SOUTHERN CALIFORNIA

ASSOCIATION of GOVERNMENTS

**Main Office**

818 West Seventh Street

12th Floor

Los Angeles, California

90017-3435

t (213) 236-1800

f (213) 236-1825

www.scag.ca.gov



# SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

# COMPLIANCE PROCEDURE FOR ENVIRONMENTAL JUSTICE IN THE TRANSPORTATION PLANNING PROCESS

## OCTOBER 2000

## TABLE OF CONTENTS

# Compliance Procedure for Environmental Justice in the Transportation Planning Process
## Southern California Association of Governments

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## Foreword

The public expects government agencies to execute programs and administer federal funds fairly. The law requires it, as stated in Title VI of the Civil Rights Act of 1964. This document describes the steps taken by the Southern California Association of Governments (SCAG) to fulfill these public and legal expectations of fairness in its programs.

As a government agency that receives federal funding, SCAG is responsible for implementing Title VI and conforming to federal environmental justice principles, policies, and regulations. SCAG is proud of its longstanding policy to actively ensure nondiscrimination in all of its activities. Furthermore, it is SCAG's continuing practice to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decision-making process – from early planning through implementation.

This document describes the public outreach by SCAG to assure that traditionally underrepresented groups can participate meaningfully in SCAG's processes, and the analyses that SCAG staff conducts to assure equity. It also describes SCAG's self-evaluation procedure for the outreach and analysis programs.

## I. Introduction

### *A. Background*

Title VI of the Civil Rights Act of 1964 says 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." Title VI bars intentional discrimination as well as disparate impact discrimination (i.e., a neutral policy or practice that has a disparate impact on protected groups).

Early government responses to this directive focused on issues like diversity in employment and contracting. Beginning around 1980, growing

concern over perceived disparities in the siting of undesirable facilities like landfills and industrial plants led some minority groups to allege "environmental racism" on the part of businesses and permitting authorities. By the early 1990's, a distinct "environmental justice" movement had coalesced, with Title VI as its legal underpinning.

During the same period, transportation planning agencies began to receive similar complaints about the impacts of proposed projects, such as rail alignments and freeways. One of the premier examples of this was the public controversy and litigation surrounding construction of the I-105 or Century Freeway through low-income and predominantly minority neighborhoods in central Los Angeles.

In the 1990's, the federal executive branch issued orders on environmental justice that amplified Title VI, in part by providing protections on the basis of income as well as race. These orders are further described in the next section.

Under federal Department of Transportation regulations, SCAG is the designated Metropolitan Planning Organization (MPO) for a six-county region, including the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura. As an MPO, SCAG must produce a long-term regional transportation plan every three years, and a shorter-term regional transportation improvement program every two years. In addition, the agency prepares an overall work program annually that lays out SCAG's specific tasks and expenditures for the year.

SCAG is also a COG, or Council of Governments. As such, it is governed by a Regional Council consisting of 75 local elected officials from around the six-county region. Policies, plans and programs adopted by these officials at the recommendation of staff are considered to be official SCAG policies, plans and programs.

The transportation projects that comprise SCAG's plans and programs have benefits and burdens. The adoption of plans involves tradeoffs between these benefits and burdens. SCAG uses environmental justice analyses and public outreach to help its elected officials make these decisions fairly. The analyses are designed to assure that benefits and burdens are not distributed unfairly across populations in the region.

The SCAG region is uniquely large – about the size of Kentucky – with geographically dispersed commercial and residential centers. The region includes heavily urban and entirely rural areas, as well as terrain features that make air quality goals difficult to achieve. Demographically, it is one of the most diverse regions in the country, already becoming the first to experience a white minority, and encompassing the extremes in household income. Furthermore, it is projected to continue to experience dramatic population growth, adding over 6 million people by 2025. These factors combine to make compliance with environmental justice

expectations in transportation planning a complex and formidable task for the region.

### *B. Federal Expectations*

In 1994, President Bill Clinton issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (Attachment I), in response to growing concern over environmental effects on minority and low-income communities, including human health, social, and economic effects.

The Executive Order directed all federal agencies "to make achieving environmental justice part of [their] mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of [their] programs, policies, and activities on minority populations and low-income populations."

In carrying out the Executive Order, the U.S. Department of Transportation (DOT) issued an Order on Environmental Justice in 1997 (Attachment II) which primarily reaffirmed the principles of Title VI, the National Environmental Policy Act of 1969 ("NEPA," 23 U.S.C. 109(h)) and other federal statutes that incorporate social, economic, or environmental matters as well as public health or welfare and public involvement into the environmental and transportation decision-making processes.

In 1998, the Federal Highway Administration (FHWA) issued an Order to establish policies and procedures for complying with both the Executive Order and DOT Order above (Attachment III). It states that FHWA "will rely upon existing authority to collect data and conduct research associated with environmental justice concerns, including 49 CFR 21.9(b) and 23 CFR 200.9(b)(4)."

These regulations mainly establish procedures for compliance with Title VI. Revised draft FHWA planning and environmental regulations propose clarifications and appropriate procedural and analytical approaches for more completely complying with the provisions of Title VI and the Executive Order.[1]

The President's Executive Order, the DOT Order, and FHWA Order were clarified in a Memorandum issued by the FTA and FHWA on October 7, 1999 (see Attachment IV). The Memorandum emphasized the importance of incorporating environmental justice principles during transportation project development as well as in the processes and products of transportation planning. Compliance with Title VI of the Civil Rights Act is normally evaluated by the federal Department of

[1] See Statewide Transportation Planning; Metropolitan Transportation Planning; Proposed Rule, Federal Register, Vol. 65, No. 102, Thursday, May 25, 2000 (65 FR 33922). The regulations are expected to expand the scope of environmental justice analyses to include consideration of disabled and elderly persons, but these populations are not addressed in this procedure.

Transportation during triennial certification reviews of metropolitan planning organizations such as SCAG.

The Memorandum included a set of questions to be used by FTA regional and FHWA division administrators during certification reviews. The questions make clear that DOT expects MPOs to analyze the equity of service and the distribution of the associated impacts on minority and low-income groups. In addition, MPOs are expected to reach out to traditionally underrepresented groups, even to the extent of providing financial assistance, to assure that they can participate meaningfully in the transportation planning process.

### *C. SCAG's Equity Analysis*

The federal orders direct MPOs to adhere to NEPA guidelines when assessing potential impacts and developing appropriate mitigation programs.[2] To respond to the federal directives, SCAG conducts an environmental justice evaluation for each Regional Transportation Plan (RTP), as described in this document. Federal planning regulations also apply environmental justice expectations to the funds programming process conducted every two years through the Transportation Improvement Program, or TIP. Since each TIP contains projects that are a subset of those in the RTP, and the RTP meets environmental justice expectations through the procedures described below, the TIP is also presumed to meet these expectations.

Environmental impacts of the RTP – both negative and positive – are assessed in the Environmental Impact Report (EIR) prepared under the California Environmental Quality Act (CEQA). The distribution of these impacts and benefits is assessed, in part, using definitions of "minority" and "low-income" in federal NEPA and DOT environmental justice guidance documents.[3] Figure 1 presents SCAG's environmental justice activities in diagram form; Figure 2 shows them in the context of other agency programs.

In addition, SCAG evaluates the distribution of net benefits and costs of each RTP across income categories and ethnic groups. Part of this analysis includes an assessment of the accessibility to opportunities afforded to these income and ethnic groups by the plan. Accompanying each RTP process is an extensive public outreach effort designed to

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[2] For example, the memorandum accompanying the executive order on environmental justice says, in part, that "each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act."

[3] Environmental justice guidance for NEPA was published in December 1997 by the White House Council on Environmental Quality. As of Fall 2000, there was no comparable environmental justice guidance for CEQA.

ensure that all groups are aware of SCAG's plans and have the chance to provide input.

In the process of developing its 1998 RTP, SCAG conducted an initial equity analysis focusing mainly on the question of service equity. The analysis began by quantifying the overall benefits of the RTP, primarily in terms of time saved due to reduced congestion, air quality benefits, and averted traffic injuries and deaths. The analysis also quantified costs of the RTP, including the total expenditures envisioned for the plan.

The initial analysis calculated the net present value of the net benefits of the plan for five categories of households, from lowest to highest-income. It found that, while expenditures were distributed more or less equitably, the net benefits of the plan would accrue disproportionately to the highest-income category. In fact, over 48% of the net benefits would go to households with annual incomes over $70,000. This finding was primarily due to SCAG's valuation of time saved, which, while supported by the literature, valued high wage earners' time more than low wage earners' time.

SCAG continued to refine its equity analysis to consider the RTP's impacts on accessibility. This concept was defined as the opportunity to get from Point A to a Point B with a social purpose, such as work, school, shopping, medical care, or child care, within a reasonable time and at reasonable cost, and without physical, social, or economic barriers. SCAG's refined analysis showed that the RTP would result in disproportionate accessibility gains for the region's transit users, who were largely low-income and minority. When the plan was published, EDF issued a press release praising SCAG's plan (see Attachment V).

### *D. SCAG's Environmental Justice Policy*

SCAG's policy shall conform to the DOT and FTA/FHWA policies described above. FHWA has issued proposed revised planning regulations that refer to environmental justice. When the final regulations are promulgated, SCAG will modify this procedure to accommodate any changes.

SCAG's goal is to assure that its programs and plans do not create disproportionate adverse impacts for low-income and minority people in the region. SCAG seeks to achieve, at a minimum, compliance with federal environmental justice rules and policies.

The following points comprise SCAG's environmental justice compliance policy.

- SCAG is committed to being a leader among the nation's metropolitan planning organizations in its analysis of the

environmental, health & safety, and economic impacts of its programs on minority and low-income populations.

- SCAG will provide early and meaningful public access to decision making processes to all interested parties, including minority and low-income populations.
- SCAG will seek out and consider the input of traditionally underrepresented groups, such as minority and low-income populations, in the transportation planning process.
- When disputes arise, it is SCAG's adopted policy to make the fullest possible use of alternative dispute resolution (ADR) techniques, including mediation and consensus building.[4]
- When disproportionately high and adverse impacts on minority or low-income populations are identified, SCAG will take steps to propose mitigation measures or consider alternative approaches.
- SCAG will continue to evaluate and respond as needed to environmental justice issues that arise during the implementation of regional plans.

## II. Environmental Justice Compliance Program for Planning

### *A. Public Outreach and Involvement*

Federal planning regulations, as well as the policies described in Section I, require that a wide spectrum of stakeholders have the opportunity to participate meaningfully in the planning and programming process. Minority and low-income communities are among those receiving special emphasis in these directives.

SCAG responds to these directives in various ways, depending on the nature of the activity. SCAG's current Public Participation Program was adopted by the Regional Council, SCAG's governing body, on September 2, 1993, and is available from SCAG's Government Affairs section. Generally, it requires that for each planning effort undertaken by the agency, a specific program description for public outreach be prepared.

One of the most critical and far-reaching planning functions of SCAG is the development and adoption of the Regional Transportation Plan (RTP). The following material describes in detail how SCAG approaches the public participation requirements with respect to the RTP process. A similar but somewhat less extensive process is undertaken for each Regional Transportation Improvement Program (RTIP), which programs regional transportation funding in the near term.

[4] See Attachment VI for more information about SCAG's Alternative Dispute Resolution Systems.

For the RTP, SCAG implements a comprehensive Public Participation and Outreach Program throughout its six-county region. The program is conducted by a combination of SCAG staff, consultants, and subregions, and involves the participation of SCAG elected officials whenever possible. This approach is intended to provide the public with numerous opportunities to reach decision makers with their concerns about the transportation planning process.

### 1. Purpose

The purpose of the Outreach Program is to:

- Obtain public input into the ongoing development of the RTP.
- Communicate the scope of the RTP to the region for adoption by the SCAG Regional Council.
- Maximize innovative and conventional communication strategies to provide the most effective Outreach Program possible.
- Obtain significant subregional participation (14 subregions) and communication at the local level.
- Provide ongoing communication between the public and local elected officials.
- Ensure participation by minority and low-income communities.

These steps assure that all members of the public, including low-income and minority communities, have the opportunity to participate meaningfully in the regional transportation planning process. This outcome complies with DOT and FHWA regulations implementing Title VI of the Civil Rights Act.

