

# **Genesee County Metropolitan Planning Commission**

## **Limited English Proficiency (LEP) Plan**

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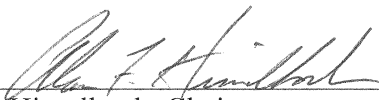
A RESOLUTION OF THE  
Genesee County Metropolitan Planning Commission  
ADOPTING THE  
LIMITED ENGLISH PROFICIENCY (LEP) PLAN

**WHEREAS**, in accordance with Title VI non-discrimination laws in regard to providing appropriate access to services and activities provided by federal agencies and recipients of federal assistance, the Limited English Proficiency Plan was drafted to define how the Genesee County Metropolitan Planning Commission will accommodate persons with Limited English Proficiency; and

**WHEREAS**, individuals who do not speak English well and who have a limited ability to read, write, speak, or understand English are entitled to language assistance under Title VI of the Civil Rights Act of 1964 with respect to a particular type of service, benefit, or encounter;

**NOW, THEREFORE, BE IT RESOLVED** that the Genesee County Metropolitan Planning Commission approves and adopts the Limited English Proficiency Plan, a copy of which is attached hereto.

Adopted the 3<sup>rd</sup> day of December 2013

  
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Alan Himelhoch, Chairperson  
Genesee County Metropolitan Planning Commission

## Introduction

On August 11, 2000, President William J. Clinton signed Executive Order 13166: Improving Access to Service for Persons with Limited English Proficiency<sup>i</sup>, to clarify Title VI of the Civil Rights Act of 1964. It had as its purpose, to ensure accessibility to programs and services to otherwise eligible persons who are not proficient in the English language.

This Executive Order stated that individuals who do not speak English well (i.e., “less than very well”) and who have a limited ability to read, write and speak, or understand English are entitled to language assistance under Title VI of the Civil Rights Act of 1964 with respect to a particular type of service, benefit, or encounter<sup>1</sup>. These individuals are referred to as being limited in their ability to speak, read, write, or understand English, hence the designation, “LEP,” or Limited English Proficient. The Executive Order states that:

“Each federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency’s programs and activities.”

Not only do all federal agencies have to develop LEP plans as a condition of receiving federal financial assistance, recipients have to comply with Title VI and LEP guidelines of the federal agency from which funds are provided as well.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of federal funds range from state and local agencies, to non-profits and organizations. Title VI covers a recipient’s entire program or activity. This means all parts of a recipient’s operations are covered, even if only one part of a recipient’s organization receives the federal assistance. Simply put, any organization that receives federal financial assistance is required to follow this Executive Order.

The Genesee County Metropolitan Planning Commission (GCMPC) receives funds from the United States Department of Transportation (USDOT) via the Federal Highway Administration. It also receives funds from the United States Department of Housing and Urban Development.

The USDOT published *Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons* in the December 14<sup>th</sup>, 2005 Federal Register.<sup>ii</sup>

The guidance implies that the GCMPC is an organization that must follow this guidance. This guidance applies to all DOT funding recipients, which include state departments of transportation, state motor vehicle administrations, airport operators, metropolitan planning organizations, and regional, state, and local transit operators, among many others. Coverage extends to a recipient’s entire program or activity, i.e., to all parts of a recipient’s operations.

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<sup>1</sup> Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons. Federal Register: December 14, 2005 (Volume 70, Number 239)

This is true even if only one part of the recipient receives the Federal assistance. For example, if DOT provides assistance to a state department of transportation to rehabilitate a particular highway on the National Highway System, all of the operations of the entire state department of transportation—not just the particular highway program or project—are covered by the DOT guidance.

### **Elements of an Effective LEP Policy**

The Civil Rights Division of the United States Department of Justice (DOJ) developed a set of elements that GCMPC staff used in designing this LEP plan. These elements included:

1. Identifying LEP persons who need language assistance
2. Identifying how language assistance will be provided
3. Training staff
4. Providing notice to LEP persons
5. Using US DOT's Four-Factor Analysis as the recommended method of evaluating accessibility to available transportation services

These recommended plan elements have been incorporated into this plan.

### **Methodology for Assessing Needs and Reasonable Steps for an Effective LEP Policy**

The DOT guidance outlines four factors recipients should apply to the various kinds of contacts they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee.
2. The frequency with which LEP individuals come in contact with the program.
3. The nature and importance of the program, activity, or service provided by the recipient to the LEP community.
4. The resources available to the GCMPC and overall cost.

