

# Retooling Environmental Justice

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## ABSTRACT

This Article responds to environmental justice arguments that undermine, rather than safeguard, health and environmental quality for low-income and minority populations. Efforts by scholars and practitioners to clearly define “environmental injustice” to facilitate use of racial discrimination legal frameworks have had minimal success and are ultimately limiting the ability to embrace a broader arsenal of weapons in the fight against injustice. The greatest weapon of the environmental justice movement is its people. Environmental justice must evolve more rapidly beyond efforts to merely give communities voice, and actually redistribute power and decision making to open up opportunities for social movement intersection. The struggle to define environmental justice is difficult because it attempts to crystalize the efforts of converging social movements that continue. This Article advocates more explicit acceptance of environmental justice as a movement which requires focus on new strategies and tools that address historic pollution and prevent future inequitable environmental impacts. Considering the past, present, and future of environmental justice, this article advocates for expedited cleanups of historically polluted areas, mandatory environmental justice assessments (EJA) in existing planning processes, and robust environmental justice components in local land use plans; these coordinated strategies would empower communities to realize a vision of land use freed of the historic imposition of inequity.

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## INTRODUCTION

We are in the midst of a new dialogue—that joins climate, youth, environmental, and social justice movements in their pursuit of changes toward a livable and just harmony on this planet. Fundamental to the dialogue is a broad recognition of a divide in this country, one with deep historic roots, that is growing as viciously as a cancer. On the one side are those who have ready access to clean air, water, greenspace, and healthy food. On the other are a

myriad of communities suffering the ill effects of pollution and urban decay.<sup>1</sup> The public awakening to these disparities in the aftermath of the murders of George Floyd, Ahmaud Arbery, and Breonna Taylor,<sup>2</sup> and amidst the devastating unequal impacts of COVID-19,<sup>3</sup> has broadened and strengthened voices for change. This is true not only in criminal justice and health care, but more broadly to the structural racism weaved throughout our institutions.

Moreover, the climate crisis is exacerbating these disparities and linking our past transgressions with the potential for massive injustice against future generations. Climate change and environmental justice are inexorably linked—merged and coming into sharp clarity before our very eyes.<sup>4</sup> Reliable projections indicate that unless curbed, in the future regions such as North Africa and the Middle East will become uninhabitable due to extreme heat and drought, and low-lying islands and atolls may become uninhabitable due

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1. The lead poisoning that occurred in the City of Flint, Michigan is one of the most compelling pieces of evidence that communities in the United States suffer harmful consequences of polluted drinking water. What happened in Flint is held out as an example of environmental injustice and bad decisionmaking. See, Peter J. Hammer, *The Flint Water Crisis, KWA and Strategic-Structural Racism; Written Testimony Submitted to the Michigan Civil Rights Commission; Hearings on the Flint Water Crisis*, 18 J.L. IN SOCIETY 1 (2018).

2. See, e.g., Aris Folley, *John Lewis Visits 'Black Lives Matter Plaza,' Calls Protests 'Very Moving.'* THE HILL, (8:51 PM EDT), <https://thehill.com/homenews/house/501591-john-lewis-visits-black-lives-matter-plaza-calls-protests-very-moving> [https://perma.cc/3ZSN-ZPFB]. Alex Altman, *Why the Killing of George Floyd Sparked an American Uprising*, Time, June 4, 2020; Jorge L. Ortiz, *'It's nothing but pain': The latest on the cases of violence against Black people that sparked America's racial reckoning*, USA TODAY, Sept. 9, 2020.

3. Sandhya Raman, *COVID-19 Amplifies Racial Disparities in Maternal Health*, CQ ROLL CALL, (May 14, 2020, 5:00 AM) <https://www.rollcall.com/2020/05/14/covid-19-amplifies-racial-disparities-in-maternal-health> [https://perma.cc/PC8G-5E4E] (reporting on greater COVID-19 mortality and morbidity rates in Latinos and African Americans). Richard A. Oppel Jr., et al., *The Fullest Look Yet at the Racial Inequity of Coronavirus*, New York Times, July 5, 2020, <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>; Wei Li, *Racial Disparities in COVID-19*, Oct. 24, 2020, HARVARD UNIVERSITY GRADUATE SCHOOL OF ARTS AND SCIENCES, SCIENCE IN THE NEWS.

4. Morello-Frosch, et al., *The Climate Gap: Inequalities in How Climate Change Hurts Americans and How to Close the Gap*, [https://dornsife.usc.edu/assets/sites/242/docs/ClimateGapReport\\_full\\_report\\_web.pdf](https://dornsife.usc.edu/assets/sites/242/docs/ClimateGapReport_full_report_web.pdf) (examining the disparate climate impacts on communities of color and the poor and advocating for equitable climate mitigation and adaptation.) The California Office of Environmental Health and Hazard Assessment (OEHHA) has outlined ways that climate change disproportionately impacts socioeconomically disadvantaged and racial groups. Specifically, these groups have more exposure to hazards of climate change and more limited ability to address these risks. Specific concerns include exposure to extreme heat and wildfire risks. INDICATORS OF CLIMATE CHANGE IN CALIFORNIA: ENVIRONMENTAL JUSTICE IMPACTS, OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT (Dec. 2010). Internationally this unequal negative impact of climate change on the poorest is a growing human rights issue. Human Rights Council, *Climate Change and Poverty, Report of the Special Rapporteur on Extreme Poverty and Human Rights*, A/HRC/41/39 (June 25, 2019) [https://srpoverty.org.files.wordpress.com/2019/06/unsr-poverty-climate-change-a\\_hrc\\_41\\_39.pdf](https://srpoverty.org.files.wordpress.com/2019/06/unsr-poverty-climate-change-a_hrc_41_39.pdf) [https://perma.cc/N3W8-EKGW] (emphasizing the negative impacts of climate change will be experienced disproportionately by the poorest in society).

to sea level rise.<sup>5</sup> Regardless of geographic location, the poor are simply less able to adapt to changes in the environment including drought, heat waves, wildfires and flooding. Environmental injustice is all around us but the apathy and inaction of key leaders is corroding the fabric of U.S. society, leading to renewed calls to reassess environmental decision making power.<sup>6</sup> As we enter the age of the Anthropocene, where human actions are the dominant force transforming the environment, the false distinction that people are apart from the environment is collapsing.<sup>7</sup>

People engaged in the environmental movement have always pursued the improvement of conditions for humans by reducing pollution, promoting sustainable use of resources, and protecting land and wildlife. However, the benefits achieved by the movement are not equally shared. Physical wellbeing has long been tethered to affluence—access to education, health care and meaningful employment that provides a living wage.<sup>8</sup> More affluent communities have secured the upside of environmental laws, while communities of color and those in the lower economic classes have not fared as well.<sup>9</sup> For example, rates of asthma and cancer are higher in minority communities.<sup>10</sup>

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5. *Id.* Anmar Frangoul, *Climate Change could make North Africa and Middle East 'uninhabitable'*, CNBC, May 4, 2016, <https://www.cnbc.com/2016/05/04/climate-change-could-make-north-africa-and-middle-east-uninhabitable.html> [https://perma.cc/3FSJ-47MZ]; Curt D. Storlazzi, et al., *Many Atolls May be Uninhabitable Within Decades Due to Climate Change*, SCI REP 5, 14546 (2015), <https://doi.org/10.1038/srep14546> [https://perma.cc/BYN7-D4YZ].

6. See, e.g., Karen O'Brien, Elin Selboe & Bronwyn M. Hayward, *Exploring Youth Activism on Climate Change: Dutiful, Disruptive, and Dangerous Dissent*, 23 ECOLOGY & SOC. 42 (2018); see also Ann E. Marimow, *A Federal Judge in D.C. Hit 'Reply-All,' and Now There's a Formal Question About His Decorum*, WASH. POST (Aug. 16, 2019, 3:45 AM), [https://www.washingtonpost.com/local/legal-issues/a-federal-judge-in-dc-hit-reply-all-and-now-theres-a-formal-question-about-his-decorum/2019/08/15/551155b4-ba17-11e9-b3b4-2bb69e8c4e39\\_story.html](https://www.washingtonpost.com/local/legal-issues/a-federal-judge-in-dc-hit-reply-all-and-now-theres-a-formal-question-about-his-decorum/2019/08/15/551155b4-ba17-11e9-b3b4-2bb69e8c4e39_story.html) [https://perma.cc/7B2G-X4K5] (detailing a recent dispute over whether federal judges should be visibly supportive of climate change education that was raised when newspapers reported on a high profile email dispute among federal judges sharing information on a climate change program that was cosponsored by the research and education agency of the judiciary branch).

7. Karrigan S. Börk *Guest Species: Rethinking Our Approach to Biodiversity in the Anthropocene*, 2018 UTAH L. REV. 169, 176 (2018) (arguing that the false dichotomy between human and natural systems is now untenable).

8. See, e.g., Mel Bartley, *Unemployment and Ill Health: Understanding the Relationship*, 48 J. EPIDEMIOLOGY & COMMUNITY HEALTH 333 (1994) (noting that the relationship between unemployment and ill health is no longer seriously disputed); J. Benach and C. Muntaner, *Precarious Employment and Health: Developing a Research Agenda*, 61 J. EPIDEMIOLOGY & COMMUNITY HEALTH 276 (2007).

9. Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001–03 (1993); Joshua Glasgow, Comment, *Not in Anybody's Backyard? The Non-Distributive Problem with Environmental Justice*, 13 BUFF. ENV'T L.J. 69, 115 (2005).

10. Philip J. Landrigan et al., *Environmental Justice and the Health of Children*, 77 MT. SINAI J. MED. 178, 179 (2010).

Environmental law has been less effective in low income and minority communities. It is well documented that environmental laws are less stringently enforced in these communities.<sup>11</sup> Perversely, environmental laws have been used successfully to avoid the siting of locally undesirable land uses within and adjacent to wealthy communities. Developers are keen to locate in areas which will not resist or be effective in blocking siting and development—historically this has meant low-income and minority communities.<sup>12</sup> Throughout the course of the environmental justice movement, research has been inconclusive regarding the correlation between high concentrations of pollution burden and few environmentally beneficial amenities for low-income and minority populations.<sup>13</sup> Yet, more recent research demonstrates that targeting, racial discrimination, and sociopolitical explanations best explain the environmental justice conundrum.<sup>14</sup> For environmental justice, environmental law is important, but it is not enough.

As the environmental justice movement evolved, low-income and minority communities acquired new tools to identify and address injustices. The Federal and State governments have adopted procedures to facilitate more meaningful engagement by affected communities in government decisionmaking.<sup>15</sup> These government procedures include inviting affected populations to

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11. See, e.g., Marianne Lavelle & Marcia Cole, *Unequal Protection: The Racial Divide in Environmental Law*, 15 NAT'L L.J. 21 (1992); Robert R. Kuehn, *Remedying the Unequal Enforcement of Environmental Laws*, 9 ST. JOHNS LEGAL COMMENT 625, 627 (1994).