### 2. Communication Stages

In order to ensure meaningful public input, including from low-income and minority communities, stages of communication are implemented as follows:

- Early Input – This is public comment provided to SCAG prior to development and issue of the Draft RTP.
- Draft RTP Comments – This is public comment provided to SCAG based on the Draft RTP document. During this period, the public has an opportunity to question, comment and state positions on the transportation policy direction proposed in the Draft RTP.
- Program Environmental Impact Report (PEIR) Comment Period – The public comment period on the RTP PEIR is another opportunity for the public to officially record its position on the RTP. These public comments would center upon the

anticipated impacts and associated mitigation measures proposed for the RTP.

### 3. Communities

SCAG's outreach program is focused upon communities throughout the SCAG region. The specific audiences include the following:

- Subregions – SCAG is comprised of 14 subregions, which reflect the entire SCAG region. Each subregion is offered a separate outreach contract to support the RTP communications efforts. The SCAG communications consultant works with each participating SCAG subregion to coordinate individual RTP workshops, community dialogues, newsletters, and other local communication methods.
- Elected officials – SCAG and its subregions are comprised of local elected officials dedicated to regional governance. These elected officials represent another audience to whom the RTP Outreach Program is directed.
- Traditionally underrepresented groups and low-income populations – An effort is made to reach community groups and leaders that traditionally have not been involved with the SCAG transportation planning process. This audience is contacted through the SCAG communications consultant team as well as through subregional contacts.
- Native American tribes – A special effort is made to reach the Native American tribes located throughout the SCAG region. Again, through local communications consultants, these contacts are made and coordinated through the local subregional organizations.

### 4. Outreach Materials

In order to support the RTP Outreach Program, a set of outreach materials is developed. These materials are used to provide the public with appropriate levels of information (ranging from general to very specific) on the RTP. Outreach materials may include:

- Workshop Agenda
- Community Dialogue Agenda
- General Power Point Presentation
- Technical Power Point Presentation
- Task Force Fact Sheets

- Community Survey
- Public Comment Form

In addition to the aforementioned materials, the communications consultant also draws upon existing documentation prepared by SCAG staff (newsletters, video and other publications) as source material for the public.

All outreach material is also translated into Spanish and other languages as needed by a community area. All outreach material is appropriately tailored to match local community needs in terms of content and language.

**5. Outreach Activities**

A set of outreach activities is conducted in order to involve the public in SCAG's RTP planning process. These include:

- Community Database – This reflects the "universe" of individual contacts identified for invitation into the RTP planning process. The community database (or mailing list) is developed through each local subregion in order to adequately reflect the needs and interests of each subregion. In addition, the SCAG communications consultant supplements these lists with its own set of community contacts and a comprehensive search of local community organizations and associations (community CD directory).
- RTP Workshops – The RTP Workshops are a traditional method for public involvement; however, each workshop is planned in association with a local organization and coordinated through the subregion. This ensures that local participation is accomplished and can focus upon specific transportation issues, which are of concern to the local group. Workshops are repeated throughout all subregions and follow-up workshops can be held with groups that want to stay involved throughout the planning cycle.
- RTP Community Dialogues – More informal community dialogues are held with groups that have not traditionally been involved with SCAG or the RTP planning process. These dialogues are frequently scheduled for evening hours to allow attendance by those who work during the day. For these audiences, which typically include minority groups and low-income populations, a "tutorial" is offered on SCAG and the RTP. Generally speaking, it is necessary to explain SCAG as the regional planning organization and its function. The RTP is then further explained as the planning document for regional transportation. As the subject of transportation (mass transit,

public highways, local roads, etc.) evolves with each group, specific needs and issues are identified and recorded as input into the RTP planning process.

- Media Interviews – Local public affairs shows offer another outlet for local communication, particularly with non-English speaking audiences. Local elected officials are asked to serve as the regional spokespersons, as appropriate, for these programs, emphasizing the importance of regional planning and the need for local input.
- Electronic Town Halls – An innovative method of public outreach is the "electronic" town hall, which utilizes local videoconferencing centers. These community meetings have the advantage of involving local leaders and community members from diverse geographic locations at the same time to promote dialogue and comment on common topics. For the RTP Outreach Program, two to three electronic town halls are planned.
- RTP Online – Finally, another innovative method of public outreach is "RTP Online." This system utilizes the internet to share public information as well as to coordinate internal schedules and documents. First, all public information, surveys and RTP documentation are made available to the public online through the SCAG website. The website is promoted throughout the entire Outreach Program both orally and in writing. Second, a secure project website is utilized for the SCAG team and its subregions to communicate and coordinate on the RTP Outreach Program. Prior to any information going to the public, the internal team discusses, reviews, approves and/or prepares all material and calendars for public dissemination.

## 6. Documentation

Following each contact with the public, every comment and concern is recorded in writing regardless of source. Each comment is logged, categorized and submitted to SCAG planning staff for review and consideration. Depending upon the nature and subject of the comment, it is directed to the appropriate SCAG planning staff. All public comments are responded to at the earliest possible time, or referred to the appropriate individual or agency for handling. The status of each comment is monitored and documented on an ongoing basis.

### *B. Equity Analysis*

As described in the first section of this plan, the equity analysis has two major components: one focusing on the distribution of environmental impacts, and one involving a calculation of net benefits, including accessibility and mobility. The environmental impacts identified in the first process are monetized, to the extent possible, for inclusion in the net benefit analysis. This section describes how each of these analyses is carried out.

Inequities identified by means of these analyses are addressed if and when they are found. However, federal guidance documents do not provide unambiguous criteria for determining when a distribution of costs or benefits is inequitable. The only guideline is that a disproportionate effect occurs when a higher percentage of people experience it than are present in the region (or other geographic comparison area) as a whole. Further complicating this process for SCAG is the fact that regional demographics are moving to a situation in which "minorities," as defined by guidance, are in a numerical majority. And of course, it is difficult to fully quantify costs and benefits, often more so where benefits are concerned.

SCAG continues to develop responses to these issues. Our basic approach is to continue to devise ways to estimate the distribution of environmental impacts and net benefits across income and ethnic groups. The estimated distributions are evaluated against the appropriate social goal – an equal share for all groups, when appropriate, or a more beneficial outcome for lower-income groups where redistribution is desired.

#### 1. Environmental, Health & Safety Equity

This phase of the analysis attempts to identify environmental impacts of the Regional Transportation Plan that have the potential to affect different ethnic or income groups differently. The areas addressed by SCAG's program include noise, traffic congestion, air quality, and safety (specifically traffic safety). The following sections describe the methodology used to address each of these impact areas, beginning with the collection of demographic data.

a) Demographics

An environmental justice analysis must begin with demographic information: specifically, information on whether minority and low-income groups are present in the area affected by an agency plan. SCAG bases its analyses on the latest census data for ethnic groups and household income in the SCAG region, by census tract and by transportation analysis zone (TAZ). The agency's Forecasting section provides forecasts of ethnicity and income data by census tract and TAZ for analyses of future impacts, as needed.

(1) Ethnicity

In its 1997 Order on environmental justice, the U.S. DOT defined "minority" as follows:

> "Minority means a person who is:
>
> (1) Black (a person having origins in any of the black racial groups of Africa);
>
> (2) Hispanic (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, the Indian subcontinent, or the Pacific Islands); or
>
> (4) 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).

Ethnicity data includes all groups currently recognized by the Census Bureau, with an additional calculation of the percentage of total minority (i.e., non-white) residents in each census tract. The White House Council on Environmental Quality (CEQ) provides the following additional guidance:

> "Minority population should be identified where either: (a) the minority population of the affected area exceeds 50 percent or (b) the minority 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."

In the SCAG region, census tracts exceeding 50% non-white population are considered "minority populations" under this definition. As demographics change over time, it may be desirable to revisit this definition, particularly in the SCAG region where minorities are a sizable proportion of the population. For example, SCAG staff have projected future demographics by starting with 1990 Census data, then incorporating trends seen in more recent state-level demographic data. As of 2000, these projections place the 2020 non-white population at 69% of the total, a situation in which the 50% criterion may not be the most appropriate. To allow all types of comparisons, SCAG analyses identify impacts on both white and non-white persons, including a breakdown by the specific ethnic groups identified in the guidance.

(2) Income

According to the 1997 U.S. DOT Order on environmental justice,

"Low-income means a person whose median household income is at or below the Department of Health and Human Services Poverty Guidelines."

To meet these federal guidelines, the income data assembled includes median household income and the breakdown of household counts by income ranges ($0-4,999, $5,000-9,999, etc.). To identify "low-income" populations as defined above, SCAG uses the Department of Health & Human Services poverty guidelines as posted on their website (see http://aspe.hhs.gov/poverty/figures-fed-reg.htm). The poverty level applicable to the SCAG region is chosen on the basis of regional average household size for the census year. For example, for a regional mean of 2.98 persons – rounded to 3 – per household, the threshold would consist of the sum of the value for the first person plus two additional people. The household counts in each income range are then used to determine the number and percentage of households in each census tract below the poverty level.

In addition to complying with federal guidance, SCAG also conducts income equity analyses based on five income quintiles. A quintile, by definition, is a category into which 20 percent of the ranked population falls. For each new analysis, SCAG defines regional income quintiles based on the most recent census data on household income. Once the income quintiles are established, the incidence of benefits and costs can be estimated and compared across these income categories. In addition, the demographics of any area smaller than the region can be analyzed in terms of the percentage of its population in each of the income quintiles.

b) Noise

SCAG evaluates the projected impacts of noise resulting from each Regional Transportation Plan on minority and low-income populations in the region. This is done using the best available regional data on noise impacts from airports, roadways, and rail lines, generally based on modeling. For example, aviation noise is estimated using the Integrated Noise Model or INM.

The Federal Aviation Administration considers noise impacts over 65 dB to be significant. For aviation, the Community Noise Equivalent Level (CNEL) is an aggregate noise level that reflects the mix of aircraft and the frequency and timing of operations at airports. The Federal Highway Administration expresses noise criteria using a statistic called $L_{eq}$, which represents the aggregate hourly noise level. Outdoor highway noise criteria range from 57 dB to 72 dB, depending on the property's use, with an $L_{eq}$ of 67dB for residential areas.

For each noise source for which noise data is available, the 65 dB noise contour – the lower of the two federal residential criteria – is plotted on a map that also shows the percentage of non-white residents by census tract. A separate map shows the same noise contours with the percentage of low-income households in each census tract.

Census tracts within the 65 dB noise level are identified. The ethnicity and income levels in those census tracts are summarized and compared with regional percentages to identify disproportionate noise impacts. If the percentage of non-white or low-income persons exposed to annoying or significant noise levels in a given RTP scenario appreciably exceeds the percentage in the region, the impact is considered to be disproportionate.

c) Traffic Congestion Impacts

Improvements in traffic congestion – in the form of time savings, for example – resulting from various plan scenarios (compared to the baseline) are computed for each TAZ, both overall and by mode of transportation. These results can be disaggregated by ethnicity and by income, based on Public Use Microdata Samples of U.S. Census data that show travel mode choice and on Bureau of Labor Statistics data that show expenditures on transportation by income quintile. The results for various income and ethnic groups can then be aggregated to any geographic level – for example, Regional Statistical Areas (RSAs) – to show the overall effects of the plan.

d) Air Quality

SCAG's methodology for analyzing the distribution of air quality impacts is similar to that used in the South Coast Air Quality Management District's socioeconomic impact analysis for the 1997 Air Quality Management Plan (AQMP). Ideally, the methodology should consider exposure to both criteria pollutants and toxic air pollutants, but there is limited data on emissions of toxics, even from potentially major sources like airports.[5]

SCAG's regional transportation model produces transportation link data as an input to an emission model which estimates emissions of pollutants such as particulate matter (PM), nitrogen oxides (NOx), reactive

[5] In its 1999-2000 MATES II project, the South Coast Air Quality Management District measured and modeled air toxics concentrations arising from all emitting sources in the South Coast Air Basin, which is a sizable portion of the SCAG region. However, the concentration estimates are subject to considerable uncertainty: notably, in the magnitude of cancer risk from diesel particulates, which represents the majority of risk in the District's study. The estimates are of current pollutant levels, not those in 2025 that would be needed for SCAG's analysis. The single study is not a sufficient foundation for deriving an empirical relationship between traffic patterns and air toxics concentrations that could be used to develop reliable forecasts. Through its work to assure conformity of regional transportation plans with State Implementation Plans for air quality, SCAG supports the conversion of bus fleets, which serve largely minority and low-income populations, to clean fuels.

organic gases (ROG), and carbon monoxide (CO). Since emissions disperse and travel through the region after they are released, ambient pollutant concentrations would be the best indicator of human exposure. However, to model this dispersion is beyond the capability of the agency, and analyses of air quality impacts are therefore based only on the emission quantities predicted by SCAG's modeling.