The greater the number or proportion of eligible LEP persons, the greater the frequency with which they have contact with a program, activity, or service; the greater the importance of that program, activity, or service, the more likely enhanced language services will be needed. The intent of DOT's guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small organizations and local governments.

Smaller recipients with more limited budgets are typically not expected to provide the same level of language service as larger recipients with larger budgets.

The DOT guidance is modeled after the Department of Justice’s guidance and requires recipients and sub-recipients to take steps to ensure meaningful access to their programs and activities to LEP persons. More information for recipients and sub-recipients can be found at <http://www.lep.gov>.

### **The Four-Factor Analysis**

This plan uses the recommended four-factor analysis of an individualized assessment considering the four factors outlined in the section above. Each of the following factors is examined to determine the level and extent of language assistance measures required to sufficiently ensure meaningful access to GCMPC services and activities that may affect the quality of life of LEP persons. Recommendations are then based on the results of the analysis.

#### **Factor 1: The Proportion, Numbers and Distribution of LEP Persons**

The United States Census Bureau has a range of four classifications regarding how well people speak English. The classifications are: ‘very well’; ‘well’; ‘not well’; and ‘not at all.’ For planning purposes, GCMPC considers people that speak English less than ‘very well’ as Limited English Proficient (LEP) persons.

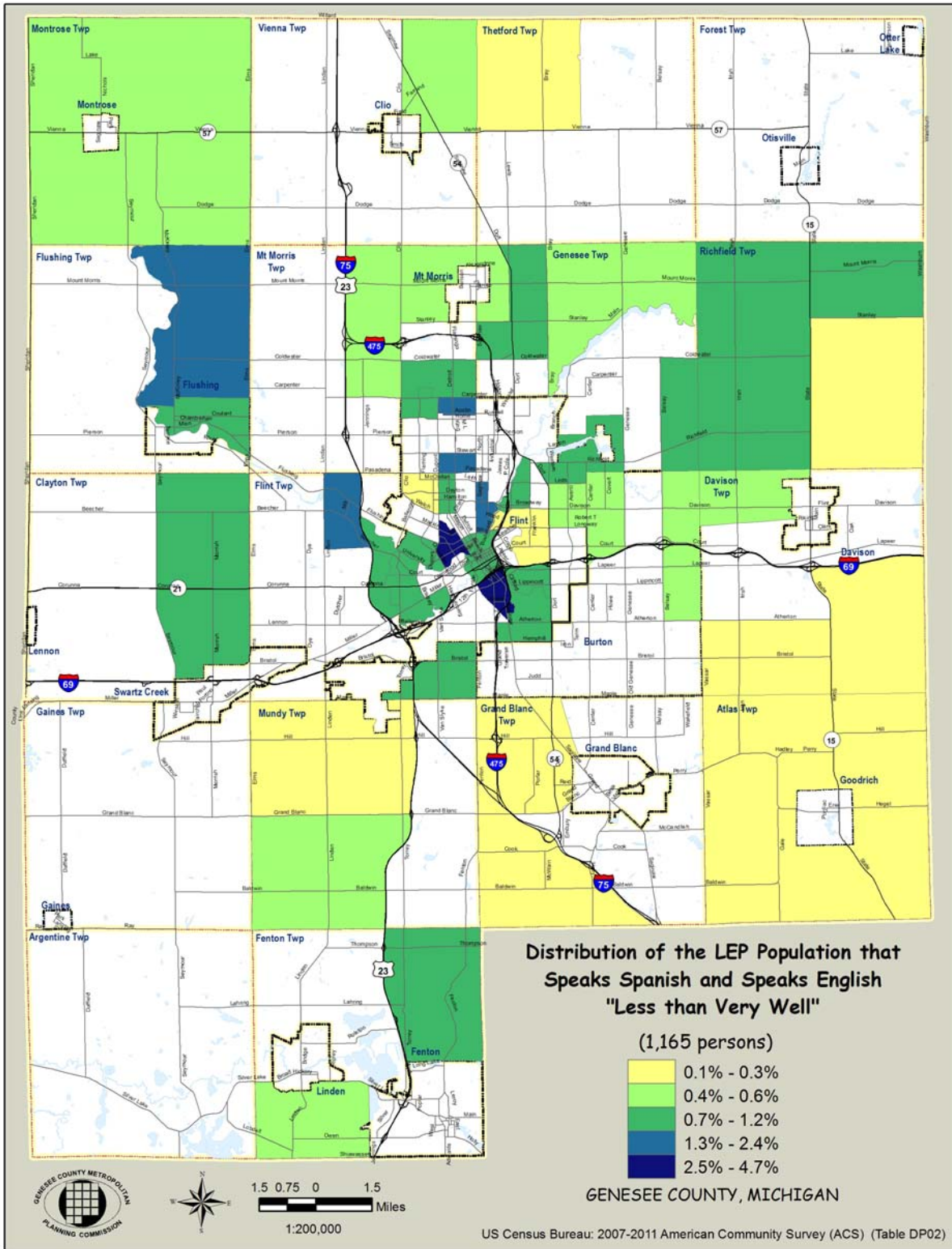
As seen in Table #1 on the following page, the American Community Survey Data from 2007-2011 for Genesee County shows that 4,257 (1.1%) of individuals have identified themselves as speaking English “less than very well”. Of this number, there are: 1,165 (0.3%) Spanish-speaking individuals who speak English less than very well; 1,106 (0.3%) speakers of other Indo-European languages who speak English less than very well; 1,031 (0.3%) speakers of Asian and Pacific Islander languages who speak English less than very well; and 955 speakers of other languages that speak English less than very well.

