



August 14, 2024

U.S. Department of Transportation
1200 New Jersey Avenue SE,
West Building Ground Floor,
Room W12-140,
Washington, DC 20590-0001

RE: 2024 update to DOT Equity Action Plan Public Comment [DOT-OST-2024-0072]

Thank you for the opportunity to comment on the Department of Transportation’s 2024 update to its Equity Action Plan. For more than 50 years, the Southern Poverty Law Center has been a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. We focus primarily on five states: Alabama, Georgia, Mississippi, Louisiana, and Florida. Our core impact issues include eradicating poverty; decriminalizing and decarcerating Black and brown people; protecting voting rights and civic engagement; and dismantling white nationalism and extremism. We aim to eradicate poverty specifically by expanding access to opportunities and eliminating racial and economic inequality and inequity in all facets of life -- including access to food and water, healthy housing, high-quality health care, free education, safe working conditions, fair wages, and government support to meet basic needs.

SPLC has been working with communities in the Deep South to seek federal funding to fix failing infrastructure, increase access to utilities and necessities, and increase investments in local economies and workforce.¹ At the same time, SPLC has also been working with historic Black communities that are facing threats to their ability to maintain land ownership in the face of industrial development, including instances where eminent domain is being threatened or used to advance a highway, railroad, or other transportation infrastructure project that would pollute, degrade, and render their land uninhabitable.² The government has a long history of disproportionately locating industrial development in Black and brown communities, leaving them

¹ “Mississippi City’s Water Problems Stem from Generation of Neglect,” SOUTHERN POVERTY LAW CENTER, Jun. 28, 2023, <https://www.splcenter.org/news/2023/06/28/timeline-jackson-mississippi-water-problems>; Esther Schrader, “Residents in Alabama City Face Water Criss Like Some Other Black Communities,” SOUTHERN POVERTY LAW CENTER, Nov. 3, 2023, <https://www.splcenter.org/news/2023/11/03/residents-alabama-face-water-crisis-black-communities>.

² See, Esther Schrader, “Preserving Black Heritage: Florida Activists Fight to Save Historic Site and Their Culture,” SOUTHERN POVERTY LAW CENTER, Nov. 18, 2022, <https://www.splcenter.org/news/2022/11/18/historically-black-community-eatonville-florida>; “SPLC Urges National Recognition of Historic Community of Royal, Florida,” SOUTHERN POVERTY LAW CENTER, Sep. 21, 2023, <https://www.splcenter.org/presscenter/splc-urges-national-recognition-historic-community-royal-florida>; Esther Schrader, “Residents Fight to Preserve Florida Community Founded by Emancipated Black Citizens,” SOUTHERN POVERTY LAW CENTER, Aug. 4, 2023, <https://www.splcenter.org/news/2023/08/04/fight-preserve-florida-community-emancipated-citizens>; Esther Schrader, “Railroaded: Residents of Predominantly Black Georgia Community Fight Back Against Train Proposal,” SOUTHERN POVERTY LAW CENTER, Feb. 24, 2023, <https://www.splcenter.org/news/2023/02/24/sparta-georgia-community-fight-against-railroad-line>;



to deal with negative consequences like increased traffic, noise, pollution, land devaluation, and health and safety concerns, with minimal or no economic benefit to the residents of those communities.³ SPLC has been working to fight systemic land loss and wealth extraction in Black communities, as we believe land justice is one of the leading racial justice issues contributing to the widening racial wealth gap and economic inequity.

One of the primary ways the Department of Transportation can ensure that its work advances racial equity and support for underserved communities is by administering grants and awards. Under Title VI of the Civil Rights Act of 1964, all recipients of federal financial assistance are required to comply with anti-discrimination laws, but there are additional actions that the DOT can take to promote equity and enforce obligations on state and local governments. As the DOT considers activities that can be expanded through the Equity Action Plan, we recommend the following:

1) Strengthen community engagement, transparency, and accountability.