For the air quality environmental justice analysis, the resulting emissions estimates are aggregated to a geographic level of interest to decision makers: for example, RSAs. For each RSA, the changes in emissions resulting from the baseline and plan scenarios are distributed among ethnic and income groups, according to projected demographics for the plan year. The changes can also be summed to show the overall effects of the plan for the region.

e) Public Safety

Due to the limited availability of data on public safety, SCAG analyses in this arena focus only on vehicle traffic safety: specifically, injury and accident rates.

In SCAG analyses, this subject is treated on a regional basis, and is similar to the methodology used to analyze the distribution of improvements in traffic congestion. Accident rates per vehicle mile traveled (VMT) are multiplied by TAZ-level model estimates of VMT, and disaggregated according to ethnicity and income in the same way as the congestion data. The results are then aggregated to a regional level.

**2. Socioeconomic Equity**

Socioeconomic equity can be assessed in a variety of ways. SCAG uses two indicators: mobility and accessibility, defined below.

- Mobility refers to the ease with which individuals can move about. In SCAG analyses, the mobility performance indicator is defined as total person hours of travel on highways (on a per person trip basis).
- Accessibility generally pertains to land uses. It is defined as the ease with which desired activities – e.g., employment or essential services – can be reached from any location. An accessibility performance measure used in SCAG's planning process is the percentage of work trips within a certain average travel time, say 30 minutes by car or transit.

Mobility is more readily analyzed, but accessibility may be a more valuable measure in that it allows evaluation of an entire system of transportation and land use, instead of focusing only on the transportation system. Also, accessibility is a better policy tool because more accessibility is inherently good, while more mobility is not necessarily so.

SCAG analyzes mobility by examining the following benefits and costs over the planning period of the current Regional Transportation Improvement Program (RTIP), since (unlike the RTP) its programs are known with certainty:

Benefits:

- Auto hours saved (a direct measure of mobility, valued in relation to wage rate)
- Truck hours saved
- Vehicle miles of travel (VMT) saved (auto and truck)
- Emission reductions from VMT saved
- Fatal accidents avoided
- Injury accidents avoided

Costs:

- Capital costs
- Operating and maintenance costs
- Monetization of environmental impacts (e.g., property value loss due to noise, health care costs due to air pollution)

These values are quantified based on modeling and the best current project cost estimates, and summed in a net present value calculation over the planning period. SCAG staff determines how the (positive) net present value of the plan is distributed across various ethnic groups and the income quintiles previously described..

SCAG also analyzes accessibility, defined as the percentage of all workers whose work commute is 25 minutes or less. A second aspect of the accessibility analysis evaluates opportunities (specifically, jobs, essential services, and shopping) available within reasonable travel time, distance, and cost. Households without cars generate far fewer trips than those with cars, indicating that accessibility (to any kind of opportunity) is very low for people in the SCAG region without cars. This analysis measures how the plan will improve the situation of specific socioeconomic groups – for instance, low-income African-Americans – in comparison to their representation in the region's population. The analysis also considers the incidence of taxation, a key source of revenue used to fund transportation projects, across income groups in the region.

### 3. Response to Analysis and Mitigation

If a SCAG equity analysis shows an inequitable distribution of benefits and costs or of environmental impacts, these results are presented to decision makers via the appropriate SCAG policy committees. If mitigation is needed, SCAG staff will recommend

measures for decision makers' consideration, after seeking public input appropriate to the nature of the mitigation. The details of mitigation measures, of course, will depend on the nature of the inequities found. Staff will analyze the potential costs of mitigation and include them in presentations to decision makers, as well as in overall cost analyses.

## III. SCAG's Self-Evaluation Procedure

### *A. Frequency*

At least once every three years, SCAG staff will conduct a self-evaluation of the organization's compliance with Title VI and associated regulations, federal environmental justice orders, and this procedure and policy.

### *B. Scope*

#### 1. Analysis

SCAG will obtain the services of an outside consultant with expertise in transportation planning to review the analytical methods used by SCAG staff. In addition, the consultant will review the documentation kept by staff for environmental justice analyses. The consultant will evaluate SCAG's compliance using checklists based on the regulations, orders, and this policy, and will conduct the review through a combination of staff interviews and document reviews. The consultant will provide a written report of findings so that SCAG can modify its analytical approaches as needed to assure compliance.

#### 2. Outreach

This analysis will be conducted via a customer survey of groups that participated in the public outreach process. The survey will be designed to elicit feedback about whether these groups felt they received adequate notice of SCAG's plans and sufficient opportunity to comment on them. This feedback will help SCAG staff to modify the public outreach program as needed to assure that compliance is achieved with the goals of the Title VI regulations and federal orders.

**Figure 1. SCAG's Environmental Justice Program**

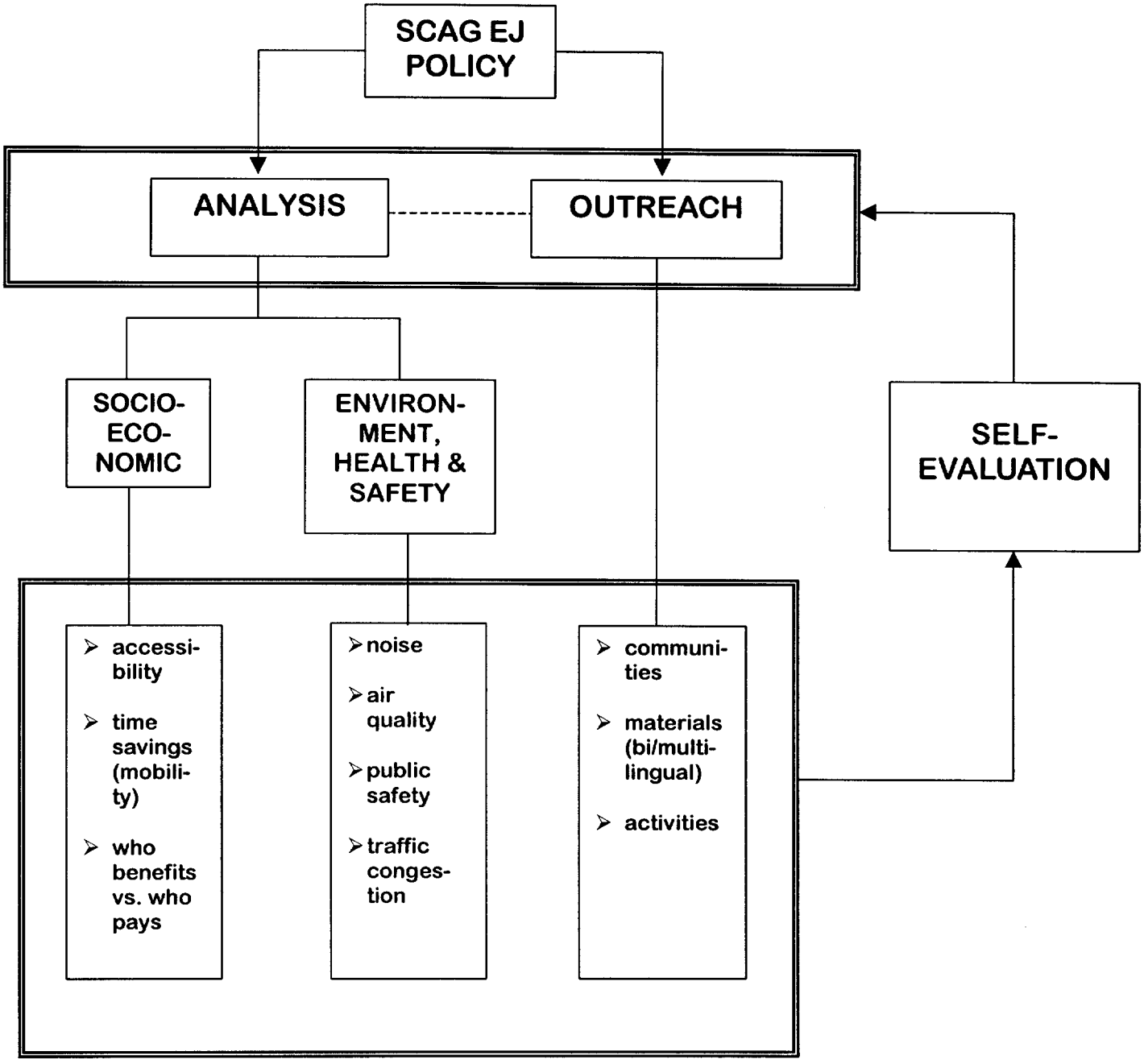
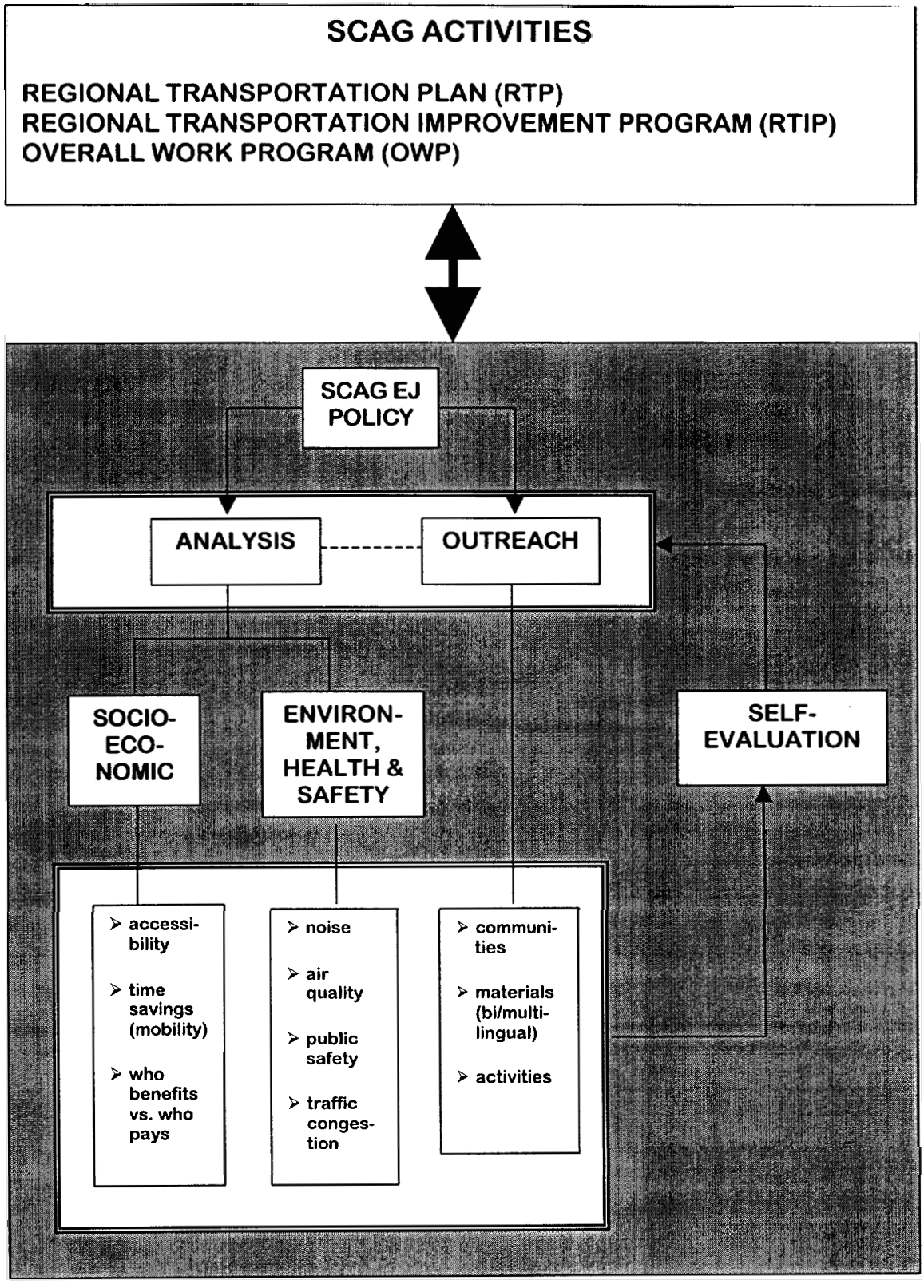


**Figure 2. SCAG's Environmental Justice Program in Context of Agency Activities**



## LIST OF ACRONYMS

ADR – Alternative Dispute Resolution
AQMP – Air Quality Management Plan
CEQ – (White House) Council on Environmental Quality
CEQA – California Environmental Quality Act
CFR – Code of Federal Regulations
CNEL – Community Noise Equivalent Level
CO – Carbon monoxide
COG – Council of Governments
dB – Decibel, a unit of noise measurement
DOT – (United States) Department of Transportation
EDF – Environmental Defense Fund
EIR – Environmental Impact Report
EJ – Environmental Justice
FHWA – (United States) Federal Highway Administration
FR – Federal Register
FTA – (United States) Federal Transit Administration
INM – Integrated Noise Model
$L_{eq}$ – Hourly equivalent noise level (defined for highway noise)
MATES – Multiple Air Toxics Exposure Study
MPO – Metropolitan Planning Organization
NEPA – National Environmental Policy Act
NOx – Oxides of nitrogen
PEIR – Program Environmental Impact Report
ROG – Reactive organic gases
RSA – Regional Statistical Area
RTP – Regional Transportation Plan
RTIP – Regional Transportation Improvement Program
SCAG – Southern California Association of Governments
SOx – Oxides of sulfur
TAZ – Transportation Analysis Zone
TIP –Transportation Improvement Program
U.S.C. – United States Code
VMT – Vehicle Miles Traveled

## LIST OF ATTACHMENTS

I. Executive Order 12898
II. DOT EJ Order
III. FHWA EJ Order
IV. FTA/FHWA Memorandum, "Implementing Title VI Requirements in Metropolitan and Statewide Planning," October 7, 1999.
V. Environmental Defense Fund News Release, "SCAG Plan to Improve Transit Service for Low Income People of Color," April 17, 1998.
VI. "Alternative Dispute Resolution Systems," Submitted by the Western Justice Center to the Southern California Association of Governments, July 1995.

