



TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.transportation.ky.gov/

Steven L. Beshear
Governor

Michael W. Hancock, P.E.
Secretary

MEMORANDUM

To: DEA Staff; District Environmental Coordinators;
District Branch Managers for Project Development

From: David M. Waldner, P.E., Director
Division of Environmental Analysis

A handwritten signature in blue ink that reads "D. Waldner".

Date: June 27, 2011

RE: Environmental Justice Analysis for Projects Documented by Categorical Exclusion

Environmental Justice is a vital part of KYTC's mission to provide a safe, efficient, environmentally sound and fiscally responsible transportation system that delivers economic opportunity and enhances the quality of life in Kentucky. To that end, KYTC utilizes recognized methods for larger-scale (EA/EIS) projects to ensure compliance with Executive Order 12898, Title IV of the Civil Rights Act and all other applicable laws and regulations. More detailed methodologies for analysis of impacts for smaller-scale projects have now been developed.

This guidance is specifically designed for small-scale (CE) projects involving relocations. These methods may be adapted to assist with EJ analysis on large-scale projects, but that is not the primary intent of the guidance. The goal for EJ investigations on these small-scale projects should not be one of simply establishing the presence or absence of underserved populations, which include minority, low-income, limited English proficiency and limited transportation means (zero-car households). Rather, the focus should be on defining and documenting the potential benefits and burdens our projects may have on these protected households being relocated by the project and the development of a strategy that would avoid, minimize and/or mitigate any disproportionately high and adverse human health and environmental effects that may result. To achieve this objective it is essential that sensitive information be gathered for consideration in the project development decision-making process and to document compliance with all applicable laws and regulations. To gather this information, a questionnaire has been developed for mailing to any households to be relocated by the project. While this process is intended to aid in identifying the potential for Environmental Justice (EJ) impacts associated with the preferred alternative, it is also important to consider EJ issues during the development of all preliminary alternatives. Public involvement activities planned for the project should also include measures to identify and engage under-served populations.



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SURVEY PREPARATION

The following steps will assist the preparer in providing the information needed for an informed response by the recipient.

1. Provide an adequate description of the project in the opening paragraph (should be consistent with the description in the KYTC Highway Plan). A summary of the purpose of the project should also be included to describe the issues that are to be addressed by the proposed project.
2. Reference all materials attached (maps, P&N Statement, schedule, etc.).
3. Provide KYTC contact name, mailing address and phone number (contact person must be able to answer questions and provide detailed information regarding the project). It is recommended that either the District Environmental Coordinator or Project Manager assume this responsibility.
4. Provide a date by which a response is due.

SURVEY DISTRIBUTION

The steps below will assist the team in preparing the form for mailing to potentially impacted residents:

1. The letter shall be distributed to all potential relocatees along the preferred alternative, but may also be sent to relocatees along preliminary alternatives for screening purposes at the discretion of the project team. The letter shall be sent directly to the physical address regardless of ownership status. This will ensure that the response comes from the person occupying the structure and not the owner of a rental property that may not reside there.
2. Completed questionnaires should be directed to the individual listed as the contact on the questionnaire to ensure a single point of contact for continuity.
3. Within two weeks following the requested response date, the Project Team shall contact any residents who did not respond to the original distribution.

IDENTIFICATION OF ISSUES IN RETURNED SURVEYS

Once it has been determined that no additional responses are anticipated, a summary of the responses received shall be compiled to identify any minority and/or low income households being relocated that have raised concerns over the proposed project. The project team, including FHWA, should consider the significance and relevance of the concerns expressed in order to determine the need for further analysis. The guidance below will assist the team in determining the presence or absence of underserved populations.

Identification of Low Income and Minority Populations

The identification of minority or other underserved populations present in the project area is made through the information provided in Question #4. Any household characterized by those groups shown

in Question #4 are considered underserved populations. These populations are offered the same protections as those afforded to low income.

