To: Ryan Walkowiak, Environmental Documents Unit, NDOR
From: Chris Hassler, Highway Civil Rights Coordinator, NDOR
Date: 11 April 2016
RE: Civil Rights Analysis, CN 42772, ITS-NH-80-5(79), Elm Creek to Alda

Civil Rights Analysis for CN 42772

Environmental Justice Regulatory Background and Methodology:

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, was signed on February 11, 1994, and requires that, to the extent practicable and permitted by law, low-income or minority populations may not receive disproportionately high and adverse human health or environmental effects as a result of a proposed project. Federal agencies must take the appropriate and necessary steps to identify and address disproportionately high and adverse effects of federal projects on the health or environment of low-income and minority populations. Also, representatives of any low-income or minority populations in the community that may be affected by a project must be given the opportunity to be included in the impact assessment and public involvement process.

On June 14, 2012, FHWA issued Order 6640.23A, *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which established policies and procedures for the FHWA and state transportation agencies to use in complying with Executive Order 12898. The Order provided definitions for multiple terms and concepts applicable to this analysis.

> *Adverse Effects* are defined as "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 human-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; and the denial of, reduction in, or significant delay in the receipt of, benefits of FHWA programs, policies, or activities."
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> A *Disproportionately High and Adverse Effect to Low-Income and Minority Populations* is defined as an adverse effect that:
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> 1. is predominately borne by a minority population and/or a low-income population; OR
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> 2. 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 nonminority population and/or non-low-income population.

Minority is defined as a person who is:

1. Black: a person having origins in any of the black racial groups of Africa;

2. Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

3. Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent;

4. American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; OR

5. Native Hawaiian and Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

A *Low-Income* person is defined as a person whose median household income is at or below the Department of Health and Human Services poverty guidelines. (*Note – The U.S. Department of Health and Human Services does not publish tabulations of the number of people below the DHHS poverty guidelines, which are a simplified version of the federal poverty thresholds. The federal poverty thresholds are used for calculating all official poverty population statistics, and are updated annually by the Census Bureau. The best approximation for the number of people below the DHHS poverty guidelines in a particular area is the number of persons below the Census Bureau poverty thresholds in that area.)*

A *Minority Population* is defined as 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 FHWA program, policy, or activity.

A *Low-Income* population is defined as 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 or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.

In a December 16, 2011, memorandum titled *Guidance on Environmental Justice and NEPA*, the FHWA laid out a basic methodology for performing Environmental Justice analysis. NDOR has adopted, and FHWA has approved, an Environmental Justice methodology which follows the basic framework of the 2011 memorandum, but expands upon a few vague or undefined concepts. NDOR Environmental Justice methodology is as follows:

1. Using localized census tract data and other relevant information sources, data is gathered and readily identifiable groups or clusters of minority or low-income persons in the EJ study area are listed. Small clusters or dispersed populations are not overlooked. Study area data is also compared with the data of larger, identifiable areas (census tracts, cities, counties,

NDOR districts, etc.) to determine the proportion of minority and low-income persons present in the study area.

2. Minority and low-income populations are identified where:

   (a) A readily identifiable group or cluster of minority or low-income persons is located in the EJ study area (for example, a low-income housing complex, or a workplace of mostly minority persons); OR

   (b) The minority or low-income population of the study area exceeds 50 percent; OR

   (c) The minority or low-income population percentage of the affected area is *meaningfully greater* than the minority population percentage in the general population or other appropriate unit of geographic analysis. The *meaningfully greater* standard is fact-dependent and requires professional judgment, but in most cases *meaningfully greater* is about 6%-8% or above.

3. If minority and/or low-income populations are not present in the EJ study area, the analysis is concluded.

4. If minority and/or low-income populations are present in the EJ study area, potential disproportionately high and adverse effects of the proposed project are examined. If none are identified, the analysis is concluded.

5. If minority and/or low-income populations are present in the EJ study area, and potential disproportionately high and adverse effects of the proposed project have been identified, proposed mitigation will be considered. Commonly, the application of effective mitigation techniques can reduce or eliminate adverse effects that might otherwise fall disproportionately upon minority and low-income populations.

6. Finally, the analysis concludes with a determination that the proposed project either will or will not result in disproportionately high and adverse effects to minority and low-income populations. State transportation agencies lack the regulatory authority to make a final determination in cases where potential disproportionately high and adverse effects to minority and/or low-income populations exist. In the event that potential disproportionately high and adverse effects to minority and low-income populations are anticipated, even when mitigation is expected to reduce or eliminate the effects, the analysis and determination must be forwarded to the FHWA for comment, revision, and approval.

Project Location and Description

This project will deploy automated gates and CCTV cameras on I-80 entrance ramps at 9 locations within Buffalo and Hall Counties.

Examination of Study Area Population: Census Data and Other Observations

The scope of this project is so minor that, even if the project sites were adjacent to minority or low-income populations, the possibility of disproportionately high and adverse effects to those populations simply does not exist.

Specifically:

> There will be no detours and no permanent road closures. Traffic will continue to flow throughout the projects.
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> No right-of-way is being acquired.
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> Access to adjacent properties will be maintained.
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> There will be no isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community
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> There will be no restrictions of access to essential services.
>
> There will be no relocations or building removal.

The NDOR Public Involvement Manager has indicated on DR Form 53 for this project that no public involvement activities are necessary beyond the project's inclusion in program-level documents. Therefore, no Limited English Proficiency data or analysis is required for this project because there will be no public involvement activities for the LEP outreach to enhance.

Conclusions

There will be no disproportionately high and adverse human health or environmental effects visited upon minority and low-income populations, as defined in FHWA Order 6640.23A, because the scope of the project is so minor as to preclude the possibility of adverse effects.

No LEP outreach is required for this project because there will be no further public involvement activities for the LEP outreach to enhance.