

Memo

Date: January 2016

Project: South Rochford Road EIS

To: South Dakota Department of Transportation

From: HDR

Subject: Environmental Justice (EJ) Memo

1.0 Introduction

In January 2012, the Federal Highway Administration (FHWA), the South Dakota Department of Transportation (SDDOT), and Pennington County (the County) (the Joint Lead Agencies) published the Notice of Intent (NOI) in the Federal Register to initiate the South Rochford Road Environmental Impact Statement (EIS). The Proposed Action is federally funded and would require federal permits; consequently, compliance with the National Environmental Policy Act of 1969 (NEPA) is required.

Evaluating the potential for disproportionately high and adverse effects to low-income, minority, vulnerable age, disabled, and Limited English Proficiency (LEP) populations is required to comply with the following Presidential executive orders and FHWA guidance developed to comply with these executive orders.

- Title VI of the Civil Rights Act of 1964 (Title VI) – Title VI states that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations – EO 12898 was issued by former President Clinton on February 11, 1994, and directs each federal agency “to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” EO 12898 also states that “each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations. Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.”
- EO 13166, Improving Access to Services for Persons with Limited English Proficiency – EO 13166 was issued by former President Clinton on August 11, 2000, and requires federal agencies to examine the services they provide, identify any

need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.

Though senior citizens and children are not specifically defined as EJ populations according to EO 12898, they are considered vulnerable age groups identified in Title VI and related nondiscrimination statutes and should be included in environmental justice analysis. Individuals with disabilities should also be included in environmental justice analysis (Federal Highway Administration [FHWA], 2012).

In 2012, the U.S. Department of Transportation (DOT) and FHWA issued the following guidance addressing minority, low-income, and vulnerable age populations and how these populations should be considered during planning for transportation projects:

- DOT Order 5610.2(a), Final DOT Environmental Justice Order – DOT Order 5610.2(a) was issued on May 2, 2012, and is used by DOT to comply with EO 12898. The DOT order states that “it is the policy of DOT to promote the principles of environmental justice (as embodied in [EO 12898]) through the incorporation of those principles in all DOT programs, policies, and activities.”
- FHWA Order 6640.23A, FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations – FHWA Order 6640.23A was issued on June 14, 2012, and is used by FHWA to comply with EO 12898.
- DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons was issued December 14, 2005, and is used by DOT to implement EO 13166.
- FHWA Limited English Proficiency was issued May 18, 2012, and is used by FHWA to implement EO 13166.

DOT and FHWA define low-income as:

- A person whose median household income is at or below the Department of Health and Human Services (HSS) poverty guidelines. Poverty guidelines are a simplification of the poverty thresholds for administrative purposes—for instance, determining financial eligibility for certain federal programs. Poverty thresholds are used mainly for statistical purposes—for instance, preparing estimates of the number of Americans in poverty each year. Poverty population data is calculated using the poverty thresholds, not the guidelines (HSS n.d.).
- 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 and transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity (FHWA, June 14, 2012).

DOT and FHWA define minority as:

- Black: a person having origins in any of the black racial groups of Africa;
- Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent;
- 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
- Native Hawaiian and Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands (FHWA, June 14, 2012).
- A minority population is defined as any readily identifiable groups 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.

DOT defines LEP as individuals for whom English is not their primary language who have a limited ability to read, write, speak, or understand English.

FHWA does not define the term disabled. The U.S. Census Bureau defines disabled as having serious difficulty with four basic areas of functioning – hearing, vision, cognition (serious difficulty concentrating, remembering, or making decisions), and ambulation (a condition that substantially limits one or more basic physical activities such as walking, climbing stairs, reaching, lifting, or carrying), and two activities of daily living: difficulty bathing and dressing, and difficulty performing errands such as shopping or going to a doctor appointment (U.S. Census Bureau, not dated).

This memo documents a determination of whether the potential impacts of the Project's construction and operation would result in disproportionately high and adverse human health or environmental effects on any identified minority, low-income, vulnerable age, disabled, and LEP populations and documents potential mitigation for impacts on any minority, low-income, vulnerable age, disabled, and LEP populations. Effects to the Tribes have been documented in in Chapter 3 of the EIS the cultural resource reports prepared for the Project (QSI, 2014).

2.0 The Project

2.1 Purpose and Need

The purpose of this Project is to correct roadway deficiencies to sustain year-round transportation on South Rochford Road, providing a regional transportation linkage. The needs include addressing roadway deficiencies including improper conveyance of runoff and adjacent drainages, frost heaves, structural deficiency of a bridge, road geometrics which result in high maintenance costs. The Project would also fulfill legislative intent to reconstruct South Rochford road from Rochford to Deerfield and would therefore improve the roadway system linkage in the region.