# ATTACHMENT I

**Environmental Guidebook TAB 4**

THE WHITE HOUSE

WASHINGTON

**February 11, 1994**

MEMORANDUM FOR THE HEADS OF ALL DEPARTMENTS AND AGENCIES

SUBJECT: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Today I have issued an Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. That order is designed to focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice. That order is also intended to promote nondiscrimination in Federal programs substantially affecting human health and the environment, and to provide minority communities and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment.

The purpose of this separate memorandum is to underscore certain provision of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment. Environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and-low-income communities. Application of these existing statutory provisions is an important part of this Administration's efforts to prevent those minority communities and low-income communities from being subject to disproportionately high and adverse environmental effects.

I am therefore today directing that all department and agency heads take appropriate and necessary steps to ensure that the following specific directives are implemented immediately: In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.

Each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. section 4321 et esq. Mitigation measures outlined or analyzed in an environmental assessment, environmental impact statement, or record of decision, whenever feasible, should address significant and adverse environmental effects of proposed Federal actions on minority communities and low-income communities.

Each Federal agency shall provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of meetings, crucial documents, and notices.

The Environmental Protection Agency, when reviewing environmental effects of proposed action of other Federal agencies under section 309 of the Clean Air Act, 42 U.S.C. section 7609, shall ensure that the involved agency has fully analyzed environmental effects on minority communities and low-income communities, including human health, social, and economic effects.

Each Federal agency shall ensure that the public, including minority communities and low-income communities, has adequate access to public information relating to human health or environmental planning, regulations, and enforcement when required under the Freedom of Information Act, 5 U.S.C. section 552, the Sunshine Act, 5 U.S.C. section 552b, and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11044.

This memorandum is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

**EXECUTIVE ORDER 12898 of Feb. 11, 1994 (59 F.R. 7629, Feb. 16, 1994)**

**FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1-1. Implementation.**

**1-101.** *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall 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 in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

**1-102.** *Creation of an Interagency Working Group on Environmental Justice.*
(a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice (" Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services, (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 33 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

**1-103.** *Development of Agency Strategies.* (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs,

policies, and activities on minority populations and low-income populations.The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

**1-104.** *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1103(e) of this order.

**Sec. 2-2. Federal Agency Responsibilities for Federal Programs.** Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

**Sec. 3-3. Research, Data Collection, and Analysis.**

**3-301.** *Human Health and Environmental Research and Analysis.* (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

**3-302.** *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right to Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

**Sec. 4-4. Subsistence Consumption of Fish and Wildlife.**

**4-401.** *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

**4-402.** *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

**Sec. 5-5. Public Participation and Access to Information.** (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) 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.

(c) 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.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

**Section 6-6. General Provisions.**

**6-601.** *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

**6-602.** *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

**6-603.** *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

**6-604.** *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

**6-605.** *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

**6-606.***Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally recognized Indian Tribes.

**6-607.** *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

**6-608.** *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

**6-609.** *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

/s/ William J. Clinton
THE WHITE HOUSE
February 11, 1994.

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**TAB 4**

# ATTACHMENT II

**DEPARTMENT OF TRANSPORTATION**
**Office of the Secretary**
**[OST Docket No. OST-95-141** (50125)]

Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations

**AGENCY:** Office of the Secretary: Departmental Office of Civil Rights and Office of the Assistant Secretary for Transportation Policy; Department of Transportation (DOT).
**ACTION:** Notice of final DOT Order on environmental justice.

**SUMMARY:** The Department of Transportation is issuing its final DOT Order, which will be used by DOT to comply with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The Order generally describes the process that the Office of the Secretary and each Operating Administration will use to incorporate environmental justice principles (as embodied in the Executive Order) into existing programs, policies, and activities. The Order provides that the Office of the Secretary and each Operating Administration within DOT will develop specific procedures to incorporate the goals of the DOT Order and the Executive Order with the programs, policies and activities which they administer or implement.

**FOR FURTHER INFORMATION CONTACT:** Ira Laster Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, (202) 366-4859, or Marc Brenman, Departmental Office of Civil Rights, (202) 366-1119, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

**SUPPLEMENTARY INFORMATION:** Executive Order 12898, as well as the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all departments and agencies), are intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects of their policies, programs and activities on minority populations and low-income populations.

The DOT Environmental Justice Order is a key component of DOT's June 21, 1995 Environmental Justice Strategy (60 F.R. 33896). The Order sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into their operations. This is to be done through a process developed within the framework of existing requirements, primarily the National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and other DOT applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; and public involvement. The Order is an internal directive to the various components of DOT and does not create any right to judicial review for compliance or noncompliance with its provisions.

In order to provide an opportunity for public input, a proposed version of this Order was published for comment on June 29, 1995 (60 F.R. 33899). A total of 30 written comments were received. Fifteen comments were received from state transportation or highway agencies, representing 20 state agencies (one letter was signed by ten state agencies, but four of those also sent

individual comments). The other 15 comments included four from transit agencies, four from national organizations, two each from local governments, metropolitan planning organizations, and citizens objecting to one particular project, and one from a professional association.

Most of the comments from the state agencies suggested that the proposed Order would duplicate existing processes and impose additional burdens on the state agencies, and urged that greater flexibility be granted to states.

The DOT Order reinforces considerations already embodied in NEPA and Title VI, and the final version has been revised to make this clearer. It is intended to insure that a process for the assessment of environmental justice factors becomes common practice in the application of those, and related, statutes.

Many other comments suggested ways in which the Order might be clarified or simplified, or addressed specific details of individual agency implementation. As this Order is only intended to provide general guidance to all DOT components, detailed comments on each agency's implementation are premature, and should be made during opportunities for public input on agency implementation (para. 5 of the Order).

Several commenters suggested greater reliance on existing procedures, particularly those implementing NEPA.

One commenter noted, "Over the past number of years we have seen rules and laws initiated with laudable intent, only to be slowly transformed into bureaucratic mazes only dimly related to their original purpose."

The Department does not intend that this Order be the first step in creating a new set of requirements. The objective of this Order is the development of a process that integrates the existing statutory and regulatory requirements in a manner that helps ensure that the interests and well being of minority populations and low-income populations are considered and addressed during transportation decision making.

To further advance this objective, explanatory information has been provided in this preamble and several changes have been made in the Order. Most notably:

- Further clarification has been provided concerning the use of existing NEPA, Title VI, URA and ISTEA planning requirements and procedures to satisfy the objectives of Executive Order 12898.

- The application of the Order to ongoing activities is discussed in this preamble.

- The Order has been modified to further clarify the relationship and use of NEPA and Title VI in implementing the Executive Order.

Further, in developing and reviewing implementing procedures, described in paragraph 5a to comply with Executive Order 12898, the emphasis continues to be on the actual implementation of

NEPA, Title VI, the URA and ISTEA planning requirements so as to prevent disproportionately high and adverse human health or environmental effects of DOT's programs, policies and activities on minority populations and low-income populations.

One of the primary issues raised in the proposed Order concerned the actions that would be taken if a disproportionately high and adverse human health or environmental effect on minority populations or low-income populations is identified. The proposed Order set forth three options. A variety of comments were received on this issue, both for and against the various options.

The final Order adopts a modified version of Option B from the proposed Order. While Option B implements a new process for addressing disproportionately high and adverse effects, the Department believes that Option B is consistent with existing law and best accomplishes the objectives of the Executive Order. Option B (now incorporated in paragraphs 8a, 8b and 8c of the final Order) provides that disproportionate impacts on low-income and minority populations are to be avoided, if practicable, that is, unless avoiding such disproportionate impacts would result in significant adverse impacts on other important social, economic, or environmental resources. Further, populations protected by Title VI are covered by the additional provisions of paragraph 8b. Three commenters expressed concern and uncertainty as to the implementation of paragraph 6b(1) of Option B as proposed, that provided for an agreement with populations protected by Title VI. DOT agreed with the comments and, accordingly, that paragraph has been deleted from the final Order.

Several commenters asked about the effective date of this Order. In particular they wanted to know whether it applies to ongoing projects. The effective date of the Order is the date of its issuance. However, to the extent that the Order clarifies existing requirements that ensure environmental justice principles are considered and addressed before final transportation decisions are made, its purposes already should be reflected in actions relating to ongoing projects.

Several commenters recommended that insignificant or de minimis actions not be covered by this Order. It is noted that the definition of "programs, policies and/or activities" in Section 1f of the Appendix does not apply to those actions that do not affect human health or the environment. Other actions that have insignificant effects on human health or the environment can be excluded from coverage by a DOT component.

One commenter suggested that this Order might be inconsistent with the Supreme Court's decision in Adarand Constructors v. Peña. DOT has concluded that, since the purpose of this Order is unrelated to the types of programs which were

the subject of Adarand, this Order is not affected by the Adarand decision.

Dated: February 3, 1997

Federico F. Peña
Secretary of Transportation

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

ORDER

SUBJECT: DEPARTMENT OF TRANSPORTATION ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

1. PURPOSE AND AUTHORITY.

a. This Order establishes procedures for the Department of Transportation (DOT) to use in complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994. Relevant definitions are in the Appendix.

b. Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT to implement the Executive Order, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6-609 of Executive Order 12898, this Order is limited to improving the internal management of the Department and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its operating administrations, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its officers or any other person.

2. SCOPE. This Order applies to the Office of the Secretary, the United States Coast Guard, DOT's operating administrations, and all other DOT components.

3. EFFECTIVE DATE. This Order is effective upon its date of issuance.

4. POLICY.

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering

environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended,(URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decisionmaking; social, economic, or environmental matters; public health; and public involvement.

b. In complying with this Order, DOT will rely upon existing authority to collect data and conduct research associated with environmental justice concerns. To the extent permitted by existing law, and whenever practical and appropriate to assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. **INTEGRATION WITH EXISTING OPERATIONS.**

a. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance. Within six months of the date of this Order each operating administration will provide a report to the Assistant Secretary for Transportation Policy and the Director of the Departmental Office of Civil Rights describing the procedures it has developed to integrate, or how it is integrating, the processes and objectives set forth in this Order into its operations.

b. In undertaking the integration with existing operations described in paragraph 5a, DOT shall observe the following principles:

(1) Planning and programming activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

(2) Steps shall be taken to provide the public, including members of minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.

c. Future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of future DOT policy statements and proposals for legislation which may affect human health or the environment will include consideration of the provisions of Executive Order 12898 and this Order.

## 6. ONGOING DOT RESPONSIBILITY

Compliance with Executive Order 12898 is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order and Executive Order 12898. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.

