

# **Capital Area Transit Environmental Justice Report**

**August, 2014**

## Background on Environmental Justice

### Environmental Justice and Mass Transit Projects

Over the past two decades, there has been increasing concern over environmental impacts in minority and low-income populations. Evidence suggests that some communities face disproportionately high and adverse human health and environmental effects. This concern regarding environmental justice builds upon Title VI of the Civil Rights Act of 1964 (42 U.S.C 2000d) that requires nondiscrimination in federally assisted programs by emphasizing the need to identify and address disproportionate effects of federal programs, policies, and activities.

A formal federal policy on environmental justice was established in February 1994, with [Executive Order 12898 \(EO 12898\) \(PDF\)](#), "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations." The Council on Environmental Quality (CEQ) has oversight of the federal government's compliance with EO 12898. CEQ has published a guidance document on environmental justice [\[PDF\]](#) for federal agencies. In addition, all federal agencies were directed under EO 12898 to establish internal directives to ensure that the spirit of the order is reflected in the full range of their activities.

In April 1995, the US Department of Transportation issued its Order to Address Environmental Justice in Minority Populations and Low-Income Populations to fulfill the environmental justice policy objectives laid out in Executive Order 12898. The central objective of the order is to ensure that all federally funded transportation-related programs, policies, or activities having the potential to adversely affect human health or the environment involve a planning and programming process that explicitly considers the effects on minority populations and low-income populations.

### Environmental Justice Assessment Process

Under the process outlined in Executive Order 12898 (EO 12898) and the US Department of Transportation's order, CAT will give consideration of potential environmental justice issues during service planning activities. As such, CAT will follow these general principles set forth by the USDOT Executive Order:

1. **Identification of Minority or Low-Income Populations:** CAT will consider the composition of the affected area to determine whether minority populations, low-income populations, or Indian tribes are present, and if so whether there may be disproportionately high and adverse human health or environmental effects on these populations. This identification should occur as early as possible during the EIS process.
2. **Public Participation:** Develop effective public participation strategies that assure meaningful community representation in the planning process.
3. **Numeric Analysis:** Where a disproportionate and adverse environmental impact is identified, CAT will consider relevant demographic, public health and industry data

concerning the potential for exposure to human health or environmental hazards in the affected population, to the extent that such information is reasonably available.

4. **Alternatives and Mitigation:** CAT will consider the relative impact of alternatives, and measures to avoid, minimize, and mitigate impacts will be evaluated.<sup>1</sup>

### **Environmental Justice and Title VI of the Civil Rights Act of 1964**

The EJ Executive Order supplements the existing requirements of Title VI of the Civil Rights Act. Each Federal agency is required to ensure that no person on grounds of race, color, or national origin is excluded from participation in, denied the benefits of, or in any other way subjected to discrimination under any program or activity receiving Federal assistance. Accordingly, Title VI prohibits recipients of Federal funds from actions that reflect "intentional discrimination" or that exhibit "adverse disparate impact discrimination" on the basis of race, ethnicity or national origin. Supplemental legislation provides these same protections from discrimination based on sex, age, disability or religion.

The concept of environmental justice is intended to ensure that procedures are in place to further protect groups, which have been traditionally underserved. The fundamental principles of environmental justice are:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

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<sup>1</sup> "FTA Background on Environmental Justice," Federal Transit Administration. Accessed online: [http://www.fta.dot.gov/12347\\_2238.html](http://www.fta.dot.gov/12347_2238.html), (August, 2014)

The major similarities and differences between the EJ Executive Order and Title VI are described below:

#### **Similarities**

- Both address non-discrimination.
- Both identify minority populations.
- Both are rooted in the constitutional guarantee (14<sup>th</sup> Amendment) that all citizens are created equal and are entitled to equal protection.
- Both address involvement of impacted citizens in the decision-making process through meaningful involvement and participation.

#### **Differences**

- EJ covers minority and low-income, while Title VI and supplemental legislation cover race, color, national origin, sex, age, and disability.
- EJ is an executive order (an order of the President of the United States), while Title VI is a law (an act of Congress).
- EJ mandates a process, while Title VI prohibits discrimination.

### **Definitions**

Definitions have been taken directly from the U.S. Department of Transportation (DOT) Order on Environmental Justice:

#### ***Low-Income***

A person whose median household income is **at or below** the Department of Health and Human Services poverty guidelines.

#### ***Minority***

A person who is:

(a) **Black** (a person having origins in any of the black racial groups of Africa);

(b) **Hispanic** (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) **Asian American** (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(d) **American Indian and Alaskan Native** (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition)

### ***Low-Income Population***

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

### ***Minority Population***

Any readily identifiable groups of minority persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers) who will be similarly affected by a proposed DOT program, policy or activity.

