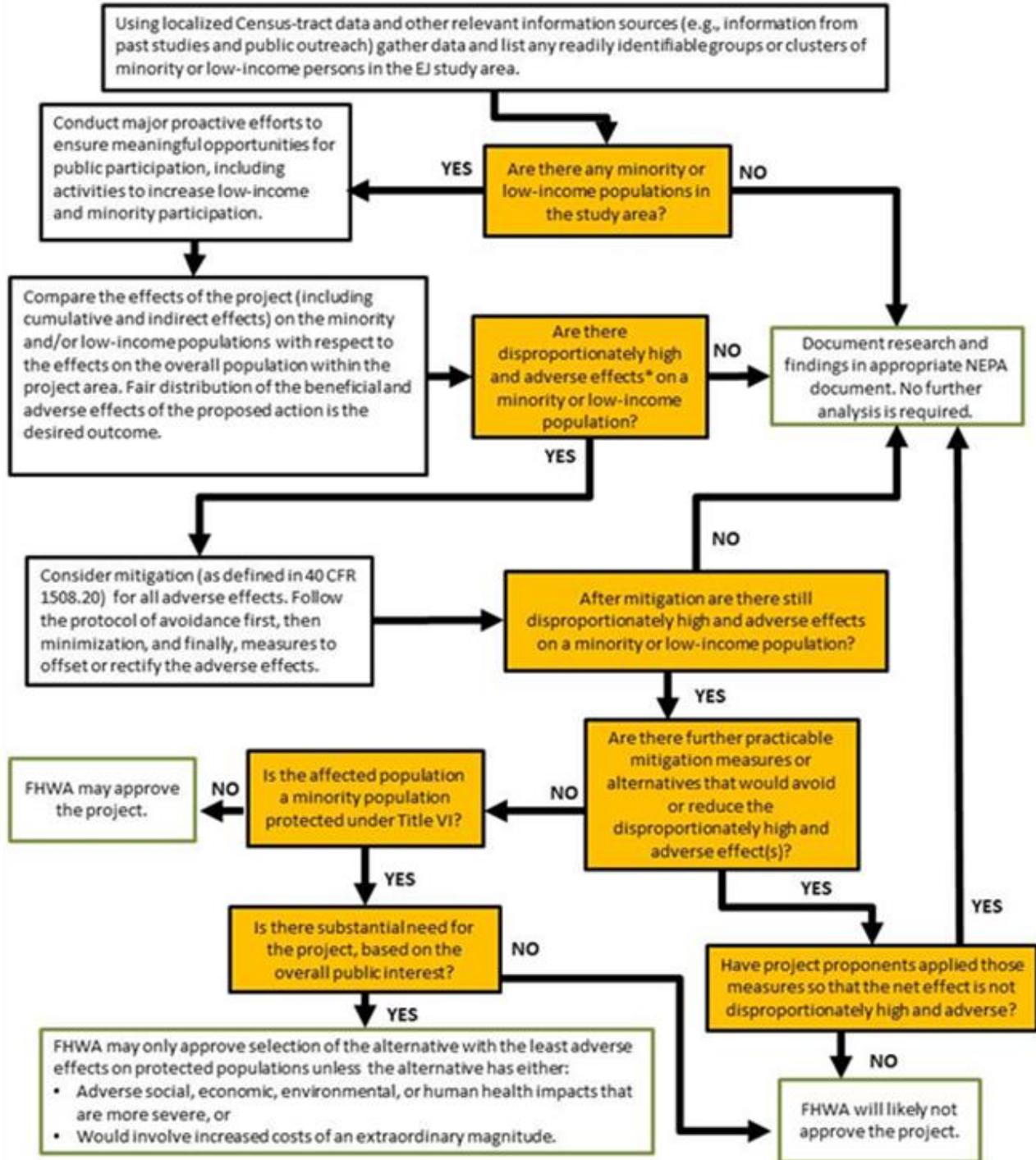
**Potential Burdens:** • Disruption of community cohesion (e.g., access to schools, parks, medical facilities, and religious institutions) • Adverse employment effects • Decline in tax base or property values • displacements • Increased noise and/or emissions • Diminished aesthetics • Disruption to businesses • Parking/access to transit

**Potential Benefits:** • Reduced travel times • Reduced congestion • Improved safety outcomes • Improved travel options

**Project Development:** This section describes the intersection between EJ with the various stages of the project development process upon analysis of the minority and/or low-income populations in the study area. The phases of project development include planning, environmental review, design, right-of-way, construction, and maintenance and operations. Some of these stages (e.g., environmental review and design) occur concurrently and may overlap. Page 5 is the basic process in its most common form. This page can also be found on page 44 of the FHWA EJ guidance document. Subsequent sections in this document will explain how EJ relates to each of these processes.