2.2 Project Description

The Project consists of constructing a paved surface road along an existing gravel roadway between Rochford and Deerfield Road. The two feasible build alternatives that meet the purpose and need resulting from the screening process include the following:

- Alternative 1 consists of paving the road along the existing South Rochford Road alignment.
- Alternative 2 consists of paving the road along the existing South Rochford Road alignment with deviations to account for maximum improvements and adherence to AASHTO standards.

Figure 1 shows the Project Areas. The Project Areas consists of the two alternative corridors and limits where disturbance would be contained.

3.0 Methodology

In order to address the environmental justice for the Project, a local study area was identified that would encompass the geographic area of environmental resources affected by the Proposed Action.

3.1 Local Study Area

In accordance with FHWA guidance, minority, low-income, and vulnerable age populations in the Study Area were identified to determine the potential for these populations to be disproportionately affected by the Project. Additionally, LEP populations were identified as part of the requirement to meet the requirements of EO 13166 and DOT Order 5610.2(A).

The most recent U.S. Census Bureau data was analyzed to determine if minority, low-income, vulnerable age, disabled, or Limited English Proficiency (LEP) populations were present. Census data was acquired to smallest available geographic area (Census block for minority and age, Census block group for LEP, Census Tract for income, and county for disabled).

No known transient populations were identified other than Native Americans which visit Pe' Sla (described below) for ceremonial purposes. Cultural resources were examined for the Project and discussed further in the Chapter 3 of the EIS and cultural reports prepared for the Project (QSI, 2014).

4.0 Population Characteristics of the Study Areas

4.1 Local Study Area

The Study Area is situated in Pennington County within the Black Hills and consists of a rural area with minimal population. Land use consists of mainly pastureland and forested areas; however, it does contain some residential areas. Land ownership is split among private landowners, the U.S. Forest Service, and tribal land (Rosebud Sioux Tribe). The Study Area contains a Black Hills montane prairie name Reynolds Prairie which is a remote area with unique physiography, and corresponding unique ecological features including fens which contain endemic and sensitive species. Reynolds Prairie is known as Pe' Sla to Native Americans and holds an important traditional value to the Tribes.

South Rochford Road is a gravel surface road and provides access to residences within the Study Area. As stated earlier, this road has multiple deficiencies which result in increased maintenance costs relative to similar roads within the County. The economy in the area historically has been driven by agriculture and the forest products industry, although tourism is currently a vibrant industry within the Black Hills region.

The local Study Area contains a very low population with only 59 individuals in the Study Area census blocks.

5.0 Minority, Low-Income, Vulnerable Age, Disabled, and LEP Populations

5.1 Local Study Area

In accordance with FHWA Order 6640.23A, any readily identifiable group of minority or 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 were identified.

FHWA Order 6640.23A does not define "any readily identifiable group." Guidance developed by the Council on Environmental Quality (CEQ), who along with the US Environmental Protection Agency (EPA), has oversight responsibility for implementing EO 12898, identifies a minority and low income population when:

- The percentage of minorities or low-income residents, respectively, exceeds 50 percent of the population in the area affected by the Project, or

- The minority population percentage of the affected area is meaningfully (or substantially) greater than the minority population percentage in the general population or other appropriate unit of geographic analysis (CEQ, December 10, 1997).¹

Typically, the population characteristics (minority, age, language spoken, and income) of the Study Area would be compared to the characteristics of the County to determine if there are substantial populations of minority, vulnerable age, LEP, or low-income residents. Substantial populations would be considered census block groups and blocks with these population having concentrations of at least 40 percent higher than the County’s percentage of the same minority, low-income, and vulnerable age population. A 40 percent threshold represents a rounded value that is approximately the population within one standard deviation (34 percent) from the mean of a typical normal data distribution curve.

The five individuals considered “American Indian and Alaska Native alone” are located in Block 3072 of Block Group 3, Census Tract 117 (see Figure 1). Due to the low population residing in the Study Area, meaningful (or substantial) populations of minorities, low-income, vulnerable age, disabled, and LEP were not present. Therefore, comparing the Study Area population to that of Pennington County and discussion of environmental justice impacts to the local Study Area populations will be dismissed. Table 1 and

Table 2 contain the population data for the smallest geographic areas that fall within or intersect the local Study Area.

Table 1. Population of Minorities and Vulnerable Age Groups in the Study Area Census Blocks.

Minority ²	Total Population (Blocks)
White alone	49
Black or African American alone	0
American Indian and Alaska Native alone	5
Asian alone	0
Native Hawaiian and Other Pacific Islander alone	0
Some Other Race alone	0

¹ Neither CEQ nor EPA’s guidance define “meaningfully greater”, but leave it to the professional judgment of the NEPA analyst based on the circumstances in the area affected by the project and the surrounding community.

² Source: U.S. Census Bureau. 2010 Decennial Census, Summary File 1. American Fact Finder 2. <<http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>>. Retrieved February 14, 2014.