12. Glasgow, *supra* note 9, at 115. The author notes specifically that “[t]he ability of wealthier communities to wage more effective NIMBY campaigns is a major contributor to disproportionate siting.” *Id.* One of the first exposés on this was the revelations of the 1984 Cerell Report which encouraged siting garbage incinerators in communities that would offer the least resistance, including poor, rural, and highly Catholic communities, and those with fewer than 25,000 residents. LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 71 (2001).

13. See, e.g., Vicki Been & Francis Gupta, *Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims*, 24 ECOLOGY L. Q. 1 (1997).

14. Paul Mohai and Robin Saha’s recent research concluded that minority and low-income communities are targeted for hazardous waste facilities as they are less likely to put up resistance. The authors note that such targeting—“racial discrimination and sociopolitical explanations”—best explain the current inequitable distribution of such facilities. Paul Mohai & Robin Saha, Letter, *Which Came First, People or Pollution? Assessing the Disparate Siting and Post-Siting Demographic Change Hypotheses of Environmental Injustice*, 10 ENV'T RES. LETTERS 1, 1 (2015). The research on the chicken-or-egg problem of whether facilities are sited in communities that are low-income and minority or whether the existence of such facilities caused demographic changes has been the subject of debate for some time, with conflicting studies finding for one or the other based on methodological differences. Paul Mohai & Robin Saha, *Which Came First, People or Pollution? A Review of Theory and Evidence from Longitudinal Environmental Justice Studies*, 10 ENV'T RES. LETTERS 1, 2 (2015).

15. See Rachael E. Salcido, *Reviving the Environmental Justice Agenda*, 91 CHI.-KENT L. REV. 115 (2016) (examining environmental justice progress made during the administration

participate in comment processes open to the public and to therefore demand attention to impacts that might have been ignored. This type of engagement is not equivalent to veto-power over projects, or the ability to remedy unhealthy patterns of pollution and under-resourcing. Yet equipping communities with a legitimized “voice” in existing processes has intensified the fight over what is a “green” project or what should rightly be characterized as a project raising environmental justice concerns.<sup>16</sup> This is a new frontier in defining environmental justice.<sup>17</sup> Scholars have been grappling with the challenge of “greenwashing,” corporate public relations promoting an image of sustainability in contrast to their environmentally destructive business practices,<sup>18</sup> but scant scholarship has addressed ways to combat this issue in the environmental justice space. Engagement of the affected public in government decisionmaking is critical, but greenwashing makes it difficult for disadvantaged communities to leverage the limited ammunition they have thus far acquired to fight environmental injustice.

The greenwashing challenge exists in part due to incomplete attempts to define exactly what environmental justice, or its converse, environmental injustice, means.

Multiple theories explain environmental injustices and collectively seek to define its parameters, including discrimination, market dynamics, lack of citizen power, industrialization, individual behavior, and culture.<sup>19</sup> Dr. Karen Bell explains that the term “environmental justice” became more contentious as it widened to cover issues beyond the original context of racism in the siting of hazardous facilities and sociospatial distribution; activists promoted a broader view, but policymakers and academics hewed more closely to a narrower definition.<sup>20</sup> Edwardo Lao Rhodes laments the distracting debate over terminology. His concern is that people waste time debating labels and definitions because they do not understand each other and “[m]isunderstanding and misinterpretation abound.”<sup>21</sup> The issue cannot be ignored because it could

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of President Barack Obama).

16. For an evaluation of the energy sector see Jeanne Marie Zokovich Paben, *Green Power & Environmental Justice—Does Green Discriminate?* 46 TEX. TECH L. REV. 1067 (2014) (establishing a foundation for how to evaluate environmental justice risks of green energy production).

17. See, e.g., Eric K. Yamamoto & Jen-L W. Lyman, *Racializing Environmental Justice*, 72 U. COLO. L. REV. 311 (2001) (arguing that cultural and economic self-determination are important and ignored aspects of environmental justice). The authors contend some communities are insufficiently engaged in discussion of whether projects do pose environmental justice concerns. *Id.*

18. See, e.g., Thomas Athanasiou, *The Age of Greenwashing*, 7 CAPITALISM NATURE SOCIALISM 1 (1996).

19. KAREN BELL, *ACHIEVING ENVIRONMENTAL JUSTICE: A CROSS-NATIONAL ANALYSIS* 216–17 (2014).

20. *Id.* at 15.

21. EDUARDO LAO RHODES, *ENVIRONMENTAL JUSTICE IN AMERICA: A NEW PARADIGM* 13 (2003).

undermine efforts to build coalitions and public support on the one hand, and allow evasion of scrutiny and greenwashing on the other hand.

Another scholar, Brinda Sarathy, advocates for an intersectional perspective that moves beyond the strictly racial lens to include considerations of sexism and classism, to “acknowledge the role of multi-racial and cross-class alliances in struggles for justice.”<sup>22</sup> Unity does not require complete agreement. For example, the vigorous debates over a “Green New Deal” are equally trying to define what is essentially a growing rejection of the status quo. As Nicholas Bryner explains, the Green New Deal “is a reinvigoration of the idea of industrial policy as social policy with an explicit ‘green’ layer to address the transition toward a more sustainable economy.”<sup>23</sup> The definition of environmental justice will remain incomplete because it is fundamentally an ongoing movement. The dynamic and intersectional aspect of the environmental movement itself requires that those engaged in the movement continue to update their demands for progress to match political support to address injustice.

This Article seeks to move beyond the definitional conundrum by focusing on environmental justice tools and strategies that will link to the movement’s greatest asset: people. As a movement, and one closely allied to other movements, environmental justice must demand a redistribution of resources and power. We are in a critical moment for these demands to be met. First, I will discuss the elusive definition of environmental justice, emphasizing that it is a movement that connects to other social and economic justice concerns. As such, environmental justice is built on a broad array of laws: civil rights laws, federal and state environmental laws, and land use law. Second, using a recent example of a debate over defining “green development” in a majority-minority city, I explore the tendency to over-focus on the distributive and procedural aspects of environmental justice. The example will illustrate some pathways to a more productive and proactive approach to the full range of environmental justice imperatives. Third, I will examine some of the gains made by the movement, as well as ways both the environmental and social justice movements have expanded the toolbox for addressing a myriad of environmental justice concerns. Finally, Part IV will discuss immediate equitable steps, such as funding remediation with the Environmental Justice Act, enhancing the environmental justice assessment with more substantive and procedural teeth, and incorporating robust proactive measures in city and county general plans. The conclusion draws together lessons and re-emphasizes that the environmental justice movement is both a journey and a destination for more equitable power distribution and self-determinacy in our society. As Fredrick Douglass

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22. Brinda Sarathy, *An Intersectional Reappraisal of the Environmental-Justice Movement*, in *THE NATURE OF HOPE: GRASSROOTS ORGANIZING, ENVIRONMENTAL JUSTICE, AND POLITICAL CHANGE* 26, 28 (Char Miller & Jeff Crane eds., 2018).

23. Nicholas S. Bryner, *The Green New Deal and Green Transitions*, 44 *VT. L. REV.* 723, 725–26 (2020).

famously warned, “Power concedes nothing without a demand. It never did and it never will.”

## I. BACKGROUND: THE ELUSIVE DEFINITION OF ENVIRONMENTAL JUSTICE

Environmental racism is a recognized phenomenon,<sup>24</sup> and it has not been eliminated despite the adoption and implementation of unlawful discrimination laws at both federal and state levels. The Environmental Protection Agency (EPA), the federal agency responsible for implementing and overseeing environmental laws, recently confirmed the continued existence of environmental racism.<sup>25</sup>

Although the concept is well-recognized, defining the term environmental racism, or “environmental justice” as it is better known, is still a work in progress.<sup>26</sup> Perhaps most succinctly and powerfully stated by Robert R. Kuehn, “‘Environmental justice’ means many things to many people.”<sup>27</sup> Kuehn’s helpful taxonomy includes distributive and procedural justice as well as corrective and social justice.<sup>28</sup> Distributive justice is concerned with unequal distribution and burdens of pollution;<sup>29</sup> procedural with the process of decisionmaking;<sup>30</sup> corrective with both the fairness in administration of punishment against law-breaking and in repairing losses unlawfully inflicted on others;<sup>31</sup> and social with the fair and just ordering of society and in the environmental context reflects the fact that disadvantaged communities live with the cumulative burdens of the interrelated injustices in education, healthcare, and environmental degradation.<sup>32</sup> Moreover, as scholars such as Alice Kaswan have emphasized,

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24. See, e.g., Gerald Torres, *Introduction: Understanding Environmental Racism*, 63 U. COLO. L. REV. 839 (1992); Luke W. Cole, Correspondence, *Remedies for Environmental Racism: A View from the Field*, 90 MICH. L. REV. 1991, 1992 (1992).

25. Vann R. Newkirk II, *Trump’s EPA Concludes Environmental Racism Is Real*, THE ATLANTIC (Feb. 28, 2018), <https://www.theatlantic.com/politics/archive/2018/02/the-trump-administration-finds-that-environmental-racism-is-real/554315> [<https://perma.cc/KT9S-J8WG>].

26. Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ENVTL L. REP. 10681, 10681–82 (2000); DAVID SCHLOSBERG, *DEFINING ENVIRONMENTAL JUSTICE, THEORIES, MOVEMENTS, AND NATURE* (2007); KAREN BELL, *ACHIEVING ENVIRONMENTAL JUSTICE: A CROSS-NATIONAL ANALYSIS* 17 (2014) (explaining the debate over whether a definition is necessary or will be part of a continued dialogue within the movement itself.).

27. *Id.*

28. *Id.*

29. *Id.* at 10683–84.

30. *Id.* at 10688.

31. *Id.* at 10693. For a thoughtful proposal to distribute pollution penalties to those harmed by unlawful actions, see Alex Geisinger, *Rethinking Environmental Justice Regulation: A Modest Proposal for Penalty Return*, 55 SYRACUSE L. REV. 33 (2004).

32. Kuehn, *supra* note 26, at 10699.

because the goals of environmental justice are to reorient the human relationships within society, it is also significantly about political power and relationship to justice.<sup>33</sup>

Because environmental justice emerged as a social and political movement, the definition has always needed to be both broad and flexible in order to sustain momentum and gather support from as many allies as possible. This has proven somewhat effective over the past few decades, with even more states and localities focusing on the demands the movement identifies to rectify ongoing inequities. However, the problem with having an ambiguous definition is that it can be misused and the acceptable boundary of injustice continues to shift with political will.

Environmental justice advocates and allies must take notice of the emergence of false and misleading narratives around improved social and economic conditions. Often, projects with significant harmful environmental impacts are promoted as beneficial to communities because they will improve the local economy, specifically by providing local employment.<sup>34</sup> Environmental justice must be used to neutralize these arguments, prevent further harm to communities already suffering the overburden of pollution, and prevent future inequitable harms. Today we can capitalize on complementary movements to fundamentally shift power because systemic racism in areas such as housing, education, energy distribution and environmental protection have broader recognition than ever before.

