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Presentation on Social Equity Impact Analysis

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In the current controversy over the Dakota Access Pipeline, we've seen what can happen if impact analysis, particularly social equity impact analysis, is not included in infrastructure and project considerations.

Social equity has been defined as “The fair, just and equitable management of all institutions serving the public directly or by contract; the fair and equitable distribution of public services, implementation of public policy; and the commitment to promote fairness, justice, and equity in the formation of public policy.” (National Academy of Public Administration, Standing Panel on Social Equity).

Social equity impact assessment grew out of civil rights and environmental law. It requires that the potential effects of plans and projects be examined in advance to avoid disproportionate and adverse effects on minority and low income groups. Typically, the implementation of civil rights laws look at these matters after the effect and rely on the affected people to complain to funding agencies to seek redress. Then the recipient of federal financial assistance is subject to an investigation, and it's very hard to undo the wrongs, if any are found.

It has some similarities to public involvement, participation, and engagement processes, as one source of information. Here's one example of how it should have been used, and

how some of the problems in getting a project built could have been avoided. Bay Area Rapid Transit, or BART, was planning on extending its rail line from downtown Oakland to the Oakland International Airport, with no stops inbetween. It would bypass several minority and low income communities. These communities needed better transportation, including transportation to the Airport. Airports tend to be job creation engines. Airlines, on the other hand, tend to be ridden by more Anglo and higher income passengers than live in minority and low income communities. Public Advocates, Inc., a public interest law firm, filed a Title VI administration complaint with the Federal Transit Administration, part of USDOT, on behalf of the advocacy groups Urban Habitat, TransForm and Genesis. I was the Title VI consultant on the case. We alleged that bypassing these communities violated their rights on the basis of race and national origin, and that a social equity impact analysis should have been conducted by BART. FTA investigated, and found in our favor, that BART had discriminated. It ordered the deferment of \$70 in ARRA funds.

Each study, plan or review by a governmental agency or recipient of federal financial assistance needs to include the following elements:

- (1) A clear description of what is planned;
- (2) An analysis of the impact on all populations, including minority and low income populations;
- (3) An analysis of available alternatives;
- (4) The documented inclusion of minority and low income populations in the study and decision-making process; and
- (5) An implementation plan to address any concerns identified in the equity analysis.

Social equity impact assessment is somewhat akin to environmental law, where, for example, the presence of an endangered species in the project site is found is advance and avoided. But here we're talking about endangered people and communities.

Several principles include the idea that projects built by recipients of federal financial assistance are supposed to serve people and not harm them, that some demographic groups have been traditionally discriminated against and deserve a higher level of protection to avoid more harm, and that a civil rights violation can be found by showing what the logical and foreseeable consequences would be of decisions by a recipient of federal financial assistance.

In transportation, we sometimes refer to transportation disadvantaged people. These can include numerous categories of people without personal vehicles, such as the elderly and persons with disabilities who have mobility impairments that preclude them from driving or who need medical equipment in order to travel; low-income, homeless, or transient persons who do not have a permanent residence or who do not own or have access to a personal vehicle; children without an adult present during a disaster; tourists and commuters who are frequent users of public transportation; those with limited English proficiency who tend to rely on public transit more than fully proficient English speakers or those who, for any other reason, do not own or have access to a personal vehicle. A common transportation disadvantaged group includes African-Americans, who own cars at the lowest rate of any group in the United States. This became especially apparent during Hurricane Katrina. We sometimes refer to such groups as public transportation dependent.

Social equity impact assessment is a set of tools to help determine what the logical and foreseeable consequences of a project will be on these groups. We can think of it as a form of simulation or modeling. If the negative consequences toll more heavily on protected and disadvantaged communities than on the more Anglo and higher income population, then the project should not be built, or it should be changed to equalize the negative effects or shift them away from the potentially injured group. A protected class is a group of people who are protected from employment, services, or other discrimination by law. In the US, these groups include men and women on the basis of sex; any group that shares a common race, religion, color, or national origin; people over 40; and people with physical or mental disabilities.

The requirements grow out of Title VI of the Civil Rights Act of 1964, the Environmental Justice Executive Order, the Limited English Proficiency Executive Order, the National Environmental Policy Act, and the Americans with Disabilities Act. Other statutes, such as the Clean Air Act, can be used for equity requirements also. There are various state laws that apply, such as states' mini-NEPAs. In addition, recipients must sign assurance forms in which they agree not to discriminate. Title VI prohibits discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. Administrative complaints can be filed, and federal agencies are obligated to investigate and resolve them. In limited circumstances, lawsuits can be filed.