<b>Table #1 American Community Survey Data 2007-2011</b>		
<b>Language Spoken at Home</b>	<b>Number of Individuals</b>	<b>Percentage</b>
<b>Population 5 years and over</b>	401,269	100%
<b>English only</b>	387,415	96.5%
<b>Language other than English</b>	13,854	3.5%
<b>Speak English less than "very well"</b>	4,257	1.1%
<b>Spanish</b>	4,821	1.2%
<b>Speak English less than "very well"</b>	1,165	0.3%
<b>Other Indo-European languages</b>	4,494	1.1%
<b>Speak English less than "very well"</b>	1,106	0.3%
<b>Asian and Pacific Islander languages</b>	2,040	0.5%
<b>Speak English less than "very well"</b>	1,031	0.3%
<b>Other languages</b>	2,499	0.6%
<b>Speak English less than "very well"</b>	955	0.2%

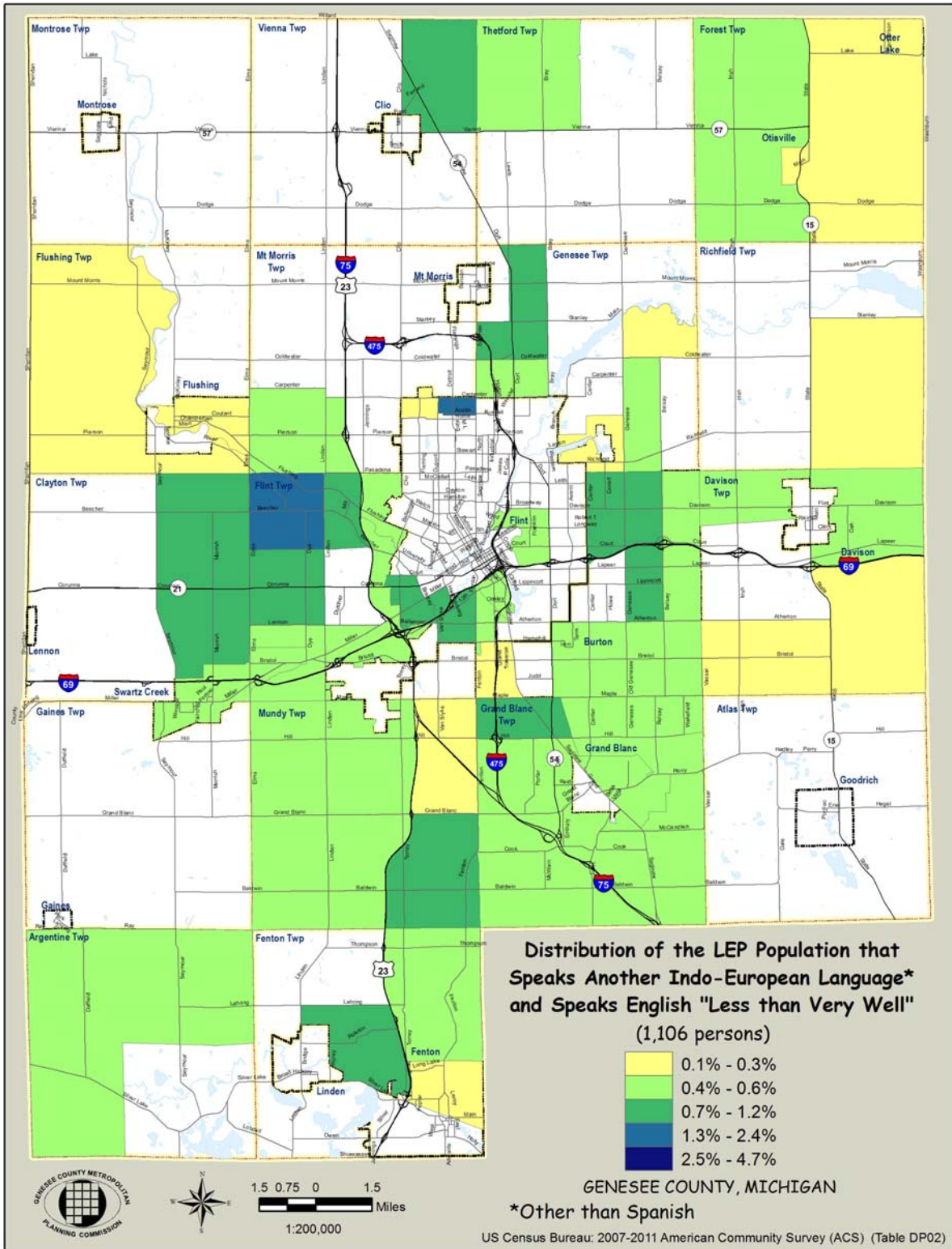
Staff has created four maps that will help the reader visualize the data in Table #1. The maps appear on the following pages. For each of the four language groups in the table, a corresponding map shows where that population is located in Genesee County.