#### A. *Traditional Environmental Justice Definitions and Guiding Touchstones*

Although there is no single legal definition of environmental justice,<sup>35</sup> the broad contours exist from federal, state and local enactments. In 1994, President William Clinton issued Executive Order 12898 directing Federal Agencies

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33. Alice Kaswan, *Bridging the Gap Between Environmental Laws and "Justice,"* 47 AM. U. L. REV. 221, 230 (1997) (emphasizing political justice); Alice Kaswan, *Environmental Justice and Environmental Law*, 24 FORDHAM ENV'T L. REV. 149 (2013) [hereinafter *Environmental Justice and Environmental Law*] (explaining how the environmental justice's broad and inclusive vision can contribute to goals of the environmental movement, in part by increasing political strength).

34. The concept of greenwashing has received treatment in various contexts, including by the fossil fuels industry seeking to recreate its image. Many corporations have taken pains to create a sustainable image in an effort to avoid regulation and enjoy the benefits of continued patronage. Miriam A. Cherry and Judd F. Sneirson, *Beyond Profit: Corporate Social Responsibility and Greenwashing After the BP Oil Disaster*, 85 TUL. L. REV. 983, 1025 (2011) (discussing the sense of betrayal of British Petroleum (BP) consumers after the 2010 Gulf of Mexico oil spill upended BP's image and contradicted its carefully crafted advertising campaigns).

35. Uma Outka explained there is "no fixed definition of environmental justice." Uma Outka, *NEPA and Environmental Justice: Implementation, Integration and Judicial Review*, 33 B.C. ENV'T AFF. L. REV. 601, 602 at n.1 (2006). While a working definition is necessary for legal action as well as the practical efforts of agencies and activists, fixation on a single meaning when a movement is organic and changing is infeasible.

to incorporate achieving environmental justice into their missions.<sup>36</sup> E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations states 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.”<sup>37</sup> This definition emphasizes the *distributive* aspect of environmental justice, where certain demographics are unequally burdened with pollution and environmental degradation.

The EPA defines environmental justice as “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.”<sup>38</sup> This focus is on both the procedural and distributive aspects of environmental justice.

The EPA has actively tracked federal progress on achieving the goals set forth in E.O. 12898 and has been transparent regarding where we are falling short of our ambitions. The EPA’s Environmental Justice Report fiscal year 2017 Progress Report, marking the twenty-fifth year of EPA’s Office of Environmental Justice, indicated need for progress in all areas of pollution control, including safe drinking water and air quality.<sup>39</sup> The fiscal year 2019 report emphasized continued capacity building and cleanup efforts.<sup>40</sup> The EPA’s Environmental Justice 2020 action plan notes a vision for the EPA as follows:

By 2020, we envision an EPA that integrates environmental justice into everything we do, cultivates strong partnerships to improve on-the-ground results, and charts a path forward for achieving better environmental outcomes and reducing disparities in the nation’s most overburdened communities. Achieving this vision will help to make our vulnerable, environmentally burdened, and economically disadvantaged communities healthier, cleaner and more sustainable places in which to live, work, play and learn.<sup>41</sup>

There has been wide acknowledgment that the EPA’s definition, which has changed over time, is ambiguous, incomplete, and focuses significantly

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36. Exec. Order No. 12,898, 3 C.F.R. 859 (1995), *reprinted as amended in* 42 U.S.C. § 4321 (2012).

37. *Id.*

38. *Learn About Environmental Justice*, U.S. EPA, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> [<https://perma.cc/652J-QEV5>] (last updated Sept. 24, 2020) (further defining “fair treatment” and “meaningful involvement”).

39. U.S. EPA, EPA ENVIRONMENTAL JUSTICE FY 2017 PROGRESS REPORT 10, 14, 33 (2018).

40. U.S. EPA, EPA ANNUAL ENVIRONMENTAL JUSTICE PROGRESS REPORT FY 2019 3, 5 (2019).

41. U.S. EPA, EJ 2020 ACTION AGENDA: THE U.S. EPA’S ENVIRONMENTAL JUSTICE STRATEGIC PLAN 2016–2020 iii (2016) (hereinafter EJ 2020 ACTION AGENDA).

on distributive and procedural elements of “fair treatment” and “meaningful involvement.”

“Fair treatment” means:

No group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.<sup>42</sup>

“Meaningful involvement” is defined by the EPA as 1) Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; 2) The public’s contribution can influence the regulatory agency’s decision; 3) The concerns of all participants involved will be considered in the decision making process; and 4) The decision-makers seek out and facilitate the involvement of those potentially affected.”<sup>43</sup>

These two definitions have led regulatory actions, yet these actions are significantly focused on distributive and procedural elements of environmental justice. EPA has recognized the existing framework is unwieldy for disadvantaged communities that lack time, knowledge, or technical fluency.<sup>44</sup> Community capacity building is an important aspect of this work to achieve procedural justice. Otherwise, communities cannot effectively participate in the environmental decisionmaking process. EPA has made progress in this arena. For example, EPA’s Office of Environmental Justice, in collaboration with other regional offices, has hosted Community Involvement Training Conferences to connect community members to EPA officials and educate them about how to get involved in local community environmental efforts.<sup>45</sup> EPA has also focused on capacity building in particular communities that are more likely to encounter repeat challenges to their efforts to restore environmental equity.<sup>46</sup>

Despite this significant focus on capacity building, it should be recognized that the procedural aspect of environmental justice is a precondition to implementing some of the corrective and social justice components that are still woefully unrealized. Capacity building must supplement the other

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42. *EJ 2020 Glossary*, U.S. EPA, <https://www.epa.gov/environmentaljustice/ej-2020-glossary> [<https://perma.cc/HER4-LYVZ>] (last updated Aug. 2, 2019).

43. *Id.*

44. James D. Fine and Dave Owen, *Technocracy and Democracy, Conflicts Between Models and Participation in Environmental Law and Planning*, 56 *HASTINGS L.J.* 901 (2005) (discussing complexity of models used in environmental planning processes such as air quality plan development and barriers to public participation).

45. For example, EPA Region 4 cohosted a program in Atlanta, Georgia in 2015 featuring the theme “Making a Visible Difference in Communities.” U.S. EPA, 2015 COMMUNITY INVOLVEMENT TRAINING CONFERENCE: MAKING A VISIBLE DIFFERENCE IN COMMUNITIES (2015), [https://www.epa.gov/sites/production/files/2015-09/documents/2015\\_conf\\_booklet.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/2015_conf_booklet.pdf) [<https://perma.cc/9HS7-HEJZ>].

46. U.S. EPA, COMMUNITY ACTION ROADMAP: EMPOWERING NEAR-PORT COMMUNITIES (2019).

environmental justice work of the EPA; procedural justice cannot be reduced to efforts to shift responsibility to police polluters and agitate for government enforcement of environmental laws.

In California, one of the first states to legislate for environmental justice, the definition similarly focuses on fair treatment in the implementation of environmental law. The definition is found in California Government Code section 65040.12(e):

For the purposes of this section, “environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.<sup>47</sup>

The focus on environmental justice as a *grassroots* movement, sharing parallels to other movements, supports a vision of justice that is broader than the distributional and procedural elements that are articulated in the existing definitions from government agencies.<sup>48</sup> This broader lens is an attempt to root the demand for environmental justice as a right, although one that is not yet fully recognized.<sup>49</sup> A critical moment in the movement was the adoption of the 17 Principles of Environmental Justice by delegates of the 1991 National People of Color Environmental Leadership Summit, over half of which are articulated as “rights.”<sup>50</sup> As the authors in *From The Ground Up* so elegantly articulate, environmental justice as a movement is seeking to go beyond the framing of environmental justice as merely a distributional problem, explaining the need to:

[R]econceptualize grassroots activism as *more than* an attempt to disrupt decisions of private corporations and state agencies. Instead, grassroots struggles are a crucial arena in which to *restructure social relations* through systems of localized environmental decision making.<sup>51</sup>

The tools recommended in this Article focus on how to link the power of the converging social movements to meaningfully restructure environmental decision making and improve the outcomes of redevelopment of our human landscapes in response to existing pollution and anticipated climate change imperatives.

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47. CAL. GOV'T CODE § 65040.12(e)(1) (2020).

48. Jonathan C. Augustine, *Environmental Justice in the Deep South: A Golden Anniversary Reflection on Stimulus and Change*, 47 U.S.F. L. REV. 399, 410 (2013) (reflecting on the grassroots origins of the movement).

49. Robert Bullard asserts that environmental justice should be framed as a “right” in his articulation of an environmental justice framework. See Robert D. Bullard, *Environmental Justice for All: It's the Right Thing to Do*, 9 J. ENV'T L. & LITIG. 281, 307 (1994).

50. Paul Mohai, *Environmental Justice and the Flint Water Crisis*, 32 MIC. SOC. REV. 18–20 (2018).

51. COLE & FOSTER, *supra* note 12, at 13 (emphasis added).

## B. *Limits of Framing Environmental Justice as Discrimination*

The fight against environmental injustice is being waged on many fronts. Title VI of the Public Health and Welfare Act prohibits discrimination by federal agencies (or those they fund) based on race, color, and national origin, in programs and activities receiving federal funding.<sup>52</sup> It is imperative that government officials address the cruel and vicious incidents of racism prohibited by these laws. Yet the civil rights discrimination framework for prosecuting these crimes is not well designed to turn the tide against the weight of preexisting disparities.<sup>53</sup>

Moreover, from a language perspective, there is concern that using the term “environmental racism” can close off minds that might otherwise have been open to understanding perspectives of concerned community members.<sup>54</sup> From a movement objective, the language invoked can make a difference in garnering political will and support. Furthermore, utilizing the term “discrimination” or discussing environmental justice as a discrimination allegation may unintentionally lead to an unfruitful search for one particular “bad actor” or overemphasize the “intent” element of an environmental justice violation claim. There may in fact be no one bad actor to discern, nor any intent to discriminate, and yet we must find ways to avoid decisions that exacerbate environmental injustice. The structural and political forces that perpetuate discrimination are another reason environmental justice activists resist the idea

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52. Civil Rights Act of 1964 § 601, 42 U.S.C. § 2000(d) (1964). Because federal agencies are responsible for policing the enforcement and implementing environmental law, and they also provide funds to various states to carry out these activities, ensuring that Title VI is followed is an important EJ function.

