

Overview of Environmental Laws and Transportation Decision-making

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The NEPA “Umbrella”

- ▶ Human and Natural Environmental Effects
- ▶ National Historic Preservation Act
- ▶ Endangered Species Act
- ▶ Clean Air Act
- ▶ Clean Water Act
- ▶ Farmland Protection Policy Act
- ▶ Archaeological Resources Protection Act
- ▶ Section 4(f) of USDOT Act
- ▶ Title VI of Civil Rights Act
- ▶ Coastal Zone Management Act
 - ▶ Wild and Scenic Rivers Act
 - ▶ Resource Conservation and Recovery Act
- ▶ Executive Order 12898 (Environmental Justice)
- ▶ Executive Order 11988 (Floodplain Management)
- ▶ Executive Order 11990 (Protection of Wetlands)
- ▶ Uniform Relocation Assistance and Real Property Acquisition Policies Act
- ▶ Public involvement and Public Hearing Requirements
- ▶ Highway Traffic Noise Standards
- ▶ Visual Impacts Assessment
- ▶ And much, much more...



Section 4(f) of the USDOT Act of 1966

The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of a historic site of National, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction) only if –

1. there is no feasible and prudent alternative to using the land; and
2. the program or project includes all possible planning to minimize harm to the ... Section 4(f) resource(s).

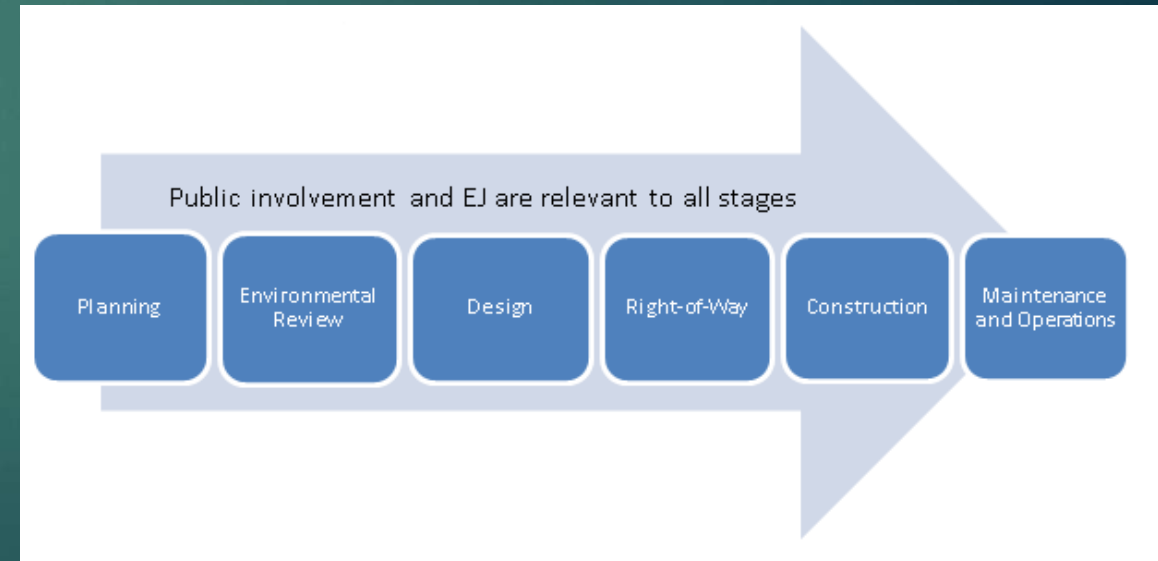
An alternative is not prudent if:

1. It compromises the project to the degree that it is unreasonable to proceed with the project in light of its stated purpose and need;
2. It results in unacceptable safety or operations problems;
3. After reasonable mitigation it still causes:
 - A. Severe social, economic, or environmental impacts;
 - B. Severe disruption to established communities
 - C. Severe disproportionate impacts to minority or low-income populations
 - D. Severe impacts to environmental resources protected under other Federal statutes;
4. It results in additional construction, maintenance, or operational costs of an extraordinary magnitude;
5. It causes other unique problems or unusual factors; or
6. It involves multiple factors that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude

Environmental Justice Fundamentals

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- ▶ Each Federal Agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority and low-income communities, when such an analysis is required by NEPA. – EO 12898
 1. Identification of existing minority and low-income populations
 2. Public involvement to ensure meaningful opportunities for public participation in the decision-making process related to alternatives analysis, impact analysis, and mitigation
 3. Determining if there are disproportionately high and adverse effects on minority and low-income populations
 4. Identifying mitigation measures in NEPA documents to address adverse effects



Environmental Justice

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- ▶ Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations – 1994
- ▶ USDOT EJ Strategy – 1995 (revised in 2012)
- ▶ USDOT EJ Order – 1997 (revised in 2021)
- ▶ FHWA EJ Order – 1998
- ▶ CEQ Guidance document – Environmental Justice: Guidance Under the National Environmental Policy Act – 1997
- ▶ Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency – 2000
- ▶ Memorandum of Understanding on Environmental Justice and EO 12898 (signed by 17 agencies including USDOT) – 2011
- ▶ FHWA Memorandum on Guidance on Environmental Justice and NEPA – 2011
- ▶ EPA Report – Promising Practices for Environmental Justice Methodologies in NEPA Reviews – 2016
- ▶ Executive Order 14004 – Tackling the Climate Crisis at Home and Abroad - 2021

Environmental Review Toolkit

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Environmental Justice

FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

On June 14, 2012, FHWA issued the [FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations](#) directive, which establishes policies and procedures for FHWA to use in complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), dated February 11, 1994.

Final DOT Environmental Justice Order

On May 2, 2012, U.S. DOT issued the [Final DOT Environmental Justice Order](#), which is an update to U.S. DOT's original Environmental Justice Order (Departmental Order 5610.2(a) - Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which was published on April 15, 1997. The Order continues to be a key component of U.S. DOT's strategy to promote the principles of Environmental Justice in all Departmental programs, policies, and activities.

Guidance on Environmental Justice and NEPA

On December 16, 2011, FHWA issued a memo titled [Guidance on Environmental Justice and NEPA](#). This guidance describes the process to address Environmental Justice during the NEPA review, including documentation requirements. It supplements the FHWA Technical Advisory 6640.8A, which provides guidance for documenting the potential social, economic, and environmental impacts considered in the selection and implementation of highway projects.

Environmental Justice Reference Guide

The Federal Highway Administration (FHWA) [Environmental Justice \(EJ\) Reference Guide](#) (April 1, 2015) is a resource for FHWA staff to help them ensure compliance with EJ requirements. EJ at FHWA means identifying and addressing disproportionately high and adverse effects of the agency's 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 the transportation decisionmaking process. **The EJ Reference Guide does not establish any new requirements or replace any existing guidance.** The FHWA EJ Workgroup, comprised of staff from different offices throughout the agency, collaboratively developed this reference guide.

Environmental Justice and NEPA Case Studies

FHWA has developed a series of [Environmental Justice and NEPA case studies](#) that focus on Environmental Justice analysis during the environmental review process. The case studies highlight 10 projects where agencies addressed Environmental Justice concerns early in the NEPA process.

Environmental Justice



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Contacts

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Environmental Justice Reference Guide

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