Using the information from Questions 5 and 6, it will need to be determined whether any of the respondent households is classified as low income. The table below is taken from the U.S. Department of Health and Human Services website. This table is used to cross reference the information given on Questions 5 and 6 on the returned Questionnaire and determine if the household is low income. This information is updated annually and should be validated via the website referenced at the bottom of the table prior to the analysis of occupancy and income information.

| 2011* | |
|--|--------------------------|
| Poverty Guidelines for the 48 Contiguous States and the District of Columbia | |
| Persons in Family | Poverty Guideline |
| 1 | \$10,890 |
| 2 | 14,710 |
| 3 | 18,530 |
| 4 | 22,350 |
| 5 | 26,170 |
| 6 | 29,990 |
| 7 | 33,810 |
| 8 | 37,630 |
| For families with more than 8 persons, add \$3,820 for each additional person. | |
| * http://aspe.hhs.gov/poverty/09extension.shtml | |

Follow-up Procedures

Additional engagement is required when returned questionnaires confirm underserved populations are being relocated and issues or concerns with the proposed action have been expressed. This follow-up effort will assist the project team in gaining a better understanding of the identified issues or concerns, and provide an opportunity to share additional information concerning the proposed project. In some cases, providing more information and a better explanation of the project may be sufficient to address the identified issues or concerns. Concerns or other issues received from non-EJ household should be considered by the project team as would any comment received from typical outreach and public involvement from the general public.

The steps below will assist the Project Team in drafting follow-up questions regarding benefits and burdens as outlined in the returned questionnaire.

1. Issues or concerns expressed in the responses must be coordinated through the EPM, who will draft a letter from KYTC to FHWA with a recommendation that the concerns are either significant or relevant to Environmental Justice or that they are not. FHWA must then issue a finding that will begin the process of developing follow-up questions to gain a better understanding of the issues.
2. Follow-up questions developed in cooperation with the FHWA should be framed around whatever issues and concerns were expressed in the original response. The goal of the follow-up questions is to further define the burden or benefit the project may have upon the relocated household, as well as to assist in the development of any avoidance or mitigation measures that may be appropriate.
3. Every effort must be made to assure the resident that the information they provide us will be beneficial to the project decision-making process.
4. Care must be taken in discussing potential mitigation measures until they are agreed upon by the project team. Discussing potential measures prematurely may create confusion when final measures are agreed upon by the involved agencies.

Sample Questions

As previously stated, follow-up questions are to be developed by the Project Team, in cooperation with FHWA, and will be dependent upon the issues and concerns identified in each response. In formulating these questions, keep in mind that this information is sensitive and the process may be perceived as intrusive.

The following questions serve as examples that may be used to gather additional information needed to resolve identified issues and concerns. Specific follow-up questions will need to be tailored to fit each unique set of circumstances and should attempt to define both burdens and benefits on those directly impacted by the project.

- Would relocation make it more difficult for you to receive services that you depend on to maintain your quality of life?
- Would relocation remove you from family/neighbors that you depend upon or that depend upon you for assistance on a regular basis?
- Would relocation remove you from a community that you rely upon for cultural/spiritual reasons?

- Would relocation place a unique burden on your household? Please describe what negative results would occur if relocated by the construction of this project.
- Are there potential benefits to relocation such as improved access to services, increased safety, being closer to family or other community facilities?
- Would relocation improve your existing living conditions?

EJ IMPACT DETERMINATIONS

Upon review of both the original completed questionnaire and responses to all follow-up efforts, KYTC should make a one of the following recommendations to the FHWA on the potential for high and adverse impact to EJ populations:

- No impact to EJ populations anticipated
- No disproportionately high and adverse impact to EJ populations with no mitigation measures required
- No disproportionately high and adverse impact to EJ populations with mitigation measures required
- Disproportionately high and adverse impacts to EJ populations anticipated

The determination of disproportionate EJ impacts lies with FHWA. This determination will define what future measures are required for the project to proceed. Final mitigation measures to be implemented in the project shall be documented in the CE checklist, tracked in EATS and added to project plans as appropriate. Survey forms should be retained for the Administrative Record but not attached to the checklist.