53. The 2001 Supreme Court case of *Alexander v. Sandoval* is important for environmental justice lawyers. 532 U.S. 275 (2001). The Supreme Court decided there is no private right of action to enforce disparate impact regulations promulgated under section 602 of Title VI. *Id.* at 293. There is a private right of action under 601 and parties can sue for injunctive relief or damages, but 601 prohibits only *intentional* discrimination. *Id.* For another attempt to define “environmental justice” in a way to help the movement see Scott Michael Edson, *Title VI or Bust? A Practical Evaluation of Title VI of the 1964 Civil Rights Act as an Environmental Justice Remedy*, 16 FORDHAM ENV'T L REV. 141 (2004). Edson notes that the movement is grassroots and thus has power, but such grassroots nature also means it is difficult to organize across, stating that the grassroots nature “has been both its biggest asset and its most significant shortcoming.” *Id.* at 147. Edson later suggests that defining “environmental justice” and environmental justice advocate’s goals could facilitate developing effective future environmental justice strategies. *Id.* at 148.

54. There is a robust debate over using the terms racism, discrimination, or justice. Robert D. Bullard, *Environmental Racism and ‘Invisible’ Communities*, 96 W. VA. L. REV. 1037, 1037 (1994); see also Dorceta E. Taylor, *The Rise of the Environmental Justice Paradigm*, 43 AM. BEHAV. SCIENTIST 508, 536 (2000) (noting that environmental racism or discrimination occurs through a process where environmental decisions, policy and actions lead to racial discrimination).

that there needs to be a “bad guy” out there trying to harm communities; it is the impact on communities that is the most important aspect to remedy.<sup>55</sup>

Private parties may sue for intentional discrimination where they have evidence of that nature. However, proving disparate impact, which is the character of most environmental justice problems, is procedurally elusive. Following the Supreme Court’s decision in *Alexander v. Sandoval* there is no private right of action to sue for violations of the Civil Rights regulations. The prohibition on disparate impact is not written into the statute only the implementing regulations making Title VI litigation a more difficult tool for private environmental justice advocates to use.<sup>56</sup> *Sandoval* did not prevent agencies from enforcing their disparate impact regulations in the environmental justice context and subsequent case law has confirmed its continued vitality to police unlawful racial discrimination.<sup>57</sup> Thus, environmental justice advocates now must rely on the government to seek redress of Title VI violations, or must prove intentional discrimination.

However, even where these Title VI lawsuits are available, there continues to be a great difficulty in defining both “environmental justice” and the appropriate comparison population.<sup>58</sup> Alice Kaswan noted that the EPA’s struggle to interpret “disparate impact” has undermined the effectiveness of Title VI enforcement.<sup>59</sup> To establish a disparate impact, the plaintiff must prove a disparity between an affected population and an appropriate comparison population. Bradford Mank elaborated on the challenge of finding an appropriate comparison population, which endures even when environmental justice assessments are conducted in the development context.<sup>60</sup> For example, Mank noted that “business commentators suggest it would be inappropriate in many cases to compare a poor urban area with an affluent suburban area.”<sup>61</sup> Instead, business interests have promoted only comparing areas with similar land uses.<sup>62</sup> In contrast, Mank argues that a comparison population could be based on areas that meet “the minimum relevant requirements for the proposed facility.”<sup>63</sup> This is a much less restrictive approach, and thus, highly contested by

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55. COLE & FOSTER, *supra* note 12, at 12.

56. See Bradford C. Mank, *Is There a Private Cause of Action Under EPA’s Title VI Regulations?: The Need to Empower Environmental Justice Plaintiffs*, 24 COLUM. J. ENV’T L. 1, 17 (1999); Bradford C. Mank, *Proving an Environmental Justice Case: Determining an Appropriate Comparison Population*, 20 VA. ENV’T L. REV. 365, 367 (2001) [hereinafter *Proving an Environmental Justice Case*].

57. Alan Ramo, *Environmental Justice as an Essential Tool in Environmental Review Statutes: A New Look at Federal Policies and Civil Rights Protections and California’s Recent Initiatives*, 19 HASTINGS W-N.W. J. ENV’T L. & POL’Y 41, 52–56 (2013).

58. *Proving an Environmental Justice Case*, *supra* note 56, at 365.

59. *Environmental Justice and Environmental Law*, *supra* note 33, at 156.

60. *Proving an Environmental Justice Case*, *supra* note 56, at 371.

61. *Id.* at 367.

62. *Id.*

63. *Id.*

development interests. Within this framework, instead of evaluating whether the affected population is receiving *an additional* burden of pollution, we try to construct a comparison population. Until historic inequities are addressed, this method of analysis will inevitably fall short of achieving environmental justice.

Beyond federal law, states such as California, have their own civil rights protections. California's civil rights protections<sup>64</sup> are modeled on Title VI but are broader to avoid the *Sandoval* problem. However, this has limited helpfulness beyond the state of California.<sup>65</sup>

Thus, with continued environmental injustice and a lack of access to civil rights litigation, more must be done. Environmental justice emerged as an offshoot of environmental law to specifically analyze the unequal burden that low-income and minority communities bear in relation to pollution and environmental harm. Yet the concerns for environmental injustice go well beyond unequal burdens of pollution, and include concern for access to healthy, sustainable communities. Indeed, for some time the concept of environmental justice has been amorphous.<sup>66</sup> People of color and environmental justice advocates have tried to articulate the vision for environmental justice and first principles in their own voices. This project now has some urgency, so an expanded vision that combines the discrimination lens with additional focal points in the land use and environmental arenas is rapidly advancing.

## II. ILLUSTRATIVE PROJECT: VALLEJO, CALIFORNIA MARINE TERMINAL AND CEMENT PROJECT

The challenges of implementing environmental justice in the current sociopolitical context and the opportunities for improvement can be appreciated through the analytical lens of a particular project. Some environmental justice battles are squarely within the agreed-upon boundaries while others are contested. For example, Flint, Michigan's lead-contaminated drinking water is one high-profile environmental justice case.<sup>67</sup> In 2014, the City switched its water supply to the Flint River and the introduction of water with different chemical properties than the prior City water source into century-old pipes exposed residents to lead contaminated water. The city was a majority-Black

64. CAL. GOV'T CODE § 11135 (2020) (confirming disparate impact test is acceptable).

65. Ramo, *supra* note 57, at 56.

66. Alex Geisinger, *The Benefits of Development and Environmental Injustice*, 37 COLUM. J. ENV'T L. 177, 178 (2012) (definition of environmental justice is contested); Gloria E. Helfand & L. James Peyton, *A Conceptual Model of Environmental Justice*, 80 Soc. Sci. Q. 68–83 (1999).

67. For an excellent overview of the saga, see Melissa Denchak, *Flint Water Crisis: Everything you Need to Know*, NAT. RESOURCES DEF. COUNCIL (Nov. 8, 2018) <https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know#sec-summary> [<https://perma.cc/7P5S-C896>]; see also Merrit Kennedy, *Lead-Laced Water in Flint: A Step-By-Step Look at the Makings of a Crisis*, NAT'L. PUB. RADIO (Apr. 20, 2016, 6:39 PM), <https://www.npr.org/sections/thetwo-way/2016/04/20/465545378/lead-laced-water-in-flint-a-step-by-step-look-at-the-makings-of-a-crisis> [<https://perma.cc/GK48-QFP6>].

community with 40 percent of people living in poverty. There is wide acceptance by environmental advocates that this is an environmental justice issue. The residents of Flint are still receiving bottled water. Prosecutors dropped their initial criminal indictments, restarting the investigation into the disaster due to irregularities that potentially corrupted the investigative process.<sup>68</sup> A potential settlement reached in 2020 would compensate Flint residents impacted by the contaminated water.<sup>69</sup> And Flint is not the only place facing this environmental injustice. Lead contamination of public drinking water is also a major issue in the community of Newark, New Jersey, which, like Flint, also has a high poverty rate of 28 percent compared with a national rate of 12.3 percent.<sup>70</sup>

Although there are many high-profile environmental justice conflicts that have been highlighted in prior reporting and scholarship, the focus of this Part is on the process and substance leading decisions about a cement plant in a small California bay area bedroom community. Focusing on a project within the wider San Francisco Bay area is appealing, given the income inequity that is rising in the otherwise progressive and environmentally conscious region. Moreover, the project involves cement—a building block of modern industrialized society. The complexity of the proposal, the grassroots movement against its approval, and the narrative contesting its character as beneficial, harmful, or benign provides a rich opportunity for reflection.

#### A. *Demographics and Location*

Vallejo, California is a city of about 100,000 people,<sup>71</sup> located in Northern California about 30 miles north of San Francisco on the northeastern shore of San Pablo Bay and southern end of the Napa river. Vallejo is well known as one of the first sizable cities in California that went bankrupt in 2008—it was hit very hard by the housing-bubble's burst and the resulting economic downturn.<sup>72</sup> Vallejo was previously the location of the Mare Island Naval Shipyard.

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68. Mitch Smith, *Flint Water Prosecutors Drop Criminal Charges, With Plans to Keep Investigating*, New York Times, June 13, 2019, <https://www.nytimes.com/2019/06/13/us/flint-water-crisis-charges-dropped.html> [<https://perma.cc/J7MN-X325>].

69. Riley Beggin, *Landmark Flint Water Crisis Settlement Grows to \$641.2M as it Moves to Court*, The Detroit News, Nov. 17, 2020, <https://www.detroitnews.com/story/news/michigan/flint-water-crisis/2020/11/17/flint-water-crisis-settlement-grows-641-2-million/6335673002> [<https://perma.cc/KYD4-2VQS>].

70. Sasha Ingber, *Newark's Drinking Water Problem: Lead and Unreliable Filters*, NAT'L. PUB. RADIO (Aug. 13, 2019, 3:21 PM) <https://www.npr.org/2019/08/13/750806632/newarks-drinking-water-problem-lead-and-unreliable-filters> [<https://perma.cc/4KXU-DJYQ>].

71. The 2010 Census identified Vallejo's population at 115,942. *City of Vallejo*, BAY AREA CENSUS, <http://www.bayareacensus.ca.gov/cities/Vallejo.htm> [<https://perma.cc/4EUA-TJDU>].

72. Adam Tanner, *San Francisco Suburb Vallejo Files for Bankruptcy*, REUTERS (May 23, 2008, 7:33 PM) <https://www.reuters.com/article/us-bankruptcy-california-city/san-francisco-suburb-vallejo-files-for-bankruptcy-idUSN2352179020080524> [<https://perma.cc/CUE2-BFPK>]; see also Mark Davidson & William Kutz, *Grassroots Austerity: Municipal*

Mare Island (opened in 1854) was the first west coast naval base and it officially closed its doors in 1996 after 145 years of operation. The base closure impacted many residents of the city, who were employed by the Navy either officially or as contractors. Although the base closed in 1996, Mare Island has gone through several phases of redevelopment. Indeed, many cite the base closure as the reason Vallejo has suffered such economic woes.<sup>73</sup> No other large employers have relocated to the area.