## 7. PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

a. Under Title VI, each Federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute affects every program area in DOT. Consequently, DOT managers and staff must administer their programs in a manner to assure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination by any program or activity of DOT because of race, color, or national origin.

b. It is DOT policy to actively administer and monitor its operations and decision making to assure that nondiscrimination is an integral part of its programs, policies, and activities. DOT currently administers policies, programs, and activities which are subject to the requirements of NEPA, Title VI, URA, ISTEA and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate and practical:

- population served and/or affected by race, color or national origin, and income level;

- proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin;

- present and proposed membership by race, color, or national origin, in any planning or advisory body which is part of the program.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of DOT programs, policies and activities,

(2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies and activities, where permitted by law and consistent with the Executive Order,

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

8. **ACTIONS TO ADDRESS DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS.**

a. Following the guidance set forth in this Order and its Appendix, the head of each Operating Administration and the responsible officials for other DOT components shall determine whether programs, policies, and activities for which they are responsible will have an adverse impact on minority and low-income populations and whether that adverse impact will be disproportionately high.

b. In making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be taken and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. The Operating Administrators and other responsible DOT officials will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that

would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. Operating Administrators and other responsible DOT officials will also ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on populations protected by Title VI("protected populations") will only be carried out if

(1) a substantial need for the program, policy or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph (1) above), either (i) would have other adverse social, economic, environmental or human health impacts that are more severe, or (ii) would involve increased costs of extraordinary magnitude.

e. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT programs, policies, or activities under these authorities. Nothing in this Order adds to or reduces existing Title VI due process mechanisms.

f. The findings, determinations and/or demonstration made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other NEPA document prepared for the program, policy or activity, or in other appropriate planning or program documentation.

**APPENDIX**

1. **DEFINITIONS** The following terms where used in this Order shall have the following meanings*:

a. **DOT** means the Office of the Secretary, DOT operating administrations, and all other DOT components.

b. **Low-Income** means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

c. **Minority** means a person who is:

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

(2) Hispanic (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, the Indian subcontinent, or the Pacific Islands); or

(4) 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).

d. **Low-Income Population** means 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 DOT program, policy or activity.

e. **Minority Population** means 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 DOT program, policy or activity.

f. **Adverse effects** means 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; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

g. **Disproportionately high and adverse effect on minority and low-income populations** means an adverse effect that:

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

(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 non-minority population and/or non-low-income population.

h. **Programs, policies, and/or activities** means all projects, programs, policies, and activities that affect human health or the environment, and which are undertaken or approved by DOT. These include, but are not limited to, permits, licenses, and

financial assistance provided by DOT. Interrelated projects within a system may be considered to be a single project, program, policy or activity for purposes of this Order.

I. **Regulations and guidance** means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

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*These definitions are intended to be consistent with the draft definitions for E.O. 12898 that have been issued by the Council on Environmental Quality and the Environmental Protection Agency. To the extent that these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the DOT program.

Federico F. Peña
Secretary of Transportation

# ATTACHMENT III

**U.S. Department of Transportation**
**Federal Highway Administration**

# FHWA ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

**6640.23**
**December 2, 1998**

Par.



## 1. PURPOSE AND AUTHORITY.

a. This Order establishes policies and procedures for the Federal Highway Administration (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.

b. EO 12898 requires Federal agencies to achieve environmental justice by identifying and addressing disproportionately high and adverse human health and environmental effects, including the interrelated social and economic effects of their programs, policies, and activities on minority populations and low-income populations in the United States. These requirements are to be carried out to the greatest extent practicable, consistent with applicable statutes and the National Performance Review. Compliance with this FHWA Order is a key element in the environmental justice strategy adopted by FHWA to implement EO 12898, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6-609 of Executive Order 12898 and the Department of Transportation Order on Environmental Justice (DOT Order 5610.2) dated April 15, 1997, this Order is limited to improving the internal management of the Agency and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Agency, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Agency, its operating administrations, its officers, or any other person.

## 2. DEFINITIONS

The following terms, where used in this Order, shall have the following meanings[1]:

a. **FHWA** means the Federal Highway Administration as a whole and one or more of its individual components;

b. **Low-Income** means a household income at or below the Department of Health and Human Services poverty guidelines;

c. **Minority** means a person who is:

(1) Black (having origins in any of the black racial groups of Africa);

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

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

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

d. **Low-Income Population** means 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 would be similarly affected by a proposed FHWA program, policy, or activity.

e. **Minority Population** means 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.

f. **Adverse Effects** means 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; and the denial of, reduction in, or significant delay in the receipt of, benefits of FHWA programs, policies, or activities.

g. **Disproportionately High and Adverse Effect on Minority and Low-Income Populations** means an adverse effect that:

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

(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 nonlow- income population.

h. **Programs, Policies, and/or Activities** means all projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded, or approved by FHWA. These include, but are not limited to, permits, licenses, and financial assistance provided by FHWA. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of this Order.

i. **Regulations and Guidance** means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by FHWA.

3. **POLICY**

a. It is FHWA's longstanding policy to actively ensure nondiscrimination in Federally funded activities. Furthermore, it is FHWA's continuing policy to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decisionmaking process--from early planning through implementation.

Should the potential for discrimination be discovered, action to eliminate the potential shall be taken.

b. EO 12898, DOT Order 5610.2, and this Order are primarily a reaffirmation of the principles of Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, the National Environmental Policy Act (NEPA), 23 U.S.C. 109(h) and other Federal environmental laws, emphasizing the incorporation of those provisions with the environmental and transportation decisionmaking processes.

Under Title VI, each Federal agency is required to ensure that no person on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute applies to every program area in FHWA. Under EO 12898, each Federal agency must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

c. FHWA will implement the principles of the DOT Order 5610.2 and EO 12898 by incorporating Environmental Justice principles in all FHWA programs, policies, and activities within the framework of existing laws, regulations, and guidance.

d. In complying with this Order, FHWA will rely upon existing authorities to collect necessary data and conduct research associated with environmental justice concerns, including 49 CFR 21.9(b) and 23 CFR 200.9 (b)(4).

## 4. INTEGRATING ENVIRONMENTAL JUSTICE PRINCIPLES WITH EXISTING OPERATIONS

a. The principles outlined in this Order are required to be integrated in existing operations.

b. Future rulemaking activities undertaken, and the development of any future guidance or procedures for FHWA programs, policies, or activities that affect human health or the environment, shall explicitly address compliance with EO 12898 and this Order.

c. The formulation of future FHWA policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of EO 12898 and this Order.

## 5. PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

a. Under Title VI, FHWA managers and staff must administer their programs in a manner to ensure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination under any program or activity of FHWA because of race, color, or national origin. Under EO 12898, FHWA managers and staff must administer their programs to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of FHWA programs, policies, and activities on minority populations and low-income populations.

b. FHWA currently administers policies, programs, and activities that are subject to the requirements of NEPA, Title VI, the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act), Title 23 of the United States Code and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered to identify the risk of discrimination, early in the development of FHWA's programs, policies, and activities so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate, and practical:

(1) population served and/or affected by race, or national origin, and income level;

(2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, or national origin; and,

(3) present and proposed membership by race, or national origin, in any planning or advisory body that is part of the program.

c. FHWA will administer its governing statutes so as to identify and avoid discrimination and disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of FHWA programs, policies, and activities; and

(2) proposing measures to avoid, minimize, and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by FHWA programs, policies, and activities, where permitted by law and consistent with EO 12898; and

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with EO 12898; and

(4) providing public involvement opportunities and considering the results thereof, including providing meaningful access to public information concerning the human health or environmental impacts and soliciting input from affected minority and low-income populations in considering alternatives during the planning and development of alternatives and decisions.

d. **ACTIONS TO ADDRESS DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS**

a. Following the guidance set forth in this Order, FHWA managers and staff shall ensure that FHWA programs, policies, and activities for which they are responsible do not have a disproportionately high and adverse effect on minority or low-income populations.

b. When determining whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations, FHWA managers and staff should take into account mitigation and enhancements measures and potential offsetting benefits to the affected minority or low-income populations. Other factors that may be taken into account include design, comparative impacts, and the relevant number of similar existing system elements in nonminority and nonlow-income areas.

c. FHWA managers and staff will ensure that the programs, policies, and activities that will have disproportionately high and adverse effects on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. FHWA managers and staff will also ensure that any of their respective programs, policies or activities that have the potential for disproportionately high and adverse effects on populations protected by Title VI ("protected populations") will only be carried out if:

(1) a substantial need for the program, policy or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations have either:

(a) adverse social, economic, environmental, or human health impacts that are more severe; or

(b) would involve increased costs of an extraordinary magnitude.

e. Any relevant finding identified during the implementation of this Order must be included in the planning or NEPA documentation that is prepared for the appropriate program, policy, or activity.

f. Environmental and civil rights statutes provide opportunities to address the environmental effects on minority populations and low-income populations. Under Title VI, 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. Therefore, any member of a protected class under Title VI may file a complaint with the FHWA Office of Civil Rights, Attention HCR-20, alleging that he or she was subjected to disproportionately high and adverse health or environmental effects. FHWA will then process the allegation in a manner consistent with the attached operations flowchart.

Original signed by:

Kenneth R. Wykle
Federal Highway Administrator

Attachment - Note: This is a PDF file.

[1]These definitions are intended to be consistent with the draft definitions for EO 12898 that have been issued by the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA). To the extent that these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the FHWA program.

# ATTACHMENT IV

U.S. Department of Transportation

# Memorandum

**Federal Highway Administration**
**Federal Transit Administration**

Subject: ACTION: Implementing Title VI Requirements in Metropolitan and Statewide Planning

Date: October 7, 1999

From: (Original signed by)
Gordon J. Linton
Administrator, FTA
Kenneth R. Wykle
Administrator, FHWA

Reply to Attn. of: TOA-1/HEPH 1

To: FTA Regional Administrators
FHWA Division Administrators

## Background

The purpose of this memorandum is to issue clarification to you in implementing Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d-1) and related regulations, The President's Executive Order on Environmental Justice, the U.S. DOT Order, and the FHWA Order.

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." Title VI bars intentional discrimination as well as disparate impact discrimination (i.e., a neutral policy or practice that has a disparate impact on protected groups).

The Environmental Justice (EJ) Orders further amplify Title VI by providing that "each Federal agency shall 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."

Increasingly, concerns for compliance with provisions of Title VI and the EJ Orders have been raised by citizens and advocacy groups with regard to broad patterns of transportation investment and impact considered in metropolitan and statewide planning. While Title VI and EJ concerns have most often been raised during project development, it is important to recognize that the law also applies equally to the processes and products of planning. The appropriate time for FTA and FHWA to ensure compliance with Title VI in the planning process is during the planning certification reviews conducted for Transportation Management Areas (TMAs) and through the statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP).

This memorandum serves as clarification pending issuance of revised planning and environmental regulations.

Requested Action

We request that during certification reviews you raise questions that serve to substantiate metropolitan planning organization (MPO) self-certification of Title VI compliance. Suggested questions are attached. Also attached are a series of actions that could be taken to support Title VI compliance and EJ goals, improve planning performance, and minimize the potential for subsequent corrective action and complaint.

Statewide planning is also subject to the same Title VI legislative requirements as the metropolitan planning process. The FHWA division offices, jointly with FTA regional offices, should review and document Title VI compliance when making the TEA-21 required finding that STIP development and the overall planning process is consistent with the planning requirements.

In part, the purpose of asking the questions attached to this memorandum is to review the basis upon which the annual self-certification of compliance with Title VI is made. The metropolitan planning certification reviews in TMAs and STIP findings offer an opportunity to FHWA and FTA staff to verify the procedures and analytical foundation upon which the self-certification is made. If it becomes evident that the self certification was not adequately supported, a corrective action is to be included in their certification report to rectify the deficiency.

The FHWA's and FTA's Division and Regional Administrators should involve their respective civil rights staffs in the EJ and Title VI portions of the metropolitan planning certification reviews in TMAs and statewide planning findings.

Forthcoming Planning Regulations

As you know, FHWA and FTA are preparing to revise the planning (23 CFR 450 and 49 CFR 619) and environmental (23 CFR 771 and 49 CFR 622) regulations. In these rulemakings and subsequent documents, we will propose clarifications and appropriate procedural and analytical approaches for more completely complying with the provisions of Title VI and the Executive Order on Environmental Justice. Specifically, the proposals will focus on public involvement strategies for minority and low-income groups and assessment of the distribution of benefits and adverse environmental impacts at both the plan and project level.

If you have questions on metropolitan applications of this memorandum, please contact Sheldon M. Edner, Team Leader, Metropolitan Planing and Policies, FHWA (202) 366-4066 or Charlie Goodman, Division Chief, Metropolitan Planning, FTA (202) 366-1944. On statewide applications, please contact Dee Spann, Team Leader, Statewide Planning, FHWA (202) 366-4086 or Paul Verchinski, Chief, Statewide Planning, FTA (202) 366-1626.