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### EJ Analysis in Environmental Review



\*A disproportionately high and adverse effect on a minority or low-income population means the adverse effect is predominantly borne by such population or is appreciably more severe or greater in magnitude on the minority or low-income population than the adverse effect suffered by the non-minority or non-low-income population.

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**Project Development (Planning and Public Involvement):** Identifying EJ issues during planning allows County to identify issues early and consider alternatives at the beginning and throughout the entire planning process.

### Key Questions to Consider for EJ in Project Development Planning

These questions are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

- Do planning documents include the required EJ elements where applicable?
- Was the environmental review process considered at the beginning and throughout the planning process?
- Was input solicited from the public, including minority and low-income populations, in developing performance measures?
- What considerations were documented on behalf of minority and low-income populations?

One of the key components of planning involves public involvement. County encourages active community participation, recognizes community knowledge, and use of cross-cultural formats and exchanges. Those traditionally underserved by transportation often do not participate in the planning process. Although they tend to have greater difficulty accessing jobs, schools, and recreational activities, underserved populations are also often unaware of transportation proposals that could dramatically change their lives. The section describes public involvement requirements, terminology and recommendations to overcome these challenges.

Planning regulations in 23 CFR 450 requires County to develop and use a documented public involvement process in all planning processes. The County Public Participation Plan (PPP), a component of its Title VI Plan contains a list of “interested parties” that are included in County public meeting notices. In addition to 23 CFR 450, FHWA NEPA regulations in 23 CFR 771.111 also require agencies to conduct public involvement. At a minimum, this should include “the exchange of information from the inception of a proposal for action through preparation of the environmental document.” County adheres to the FHWA procedures in carrying out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

As indicated in County’s Public Participation Plan (PPP), Public Participation Surveys in English, Spanish, and Vietnamese enables the County to collect data to identify residents and communities impacted by federal financial assisted projects or activities towards documenting the views of minority and low-income populations in the planning process. The surveys can be made available in other languages as needed. Completion of the survey, by the public, is *voluntary*. Along, with the voluntary survey, County staff will conduct a visual assessment of the public participation as another means to collect data. The Public Participation Visual Tally will be used by employees as an indirect method for collecting data when at least 50 percent of the participants do not complete the public participation survey. Employees will use their best judgment when physically counting the participants in regards to the demographics, such as race, age and gender. When conducting a visual count, the public participant’s demographic data should be reported as a percentage of the total participants. The County reports back to communities regarding the planning process as appropriate to increase transparency allow the public continued participation as a partner in developing solutions, imparting a sense of ownership. Reporting items may include expected benefits and anticipated mitigation.

### Key Questions to Consider for EJ in Public Participation

These questions are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

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- Has the composition of the affected area been considered to determine whether minority populations, low-income populations or other protected groups are present?
- Has feedback involved minority and low-income populations in early planning stages?
- Have linguistic, cultural, institutional, geographic, and other barriers to meaningful participation been addressed?
- Has information been reported back to the community?
- Have populations been consulted in determining methodologies for delivering benefits and mitigating adverse impacts?

**Linking Planning with Environmental Review:** Planning and Environment Linkages (PEL) represents a collaborative and integrated approach to decision making that: (1) considers environmental, community, and economic goals early in the planning process; and (2) uses data, analysis, and products developed during planning to inform the environmental review process. Effectively linking the planning and environmental review processes can improve outcomes by ensuring a more effective transition from planning to project development for the public, including traditionally underserved populations such as minority and low-income communities. The County utilizes information and decisions from planning studies inform National Environmental Policy Act (NEPA) processes, if the materials satisfy NEPA requirements (see chart on page 5). Not all NEPA analyses require a formal EJ analysis, but they should contain and address EJ impacts, as appropriate. Caltrans NEPA procedures require each project to do the following:

- Assess whether EJ impacts are possible.
- Conduct an EJ analysis (if impacts are possible).
- Evaluate whether each alternative will have a disproportionately high and adverse impact on minority or low-income populations.
- Avoid or minimize any disproportionately high and adverse impacts to minority and low-income populations, or if impacts cannot be avoided, work with the affected community to develop mitigation measures to offset the impacts.
- Comply with EJ policy and guidance document.

County considers the following factors when conducting an EJ analysis as part of NEPA; Project location (e.g., a major metropolitan area versus rural areas), Project scope/size (e.g., corridor level versus a specific intersection), and Level of documentation required, depending on the NEPA class of action and proposed impacts.

**Location/Scoping:** County defines the study area(s) and boundaries for potential EJ impacts using localized Census-tract data and other relevant information sources such as preliminary fieldwork. County ensures that small clusters or dispersed populations are not overlooked. During scoping, an examination is conducted on the project area for historical and potential future impacts. Feedback from the public is actively sought and utilized. Findings of the examination may include:

**Categorical Exclusion (CE):** is a category of actions that do not individually or cumulatively have a significant effect on the environment and, therefore, do not require an environmental assessment or an environmental impact statement. There are no disproportionately high and adverse impacts to minority or low-income populations for a CE action. County still considers impacts on minority and low-income populations even it anticipates that an action will be a CE.