We encourage the DOT to increase community engagement, transparency, and accountability to mitigate and prevent generational harms that span lifetimes for Black communities impacted by transportation improvement, military base construction, airport expansions, and other projects. Individuals impacted by land dispossession are vital to providing effective solutions and need to be centered in any efforts to address this issue through meaningful proactive community engagement.⁴ All projects, especially those that burden communities of color, should provide a clear and meaningful process for community members to raise concerns and oppose the project, devise mitigation options, and demand compliance around racial equity, environmental justice, or other requirements before DOT approves a project.

Any community engagement model should include community liaisons to inform the public about the progress of the project, opportunities for community members to participate in decision-making, local prioritization for jobs and economic development related to the project, and accountability and transparency as to the project's impact. Because historically under-resourced, low-income, rural, Black, and brown communities may have limited interactions with federal government entities and limited access to how compliance, procurement, and other related processes work, a community engagement model should also offer guidance to community members who want to be involved but are not well-versed in how to work with government actors.

The engagement should continue throughout the project's life, leaving the community in a position for sustained self-determination after the project concludes. Sometimes projects are

³ See, Kea Wilson, "Why Highway Teardowns Make Great Infrastructure (and Equity) Investments," STREETS BLOG USA, Dec. 10, 2020, <https://usa.streetsblog.org/2020/12/10/why-highway-teardowns-make-great-infrastructure-and-equity-investments>; Dania Francis et al. "The Contemporary Relevance of Historic Black Land Loss," THE AMERICAN BAR ASSOCIATION, Jan. 6, 2023, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/wealth-disparities-in-civil-rights/the-contemporary-relevance-of-historic-black-land-loss/;

⁴ See, *i.e.* SPLC Comment Letter to the Department of Interior, January 5, 2024, <https://www.splcactionfund.org/sites/default/files/department-interior-environmental-justice-strategic-plan.pdf>



initiated with a community-center approach, but the project is halted before completion or shifted to a different direction that no longer accomplishes the original purpose or no longer provides the benefits it purported to do. Once the project begins, the community has limited power to change or participate in the process. For example, Jackson, Mississippi has received significant environmental justice funding to fix its failing water and sewer infrastructure, but community members were shut out of further decision-making and received little information about the next steps⁵ The DOT and the recipients of the federally-funded project should make a concerted effort to improve its community engagement.

2) Require racial and environmental equity commitments for any new project.

All DOT-funded projects or projects requiring federal approval, especially those that usurp land from underserved communities, should include racial equity assessments to identify the communities most benefited or negatively impacted; long-term impacts on displacement, affordable housing availability, health, environmental degradation, and other considerations; alternative actions that could yield less displacement or harm; and other metrics to understand the cost benefits analysis of a project.⁶ These results should be publicly available to permit the community to understand the extent of the long-term harm and the short-term gains. Too often, we see projects or grants intended to address a pressing need, such as improved transportation for rural communities, that nevertheless disproportionately harm communities of color through displacement and pollution.

The DOT should publish and make available project updates, studies, and regularly collected data to ensure community members can track progress and decisions. SPLC is often called upon to assist communities facing harm and who have taken it upon themselves to study environmental harms and impacts to stop impending encroachment and construction; however, this only further burdens the impacted communities when the DOT itself can proactively take steps to mitigate and prevent those harms.

3) Increase federal funding and investments to prevent, repair, and redress harm.

More federal investments are needed to promote community land ownership and development, including remedial and reparative payments, land returns, legal services, and tax subsidies for communities that have faced or are facing land encroachment and dispossession because of the DOT's projects. National historic preservation status is often the route communities take to protect and maintain communities and allow residents to live and prosper in peace in their

⁵ See, Anthony Warren and Quentin Smith, "Judge denies city's request for more 'transparency' regarding water operations," WLBT3, Jul. 7, 2023, <https://www.wlbt.com/2023/07/08/judge-denies-citys-request-more-transparency-regarding-water/>

⁶ See, The White House, Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, Jan. 26, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>; <https://www.whitehouse.gov/environmentaljustice/justice40/>



historic homes.⁷ Yet, there are very limited resources to support communities pursuing historic preservation. More funding for technical assistance for historic preservation and designation for historically unrepresented communities could help preserve lands and protect the historic integrity and character of these communities.

4) Improve existing environmental and preservation guidance.