2 Attachments

cc:
FHWA Resource Center Directors
FHWA CBU and SBU Leaders
TOA-1,2
TCR-1
FHWA/FTA Metro Offices

# Assessing Title VI Capability – Review Questions
## September 1999

Discussion of these important issues will be held as part of planning certification reviews, and the discussion will be held as part of statewide planning findings that are made as part of Statewide Transportation Improvement Program (STIP) approval. These questions are offered as an aid to reviewing and verifying compliance with Title VI requirements:

1. Overall Strategies and Goals:

   - What strategies and efforts has the planning process developed for ensuring, demonstrating, and substantiating compliance with Title VI? What measures have been used to verify that the multi-modal system access and mobility performance improvements included in the plan and Transportation Improvement Program (TIP) or STIP, and the underlying planning process, comply with Title VI?

   - Has the planning process developed a demographic profile of the metropolitan planning area or State that includes identification of the locations of socio-economic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions?

   - Does the planning process seek to identify the needs of low-income and minority populations? Does the planning process seek to utilize demographic information to examine the distributions across these groups of the benefits and burdens of the transportation investments included in the plan and TIP (or STIP)? What methods are used to identify imbalances?

2. Service Equity:

   - Does the planning process have an analytical process in place for assessing the regional benefits and burdens of transportation system investments for different socio-economic groups? Does it have a data collection process to support the analysis effort? Does this analytical process seek to assess the benefit and impact distributions of the investments included in the plan and TIP (or STIP)?

   - How does the planning process respond to the analyses produced? Imbalances identified?

3. Public Involvement:

   - Does the public involvement process have an identified strategy for engaging minority and low-income populations in transportation decisionmaking? What strategies, if any, have been implemented to reduce participation barriers for such populations? Has their effectiveness been evaluated?

- Has public involvement in the planning process been routinely evaluated as required by regulation? Have efforts been undertaken to improve performance, especially with regard to low-income and minority populations? Have organizations representing low-income and minority populations been consulted as part of this evaluation? Have their concerns been considered?

- What efforts have been made to engage low-income and minority populations in the certification review public outreach effort? Does the public outreach effort utilize media (such as print, television, radio, etc.) targeted to low-income or minority populations? What issues were raised, how are their concerns documented, and how do they reflect on the performance of the planning process in relation to Title VI requirements?

- What mechanisms are in place to ensure that issues and concerns raised by low-income and minority populations are appropriately considered in the decisionmaking process? Is there evidence that these concerns have been appropriately considered? Has the metropolitan planning organization (MPO) or State DOT made funds available to local organizations that represent low-income and minority populations to enable their participation in planning processes?

Guidance:

## Assessing Title VI Capability – FTA/FHWA Actions

Environmental Justice in State Planning and Research (SPR) and Unified Planning Work Programs (UPWPs)

At a minimum, FHWA and FTA should review with States, MPOs, and transit operators how Title VI is addressed as part of their public involvement and plan development processes. Since there is likely to be the need for some upgrading of activity in this area, a work element to assess and develop improved strategies for reaching minority and low-income groups through public involvement efforts and to begin developing or enhancing analytical capability for assessing impact distributions should be considered in upcoming SPRs and UPWPs.

Review Public Involvement Efforts During Certification Reviews for Title VI Consistency

In many areas, room for improvement exists in public involvement processes regarding engagement of minority and low-income individuals. It is appropriate to review the extent to which MPOs and States have made proactive efforts to engage these groups through their public involvement programs. Further, FHWA and FTA should review the record of complaints or concerns raised regarding Title VI in the planning process under review. During the on-site element of the metropolitan certification review, the public involvement process, now required by statute, should make a special effort to engage and involve representatives of minority and low-income groups to hear their views regarding changes to and performance of the planning process.

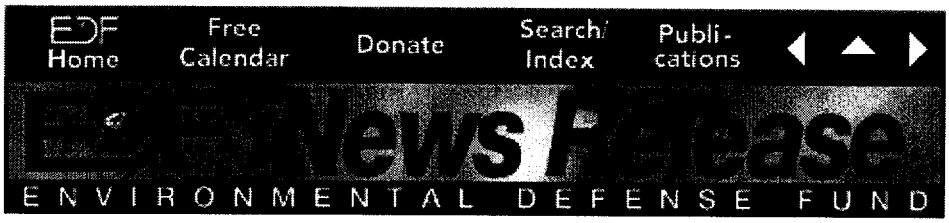
Options for FHWA/FTA Metropolitan Certification Review Actions

(1) FHWA and FTA should seek to determine what, if any, processes are in place to assess the distribution of impacts on different socio-economic groups for the investments identified in the transportation plan and TIP. If the planning process has no such capability in place, there needs to be further investigation as to how the MPO is able to annually self-certify its compliance with the provisions of Title VI.

(2) If no documented process exists for assessing the distributional effects of the transportation investments in the region, the planning certification report should include a corrective action directing the development of a process for accomplishing this end. This will serve to put the process on notice regarding existing requirements and prepare it for future regulatory requirements. If a minimal effort is in place, FHWA and FTA should encourage the planning process participants to become familiar with the provisions of the Executive Order on Environmental Justice and identify needed improvements based on the Order.

(3) If no formal evaluation of the public involvement process has been conducted per the requirement for periodic assessment (see 23 CFR 450.316(b)), a corrective action to conduct an evaluation should be included in the certification report. The formal evaluation should, at a minimum, assess the effectiveness of efforts to engage minority and low-income populations through the local public involvement process. If the MPO or State has conducted a public involvement evaluation, FHWA and FTA should determine whether the involvement of minorities and low-income individuals has been addressed and what strengths and deficiencies were identified. Recommended improvements or corrective actions for the certification report or STIP findings can be tied to the results of the MPO's or State's public involvement evaluation.

# ATTACHMENT V




**April 17, 1998**

# SCAG Plan To Improve Transit Service For Low Income People Of Color

***EDF Applauds Help For The Transit Dependent And For Low Income People Of Color***

The Environmental Defense Fund (EDF) praised the Southern California Association of Governments (SCAG) today for voting to improve transportation for the transit dependent and low income people of color in its 20-year regional transportation plan.

SCAG, a regional government organization, took steps in the plan to make transportation fair and equal to all Southern California residents. The organization voted to set goals in the plan to meet the requirements of Title VI of the Civil Rights Act of 1964, which prohibits adverse disparate impacts against people of color as well as intentional discrimination. SCAG is also committed to improving bus service that will help low income communities of color. SCAG, an association of city and county governments in a six-county region in Southern California, prepares regional policies and action plans that address issues that cross local boundaries, such as transportation and air quality.

"Low income and minority communities do not have adequate access to jobs, loved ones, doctors, food stores, churches, parks and other basic needs of life that many of us take for granted," said EDF senior attorney, Robert Garc¡a. "SCAG has brought transportation equity to the planning table and the Environmental Defense Fund is committed to working with SCAG to improve transportation for communities of color and the transit dependent."

"By including transportation equity as a basic part of this plan, SCAG is taking a lead role in the nation by bringing this very important issue to the forefront of discussion," said Tom Rubin, former Chief Financial Officer of the Southern California Rapid Transit District.

"Individuals living in poverty in Southern California represent 13% of the population, but according to SCAG, receive only 4.5% of the benefits of the transportation system," said Michael Cameron, EDF Transportation Program manager. "To successfully get from welfare to work, people need better transit service. SCAG has recognized the problem of inequitable transportation and is trying to right the course by improving bus service and funding transit alternatives, such as shuttle services."

The Environmental Defense Fund, a leading, national, NY-based nonprofit organization, represents 300,000 members. EDF links science, economics,

and law to create innovative, economically viable solutions to today's environmental problems.

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**EDF Membership 1-800-684-3322**
**Contact-EDF@edf.org**

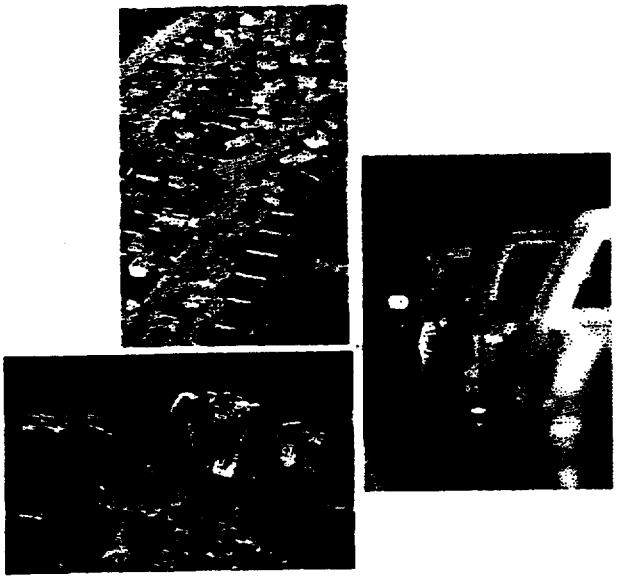
**257 Park Avenue South, New York, NY 10010**

# ATTACHMENT VI

Promoting the use of consensus building and alternative dispute resolution in southern California.

# Alternative Dispute Resolution Systems

Submitted by the Western Justice Center to the Southern California Association of Governments



SOUTHERN CALIFORNIA ASSOCIATION of GOVERNMENTS

July 1995

**Project Team:**

**Alana Knaster,** President, *Mediation Institute*
**Peter Robinson,** Associate Director, *Pepperdine Institute for Dispute Resolution*
**Lauren Burton,** Executive Director, *Dispute Resolution Services*

**Helene Smookler,** SCAG Legal Counsel

This study was funded by a grant from the Haynes Foundation

Mission Statement of the Southern California Association of Governments

"To enhance the quality of life of all southern Californians
by working in partnership with all levels of government,
the business sector and the community at large
to meet regional challenges and to resolve regional differences."

# Dispute Resolution Project Overview

In response to the growing number of disputes over federally mandated programs as well as the gridlock in the siting of critical public works and infrastructure, the Regional Council of the Southern California Association of Governments (SCAG) entered into a partnership with the Western Justice Center Foundation (WJC) in Pasadena to promote the increased use of alternative dispute resolution (ADR) for problem solving in the region. The Haynes Foundation provided funding for the design phase of the SCAG ADR Project.

The WJC Project Team interviewed over fifty local elected officials and staff to obtain input regarding what issues might lend themselves to the use of ADR techniques including mediation and consensus building. In addition, the Team conducted a careful examination of dispute resolution systems around the country to determine what approaches have been most effective in addressing regional planning issues.

Regional leaders agreed that a more expeditious approach for problem solving is needed in southern California. They cited transportation planning, and competition for tax dollars with neighboring jurisdictions as the key dispute arenas that might benefit from the implementation of ADR systems. Based upon the research effort and the interviews, the Team developed a proposal for the implementation of four dispute resolution systems.

System 1 (ADR for SCAG Mandates and Authorities) establishes formal procedures for initiating and conducting dispute resolution proceedings for matters in which SCAG has a statutory role in resolving disputes among members and for conflicts between SCAG and a local government agency over a regional planning or implementation issue.

System 2 (Policy and Regulatory Consensus Building) promotes the inclusion of broad based regional interest groups in the development of key regional policies, such as TCMs, using a facilitated consensus building process.

System 3 (Protocol for Interjurisdictional Disputes) provides a referral mechanism and technical resources for resolving disputes between members in which SCAG does not play a role. Local jurisdictions are encouraged to confer in the formative stages of a conflict with assistance from subregional organizations serving as the neutral facilitator or mediator.

System 4 (Mediation of Land Use and CEQA Litigation) implements SB 517, "The Land Use and Environmental Dispute Mediation Act" by making a roster of experienced neutral mediators available to the courts and to litigants for mediated negotiations. SCAG and the subregional COGs are named in the legislation as referral sources.

Participation is voluntary for each system. Parties can access a panel of trained, experienced neutral dispute resolution professionals and elected officials at any point in the process. For those disputes involving government agencies, the systems emphasize the importance of collaboration at the local or subregional level at an early stage in the conflict before positions become entrenched.

The next step is to secure outside funding for the implementation phase of the Project. In this phase, SCAG will initiate a series of pilot projects designed to evaluate the efficacy of the proposed ADR systems. Oversight for the pilot projects will be provided by the Advisory Committee of elected officials and staff that have guided the Project since its inception. In addition, WJC will establish and manage an independent roster of dispute resolution professionals to provide neutral services once the systems are operational.

The Project Team will also undertake to design and provide training for the ADR Coordinators and for elected officials who have indicated that they would like to serve on the neutral roster. A separate series of workshops will be conducted for SCAG members on ADR and consensus building skills.