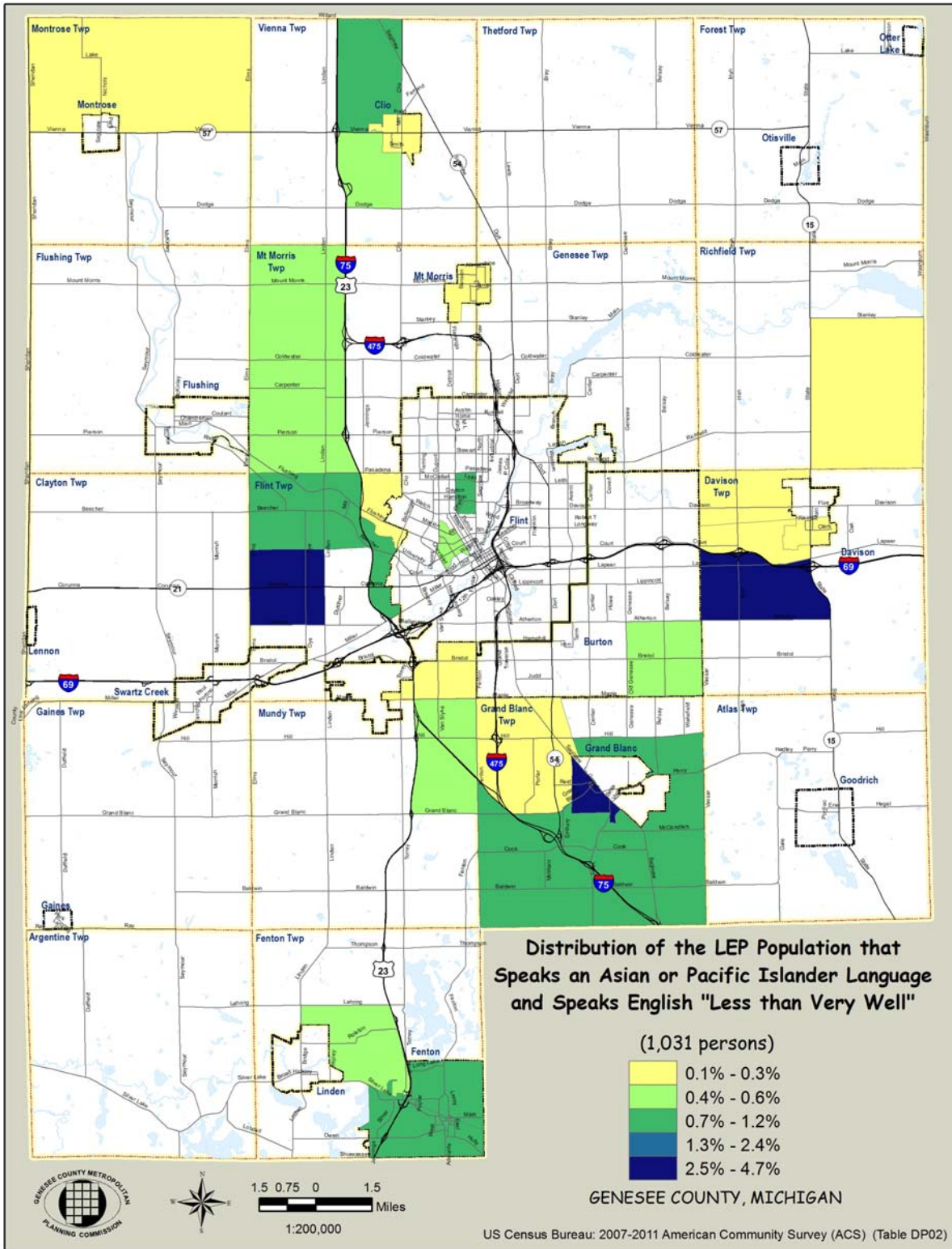
**Factor 2: Frequency of Contact with LEP Individuals**