Although California is a majority minority state, Vallejo is even more diverse than the average city in California. Vallejo is the most diverse city in Solano County, with 75 percent of its population identifying as a racial or ethnic minority. In 2018 and 2019 based on census data, Vallejo was the most diverse city in California.<sup>74</sup> It also has a greater percentage of people living below the poverty line than other cities in Solano County where it is located.<sup>75</sup>

Regardless of these demographics, Vallejo is a water-adjacent City with a mellow and appealing climate, and it is proximate to San Francisco and other cities with higher employment rates, making it a desirable bedroom community for those priced out of other housing markets.<sup>76</sup> This increases the concern for gentrification of the downtown and waterfront area, where a daily water ferry takes passengers in and out of San Francisco.

## B. *The Project*

Vallejo Marine Terminal (VMT) proposed to build a deep-water terminal and Orcem Americas proposed to build a cement factory as part of a collaborative development. This would reestablish industrial activities at a waterfront site, the former Sperry Flour Mill. According to the project description, it would operate 24-hours a day, adding significant rail, ship, and truck traffic. The port itself would require upgrading to support the project. Orcem proposed to operate a “green” cement facility by milling recycled materials.

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*Bankruptcy from Below in Vallejo, California*, 47 ENVT. & PLANNING 1440 (2015) (examining the implications of city bankruptcy on urban governance).

73. Rachel Raskin-Zrihen, *Mare Island Shipyard Closure, 20 Years Later*, MILITARY.COM (Apr. 1, 2016) <https://www.military.com/daily-news/2016/04/01/mare-island-naval-shipyard-closure-20-years-later.html> [https://perma.cc/UEU5-GB3D].

74. Rachael Raskin-Zrihen, *Vallejo Named State's Most Diverse City by MSN.com*, VALLEJO TIMES-HERALD (July 13, 2018) <https://www.timesheraldonline.com/2018/07/13/vallejo-named-states-most-diverse-city-by-msncom> [https://perma.cc/2G8C-QUMR]; see also Chris Kolmar, *Most Diverse Cities in California*, HOMESNACKS (Dec. 27, 2019) <https://www.homesnacks.net/most-diverse-cities-in-california-128906> [https://perma.cc/YY2G-B8AZ].

75. Todd R. Hansen, *Pandemic Likely to Set Back Progress in Reducing Solano County Poverty*, Daily Republic, <https://www.dailyrepublic.com/all-dr-news/solano-news/fairfield/pandemic-likely-to-set-back-progress-in-reducing-solano-county-poverty> [https://perma.cc/6UBZ-75L5] (explaining that the poverty rate in Solano County had been dropping pre-pandemic but identified Vallejo at 14 percent of residents living at or below the federal poverty rate as having a relatively higher poverty rate than other cities in the county).

76. *Demographic Profile*, CITY OF VALLEJO, [http://www.cityofvallejo.net/about\\_vallejo/demographic\\_profile](http://www.cityofvallejo.net/about_vallejo/demographic_profile) [https://perma.cc/WL9L-GZQZ].

This process has a lesser environmental impact compared to traditional Portland cement, according to the company, because it uses 90 percent less energy, causes an 80 percent reduction in emissions of air pollutants, and is a more durable and therefore longer-lasting product. This intersects directly with the desire for more climate friendly development to combat global climate change.

Cement is a building material notorious for its environmental impacts. In the well-known nuisance case *Boomer v. Atlantic Cement Co.*, the court remarked, “[c]ement plants are obvious sources of air pollution in the neighborhoods where they operate.”<sup>77</sup> However, that case introduced the idea, criticized by the dissent, that a nuisance that continued to cause substantial damage could persist upon the payment of permanent damages. If the offending party had sufficient financial means they could continue to pollute. Factors that supported the court’s analysis included the employment of 300 workers at the cement plant. Ultimately, the plant in *Boomer* was required to install pollution control technology to comply with the Clean Air Act.<sup>78</sup> Today, cement plants are still identified as one of the largest sources of air pollutants.

It is very important to reduce the impacts of building materials, and researchers consider life-cycle assessment to discern ways to move the production onto a more sustainable footing.<sup>79</sup> Cement also produces substantial CO<sub>2</sub> emissions, one of the most consequential greenhouse gases responsible for climate change.<sup>80</sup> The cement industry produced 6 percent of the total global CO<sub>2</sub> emissions in 2005, which is one reason there is serious interest in finding ways to reduce cement CO<sub>2</sub> emissions. The emissions result from the materials used and the need for significant energy to heat the kiln.<sup>81</sup> For this reason, researchers promote the use of alternative energy sources for the cement industry and a look at the feedstock materials.<sup>82</sup> Moreover, a conventional building may be composed of 40 percent to 60 percent cement products, which amplifies the potential environmental impact.<sup>83</sup>

The VMT and Orcem Cement project was proposed for a location within 300 feet of a residential zone and about a quarter mile from Grace Patterson Elementary School.<sup>84</sup> In addition to the increased rail and ship traffic, the plant

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77. *Boomer v. Atlantic Cement Co.*, 257 N.E. 2d 870, 871 (1970).

78. JOHN G. SPANKLING & RAYMOND R. COLETTA, *PROPERTY: A CONTEMPORARY APPROACH* 794–95 (4th ed. 2018).

79. Ignacio Zabalza Bribián et al., *Life Cycle Assessment of Building Materials: Comparative Analysis of Energy and Environmental Impacts and Evaluation of the Eco-Efficiency Improvement Potential* 46 *BUILDING & ENV'T* 1133–40 (2011).

80. Jieru Zhang et al., *Analysis of CO<sub>2</sub> Emissions for the Cement Manufacturing with Alternative Raw Materials: A LCA-Based Framework*, 61 *ENERGY PROCEDIA* 2541, 2541 (2014) (noting cement industry is one of the major GHG emission sectors).

81. *Id.*

82. Zabalza Bribián et al. *supra* note 76, at 1137.

83. *Id.*

84. Melissa Hung, ‘Our Bodies Can’t Take That Kind of Damage’: The California Community Battling a Cement Factory, *HUFFPOST* (March 7, 2018, 11:12 AM), <https://www.huffpost.com/entry/our-bodies-cant-take-that-kind-of-damage-the-california-community-battling-a-cement-factory>

would have 189 truck trips per day (or upwards of 500 depending on conflicting reports of the project). The plant would have replaced the old Sperry Flour Mill, which has for decades laid dormant, and reestablished industrial activities in close proximity to a residential community significantly composed of low-income and minority identified residents.

The City of Vallejo Planning Commission initially rejected the project. The commission voted 6–1 in opposition because of the negative impact on the community as well as inconsistency with the City’s waterfront policy. The decision was successfully appealed and the project moved forward in the planning process with preparation of a final Environmental Impact Report/Environmental Impact Statement (EIR/EIS), as required by the National Environmental Policy Act (NEPA) and California law. An EIR/EIS was required because the project would have air, water, and other environmental impacts. The necessary permits included one from the Bay Area Air Quality Management District (BAAQMD), which is the state agency that implements the Federal Clean Air Act requirements in the State of California. The City of Vallejo was the lead agency on the VMT/Orcem project, but there were many cooperating agencies.

Under California law, the project applicant was not required to prepare an environmental justice assessment (EJA). But when the draft EIR was circulated, some in the community questioned if there would be a disproportionate impact on low income and minority populations. Therefore, the City of Vallejo asked the project proponent to produce an EJA. Although not required, the EJA appeared to be appropriate for this project as the City of Vallejo is 75 percent minority. The EJA produced by the project proponent was not very meaningful given the context, because the City of Vallejo itself is heavily populated by residents of a minority status and living below the poverty line.<sup>85</sup> This made it difficult to discern if there was an increased burden on the individuals living in the project site, although it was composed of a slightly higher concentration of members of minority group (African American community) and slightly higher concentration of people living below the poverty line compared to the rest of the City of Vallejo.

The California Department of Justice (DOJ) sent a letter criticizing the environmental impact analysis and the environmental justice assessment. The local Sierra Club also expressed frustration that the press on the project insinuated Sierra Club was supportive of the project when they were not.<sup>86</sup> In

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[huffingtonpost.com/entry/vallejo-cement-plant\\_us\\_5a99b95ae4b0479c0252730f](https://huffingtonpost.com/entry/vallejo-cement-plant_us_5a99b95ae4b0479c0252730f) [https://perma.cc/76VN-NP86].

85. LAND ECONOMICS CONSULTANTS, LLC, ENVIRONMENTAL JUSTICE ANALYSIS FOR THE VALLEJO MARINE TERMINAL AND ORCEM PROJECT, PREPARED FOR DUDEK AND THE CITY OF VALLEJO (2017), <https://www.cityofvallejo.net/common/pages/DisplayFile.aspx?itemId=6882530> [https://perma.cc/GF7H-ZWXA] [hereinafter VMT and Orcem Project EJA].

86. Sierra Club local and state leaders wrote a letter to the editor published in the Vallejo Times Herald to clarify their opposition to the project. See Jeff Morris & Kathryn

fact, the Sierra Club previously published a report it conducted on the nature of cement manufacturing and was critical of the environmental and climate change impacts from the industry. The report also examined the superior environmental profile of cement production in Europe.

The EJA discussed a variety of negative impacts from the proposed project. Its analysis differentiated between disproportionate impacts on minority populations and low-income populations. The EJA noted that the nitrogen oxide (NOx) emissions' impact on air quality could not be mitigated. The NOx emissions from the project "have the potential to create an adverse disproportionate impact" on the low-income populations in an area the EJA referred to as Impact Area A. That area was composed of 76.8 percent minority (the proponents note that its nearly indistinguishable from the 75.4 percent minority in the overall city), but the percentage of people living in poverty in Impact Area A was 22.1 percent—and the EJA recognizes this "is meaningfully greater than the 18.3 percent statistic for the general population."<sup>87</sup> There were also anticipated noise impacts from the increase in rail lines usage and a potential decrease in property values. The EJA reasoned there would be no disproportionate impacts for minority populations, because there was a high concentration of minorities living broadly across the city. However, the EJA reasoned that because property values near railroad lines are typically lower, those areas were occupied by people with below average economic means. The EJA concluded adverse impacts would be disproportionately experienced by low-income populations.

The Vallejo community organized a resistance to the project, including a group called Fresh Air Vallejo. The project was promoted mostly for its ability to bring technical training jobs, which would have secondary benefits to the rest of the city and increase taxes that could be used to improve schools. The company estimated the project would create forty full time jobs. Those opposing the project suggested new life for the site such as mixed-used, work-live lofts, and re-imagining the "new Vallejo" with this space as the gateway. The amenities and vision promoted by the opponents of the project were consistent with Vallejo's adoption of a Waterfront policy. However, the community was not offered a multitude of potential projects that could occupy this site. Like a light switch, it is on or off, and either this project moves forward or not with nothing else in the wings. Given the history of the City, economic growth opportunities are very attractive and this process had unreasonably positioned the City between a rock and a hard place.