# Executive Summary

## Background

*Task Force meetings were held over a number of years to discuss the environmental degradation that had impacted the Salton Sea. Recreation and related economic development around the Sea in both Riverside and Imperial Counties had severely declined with little hope that it could be reversed. Facilitated talks led to a cooperative agreement among all key stakeholders for a mechanism for reversing the damage.*

*Neighboring jurisdictions have very different views of over use of a military base closure. They are talking through the press and lobbying Washington.*

*After incurring several million dollars in litigation costs, the City and County of Los Angeles resolved a longstanding conflict over the provision of services to the homeless. The negotiated settlement resulted in the creation of the Los Angeles Homeless Services Authority which enables the two jurisdictions to jointly provide services and facilities.*

These case examples of protracted disputes regarding critical services and facilities, as well as numerous others in the region, prompted the leadership of SCAG to propose that a more structured response to inter-jurisdictional disputes and early resolution of conflicts be developed for SCAG and its members. Negotiations and other collaborative processes have been part of the decision making fabric of southern California for decades. In recent years, however, as problems multiplied and funding sources dwindled, cooperation among cities and counties has become frayed at the edges. Opposition by competing interests to the siting of regional public work facilities or critical infrastructure such as highways or rail lines resulted in decades of delay and costly litigation. Accordingly, SCAG's Regional Council created the SCAG Alternative Dispute Resolution (ADR) Project, with the goal of re-instituting and promoting the effective use of mediation and related conflict resolution processes.

SCAG is the multi-purpose regional planning agency for 6 counties (Imperial, Los Angeles, Orange, Riverside, San Bernardino, Ventura) and 184 cities in the southern California region. SCAG has statutory responsibility for monitoring and assuring regional compliance with state and federally mandated standards including air quality, transportation and affordable housing. The 71 member Regional Council is composed of city council members, mayors and county supervisors. As the entity responsible for coordinating the regional planning activities of nearly 200 autonomous public entities in one of the nation's most densely populated urban regions, SCAG is the functional hub where a variety of conflicts are most appropriately addressed.

To serve as a catalyst for revitalizing and institutionalizing the use of collaborative and consensual processes in the region, SCAG leadership formed a partnership with a team of experienced dispute resolution practitioners and educators to design, implement and evaluate several dispute resolution system components for SCAG and its members. The team, under the auspices of the Western Justice Center Foundation in Pasadena, secured funding from the Haynes Foundation for the design phase of the project.

## Project Objectives

The objective of the SCAG ADR Project is to break the gridlock in regional planning and decision-making in southern California by designing and integrating a customized dispute resolution system into the planning and monitoring processes of SCAG and to its members.

The Project will produce "user friendly" systems models for assessing and resolving conflicts among disputing jurisdictions and regional stakeholder groups.

## Project Methodology

The Project Team was directed to develop two sets of dispute resolution systems. The first set of models addresses SCAG mandates and authorities. The second is designed to provide a resource to members for inter-jurisdictional disputes that do not directly involve SCAG or its programs or for land use and CEQA litigation in accordance with SB 517 (Bergeson) The Land Use and Environmental Dispute Mediation Act (1994).

To develop the systems, the Project Team reviewed studies and documents pertaining to the informal and formal usage of conflict resolution approaches at the national, state and local levels. The models build upon that experience and are consistent with the many statutes governing regional planning and the role and responsibilities of the COG.

As a primary thrust of the Project, the Team interviewed approximately fifty (50) elected officials, agency staff and regional stakeholder groups to identify their needs and obtain their recommendations on what system designs might have broad application and support. The Team worked with both a Regional Staff Advisory Committee and Elected Official Advisory Committee to review the survey instrument, draft models and team assumptions at each critical juncture.

## Directions Suggested by Project Interviews

The input provided by elected officials, subregional COG and commission staff and public interest group leaders was invaluable in setting the direction for the development of the ADR models. Several important themes emerged during the course of the consultation with the Advisory Committees and the interview process. These themes have been integrated into each of the systems as appropriate.

- Implementation of the systems should begin at the subregional level. SCAG should provide resources (financial support, technical expertise, and access to qualified neutrals) to support the subregional efforts and the use of ADR by members.

- The type of process that has the greatest appeal is one that requires disputants to come to the table to assess whether an ADR process is appropriate for them. Disputants should be expected to at least have the courtesy to attend a "meet and confer" session to consider future steps.

- The provision of dispute resolution services needs to be administered by a credible neutral organization.

- The process proposed should provide a more expeditious route for resolving differences than is afforded by the multi-layered, lengthy planning process that it is supposed to supplement. Otherwise the term "alternative" is a misnomer. It should also be readily accessible and understandable to potential users.

- There needs to be a concerted effort to identify and meaningfully involve non-governmental participants in consensus-building on regional issues.

- If SCAG is to be a leader in promoting ADR, then it has to practice what it preaches.

It is generally acknowledged that there is a lack of direct experience with formal consensus-building and alternative dispute resolution processes in the region, although a number of elected officials and staff indicated that they frequently play the role of facilitator/mediator within their jurisdiction. A highly visible test case would go a long way toward breaking down any barriers to the use of ADR and enable regional officials and leaders to better determine what process is most suitable for their needs and circumstances.

## Potential Dispute Areas

Virtually every issue that comes under the purview of SCAG is seen as an appropriate arena for the use of ADR. Dispute areas that have been particularly thorny in recent years and which regional leaders believe could benefit from ADR include transportation planning issues, jobs housing balance projections, affordable housing allocations and competition for tax dollars with neighbors. These issues are likely to remain critical dispute arenas in the foreseeable future as well. Notable longstanding disputes such as the 710 Freeway Extension controversy or the creation of HOV Lanes on the Interstate 5 were mentioned repeatedly as conflicts that might have been prevented had an ADR approach been utilized at an early stage.

Border disputes over project siting, although described as "single event" disputes, are viewed by many regional leaders as a ripe area for the introduction of early consultation and ADR.

## Proposed Systems for the Region

Based upon the literature search, regional interviews and the professional experience of the Project Team, four systems are proposed for adoption by the SCAG Regional Council.

### System 1 ADR for SCAG Mandates and Authorities

This system establishes formal procedures for initiating and conducting dispute resolution proceedings for matters in which SCAG has a statutory role in resolving disputes among members and for conflicts between SCAG and a local government agency over a regional planning or implementation issue. Early identification and resolution of potential disputes at the subregional level is encouraged prior to initiation of a formal proceeding. A courtesy "meet and confer" step is proposed to bring disputants to the table to determine whether they are willing to participate in an ADR process. If all of the key parties are agreeable, then a formal proceeding is initiated. SCAG is required to participate in any consensual process if requested by all of the key interests. Neutral third party services are provided by an independent panel of professionals or trained elected officials.

Possible issues that might be addressed under this system include the resolution of inconsistencies between two subregional plans or a difference of opinion between a jurisdiction and SCAG over population and job projections.

### System 2 Policy and Regulatory Consensus-Building

System 2 promotes the use of a highly interactive, multi-interest group negotiations and consensus-building process on critical issues in the region. A neutral professional is assigned to identify what interests need to be represented in the process and to establish their willingness to participate in a consensus process. A number of meetings are conducted over several months to a year resulting in a consensus policy or a regulation.

Issues that might lend themselves to this process include TCMs or a one stop permit process, such as the one already developed at SCAG on permits for film production. The formation of the Salton Sea JPA is an example of a policy dialogue directed at setting policies for remediating a longstanding, environmental problem. At the federal level, regulatory negotiations have been conducted on issues as diverse as standards for handicap access to airplanes and the formula for reformulated and oxygenated gasoline for non-attainment areas.

### System 3 Protocol for Interjurisdictional Disputes

The protocol described in System 3 provides referral mechanisms and technical resources for resolving disputes between members in which SCAG does not a play a role. Local jurisdictions are encouraged to confer in the formative stages of a conflict with assistance from subregional organizations serving as the neutral facilitator or mediator. If efforts by city staff, elected officials from within the jurisdictions or trained subregional officials do not suffice to work through problems, then SCAG would encourage the use of a roster of neutral trained professionals or elected officials to assist disputing jurisdictions.

A typical inter-jurisdictional dispute might include the siting of a regional shopping center, the further commercialization of a regional park, or provision of services to the homeless.

### System 4 Mediation of Land Use and CEQA Litigation

SCAG and the subregional COGs are referenced in SB 517 (The Land Use and Environmental Dispute Mediation Act) as a regional source for providing a roster of qualified neutral mediators to the courts for land use and CEQA litigation. System 4 provides a recommended set of steps for accessing such a roster. SCAG would not provide neutrals directly, but would help ensure that the neutrals recommended to members or to citizens in the region have adequate and appropriate qualifications and experience. SCAG would also play a role in encouraging members and citizens in the region to elect mediation to settle their litigation on land use and environmental matters.

### Implementation

This report recommends that SCAG proceed in encouraging and advancing the utilization of formal consensus building and alternative dispute resolution methods among governments in the region. While SCAG should play a critical role in such an effort, the provision of neutral services should be administered by an outside independent organization other than SCAG, such as the Western Justice Center Foundation. The WJC will continue as a partner with SCAG for implementation and evaluation phases of the Project. In addition, the WJC Board of Directors is currently considering whether, if requested by the Regional Council, it should assume the task of developing and managing the neutral roster to provide ADR services for each of the SCAG systems proposed.

Additional project implementation steps include:

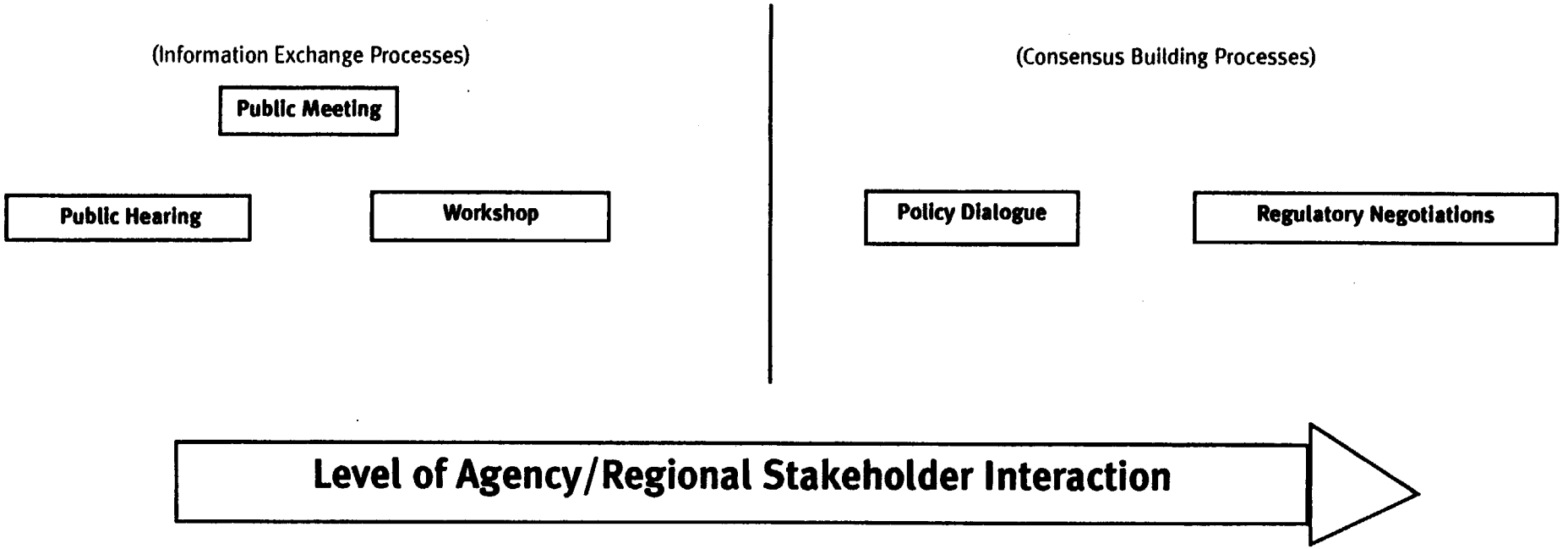
- appointment of an ongoing advisory committee of elected officials, subregional staff and SCAG staff to provide guidance and oversight for project implementation;
- appointment and training of a senior staff person as ADR coordinator at SCAG;
- Identification and training of elected officials to serve on the neutral roster;
- Appointment and training of subregional ADR coordinators to serve as liaisons with SCAG and provide assistance to members as requested;
- initiation of a renewed effort to obtain funds for Project implementation including the development of a neutral roster and obtaining financial assistance for members who wish to avail themselves of roster professional services; and
- continued promotion of educational opportunities for elected officials and agency staff in the region on the use of ADR processes.