GCMPC has conducted an informal survey of its employees with regard to whether they have had encounters with LEP individuals in the performance of their job functions and has found that they have not had any encounters with LEP individuals. GCMPC’s offices are accessible to the public and therefore accessible to LEP individuals. GCMPC also has staff that work in the field; these staff could also encounter LEP individuals. Additionally, GCMPC’s regular public meetings (such as the Metropolitan Alliance meetings held on the third Wednesday of the month) could potentially be attended by LEP individuals. Given that the county has less than 1.1% of persons that speak English less than very well, there is a slight probability that GCMPC staff may encounter LEP individuals.

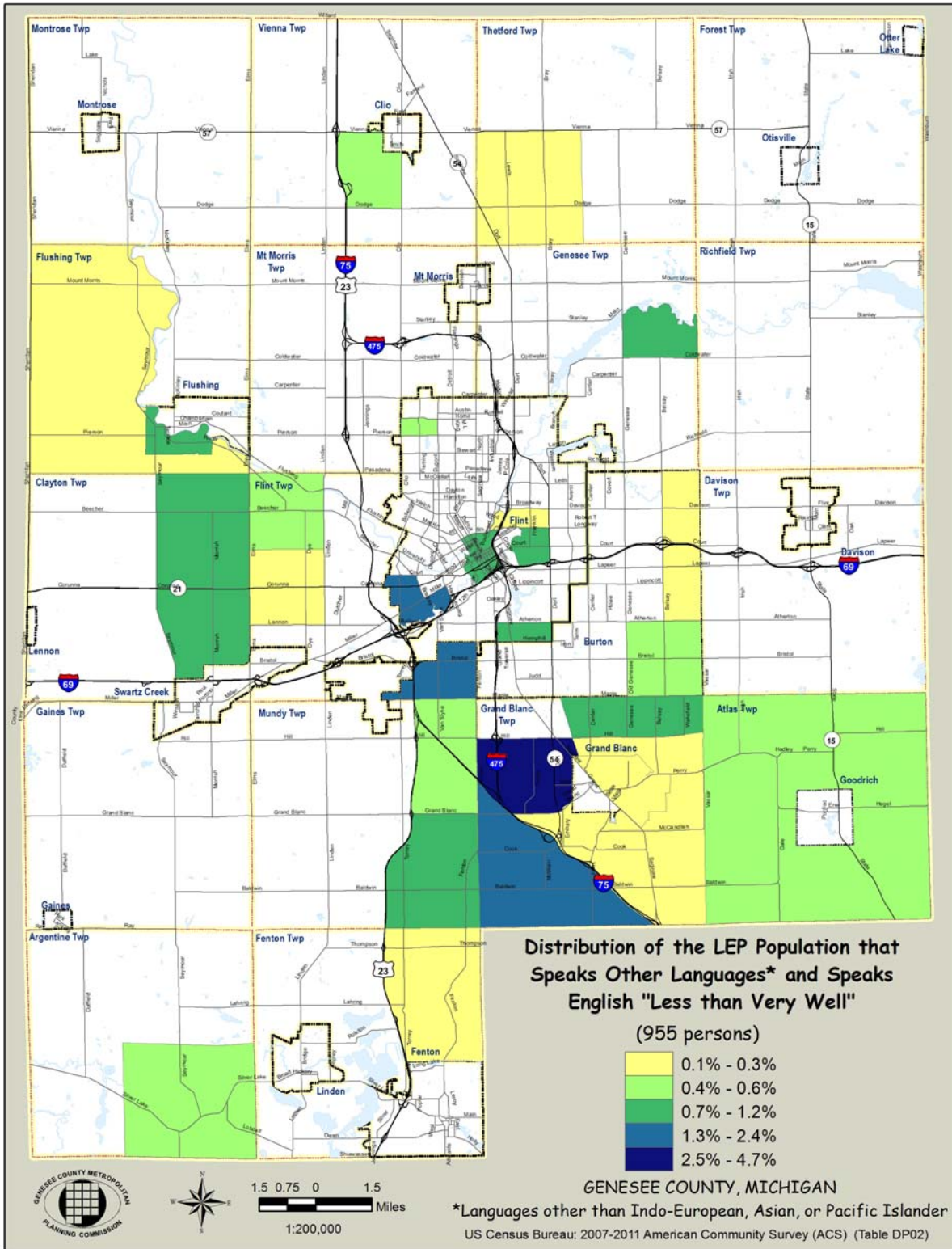












### **Factor 3: The Nature and Importance of the Program, Activity, or Service to LEP Persons**

GCMPC serves individuals throughout Genesee County in a variety of ways including administering the programs that distribute federal and state funding to transportation, community development, and solid waste programs. These programs are very important to an individual's day-to-day life. Therefore, the denial of services to an LEP individual could have a significant detrimental effect. Even though the number of LEP individuals in the county is very low, the GCMPC will ensure accessibility to all of its programs, services and activities.

### **Factor 4: The Resources Available to GCMPC and Overall Cost**

The USDOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons published in the Federal Register on December 14, 2005 (Volume 70, Number 239) states:

*“A recipient’s level of resources and the costs imposed may have an impact on the nature of the steps it should take in providing meaningful access for LEP persons. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, “reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.”*

Based on this guidance, we have reviewed our resources and deemed that, even though the number of Spanish speaking LEP individuals in the county is very low, we will translate our vital documents into the Spanish language upon request to ensure accessibility. Upon request, we will translate documents into other foreign languages if interpretation of the requested document is not an option.

Although there will not be a fixed amount allocated from our yearly budget for the translation of documents, the cost associated with the necessary translation of documents in order to comply with LEP requirements will be allocated on an as-needed basis.