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**Environmental Assessment (EA):** An EA helps determine whether a project would result in a significant impact and, thus, requires the preparation of an environmental impact statement (EIS). There should be no disproportionately high and adverse impacts to a minority or low-income population for an EA. If it becomes clear in developing the EA that a project would result in a disproportionately high and adverse impact to a minority or low-income population, then a careful review is conducted to determine if it is no longer appropriate to complete the EA and a Finding of No Significant Impact (FONSI). However, if avoidance and mitigation could address the adverse EJ impact, completing the EA and reaching a FONSI may be appropriate. For each alternative that is considered, the EA considers any social, economic, and environmental impacts whose significance is uncertain. It also describes why these impacts are not considered disproportionately high and adverse if the EA results in a FONSI.

When conducting an EIS “In the Affected Environment” section of the EIS, County provides demographic information on the population in the project study area in addition to the social groups will benefit from or be harmed by a proposed project. The document then compares impacts on the minority and/or low-income populations with respect to the impacts on the overall population within the project area. County also describes why these impacts are not considered disproportionately high and adverse. If County identifies a disproportionately high and adverse impact on a minority or low-income population, it follows the steps outlined in FHWA Guidance on Environmental Justice and NEPA (2011) in considering all of the possible impacts that are listed in 23 United States Code (U.S.C.) Section 109(h) to include: (1) air, noise, and water pollution; (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion, and the availability of public facilities and services; (3) adverse employment effects and tax and property values losses; (4) injurious displacement of people, businesses, and farms; and (5) disruption of desirable community and regional growth.

The Mitigation and Commitments Page Measures in the NEPA document is part of the final package when a project moves into the final design phase. Mitigation is conducted on a case-by-case basis in collaboration with the public. For an EIS, mitigation measures and other commitments would appear in the Record of Decision (ROD). For an EA, commitments would appear in the FONSI. When appropriate, County includes a commitments page in the environmental documentation for a CE. Documentation of commitments and agreement among all involved parties (e.g., resource agencies, practitioners, and the public) ensures the carry through in the design, construction, and subsequent phases. When appropriate, County fills out the “project mitigation measures and commitment” pages, also commonly referred to as “greensheets,” as a reminder of mitigation measures in subsequent phases of project development.

For your reference, the FHWA EJ guidance document contains information in situations where a FHWA environmental specialist may find elements of a NEPA analysis to lack consistency with the principles outlined in Executive Order (EO) 12898 (see page 42).

### Key Questions to Consider for EJ in Environmental Review

The following key questions relate to EJ in environmental review. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

- Has EJ influenced the environmental review process?
- Does the NEPA analysis consider EJ in the impacts of each project alternative?
- Does the analysis incorporate on-the-ground field work?
- Does the NEPA document address EJ impacts, where applicable?

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- Does the NEPA document assess whether any practicable mitigation measures or alternatives would avoid or reduce disproportionately high and adverse impacts on minority and low income populations?
- Is there a process for tracking commitments to ensure that practitioners implement them in subsequent phases?

**Design:** This section discusses environmental justice (EJ) responsibilities during the preliminary and final design stages of project development. In these stages, the proposed project location and design concepts are defined. Preliminary design considers EJ throughout the entire design phase to identify and mitigate potential EJ issues through the preliminary design process, in conjunction with NEPA. In cases where the final design differs from the preliminary design, County evaluates these changes to ensure that they are still consistent with the NEPA decision.

### Key Questions to Consider for EJ in Design

The following are key questions related to EJ in design. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

- Has EJ influenced the preliminary design process?
- Are designers aware of all commitments in the planning and environmental documentation and do they understand them?
- Have designers communicated all commitments to construction staff and contractors?
- What design components are essential to address EJ issues?

**Right-of-Way (ROW):** This section considers environmental justice (EJ) in right-of-way (ROW) activities. Via The Uniform Act, County reimburses displaced persons for certain costs and provide means to communicate with the displaced person in their preferred language if they have limited English proficiency. This includes the participation in planning so they can help identify the locations and types of properties a project will affect and note potential impacts. In events of early acquisition, County proactively considers potential EJ issues that may emerge during project development. A thorough EJ analysis in the ROW phase considers both business and residential impacts. County addresses the needs of EJ targeted communities during relocation planning and interviews. The ROW planning stage involves conveying and explaining property rights and potential relocation benefits to soon-to-be displaced individuals, households, businesses, farms, and non-profits. It requires careful preparation to successfully deliver information about an individual's or family's potential relocation, compensation, and comparable replacement properties available on the market. During planning, County attends public meetings to explain potential project impacts and the ROW process to owners of properties that may be affected by the project. During NEPA review, County attends public hearings to answer general questions about acquisition and relocation benefits.