### Future Role for SCAG

Recent legislation mandating the use of ADR for resolving disputes pertaining to SCAG's mandates and authorities as well as the historic role of SCAG as a catalyst for change in the region suggest that SCAG should continue to play a leadership role in the dispute resolution arena in southern California. This role is supported by local governments and citizen leaders alike and is well in keeping with the SCAG Mission Statement.

*"To enhance the quality of life of all southern Californians by working in partnership with all levels of government, the business sector and the community at large to meet regional challenges and - to resolve regional differences."*

# Spectrum of Consultation Approaches
# SCAG Regional Planning and Decision-Making




**1. Public Hearing:** Provides opportunity for the public at-large to submit their comments on proposed actions. Decisions are left to RC.

**2. Public Meeting:** Allows all affected interests to ask questions and share concerns. Provides less formal opportunity for one-on-one interchange between public and SCAG staff. Not consensual process.

**3. Workshop:** Designated participants representative of regional interests exchange ideas with other interests and SCAG. May reach closure on some issues; goal is enhanced input, not consensus.

**4. Policy Dialogue:** Formal proceedings with balanced regional representation to reach a consensus on significant policy issues.

**5. Regulatory Negotiation:** Formal proceedings with balanced regional representation with goal of reaching a consensus on a specific regulation.

# Summary ADR Proposed Systems

| Types of Disputes | System 1<br>ADR for SCAG Mandates and Authorities | System 2<br>Policy & Regulatory Consensus Building | System 3<br>Interjurisdictional Disputes | System 4<br>Land Use/CEQA (SB 517 Bergeson) |
|---|---|---|---|---|
| **Participants** | SCAG Members and SCAG and local, regional, state and federal agencies | SCAG Members, SCAG, public groups, local regional, state, and federal agencies | Local, State Government Agencies and/or citizens | Any interest or entity |
| **Issues** (examples) | RTIP, RTP, OWP, Jobs/Housing, Growth Projections | TCMs, Base Closures Salton Sea, Goods Movement | Border Disputes City/County Revenue Sharing, Airport Expansion | CEQA Challenge, Project Siting Mitigation of Impacts |
| **Convening Process** | Member contacts SCAG Member contacts Subregion | SCAG identifies facilitator to convene interest | Local government or subregion convenes | Court or litigants initiate |
| **Role of SCAG** | Coordinate, Convenor Participant | Convenor Participant | Resource Referral | Resource |
| **Role of Subregions** | Participant Facilitator | Participant | Convener, Resource | Referral Resource |
| **ADR Process** | Facilitation, mediation, arbitration, factfinding | Facilitation, mediation | Facilitation, mediation, arbitration, factfinding | Mediation |
| **Service Providers** | ADR Trained Elected or Official Subregional Staff Professional Mediators | Professional public policy mediators | ADR trained Elected Officials or Subregional staff, and Professional Mediators | Professional Mediators |

**System 1**
**Alternative Dispute Resolution for the**
**Southern California Association of Governments Mandates and Authorities**

**Step 1 Conflict Prevention and Early Intervention**

- Facilitated joint talks by Subregional ADR coordinator
- Joint additional data gathering

**Step 2 Consultation With Subregional Organization Prior to Initiating a Formal ADR Process with SCAG**

**Step 3 Initiate ADR Convening** (10 days)

- One or more parties contact SCAG ADR Coordinator
- ADR Coordinator contacts all potential interests to set meeting date: key stakeholders are identified
- Coordinator refers parties to Roster Manager for selection of a neutral
- Neutral conducts initial convening interviews

**Step 4 Courtesy Meet and Confer Session** (1/2 day)

- Outline issues
- Identify obstacles to settlement
- Determine next steps
  **(SCAG must participate if members and other stakeholders agree to ADR)**

**Step 5 Proceed with Formal Dispute Resolution** (30 days)

- Parties select appropriate ADR process(es)
- Parties negotiate process groundrules
- Deliberations occur within next 30 days; may be extended if statute permits and all parties agree
- Any agreements reached are submitted for ratification by ultimate decision-making bodies

**Issues Resolved**

**Issues Submitted for RC Decision**

**Issues Appealed or litigated**

**System 2**
**Policy and Regulatory Consensus-Building**
**(For Policy Dialogues and Regulatory Negotiations)**

**Step 1 Consider Feasibility of Utilizing a Consensus Process**

**SCAG needs to assess:**

- Scope of issues
- Ability to identify key stakeholders and balance representation
- Degree of controversy in the region
- Stakeholder incentives to participate

**Step 2 Initiate Independent Convening Assessment**

- Select neutral convener
- Neutral interviews key stakeholder groups and individuals re critical issues, potential for problem solving and willingness to participate
- Develop draft process groundrules
- Neutral provides feedback on interviews, prepares convening report on feasibility

**Step 3 Conduct Organizational Meeting (Brown Act Applies)**

- Retain services of a mediator/facilitator
- Select representatives for policy group (includes SCAG delegate)
- Approve groundrules
- Establish issues list
- Identify information needs

**Step 4 Policy Group Deliberations Proceed (Brown Act Applies)**

- Neutral facilitates information exchange
- Agency and other members develop alternative proposals
- Neutral moderates negotiations on alternative proposals
- Participants confer with organizations they represent
- Policy group prepares recommendations: *consensus proposals, areas of disagreement, options for resolving any remaining disagreement*

**Step 5 Agency considers adoption of Policy Group Recommendations (Brown Act Applies)**

- SCAG conducts public hearing on recommendations
- Recommendations are reviewed by Policy Committee and RC
- Recommendations are adopted or modified as appropriate

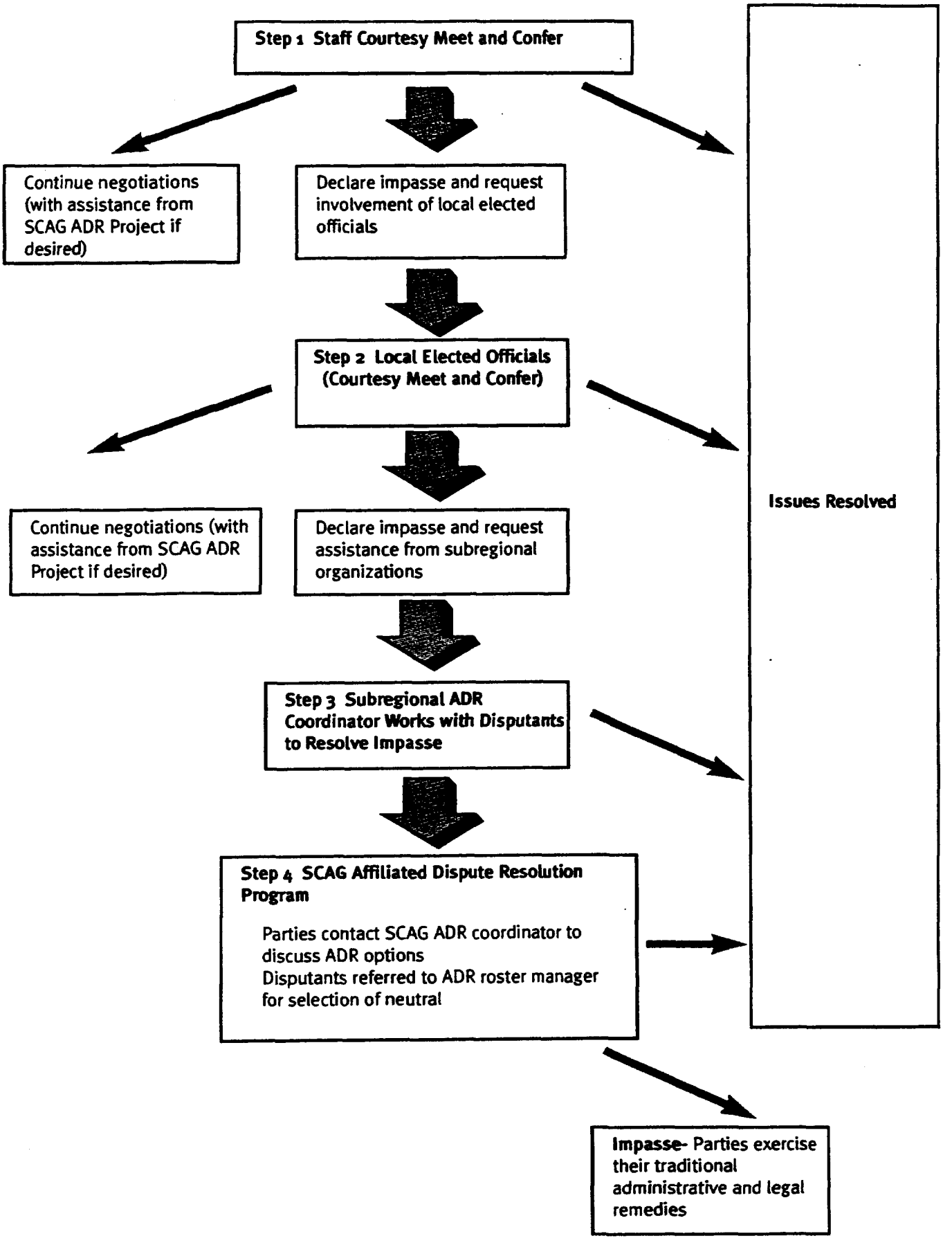
**SCAG Selects an Alternative Consultation Process**

**SCAG Adopts Consensus Recommendations as Proposed**

**SCAG Adopts Consensus Recommendations with Modifications**

**SCAG Proceeds with Normal Appeal and litigation Channels**

**System 3**
**Voluntary Protocol for Resolving Interjurisdictional Disputes**



**System 4**
**Coordination of Mediation Referrals Under SB 517**
**(Land Use and CEQA Litigation)**

**Step 1 Identification and Referral of Land Use Disputes**

- Self referral
- Referral from court
- SCAG ADR Coordinator referral

**Step 2 Roster Manager Coordinates Process**

- Roster Manager contacts litigants re mediator preferences
- Roster Manager assigns mediator(s) based upon ranking by litigants
- Litigants submit required background information

**Step 3 Convening Process**

- Mediator conducts convening interviews of all parties
- Mediator drafts "Agreement to Mediate" including groundrules for party approval

**Step 4 Mediation Process commences**

- Mediator coordinates logistics and facilities negotiations
- Parties work with mediator to develop proposals for resolution
- Parties confer with counsel and organizations they represent regarding final offers for settlement

**Impasse Litigation Proceeds**

**Partial Resolution- Issues Narrowed, Litigation Proceeds**

**Case Resolved**

**Step 5 Preparation of Court-required Process Evaluations**

- Mediator submits "Summary of Mediation Report"
- Parties agree on estimated costs saved or avoided or, each party files own estimated costs saved or avoided. Estimates filed by Roster Manager with Office of Permit Assistance
- Parties file dismissal with Superior Court
- Roster manager conducts follow-up evaluations within 30 days

# Project Implementation: Next Steps

Regional leaders who were interviewed by the ADR Project team indicated that local governments in the region would be more likely to utilize a formal conflict resolution process if there were several high profile case examples of its successful application in southern California. They also stressed the importance of establishing an independent neutral roster of dispute resolution professionals to provide ADR services to SCAG and its members.

In response to these recommendations, the Project team is proposing that SCAG initiate a series of pilot projects for each of the systems. Oversight for the pilot projects would be provided by an Advisory Committee of SCAG elected officials working with the SCAG ADR Coordinator, subregional coordinators and the Project team. The Western Justice Center has been requested to serve as the "roster manager" by establishing and administering a roster of neutral dispute resolution providers. WJC will assume responsibility for screening credentials of roster neutrals. The Project team will provide specialized training to elected officials who wish to serve on the roster as well as to subregional ADR coordinators who will play a key role in identifying potential disputes and providing ADR services.

The Advisory Committee will have the following responsibilities:

- Provide guidance in the development of grant proposals to outside funding sources
- Adopt criteria for qualifying meutrals to serve on the ADR roster
- Identify pilot project disputes or issues
- Promote the use of ADR services with local governments, subregional organizations, local bar associations and the courts
- Review and evaluate all Project activities

The Roster Manager (WJC) will develop a list of qualified neutrals in accordance with the criteria set by the Advisory Committee. The Roster Manager will also coordinate the selection of neutrals with parties who access one of the ADR systems. It is envisioned that grant funding will help defray the cost of services for the initial pilot projects and to assist local government who wish to access ADR services connected with the Project. Fees for services will be charged and administered by the Roster Manager for all services not covered by grant funds or funds allocated by SCAG for the Project.