### ***Adverse Effects***

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
- air, noise, and water pollution and soil contamination
- destruction or disruption of man-made or natural resources
- destruction or diminution of aesthetic values
- destruction or disruption of community cohesion or a community's economic vitality
- destruction or disruption of the availability of public and private facilities and services
- vibration
- adverse employment effects
- displacement of persons, businesses, farms, or nonprofit organizations
- increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community
- denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities

### **Disproportionately High and Adverse Effects on Minority and Low-Income Populations**

An adverse effect that:

(a) is predominately borne by a minority population and/or a low-income population, or

(b) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population<sup>2</sup>

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<sup>2</sup>"Environmental Justice: What You Should Know," Federal Highway Administration – Washington Division Office. Accessed Online: <http://www.fhwa.dot.gov/wadiv/crp/ejwadiv.cfm> (August, 2014)

## **Analysis of Disproportionately High and Adverse Effects**

Since a one-size-fits-all approach will not work, CAT will address a variety of questions and considerations in order to conclude if the project will have disproportionately high and adverse impacts (including denial, reduction or delay in receiving benefits) on an EJ population. In essence, the context and intensity of effects on EJ populations as compared to non-EJ populations needs to be assessed.

Since no single method will lead to a supportable conclusion, CAT will be giving the following information careful consideration:

1. Is the adverse effect predominantly borne by the EJ population? For example, are more minority or low-income people impacted than non- minority or non-low-income people?
2. Will the adverse effect on the EJ population be appreciably more severe or greater in magnitude than the adverse effect on the non-minority or non-low-income population? In other words, will the EJ population carry an unfair share of the impact? For example, if ten EJ residences and ten non-EJ residences will each experience noise levels above the federal standard, but noise at the EJ residences will increase by 20 decibels and noise at the non-EJ residences will increase by 10 decibels, there may be a disproportionate impact.
3. Does the project impact a resource that is especially important to an EJ population? Does it impact Tribal treaty rights (usual and accustomed fishing/hunting grounds)? Does it serve an especially important social, religious or cultural function for the EJ community?
4. Are there mitigation, enhancement measures or offsetting project benefits to the affected EJ population? These should be taken into account when assessing if there are disproportionately high and adverse effects.
5. Has the type and severity of adverse effects on non-EJ populations been assessed? In order to determine if there are disproportionately high and adverse effects on EJ populations, there must have been a comparison with non-EJ population.

While the identification of a disproportionately high and adverse effect on a low-income or minority population does not necessarily preclude the project from going forward, it will heighten CAT's attention to alternatives (including alternative sites), mitigation strategies, monitoring needs and preferences expressed by the affected community or population.<sup>3</sup>

## **Avoidance, minimization, mitigation, and Enhancement**

If a project appears to have a disproportionately high and adverse impact on a minority or low-income population, then the document will reflect how the impacts of the alternative could not

be avoided or minimized, how the impacted populations were involved in the decision process and what practicable mitigation commitments have been made. Furthermore, CAT will demonstrate how other alternatives which would have a less adverse effect on minority and/or low-income populations are not practicable because they would either not satisfy the project needs, have more severe adverse impacts, or that the social, economic, environmental or human health impacts of the other alternatives reach costs of extraordinary magnitudes. The approach is first to avoid impacts, if possible; then minimize impacts; then mitigate unavoidable impacts. Enhancements will also be considered. The definitions of these terms and examples (from the Federal Highway Administration's "Community Impact Assessment" booklet) are provided below:

**Avoid** – to alter a project so an impact does not occur (i.e., shift an alignment to avoid displacements, redesign a road segment as an underpass to avoid cutting off access to a community facility, etc.)

**Minimize** – to modify the project to reduce the severity of an impact (i.e., shift an alignment to reduce displacements, alter an alignment to increase the distance between the facility and residences to decrease noise impacts, phase the project to minimize impedance to business access during peak shopping periods, limit interchanges to minimize incompatible land use development, etc.)

**Mitigate** – to take an action to alleviate or offset an impact or to replace an appropriated resource (i.e., set aside land for a park or add to public recreation areas to replace lost facilities, erect sound barriers to mitigate noise impacts (consistent with FHWA/State approved noise policies), provide a bicycle/pedestrian overpass or underpass to provide access to public facilities, etc.)