EXAMPLES

A set of scenarios has been developed to illustrate what may typically occur in assessing potential EJ issues for smaller-scale projects.

Scenario #1

The project does not require any relocations. As a result, EJ impacts are not anticipated and this finding shall be documented in the CE.

Scenario #2

Project requires a number of relocations. The survey is prepared and distributed to those being potentially relocated by the project. Responses are received indicating that no under-served populations are to be relocated. As a result, EJ impacts are not anticipated and this finding shall be documented in the CE.

Scenario #3

Project requires a number of relocations. The survey is prepared and distributed to those being potentially relocated by the project. Responses are received indicating that under-served households are being relocated by the project. However, none of those impacted have identified issues or concerns resulting from the project. As a result, EJ impacts are not anticipated and this finding shall be documented in the CE.

Scenario #4

Project requires a number of relocations. The survey is prepared and distributed to those being potentially relocated by the project. Responses are received indicating that under-served households are being relocated by the project. Responses are received indicating that under-served populations are being relocated by the project and have identified issues and concerns with the project as proposed. The EPM drafts a letter from KYTC to FHWA with a recommendation that the issues and concerns are not significant and/or relevant to Environmental Justice. Consultation with the FHWA has resulted in the determination that the issues and concerns posed are not significant and/or not relevant to the project. As a result, FHWA concurs that EJ impacts are not anticipated and this finding is documented in the CE.

Scenario #5

Project requires a number of relocations. The survey is prepared and distributed to those being potentially relocated by the project. Responses are received indicating that under-served populations are being relocated by the project and have identified issues and concerns with the project as proposed. The EPM drafts a letter from KYTC to FHWA with a recommendation that the issues and concerns are significant and/or relevant to Environmental Justice. Consultation with the FHWA has resulted in the determination that the issues and concerns posed are significant and relevant to the project. The Project Team meets and formulates a series of questions to be asked of the respondents that have identified issues and concerns. Based upon the second round of responses, the EPM drafts another letter from KYTC to FHWA requesting their concurrence that the additional information has sufficiently addressed the issues and concerns raised by the relocatees. As a result, FHWA concurs that EJ impacts are no longer anticipated and this finding is documented in the CE.

Scenario #6

Project requires a number of relocations. The survey is prepared and distributed to those being potentially relocated by the project. Responses are received indicating that under-served populations are being relocated by the project and have identified issues and concerns with the project as proposed. The EPM drafts a letter from KYTC to FHWA with a recommendation that the issues and concerns are significant and/or relevant to Environmental Justice. Consultation with the FHWA has resulted in the

determination that the issues and concerns posed are significant and relevant to the project. The Project Team meets and formulates a series of questions to be asked of the respondents that have identified issues and concerns. Based upon the second round of responses, the EPM drafts another letter from KYTC to FHWA recommending the development of avoidance/minimization/mitigation measures intended to address the identified issues and concerns raised by the relocatees. The Project Team, in consultation with FHWA has developed a series of measures intended to address the issues and concerns. As a result, FHWA finds that high and disproportionately adverse EJ impacts are no longer anticipated and this finding is documented in the CE.

Scenario #7

Project requires a number of relocations. The survey is prepared and distributed to those being potentially relocated by the project. Responses are received indicating that under-served populations are being relocated by the project and have identified issues and concerns with the project as proposed. The EPM drafts a letter from KYTC to FHWA with a recommendation that the issues and concerns are significant and/or relevant to Environmental Justice. The Project Team meets and formulates a series of questions to be asked of the respondents that have identified issues and concerns. Based upon the second round of responses, the EPM drafts another letter from KYTC to FHWA recommending the development of avoidance/minimization/mitigation measures intended to address the identified issues and concerns raised by the relocatees. The Project Team, in consultation with FHWA has developed a series of measures intended to address the issues and concerns. Through continued involvement it is determined that these measures do not sufficiently address the identified issues and concerns. In conformance with the KYTC/FHWA CE Agreement, FHWA has elevated the NEPA document to an EA or an EIS in order to continue working with the affected communities to develop any additional measures needed to address the impacts.