Two or More Races	0
Age ¹	
Children	4
Elderly	20

Table 2. Population of LEP, Low Income, and Disabled in the Project Areas.

Environmental Justice Group	Geographic Area	Project Areas EJ Population (%)	Pennington County EJ Population (%)
LEP (18 years and over) ³	Block Group 3, Census Tract 117	0 (0.0%)	941 (1.2%)
Low Income Households ⁴	Census Tract 117	324 (7.5%)	12,960 (12.8%)
Disabled ⁵	Census Tract 117	372 (8.7%)	13,829 (13.6%)

³ U.S. Census Bureau, American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B16004; generated by Kendall Vande Kamp; using American FactFinder; <<http://factfinder2.census.gov>>; (18 January 2016).

⁴ U.S. Census Bureau, American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table C17002; generated by Kendall Vande Kamp; using American FactFinder; <<http://factfinder2.census.gov>>; (18 January 2016).

⁵ U.S. Census Bureau, American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table S1810; generated by Kendall Vande Kamp; using American FactFinder; <<http://factfinder2.census.gov>>; (18 January 2016).



Figure 1. Census blocks of the local Study Area.

6.0 Minority and Low-Income Businesses/Non-Profit Agencies Identified in the Local Study Area

No businesses or non-profit groups primarily owned by or serving minority, low income, vulnerable age, disabled, or LEP populations were identified.

7.0 Potential Disproportionately High and Adverse Impacts Analysis

DOT Order 5610.2(A) and FHWA Order 6640.23A define an adverse effect 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.

In accordance with the above referenced DOT and FHWA Orders, all reasonably foreseeable adverse social, economic, and environmental effects on minority and/or low-income populations must be identified and addressed in environmental documentation as part of project planning and development. Consequently, construction and operation of the Project will be assessed for the following potential impacts:

- Bodily impairment, infirmity, illness, or death – *Bodily impairment, infirmity, or death would be unaffected.*
- Air, noise, and water pollution, and soil contamination – *The potential for air, noise, and water pollution, and soil contamination are discussed in Chapter 4 of the EIS.*
- Destruction or disruption of man-made or natural resources – *the potential affects to traditional cultural properties are discussed in Chapter 4 of the EIS.*
- Destruction or diminution of aesthetic values– *the potential affects to the aesthetic values of traditional cultural properties are discussed in Chapter 4 of the EIS.*
- Destruction or disruption of community cohesion or a community's economic vitality - *Neither community cohesion nor the community's economic vitality would be reduced or disrupted.*
- Destruction or disruption of the availability of public and private facilities and services - *The availability of public and private facilities and services would be unaffected.*
- Vibration – *Temporary impacts from vibration would be limited to the duration of the Project's construction.*
- Adverse employment effects – *Employment would be unaffected.*
- Displacement of persons, businesses, farms, or non-profit organizations - *Persons, businesses, farms, or non-profit organizations would not be displaced*
- Increased traffic congestion, isolation, exclusion, or separation of minority or low-income individuals within a given community or from the broader community - *Minority or low-income individuals would not experience increased traffic congestion, isolation, exclusion, or separation.*
- The denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities - *Benefits of DOT programs would not be denied, reduced, or delayed.*

7.1 Existing Conditions in the Local Study Area

Due to the low minority population residing in the Study Area, meaningful (or substantial) populations of minorities, low-income, vulnerable age, disabled, and LEP were not present. Therefore, discussion of existing conditions within the local Study Area from an environmental justice standpoint has been dismissed.

8.0 Potential Impacts Affecting Minority, Low-income, Vulnerable Age, Disabled, and LEP Populations

8.1 Local Study Area

Due to the low population of minorities residing in the Study Area, meaningful (or substantial) populations of minorities, low-income, vulnerable age, disabled, and LEP were not present. Therefore, discussion of short term and long term impacts within the local Study Area from an environmental justice standpoint has been dismissed.

8.2 Conclusions

- Summarize any low-income, minority, vulnerable age, disabled, or LEP populations identified in the Local Study Area.
- Summarize public involvement and any measures to provide meaningful access to public information concerning the human health or environmental impacts and soliciting input from affected minority populations and low-income populations.
- Summarize any potential disproportionately high and adverse effects of the Proposed Action.
- Summarize mitigation measures (including avoidance and minimization) and if these measures would effectively mitigate any potential disproportionately high and adverse effects identified.
- Summarize any beneficial or offsetting impacts of the Proposed Action to the community.
- **Conclusion:** FHWA can implement the Proposed Action without disproportionately high and adverse impacts on low-income, minority, vulnerable age, disabled, or LEP populations.

9.0 References

- CEQ. December 10, 1997. Environmental Justice Guidance Under the National Environmental Policy Act. <http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf>. Retrieved April 17, 2015.
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