## **Safe Harbor Stipulation**

Federal law provides a “Safe Harbor” situation so that recipients can ensure with greater certainty that they comply with their obligation to provide written translations in languages other than English. A “Safe Harbor” means that if a recipient provides written translation in certain circumstances, such action will be considered strong evidence of compliance with the recipient’s written-translation obligations under Title VI.

The failure to provide written translations under the circumstances does not mean there is non-compliance, but rather provides a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis. For example, even if a Safe Harbor is not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, it is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Strong evidence of compliance with the recipient’s written translation obligations under “Safe Harbor” includes providing written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally.

This “Safe Harbor” provision applies to the translation of written documents only. It does not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

Given the low percentage of LEP language group members and the GCMPC’s budget and number of staff, it is deemed that written translations of vital documents would be so burdensome as to defeat the legitimate objectives of our programs. It is more appropriate for the GCMPC to provide translation and oral interpretation services upon request, for compliance with LEP regulations.

## **Providing Notice to LEP Persons**

USDOT LEP guidance says:

Once an agency has decided, based on the four factors, that it will provide language service, it is important that the recipient notify LEP persons of services available free of charge. Recipients should provide this notice in languages LEP persons would understand.

The guidance provides several examples of notification including:

1. Signage in languages that an LEP individual would understand when free language assistance is available with advance notice.
2. Stating in outreach documents that free language services are available from the agency.
3. Working with community-based organizations and other stakeholders to inform LEP individuals of the recipient's services, including the availability of language assistance services.

Statements in languages that an LEP individual would understand will be placed in public information and in public notices informing LEP individuals that persons requiring language assistance and/or special accommodations will be provided the requested service free of charge, with reasonable advance notice to the GCMPC.