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative consequences resulting from industrial, municipal, and commercial operation or the execution of federal, state, local and tribal programs and policies.

Several of the Administration's Livability Principles are supported by social equity impact assessment. These include,

- Promoting equitable, affordable housing.
- Supporting existing communities.
- Valuing communities and neighborhoods.

Livability in transportation includes,

- Community design that offers residents and workers the full range of transportation choices.

Social equity impact assessment is consistent with sustainable development, which includes social equity as one of the three E's of economics, environment, and social

equity. For example, the Massachusetts Sustainable Development Principles include “Be Fair: the benefits and burdens of development should be equitably shared by all.”

Here are some other key questions to ask in a social equity impact assessment:

Who will most likely be affected by the policy, plan or proposal?

What is known or understood about the sections of the community most likely to be affected?

What will the nature of the effects be (good or bad, positive or negative)?

Are effects likely to be differentially distributed by socioeconomic status, race, ethnicity, gender, geography, age, disability, or some other factors?

How do you know this is likely to happen (what is the evidence)?

How likely is it that this will occur?

How severe is this impact likely to be?

What are the risks?

Benefits and Burdens of Projects, Plans and Programs to be looked at and evaluated include the following, disaggregated by race, ethnicity, and income:

Dimensions of Equity (including procedural, distributional, quality, and outcomes)

Accessibility Measures

Travel Time Measures

Funding / Expenditures

Mobility

Safety

Quality of Life

Cumulative and Secondary Impacts

How do we measure equity?

One way is to look at potential adverse effects. As defined in the Appendix to the DOT Environmental Justice Order, adverse effects 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.

Cumulative impacts are often neglected. NEPA defines them as the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes the other actions. That means we have to talk and exchange information with other infrastructure agencies working in the same geographic area. Community members know best what they've experienced in the past.

We can think of social equity impact assessment as a form of dispute avoidance. Dispute avoidance comes before dispute resolution. Avoiding disputes, complaints, and law suits helps save time, effort, and money in the middle and long run, and helps to keep the parties and stakeholders in a positive relationship. It can also be used to generate support for a project, by working with a minority community early in the planning life of a project, and finding out what their concerns and needs are .

While the US Department of Justice has concurred with the use of social equity impact assessment, there is clearly tension between the desire to do the right thing from a social equity view and the Administration's desire to build projects quickly to provide jobs. "Off the shelf" often means "Without adequate review." Other controversies include

whether an adverse impact under civil rights laws can be mitigated the way adverse environmental impacts can be. Another is the tension in the Environmental Protection Agency over whether permits that have been granted under environmental laws trumps civil rights adverse effects. Recently, the US Department of Housing and Urban Development has created new guidelines for regional housing equity analyses, that have some similarities to social equity impact assessment.

The concept is still developing, but clearly, as the nation's population changes to becoming more Latino, planners and transportation experts are well-advised to be sensitive in minority communities. Their support will be essential in obtaining funds for new projects. To gain their support, their transportation needs will have to be served, and the adverse impacts of transportation projects on them lessened. This is not a monolithic group, which means that individual attention needs to be paid on a project by project basis, consulting with communities, and evaluating impacts over time and geography, including cumulative impacts.

To help determine the needs of the community, these factors should be looked at:

Does the project meet the self-identified needs of the community?

Will the project make things worse for them? We should look at

Quality of life

Community cohesion

Connectivity vs. barriers

Segregation indexes

Social and physical mobility

Opportunities for jobs

Does the project increase diversity?

Doing social equity impact analyses also contributes to excellence in how the planner's job is done. Exemplary practices by transportation planners include the following:

Knowledge of and conformance to federal statutory and executive order requirements.

Public involvement and participation.

Communicating effectively with the public in ways they understand.

Collecting and utilizing relevant data, methods, mapping and analytical tools to identify affected populations and assess the socioeconomic distribution of benefits and burdens of program investments and decisions.

Flexibility in adjusting to changing demographics.

Managing financial challenges in ways that don't disproportionately burden any demographic subgroup.

Project development that serves the needs of all the people in the service area, without high and disproportionate burdens on any demographic subgroup.

Thank you. I'll be happy to address questions and comments. Please feel free to contact me for more specific guidance on how to conduct a social equity impact assessment.