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Phillips, Letter to the Editor, *Sierra Club Opposes Proposed Cement Plant. Period*, VALLEJO TIMES-HERALD (Feb. 24, 2019, 6:00 AM) <https://www.timesheraldonline.com/2019/02/24/sierra-club-opposes-proposed-cement-plant-period> [<https://perma.cc/Z793-TXHA>]. The Sierra Club had previously commissioned a report to analyze cement plants in California and they concluded that California's eight plants were dirtier than those in Europe because they used petroleum and coal coke to fuel their kilns. *Id.*

87. VMT and Orcem Project EJA, *supra* note 85, at 15.

Significantly, officials from BAAQMD publicly expressed concerns about the project. BAAQMD noted that two district programs had identified Vallejo as communities that are overburdened by pollution, and that if the Orcem project was to move forward the project would need to install the Best Available Control Technology for Toxics, a very costly requirement.<sup>88</sup> Ultimately, the project did not proceed.

The Vallejo VMT and Orcem project captures the evolution of environmental challenges, demonstrating some important new points for advocates to address. These include:

- There is a fight over the narrative and potential for “greenwashing.”
- Cities already suffering an overburden of pollution are in a difficult situation to facilitate economic development.
- Cities can be proactive, including by the adoption of various future development policies (i.e. Vallejo adopting a Waterfront Policy to guide development).
- Cities can use voluntary tools such as requiring the applicant to prepare a separate EJA.
- EJAs, even where done poorly, may be valuable and provide information and analysis the community can use to engage further in the decisionmaking process.

### III. IMPLEMENTING ENVIRONMENTAL JUSTICE TOWARD RESTRUCTURED SOCIAL RELATIONSHIPS

In this Part I discuss how environmental justice is implemented in the development context, highlighting in particular the land use and environmental laws that frame the process, tools being used within that process, and particular challenges to ensuring the “meaningful involvement” of communities that environmental justice policies demanded. Because a broader goal of the environmental justice movement is to restructure social relations, change must occur in this arena. A robust statutory framework for environmental protection exists; the EPA has made progress to support communities with the necessary tools to articulate environmental justice concerns. However, a continued unequal playing field and the built-in power disparities will endure unless the environmental justice movement demands more sophisticated tools.

#### A. *Permitting and Environmental Review*

The primary way decisionmakers discern and evaluate the environmental impacts of development is through the permitting framework.<sup>89</sup> The applicable

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88. John Glidden, *BAAQMD Issues Letter of Concern with Orcem Project*, VALLEJO TIMES-HERALD (March 6, 2019, 6:48 PM), <https://www.timesheraldonline.com/2019/03/06/baaqmd-issues-letter-of-concern-with-orcem-project> [<https://perma.cc/XFE3-FWJM>].

89. As noted previously, there are several ways to address environmental justice concerns, such as focusing on the civil rights laws, engaging in the drafting of applicable environmental regulations, or political activity. For an excellent analysis of California agencies and

laws depend entirely upon the particular project—such as whether there are potential impacts on water resources (Clean Water Act), air resources (Clean Air Act), or presence of hazardous materials (Resource Conservation and Recovery Act or Comprehensive Environmental Response, Compensation and Liability Act). Yet, regardless of the particular environmental impacts, all projects that either receive federal funding or require substantial federal approval must comply with the National Environmental Policy Act (NEPA).<sup>90</sup> NEPA is applicable not only to all federal agencies, but potentially to private developments when federal engagement is substantial. If a project is not substantial enough to require a federal permit, many local jurisdictions have NEPA equivalents that frame the permitting decisionmaking process.<sup>91</sup> In this Subpart I briefly outline statutes that a project raising environmental justice concerns might encounter in cursory fashion to provide context.<sup>92</sup>

### 1. The National Environmental Policy Act (NEPA)

One of the most basic tools in the planning context is the National Environmental Policy Act and its requirement of an Environmental Impact Statement (EIS).<sup>93</sup> The EIS is an information-generating and public-input document. When NEPA is triggered by a major federal action with significant impact on the environment, the government is required to analyze the project, alternatives to the project, and discuss measures that would mitigate impacts.<sup>94</sup> The EIS is subject to public review and comment. The Environmental Protection Agency (EPA) also has an oversight role to comment and pass judgment on the quality of an EIS. The EPA's oversight role is very persuasive as a practical matter since NEPA litigation by citizen plaintiffs is frequent

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their potential for promoting environmental justice, *see* JOHN AUYONG ET AL., UNIV. OF CAL. HASTINGS COLL. OF THE LAW: PUBLIC LAW RESEARCH INST., OPPORTUNITIES FOR ENVIRONMENTAL JUSTICE IN CALIFORNIA AGENCY BY AGENCY 10 (May 2003) (noting that the California Office of Planning and research has identified five areas which are likely to implicate environmental justice concerns: (1) making or funding land use decisions, (2) making permitting decisions, (3) writing or producing regulations, (4) taking discretionary actions, (5) provide funding for activities, and (6) interacting with the public).

90. Some projects which only incidentally involve a federal component may be exempt from this process, which is known as the NEPA small handle problem. *See* WILLIAM H. RODGERS JR. & ELIZABETH BURLESON, ENVIRONMENTAL LAW § 9:9 (2d ed. 2016) (citing to the main cases and recent “small handle” conflicts and analogizing to a proximate cause analysis which at times allows the federal government to forego full NEPA analysis under the reasoning that the federal government does not have oversight of the whole project).

91. Stephen M. Johnson, *NEPA and SEPA's in the Quest for Environmental Justice*, 30 LOY. L.A. L. REV. 565, 566–67 (1997).

92. For an extended discussion of development laws as a good resource to implement environmental justice, *see* Richard J. Lazarus & Stephanie Tai, *Integrating Environmental Justice into EPA Permitting Authority*, 26 ECOLOGY L.Q. 617 (1999).

93. *See* 42 U.S.C. § 4332(C)(i) (1975) (specifically, the statutory trigger is “major Federal actions significantly affecting the quality of the human environment . . .”).

94. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 336 (1989); *see also* 40 C.F.R. § 1502.14(c) (2020).

and lack of support by EPA review is an Achilles' heel for any agency. NEPA has broad application and specific avenues for public engagement. For these reasons, many scholars have focused on the relationship between NEPA and environmental justice.<sup>95</sup> NEPA does not directly require environmental protection; only that foreseeable impacts are disclosed and considered. Some therefore criticize NEPA as a "paper tiger."<sup>96</sup>

## 2. The California Environmental Quality Act (CEQA)

Many states also have "mini-NEPAs," or the equivalent of an environmental impact assessment requirement, with the same components of analysis of alternatives, discussion of mitigation measures, and public review and comment. One such law, the California Environmental Quality Act (CEQA),<sup>97</sup> goes beyond the basic provisions of NEPA to require that all significant environmental impacts be mitigated. Mitigation can include project changes that reduce scale or other tradeoffs that minimize the impact. This requirement puts teeth into the otherwise "paper tiger" NEPA.

## 3. The Clean Water Act (CWA)

The CWA protects the chemical and biological integrity of our nation's waters.<sup>98</sup> It prohibits the discharge of any pollutant into the waters of the United States unless the discharger obtains a permit from the EPA, the Army Corps of Engineers, or an authorized state agency which has been delegated the authority to issue CWA permits. The states are responsible for designating uses of waterbodies within the state, which may include sources for agriculture, recreation and drinking water. Thus, CWA regulation is vital to supporting the health of waters for a variety of critical societal uses.

## 4. The Clean Air Act (CAA)

The federal CAA protects air quality by regulating pollution from mobile sources such as cars and trucks, fuels, and stationary sources.<sup>99</sup> For purposes of environmental justice, some of the most salient sections of the CAA are those targeting stationary sources of pollutions such as refineries, power plants, cement plants, and other manufacturing facilities. The CAA follows a cooper-

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95. See Uma Outka, *NEPA and Environmental Justice: Implementation, Integration and Judicial Review*, 33 B.C. ENV'T AFF. L. REV. 601 (2006); Ramo, *supra* note 57; Marissa Tripolsky, *A New NEPA to Take a Bite out of Environmental Injustice*, 23 B.U. PUB. INT'L L.J. 313 (2014).

96. *Id.* See also Nicholas A. Robinson, *Environmental Impact Assessments: Essential Methodology or Paper Tiger?* 13 SOUTH AFR. J. ENVTL L. & POL'Y 97 (2006) (noting that environmental impact assessment can fail to be a tool for realizing sustainable development).

97. CAL. PUB. RES. CODE §§ 21000–21189 (2020); CAL. CODE REGS. tit. 14, §§ 15000–15387 (2020) (CEQA guidelines).

98. Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251–1387 (2012).

99. Clean Air Act of 1963, 42 U.S.C. §§ 7401–7671q (2012).

ative federalism framework with the federal government setting health-based standards, and the states determining how to meet those standards. The CAA mandates control technology to limit the emission of pollutants, with the most stringent of technologies being placed on proposals for new sources in locations which have not attained health-based air quality standards. This approach seeks to balance the imperative to attain the air quality needed for healthy communities with the opportunity for possible economic development. However, many environmental justice communities suffer from ill health impacts of poor air quality, including asthma.

#### 5. Resource Conservation and Recovery Act (RCRA)

RCRA covers the generation of hazardous materials, their transportation, and the treatment, storage and disposal (TSD) facilities for hazardous materials. RCRA is also a powerful tool to analyze the environmental justice impacts of the development of facilities that will eliminate hazardous materials.<sup>100</sup> RCRA has long been associated with environmental justice concerns because some of the first environmental justice challenges related to the siting of hazardous materials incinerators and waste dumps.<sup>101</sup> Generators, transporters, and TSD facilities have separate regulations, with the most stringent upon the TSD facilities. The siting process for TSD facilities itself opens up an opportunity for community input.

#### 6. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Last, many projects that raise environmental justice concerns are in urban areas that are already heavily polluted, often called “brownfields.” Redeveloping these “brownfields” is an important aspect of improving sustainable communities to reduce the impacts on greenspace. Many national and local policies are proactively seeking to conserve greenspace and prevent urban sprawl: creating an opportunity to redevelop polluted lands in city cores. CERCLA channels liability for release of hazardous substances from a vessel or facility to parties responsible for pollution of a site. The government has the option to clean up the release itself and seek reimbursement from the responsible party, or to sue the responsible parties and require them to remediate the polluted area to the applicable and relevant legal standards. Private parties that remediate the site can also use CERCLA’s provisions to recover from polluters of the site.

The web of environmental laws that restrict the pollution of our environment are the first line of defense against harmful health impacts; thus equal enforcement of these laws should continue to be a focus for environmental justice advocates. Water and air are critical to human health, thus CWA and CAA

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100. Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901–6992k (2012).