The statement will read:

“Persons needing language assistance and/or special accommodations will be provided the requested service free of charge with advance notice of seven days to the Genesee County Metropolitan Planning Commission.”

### **Options and Proposed Actions**

#### **Options:**

Federal fund recipients have two (2) main ways to provide language services: oral interpretation either in person or via a telephone interpretation service; and written translation. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis.<sup>iii</sup>

GCMPC is defining an interpreter as a person who translates spoken language orally, as opposed to a translator, who translates written language and transfers the meaning of written text from one language into another. The person who translates orally is not a translator, but an interpreter.<sup>iv</sup>

Considering the small number of LEP individuals in the service area, and limited financial resources, it is necessary to limit language aid to the most basic and cost-effective services.

#### **What the Genesee County Metropolitan Planning Commission Will Do:**

- Notify the public that interpreter services are available upon request, with seven day advance notice.
- With advance notice of seven calendar days, GCMPC will provide interpreter services at public meetings, including language translation and signage for the hearing impaired.

- GCMPC will utilize the *Translators Resource List* as provided by MDOT for translation services and verbal interpretation.
- The Census Bureau “I-speak” Language Identification Card will be distributed to all employees that may potentially encounter LEP individuals (see Appendix A).
- Once the LEP individual’s language has been identified, an agency from the *Translators Resource List* will be contacted to provide interpretation services.
- Publications of GCMPC’s complaint form will be made available online and upon request.
- In the event that a GCMPC employee encounters a LEP individual, they will follow the procedure listed below:

#### OFFICE ENCOUNTER

1. Provide an “I-speak” Language Identification Card to the LEP individual to determine which language the individual speaks.
2. Once the foreign language is identified, provide this information to the Title VI Coordinator who will contact an interpreter from MDOT’s *Translators Resource List*.
3. If the need is for a document to be translated, the Title VI Coordinator will have the document translated and provided to the requestor as soon as possible.

#### IN-THE-FIELD ENCOUNTER

1. The field employee will immediately contact the Title VI Coordinator for assistance, and provide an “I-speak” Language Identification Card to the LEP individual to determine which language the individual speaks.
2. Once the foreign language is identified, provide this information to the Title VI Coordinator who will contact an interpreter from MDOT’s *Translators Resource List* to provide telephonic interpretation.
3. If the need is for a document to be translated, the Title VI Coordinator will have the document translated and provided to the requestor as soon as possible.

#### IN WRITING

1. Once a letter from a LEP individual has been received, it will be immediately forwarded to the Title VI Coordinator.
2. The Title VI Coordinator will contact a translator from the MDOT’s *Translators Resource List* to determine the specifics of the letter.

3. The Title VI Coordinator will work with the selected agency to provide the requested service to the LEP individual in a timely manner.

#### OVER THE PHONE

1. If someone calls the GCMPC office speaking another language, every attempt will be made to keep that individual on the line until an interpreter can be conferenced into the line. The interpreter may be able to identify the caller's language.
2. Once the language spoken by the caller has been identified, GCMPC staff will proceed with providing the requested assistance to the LEP individual.

#### **GCMPC's Staff Training**

GCMPC's staff will be provided training on the requirements for providing meaningful access to services for LEP persons.

#### **LEP Plan Access**

A copy of the LEP Plan can be requested at the GCMPC offices during normal business hours and GCMPC will make the plan available on its website at [www.gcmnpc.org](http://www.gcmnpc.org). Any person or agency may also request a copy by contacting:

| Ms. Christine Durgan, Assistant Director/Title VI Coordinator, Genesee County Metropolitan Planning Commission, 1101 Beach Street, Room 223, Flint, MI, 48502. Ms. Durgan can also be reached by e-mail at: [cdurgan@co.genesee.mi.us](mailto:cdurgan@co.genesee.mi.us); by phone at (810) 257-3010; or by fax at (810) 257-3185.

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The executive order verbatim can be found online at <http://www.usdoj.gov/crt/cor/Pubs/eolep.htm>

<sup>ii</sup> The DOT has also posted an abbreviated version of this guidance on their website at <http://www.dotcr.ost.dot.gov/asp/lep.asp>.

<sup>iii</sup> <http://www.dotcr.ost.dot.gov/asp/lep/asp>

<sup>iv</sup> Department of Justice Final LEP Guidelines, Federal Register June 18, 2002-Vol. 67-Number 117.



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## **Appendix A**