**Enhance** – to add a desirable or attractive feature to the project to make it fit more harmoniously into the community; this will not replace lost resources or alleviate project impacts (i.e., construct pedestrian overpass/underpass, install or improve street lighting, rehabilitation of railroad/bus depots, signing to recognize specific cultural or historic resources, develop bicycle trails or pathways adjacent to roadways, plant trees and add park benches, add public artwork (designed by community members) or a façade to a transportation facility to match the aesthetic design goals of the community, etc.)

### **Considerations in Determining Appropriate Avoidance, Minimization, Mitigation and Enhancement Measures**

1. CAT will take mitigation, enhancements and project benefits into account when assessing if there will ultimately be a disproportionately high and adverse impact on an EJ population.
2. Another important consideration is the fairness in distribution of avoidance, minimization, mitigation and enhancement measures between EJ and non-EJ communities. When CAT is

considering the fairness in distribution of avoidance, minimization, mitigation and enhancement measures between EJ communities vs. the entire project area, CAT will be cognizant of ensuring that the measure are proportional to the level of impact on each

Throughout this effort, CAT may be able to eliminate, reduce, or mitigate the initial disproportionate impacts to such a degree that the impacts to the EJ population are now proportional.

A disproportionately high and adverse effect on an EJ population will only be carried out if further avoidance, minimization, mitigation and enhancement measures are not practicable. In determining whether a measure is 'practicable', CAT will take into account the social, economic (including costs) and environmental effects of avoiding, minimizing, or mitigating the adverse effects.<sup>4</sup>

#### **Data Used for CAT Environmental Justice Plan: 2012 ACS 5 year estimates**

In order to determine the level of service coverage CAT has of Low Income and Minority populations, in Dauphin and Cumberland Counties, Census data was taken from Tri County Regional Planning Commission's (TCRPC) Environmental Justice maps<sup>i</sup> are derived from the 2012 American Community Survey 5 year estimates. For the Minority category, TCRPC breaks out Hispanic and Non Hispanic Minority data separately therefore they were taken in to account as two subcategories of the Minority category. Low Income refers to those households that live below the Federal Poverty guidelines.

In an Environmental Justice Analysis, low income and minority groups only need to be analyzed if they occur in the following combinations: Low income AND Minority, Low Income AND Non Minority, and Non-Low Income AND Minority. The combination of non-Low Income and Non-Minority is exempt from EJ analysis. The table below highlights these combinations.

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<sup>4</sup> "Environmental Justice: What You Should Know," Federal Highway Administration – Washington Division Office. Accessed Online: <http://www.fhwa.dot.gov/wadiv/crp/ejwadiv.cfm> (August, 2014)

**Figure 1: Environmental Justice Analysis Decision Table**

	MINORITY	Non-MINORITY
LOW INCOME		
Non-LOW INCOME		

Image courtesy of The Federal Transit Administration - Office of Planning and Environment Webinar: “Final Circular 4703.1 Environmental Justice Policy Guidance for FTA Recipients.” December 11, 2012. Accessed online: [http://www.fta.dot.gov/documents/FTA\\_External\\_Webinar\\_on\\_EJ\\_Circular.pdf](http://www.fta.dot.gov/documents/FTA_External_Webinar_on_EJ_Circular.pdf) (August, 2014)

### Limited English Proficiency

Although more so associated with Title VI Circulars, it was decided that “Limited English Proficiency” be included as an “Environmental Justice” demographic characteristic on the CAT EJ Map. The reason being that it is possible that there are individuals within the three of the four named minority groups listed as EJ populations; Hispanic, Asian American, and American Indian and Alaskan Native, who may be considered Limited English Proficient” as defined by the American Community Survey as someone who “[speaks a language] at home other than English and speak[s] English less than “very well”<sup>5</sup>. As noted in the next section below caution should be taken to provide LEP populations fair opportunity to participate in the transit planning process so as to not inadvertently discriminate on the grounds of national origin regardless of one’s national origin being one of the EJ minority populations or another non EJ population minority.

### Legal basis for Language Assistance Requirements

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and its implementing regulations provide that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives Federal financial assistance. The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted Title VI regulations promulgated by the former Department of Health,

<sup>5</sup> Tri County Regional Planning Commission Interactive Environmental Justice Map. Accessed online: <http://www.tcrpc-pa.org/GIS/Pages/environmentaljustice.html> (August, 2014)

Education, and Welfare to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.<sup>6</sup>

CAT wants to take it's EJ population map a step further by incorporating LEP populations to exercise sensitivity to the national origins of EJ populations and other non EJ nationalities.