101. COLE & FOSTER, *supra* note 12, at 19.

regulation is invaluable to everyone. However, the new development context provides another arena to promote environmental justice imperatives including corrective and social justice. As Alan Ramo has argued, socioeconomic concerns are completely within the reasonable purview of environmental review despite opponent's arguments that NEPA and CEQA's goals have been radically extended with these concerns.<sup>102</sup> Nonetheless, these laws have not been enough to shift the balance and prevent environmental injustice. RCRA is intended to be more proactive to address future siting injustices, and CERCLA looks backwards to help to reduce pollution burden that exists from prior ill-conceived practices. We need to make progress by amplifying the power of these laws, such as infusing more resources into CERCLA cleanup and magnifying the power of NEPA and CEQA with environmental justice assessment.

#### B. *Community Benefits Agreements Seek to Close the Promise Gap*

A frequent framing of environmental justice conflicts is that industrial development will yield overall benefits to affected communities, such as job growth and increased tax revenues that can increase community investment in education and health care. This has not occurred. Alex Geisinger explores this concept in depth, noting that there is an understudied "myth" that new business development will ultimately provide a community benefit and outweigh any associated burdens of pollution.<sup>103</sup> "Less apparent is the fact that what are traditionally considered to be the benefits of development may also bypass community members."<sup>104</sup> For instance, projected new jobs might not materialize or community residents may lack the necessary skills to obtain them.

One arrangement that local governments and communities have begun using to address that myth and close the promise gap is a Community Benefit Agreement (CBA). The developer promises various benefits to the affected community, such as a percentage of jobs during construction and operational phases of the proposed project, and the agreement is put into writing. Developers are motivated to enter into these agreements because people living in the proposed project vicinity may promise to refrain from opposing the project. Community opposition can slow down and potentially end a project if public officials think it would be politically disadvantageous for them to approve in the face of stiff local and future voter opposition. Moreover, as authors Patricia E. Salkin and Amy Levine point out, the growth and popularity of CBAs illustrate that many communities question whether sufficient benefits flow from development projects.<sup>105</sup> Potentially, these agreements can secure benefits beyond what a government might be able to demand because the framework

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102. Ramo, *supra* note 57, at 43.

103. Geisinger, *supra* note 66, at 193.

104. *Id.*

105. Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J. ENV'T L. & POL'Y 291 (2008).

for exactions requires a nexus and rough proportionality.<sup>106</sup> Whether this framework for analysis still applies is one of the open legal issues with CBAs. Another possible advantage of these agreements is that the negotiation of a CBA may engage the affected community public more directly than the notice and comment structures of permitting statutes.

One of the main arguments for using CBAs is that communities are dissatisfied with the benefits that would otherwise flow from development.<sup>107</sup> This reflects a basic frustration with existing land use processes to produce projects that disperse benefits through the community. However, it could also be seen as rejecting the dominant theme that more development is the path to a prosperous future, where communities are adopting policies that support community gardens and other means to bring about healthy communities. The youth and climate arms of the environmental justice movement are actively challenging the “myth” of development, and they are pushing for more sustainable models of community growth, such as support for a Green New Deal.<sup>108</sup>

There has not been enough experience with these agreements to know whether they will substantively improve the outcomes for affected communities, and there are lingering concerns regarding the enforceability of promises made by developers.<sup>109</sup> There are a few handfuls of decisions related to CBAs, although many of the legal issues remain unresolved.<sup>110</sup> Hurdles to these agreements include the need for the community to form a coalition and the money, time, and resources needed to negotiate a contract. Whether the final agreement is enforceable may depend on if it is endorsed by a government agency or incorporated into required development permits, rather than executed only with community group representatives. Another concern is that where the government has endorsed the agreement or incorporated the agreement provisions into permit conditions this might constitute a potential exaction—an unconstitutional taking of the developer’s property rights.<sup>111</sup> While the legal issues remain unresolved, this avenue may yet be worth pursuing. The engagement in

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106. *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 388–91 (1994).

107. *Id.* at 19.

108. Heejin Han & Sang Wuk Ahn, *Youth Mobilization to Stop Global Climate Change: Narratives and Impact*, 12 SUSTAINABILITY 4127 (2020). This activism has made headway, even spurring more serious consideration of disinvestment in fossil fuels. See, e.g., Bryner, *supra* note 23 (examining transition approach that could address the environmental social and economic justice concerns of the Green New Deal); Jonas J. Monast, *The Ends and Means of Decarbonization: The Green New Deal in Context*, 50 ENV’T L. 21 (2020) (discussing lingering disputes over ways to address social impacts of decarbonization).

109. Salkin & Lavine, *supra* note 105, at 328–30.

110. *Id.*; *Citizens for E. Shore Parks v. State Lands Comm’n*, 202 Cal. App. 4th 549, 556 (2011).

111. Vicki Been, *Community Benefits Agreements: A New Local Tool or Another Variation on the Exactions Theme*, 77 U. CHI. L. REV. 5 (2010).

CBA strongly signals that local governments must do more to advance environmental justice in future development.

### C. *Seeing is Believing: Demonstrating Impacts with Technology*

With new technology, it is easier to demonstrate the unequal burdens of pollution and zero in on geographic areas in need of remediation. One of the mandates for the EPA to implement environmental justice was to focus on data collection. Indeed this is an important element to facilitate local actions to redress environmental injustice. The EPA launched EJSCREEN, a tool that illuminates pockets of pollution hot spots by integrating mapping data and census demographics.<sup>112</sup> The EPA also launched the EnviroAtlas, expanding beyond pollution hot spots to identify greenspace and other ecosystem services.<sup>113</sup> This broader look discerns the adjacency of people to a variety of natural resources that add value to the quality of life.

States have also worked to create intuitive visualization technology. For example, California adopted CalEnviroScreen, a system that allows one to focus on particular geographic areas to see a rating of the environmental health burdens. Washington has created the Environmental Health Disparities Map, which is hosted online through the Washington Department of Health's website. This interactive map shows environmental health burdens such as pollution and proximity to hazardous waste sites and can be used to compare population and socioeconomic characteristics such as race, education and poverty levels throughout the state. As one Seattle columnist said, the tool "validates concerns and suspected disparities that people in environmentally distressed areas . . . have been talking about for decades."<sup>114</sup> Like California, Washington is pursuing environmental justice legislation. The state Senate passed SB 5489, the Healthy Environment for All (HEAL) Act, which would implement environmental justice through a newly created task force, and within and across agencies in the state.

These government efforts support the potential growth of the environmental justice movement. Environmental justice advocates can use visualization and mapping technology to provoke meaningful, informed public discourse over the need for corrective actions. By visually connecting pollution burden with socioeconomic factors these technologies demonstrate that widespread disparities exist in a way that an average person can understand. This

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112. *EJSCREEN: Environmental Justice Screening and Mapping Tool*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/ejscreen> [<https://perma.cc/5XSC-68P6>].

113. Press Release, U.S. Env't Prot. Agency, EPA Releases EnviroAtlas Ecosystem Mapping Tool (May 7, 2014).

114. Sara Gentzler, *Senate Passes "Environmental Justice" Bill*, WASH. ST. WIRE (Mar. 11, 2019), <https://washingtonstatewire.com/senate-passes-environmental-justice-bill> [<https://perma.cc/4N4L-ETXZ>]. <https://washingtonstatewire.com/senate-passes-environmental-justice-bill/><https://washingtonstatewire.com/senate-passes-environmental-justice-bill/><https://washingtonstatewire.com/senate-passes-environmental-justice-bill/><https://washingtonstatewire.com/senate-passes-environmental-justice-bill/>

is both an opportunity for advocates to amplify demands for remedial efforts and more sustainable land use patterns, and to potentially broaden political support for those public investments.

#### D. *The Challenge of Science Communication*

Science literacy is important to discern the potential impacts of development. Many communities do not have high levels of science literacy, so the government agencies charged with evaluating EIRs and EISs should bear a greater responsibility to communicate risks. Because the environmental justice policies of the federal government and many local governments require the meaningful involvement of communities in decisionmaking, this is a practical impediment to achieving the vision outlined in the environmental justice executive order and parallel nonfederal policies.

Even where the science of a particular project and its impacts are more understandable (for example, noise impacts from increased truck traffic in the Vallejo project), environmental documents are often seeped in difficult, or even impenetrable, legal and technical language. This is not unique to the environmental justice context. For example, in a project involving the California Bay Delta (the Bay Delta Restoration Plan) an independent science advisory body commented that the EIS/EIR was dense and unreasonably confusing.<sup>115</sup> Hazardous air pollutants and mechanisms of exposure and causality of harm need to be communicated appropriately. In fact, these documents are not speaking to an audience of laypeople, but to planning and technical specialists, and as such are an inadequate means to communicate with the public.

In the worst case situation, project proponents could use the document to obscure the true threats of a project.<sup>116</sup> Procedurally, environmental assessments are often prepared by project applicants with oversight by the government permitting agency. A recent example of inadequate communication and potential obfuscation involves modernization at the Richmond Chevron Refinery in California, *Communities for a Better Environment (CBE) v. City of Richmond*.<sup>117</sup>

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115. DELTA SCIENCE PANEL, BAY DELTA CONSERVATION PLAN (BDCP) EFFECTS ANALYSIS CONCEPTUAL FOUNDATION AND ANALYTICAL FRAMEWORK AND ENTRAINMENT APPENDIX 26 (2011) (noting fragmented, incomplete and confusing analysis); see also Letter from NRDC, et al. to DBCP (Oct. 30, 2015) (criticizing the BDCP's lack of clarity and noting that "[t]he decisionmakers and general public should not be forced to sift through obscure minutiae or appendices in order to ferret out the fundamental baseline assumptions that are being used for purposes of the environmental analysis.") (quoting *San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal. App. 4th 645, 659 (2007)).

116. See James D. Fine & Dave Owen, *Technocracy and Democracy: Conflicts Between Models and Participation in Environmental Law and Planning*, 56 HASTINGS L.J. 901, 904 (2005) (noting that significant modeling is used in planning processes which are not easily understood by laypersons). The authors point out that "[a] process based upon complex technical analyses makes participation difficult for even model-savvy parties, let alone lay persons. The economic inability of low-income communities to pay for modeling expertise only exacerbates this problem." *Id.* at 905.

117. *Cmtys. for a Better Env't v. City of Richmond*, 184 Cal. App. 4th 70 (2010).

In this case, the court found that the EIR was legally deficient and the permits were null and void because the EIR did not include information on the environmental impacts of a heavier crude oil brought to the Richmond refinery.<sup>118</sup> The project proponent, Chevron, failed to include necessary information during the course of the approval process.