CC: FHWA: Jose Sepulveda, Anthony Goodman

(DATE)

(NAME)

(ADDRESS)

(ADDRESS)

RE: (PROJECT NAME)
(PROJECT LOCATION)
(KYTC ITEM NO.)

Dear (NAME):

The Kentucky Transportation Cabinet has proposed improvements to (INSERT ROUTE AND LOCATION INFORMATION). The purpose of this project is to (INSERT SUMMARY OF PURPOSE STATEMENT). Attached for your information are (INSERT DESCRIPTION OF ATTACHMENTS AND ATTACH FULL PURPOSE AND NEED STATEMENT, MAPS, SCHEDULE, ETC) that you may find useful in your consideration of this project.

Because your residence may be acquired in order to construct the project, you are being contacted to provide information so that KYTC can understand how this may affect you or persons who may rely upon you. Attached you will find a series of questions designed to gain insight into the potential impacts of the proposed project. Though answering these questions is voluntary, your opinion is important to us.

Thank you for your time and patience in answering these questions. This information will help us to develop a project that will best serve the community and the region. If you would like to receive or provide additional information regarding this matter, please contact:

(INSERT CONTACT NAME)

(INSERT CONTACT ADDRESS)

(INSERT CONTACT PHONE NUMBER)

(INSERT CONTACT EMAIL ADDRESS)

We respectfully request your response be submitted no later than two weeks from the receipt of this request (INSERT RESPONSE DATE). Please use the attached stamped envelope to return the completed questionnaire at no expense to you.

Thanks again, and we look forward to hearing from you.

Sincerely,

(NAME)

(TITLE)

Kentucky Transportation Cabinet

KYTC Small Project Relocation Questionnaire

(NAME from address on letter)

(ADDRESS from address on letter)

(ADDRESS from address on letter)

The information is incorrect; please enter your name and address below.

| | |
|----------|--|
| Name: | |
| Address: | |

Please provide contact information:

| | |
|----------------|--|
| Telephone 1: | |
| Telephone 2: | |
| Email Address: | |

What is your preferred method of contact?

- Face-to-face meeting E-mail (be sure to provide email address above)
- U.S. Mail Phone call (be sure to provide number(s) above)
- Other: _____

1. Approximately how long have you lived at this location? _____ yrs _____ months

2. Do you: rent your home own your home?
 Other (e.g. live rent free) _____

3. What is your primary mode of transportation? (please check one of the following)

- Walking Bicycle Bus
- Carpool Car/Truck/Motorcycle Other _____

4. Please identify any of the following that characterize your household:

DISABLED (a person that has a physical or mental impairment that substantially limits one or more major life activities) How many disabled people in the household? _____

ELDERLY (Over 65) How many elderly people in the household? _____

LIMITED ENGLISH PROFICIENCY (English is not your first language and you are still learning)
How many people in the household have limited English proficiency? _____

ZERO-CAR HOUSEHOLD (No one living in home has access to a vehicle)

MINORITY (If you marked this box, please mark all that apply below.)

- Alaskan Native
- American Indian
- Asian American
- Black/African-American
- Hispanic
- Hawaiian/Pacific Islander

5. How many people live in this household (including you)? _____

6. Is your total household income before taxes more than \$40,000? Yes No

If your answer is no, please write your total household income before taxes in the space below.

My total household income is approximately \$ _____.

7. If it is determined that your home must be acquired for this project to be constructed, would you be willing to relocate with financial compensation from the government?

- Yes
- No
- Undecided

8. I would like to receive additional information related to relocation assistance.

Environmental Justice Decision Tree Documentation for CE-level Projects