We have observed a remarkable lack of historic preservation protections for Black communities across the Deep South, many of which were founded by newly emancipated persons during the 1800s. Oftentimes, development projects in these communities will cause environmental injustices, but the options to redress or prevent these threats are limited and unknown to residents. We believe the DOT can do more to affirmatively redress these inequities by reviewing its processes for conferring historic preservation protections, providing resources and opportunities for communities to engage with the DOT, and removing barriers that diverse communities unfamiliar with the historic preservation process face, such as lack of record-keeping or visibility. The DOT should consider clarifying or expanding existing environmental and preservation protection laws to prevent the taking of land. While no federal law or regulation explicitly prevents private entities from coopting land from communities of color, DOTA Section 4(f) requires consideration of the impacts on historic properties when development projects involve federal approvals or funding.⁸

5) Create a workgroup focused on land justice.

The DOT should consult with other agencies to redress past and current racial discrimination in federal programs, especially as it relates to land justice. The DOT has an unfortunate history of displacing communities of color and thus has the historical and institutional responsibility to rectify these harms and prevent future harms.⁹ For example, the DOT could follow the Department of Agriculture's efforts to redress past and current discrimination in its farm loan program.¹⁰ Additionally, delaying a transportation project is a short-term solution. Instead, the agency should focus on longer-term solutions and alternatives that increase connectivity and access without uprooting or severely burdening underserved communities. Federal agency

⁷ "SPLC Urges National Recognition of Historic Community of Royal, Florida," SOUTHERN POVERTY LAW CENTER, Sep. 21, 2023, <https://www.splcenter.org/presscenter/splc-urges-national-recognition-historic-community-royal-florida>. Esther Schrader, "Preserving Black Heritage: Florida Activist Fight to Save Historic Stite and Their Culture," SOUTHERN POVERTY LAW CENTER, Nov. 18, 2022, <https://www.splcenter.org/news/2022/11/18/historically-black-community-eatonville-florida>; Esther Schrader, "Residents Fight to Preserve Florida Community Founded by Emancipated Black Citizens," SOUTHERN POVERTY LAW CENTER, Aug. 4, 2023, <https://www.splcenter.org/news/2023/08/04/fight-preserve-florida-community-emancipated-citizens>.

⁸ Department of Transportation Act Sec. 4(f), https://www.environment.fhwa.dot.gov/env_topics/4f_tutorial/overview.aspx?h=e; *see also*, The National Historic Preservation Act Sec. 106, <https://www.ecfr.gov/current/title-36/chapter-I/part-63/section-63.2>; National Environmental Policy Act, https://www.achp.gov/integrating_nepa_106

⁹ *See*, PolicyLink Report, <https://www.policylink.org/resources-tools/grounding-justice>

¹⁰ *See*, USDA Discrimination Financial Assistance, <https://www.usda.gov/media/press-releases/2024/07/31/biden-harris-administration-issues-financial-assistance-more-43000>;



stakeholders should come together to devise actionable recommendations for policy and system change to prevent, repair, and redress these systemic inequities created by land loss.¹¹

6) **Support and fortify existing efforts to improve wealth creation and diversity, equity, inclusion, and accessibility.**

The DOT should continue to vigorously defend and advance its updates to the Disadvantaged Business Enterprise (DBE) and Airport Concession DBE program for disadvantaged businesses. It should work to protect remedial efforts that may be subject to legal challenges by publishing more data and evidence on past harms and present-day needs. It should take steps to increase demographic data to track and identify communities benefiting from grants and capacity building to help target funds to areas with the greatest need.

Thank you for considering our views on the Department of Transportation's Equity Action Plan. Please feel free to reach out to me at Theresa.Lau@splcenter.org if you have further questions about SPLC's current land justice matters or the above recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Theresa Lau'.

Theresa Lau
Senior Policy Counsel, Eradicating Poverty
Southern Poverty Law Center

¹¹ See, FEMA guidance, <https://www.fema.gov/press-release/20221013/fema-provides-multiple-ways-prove-home-ownership>; USDA guidance, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/guidance_heirs_property_operators_participating_in_fsa_programs-factsheet.pdf, Farmland Access Legal Toolkit, <https://farmlandaccess.org/heirs-property/>