### Key Questions to Consider for EJ in ROW

The following key questions related to EJ in ROW. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

- Have potential ROW issues and implications to planners, environmental staff, designers, and affected populations been communicated?

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- Is there consideration to reduce the impact on low-income and minority populations that may not receive benefits under the Uniform Act but still bear a burden from project impacts?
- Is the ROW information especially relevant to share with low-income and minority populations at public meetings?

**Construction:** County communicates to construction project staff all contract commitments and requirements, including EJ and other National Environmental Policy Act (NEPA) commitments when reviewing and approving contract modifications to ensure that the changes are consistent.

**Key Questions to Consider for EJ in Construction**

The following key questions related to EJ in construction. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

- Are potential bidders aware of and do they understand EJ-related design commitments articulated in the construction contract?
- Do any contract change orders alter or compromise design commitments, or do they create new EJ issues?

**Maintenance and Operations:** Maintenance and operations activities in many cases impact minority and low income communities differently than other populations. County takes into consideration whether the benefits and burdens of maintenance activities are equitably distributed. This section describes how County addresses EJ as it relates to maintenance and operations. The movement of freight influences environmental, economic, and social factors in a community. For that reason, County analyzes and potentially addresses any potential for disproportionately high and adverse impacts on minority and low-income populations on the program and/or project level as it pertains to freight movement. These impacts may include the following; Land-use patterns, Noise and vibration, Light pollution – Lights from trains and trucks may increase the brightness of the night sky and shine into residents’ windows, disrupting the sleep of residents who live along railroads and truck routes, Air quality and odors, Safety – At-grade crossings increase auto delays and safety concerns, and slow emergency response vehicles. Large truck crashes may also cause injuries, fatalities, and hazardous materials incidents. Employment.

**Key Questions to Consider for EJ in Maintenance and Operations**

The following are key questions related to EJ in maintenance and operations. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

- When making temporary changes to the transportation system, do practitioners provide accessible alternatives and communicate changes in accessible formats?
- Have practitioners considered the impacts of signal phasing and timing?

**Key Questions to Consider for EJ in Freight**

The following key questions related to EJ in freight. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

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- Have practitioners used geospatial analysis to assess the equity of freight impacts?
- Have practitioners proactively involved minority and low-income communities to discuss the benefits and burdens of freight and ways to mitigate harmful effects?

### CONCLUSION

EO 12898, which has roots in Title VI of the Civil Rights Act of 1964 (Title VI), but is separate from the Title VI statute emphasizes that Federal agencies should use existing laws and programs to achieve EJ, including Title VI. The FHWA Title VI Program is broader than the Title VI statute and addresses other nondiscrimination statutes and authorities, including Executive Order 12898 to ensure that FHWA policies, programs, and activities do not discriminate based on race, color, national origin, income, sex, age, disability, or limited English proficiency (LEP). State law extends these initiatives to include issues of religion and sexual orientation.

The County submits a Title VI Plan that describes how it reviews program areas to identify disparate impacts on the public that may constitute discrimination. Via the Plan, the County considers how the Title VI Program can support EJ implementation. **23 Code of Federal Regulations (CFR) Part 200, requires the County to conduct annual reviews of all EJ related program areas within the Title VI Plan to determine the effectiveness of activities designed to ensure nondiscrimination.** Program areas may include: Planning, Environment, Design, Right-of-Way, Construction, and Maintenance and Operations.

#### Key Questions for Ensuring Nondiscrimination on an Organizational Level

The following are key questions in using the FHWA Title VI Program to advance EJ. These are not intended to be prescriptive or exhaustive, and they may not be applicable to every situation:

- Has County considered how to most effectively use the data collection and reporting requirements of Title VI programs to gather information in support of EJ?
- How can the County Title VI Plan strengthen and support concepts presented in the other sections of this document?

With a focus upon the data collection and analysis and project development aspects of the FHWA EJ Guidance document, this County Environmental Justice and Policy Guidance document holds true to the health and environmental enforcement, public participation, and research goals of EO 12898. This claim is confirmed through the Public Participation Plans, community survey and other programs within the County Title VI Plan in addition to the incorporation of EJ principles within planning and review processes inherent within County.

### Title VI Program, County of Orange / OC Public Works

300 N Flower St #584 | Santa Ana, CA 92703

Julie Lyons, Title VI Coordinator, Administrative Services

Julie.Lyons@ocpw.ocgov.com

Phone Number: (714) 667-9701

Vanessa Rooke, Title VI Implementation Support

Vanessa.Rooke@ocpw.ocgov.com

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Phone Number: (714) 667-1656