**Environmental Justice Census Snapshot for Dauphin and Cumberland Counties**

Dauphin and Cumberland Counties contain a combined 114 census tracts 74 (65%) of which were identified for the purposes of this CAT EJ service coverage analysis as “EJ Census Tracts” (Figure 2). CAT recognizes an EJ Census Tract as a census tract that contains a greater percentage of households than the regional average for households living in poverty as determined by the Federal Department of Health and Human Services (HSS) guidelines, and individuals who are identified as Hispanic (as this is the most prevalent language spoken in Cumberland and Dauphin county and is considered a minority group), non Hispanic minority, or are Limited English Proficient than that of the Tri County Regional Planning Commission’s Regional threshold for each of these demographic traits. Those of Hispanic decent were identified as the regions

**Figure 2: Total Environmental Justice Census Tracts**

	Total Census Tracts	Total EJ Tracts	EJ Tracts Percentage of Total Tracts
Dauphin County	65	50	77%
Cumberland County	49	24	49%
Total	114	74	65%

**Figure 3: EJ Demographic Traits and Regional Thresholds**

	Households in Poverty	Hispanic	Non Hispanic Minority	Limited English Proficiency
<b>Regional Average</b>	<b>7.40%</b>	<b>4.70%</b>	<b>16.90%</b>	<b>3.2%</b>
Dauphin County Average	9.50%	7%	26.40%	4.1%
Cumberland County Average	5.20%	2.80%	9.10%	2.6%

**CAT bus service coverage of EJ Census tracts in Dauphin and Cumberland County**

The CAT bus route network was overlaid on the EJ map to analyze the amount of service coverage CAT currently provides to the identified EJ census tracts in Dauphin and Cumberland Counties. It was

<sup>6</sup> *Implementing the Department of Transportation's Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons: A Handbook for Public Transportation Providers.* The Federal Transit Administration - Office of Civil Rights. April 13, 2007. Accessed online: [http://www.lep.gov/guidance/guidance\\_Fed\\_Guidance.html](http://www.lep.gov/guidance/guidance_Fed_Guidance.html) (August, 2014)

deemed that CAT provides service to any EJ census tract that was within ¼ mile of a CAT bus route. One quarter mile was selected because this distance is the public transit industry standard for how far most people are willing to walk to access a bus stop.

Because census data does not pinpoint exactly where in each census tract the EJ individuals actually live, anywhere within the boundary of an EJ census tract is considered to be just as disadvantaged as other areas in the census tract. Thus, if any EJ census tract is within ¼ mile of a CAT bus route it is considered as a whole to have CAT bus service. This does not mean, however, that CAT does not see the need to improve or expand service within EJ census tracts that are within ¼ mile of at CAT bus route. The purpose of the census tract EJ data analysis is to provide guidance on where EJ vulnerable populations are as a basis for planning.

Specific service adjustments are made based on various factors however as a result of the Environmental Justice Executive Order, EJ census tracts receiving little or no CAT service or will be negatively impacted by service adjustments made by Cat will be taken into serious consideration. CAT service planning activities will take the steps identified in the Environmental Justice Assessment process as outline on page 2 of this report.

**Figure 4: CAT Service Coverage of High Below Poverty Census Tracts**

County	Total High Below Poverty Tracts	CAT Currently Serves		CAT Does Not Currently Serve	
		Total	%	Total	%
Dauphin County	34	31	91%	3	9%
Cumberland County	17	15	88%	2	12%
Total	51	46	90%	5	10%

**Figure 5: CAT Service Coverage of High Hispanic Census Tracts**

County	Total High Hispanic Tracts	CAT Currently Serves		CAT Does Not Currently Serve	
		Total	%	Total	%
Dauphin County	34	33	97%	1	3%
Cumberland County	7	5	71%	2	29%
Total	41	38	93%	3	7%

**Figure 6: CAT Service Coverage of High Non Hispanic Minority Census Tracts**

County	High Non Hispanic Minority Tracts	CAT Currently Serves		CAT Does Not Currently Serve	
		Total	%	Total	%
Dauphin County	40	40	100%	0	0%
Cumberland County	5	5	100%	0	0%
Total	45	45	100%	0	0%

**Figure 7: CAT Service Coverage of High Limited English Proficiency Census Tracts**

County	High LEP Tracts	CAT Currently Serves		CAT Does Not Currently Serve	
		Total	%	Total	%
Dauphin County	33	31	94%	2	6%
Cumberland County	12	12	100%	0	0%
Total	45	43	96%	2	4%

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<sup>1</sup> Tri County Regional Planning Commission Interactive Environmental Justice Map. Accessed online: <http://www.tcrpc-pa.org/GIS/Pages/environmentaljustice.html> (August, 2014)