In castigating Chevron's approach to information sharing, the court identified the evasive and conclusory nature of Chevron's responses. The court also criticized the clarity of the information provided.<sup>119</sup> "Far from being an informative document, the EIR's conclusions call for blind faith in vague subjective characterizations."<sup>120</sup> Independent scientists engaged in the litigation reached similar conclusions.<sup>121</sup>

What happened in *CBE* is a rare rebuke. However, recognizing these limitations, some government programs allow for communities to seek grant funding for technical assistance.<sup>122</sup> As discussed in the next Part, separate environmental justice assessments could be valuable tools to identify where difficult scientific issues with a project are subject to varying interpretations, enabling communities to target their limited resources on experts in particular issues that will have the highest return.<sup>123</sup>

#### IV. THE PAST, PRESENT AND FUTURE FOR ENVIRONMENTAL JUSTICE

This Part highlights where advocates can engage to reduce risks today and for generations to come. Despite the existing legal frameworks for environmental protection, racial antidiscrimination laws, and the efforts of EPA to indirectly address environmental injustice, more must be done. As one scholar has aptly stated, "efforts to decrease the risks borne by minority community members have been grossly ineffective."<sup>124</sup>

The following tools have their own inherent power, but more broadly, present the opportunity to utilize the power created by the convergence of the environmental justice youth and climate justice movements. To make the shift to more just environmental policy, the political will of the public is necessary. The science, the objective facts, and the technologies to achieve environmental justice are already at our fingertips. The most important missing ingredient

118. *Id.* at 93.

119. *Id.* at 85.

120. *Id.*

121. *Id.* at 86.

122. Glasgow, *supra* note 9, at 115–16.

123. See MICHAEL B. GERRARD & SHEILA R. FOSTER, *THE LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS*, 186 (2d ed. 2009) (Explaining how marginalized communities are often unable to adequately participate because they have "less time, less information, and less specialized knowledge concerning the legal, technical, and economic issues involved" when compared with more affluent groups).

124. Geisinger, *supra* note 66, at 191.

is the engagement of our political leaders who we need to listen to the will of the people.

A. *Past: Addressing Historic Pollution*

It is well past time for the adoption of an environmental justice act to supply remedies for past environmental injustices.<sup>125</sup> Moreover, the messaging value of an environmental justice act would be very powerful. Holly Doremus explains that, “in a variety of subtle ways, law influences the values that communities espouse and follow.”<sup>126</sup> Because environmental challenges are characteristically dynamic, we will be continuously adjusting our approaches and policies within an overall framework of our shared values.<sup>127</sup> If environmental justice is a part of these values it should be codified and adopted at the highest level through U.S. Congress. Congressional leaders have introduced environmental justice bills in the past, but none have garnered sufficient support for passage.<sup>128</sup> At a time where Congress is taking testimony and major party candidates and some cities are seriously grappling with demands for reparations from slavery, the immediate funding of remediation of unlawful pollution in largely African American communities is a minor step forward.<sup>129</sup>

One of the most relevant recent proposals introduced to Congress was the Environmental Justice Act of 2019 (EJA 2019), a centerpiece of Senator Cory Booker’s democratic presidential candidate’s platform.<sup>130</sup> The EJA 2019 would seek to address the shortcoming of existing nondiscrimination frameworks. Among other advances, the EJA 2019 would strengthen the EPA, provide more

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125. As previously noted, we’ve made minimal progress in the areas of corrective or redistributive justice, despite proposals for reform by policymakers and scholars. *See, e.g.,* Geisinger, *supra* note 31.

126. Holly Doremus, *Constitutive Law and Environmental Policy*, 22 *STAN. ENV’T L.J.* 295, 297 (2003).

127. *Id.*

128. Lawmakers such as Representatives John Lewis and Hilda Solis, and Senators Al Gore and Barbara Boxer previously proposed failed environmental legislation. Representative Jessie Jackson Jr. also proposed a constitutional amendment, which died in Congress. For a more detailed discussion, see Salcido, *Reviving the Environmental Justice Agenda*, *supra* note 15, at 117–18 (discussing failed attempts to pass an environmental justice bill).

129. Michael Conklin, *An Uphill Battle for Reparationists: A Quantitative Analysis of the Effectiveness of Slavery Reparations Rhetoric*, 10 *COLUM. J. RACE & L.* 33 (2020) (emphasizing ways to increase public support for reparations and expressing measured optimism). *See also generally* Catherine Millas Kaiman, *Environmental Justice and Community-Based Reparations*, 39 *SEATTLE U. L. REV.* 1327 (2016) (considering the existing frameworks for environmental reparations).

130. *See Cory Booker Makes “Environmental Justice” Central to his White House Bid*, CBS NEWS (April 26, 2019), <https://www.cbsnews.com/news/cory-booker-rolls-out-new-environmental-policy-proposal> [<https://perma.cc/Z8Y8-L2SF>]; *Booker Introduces Sweeping Environmental Justice Bill*, US SENATE (July 24, 2019), <https://www.booker.senate.gov/news/press/booker-reintroduces-sweeping-environmental-justice-bill> [<https://perma.cc/76QV-6MXF>].

money for cleanup of abandoned coal mines, and strengthen the Safe Drinking Water Act that failed to safeguard the people of Flint, Michigan.<sup>131</sup> One of the other key emphasis is on the cleanup of Superfund sites, which are the most heavily polluted sites in the U.S., and which pose the highest health and safety risks to adjacent communities.<sup>132</sup> Frequently, these sites are near areas suffering from industrial and urban decay and are home disproportionately to low-income and minority residents. An overabundance of such sites reduces the opportunity for sustainable growth and urban or suburban development.

Importantly, the EJA 2019 expands the definition of environmental justice to incorporate the 17 Principles of Environmental Justice,<sup>133</sup> articulating a

131. Environmental Justice Act of 2019, S. 2236, 116th Cong. (2019).

132. Environmental Protection Agency, Superfund FY 2019 Annual Accomplishments Report, <https://semspub.epa.gov/work/HQ/100002479.pdf> (emphasizing that the program has improved community health and improved opportunities by cleaning up the nation's most polluted sites).

133. Environmental Justice Act of 2019, S. 2236, 116th Cong. § 3(4)(C) (2019) (“the 17 Principles of Environmental Justice written and adopted at the First National People of Color Environmental Leadership Summit held on October 24 through 27, 1991, in Washington, DC, are upheld”); *Principles of Environmental Justice*, EJNET (April 6, 1996), <http://www.ejnet.org/ej/principles.html> [<https://perma.cc/UZF2-G7RH>] (providing the 17 Principles of Environmental Justice, defined as follows:

- 1) Environmental Justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
- 2) Environmental Justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
- 3) Environmental Justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
- 4) Environmental Justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.
- 5) Environmental Justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.
- 6) Environmental Justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
- 7) Environmental Justice demands the right to participate as equal partners at every level of decisionmaking, including needs assessment, planning, implementation, enforcement and evaluation.
- 8) Environmental Justice affirms the right of all workers to a safe and healthy work environment without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
- 9) Environmental Justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.

vision of EJ in the words of the First National People of Color Environmental Leadership Summit.<sup>134</sup> Most succinctly, these 17 points have been boiled down by Paul Mohai to say “[e]nvironmental justice is the right of everyone to a clean, healthy, and safe environment in which to live, work, learn, play, and pray.” As he articulates, this is the essence of what environmental justice is, and it is not difficult to understand.<sup>135</sup>

The EJA 2019 also requires the explicit participation of the public in community-based science. It emphasizes the need to democratize science and engage the public in the scientific process, including development of research questions, data gathering, and potential incorporation of information generated outside of traditional institutional boundaries.<sup>136</sup> Thus, the EJA 2019 would remedy the marginalization of traditional ecologic knowledge that native communities might include in decision making processes.<sup>137</sup>

By specifically drawing on the history of the environmental justice movement, the EJA 2019 goes beyond the articulation by Presidential Executive Order and the EPA to do more to define environmental justice and frame the necessary adjustment of social relations in the words of the movement itself.

10) Environmental Justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide.

11) Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.

12) Environmental Justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources.

13) Environmental Justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.

14) Environmental Justice opposes the destructive operations of multinational corporations.

15) Environmental Justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.

16) Environmental Justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.

17) Environmental Justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth’s resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to ensure the health of the natural world for present and future generations.”

134. S. 2236, 116th Cong. § 3(4)(C) (2019).

135. Mohai, *supra* note 50, at 20–21.

136. S. 2236, 116th Cong. § 3(3) (2019).

137. See generally Anthony Moffa, *Traditional Ecological Rulemaking*, 35 STAN. ENV’T L.J. 101, 124 (noting traditional ecological knowledge is often subject to subordination to Western science).

Its definitions and substantive procedures provide the opportunity for engagement by youth, indigenous peoples, and climate advocates—all of whom serve the broader environmental justice movement.

B. *Present: Implementing Equity Through Environmental Justice Assessments*

A tool used to capture and analyze information to determine whether a project has the potential to violate the principles of environmental justice is an “environmental justice assessment” (EJA). Unlike the EIS, this tool is not required by NEPA. An EJA can voluntarily be prepared in instances where the proposal might pose an inequitable impact on minority and communities of color.<sup>138</sup> The Council on Environmental Quality (CEQ) has produced guidance on environmental justice assessments in the context of NEPA documents. CEQ oversees federal compliance with the executive order on environmental justice and NEPA.<sup>139</sup>

The CEQ guidance makes it clear that if an EJA concludes there will be a disproportionately high and adverse human health or environmental effect on the community, the permitting agency is not required to reject the project.<sup>140</sup> Instead, this is meant to encourage consideration of alternatives, mitigation measures, “and preferences expressed by the affected community.”<sup>141</sup>

These EJAs are an underutilized tool. EJAs should become mandatory whenever an EIS is required: they can be well-designed to meet the goals of communicating risk and illustrating environmental justice concerns to decision makers and stakeholders. Like other environmental impact analyses, the EJA is intended to be an informational document that does not bind decision makers, but merely provides an opportunity for procedural justice to support a sound course of action.

Environmental impact assessments have been widely embraced around the world.<sup>142</sup> The EIS (or equivalents) required under these laws bring transparency and demand public notice and comment and facilitate decisions based on information of known and foreseeable environmental impacts. Many EISs have a separate section for analysis of environmental justice impacts. However, a separate environmental justice assessment could add important value for facilitating community engagement. Although there are many potential benefits, I will focus on three possible upsides of a separate environmental justice assessment document: (1) the value of a concise document focused on

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138. COUNCIL ON ENV'T QUALITY, EXEC. OFFICE OF THE PRESIDENT, ENVIRONMENTAL JUSTICE GUIDANCE UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT 10 (1997) (noting that no specific format for assessing environmental justice is required).

139. *Id.* at 1, 8–17, 23, 25–34.

140. *Id.* at 10.

141. *Id.*

142. STEPHEN C. McCAFFREY & RACHAEL E. SALCIDO, GLOBAL ISSUES IN ENVIRONMENTAL LAW 37 (West 2009).

environmental justice analysis, (2) the potential to assist underresourced communities the ability to pinpoint areas for further work, and (3) the possibility that environmental justice-specific analysis might gather data not otherwise available for informed and equitable decisionmaking.

### 1. Brevity and Focus Facilitating Communication

A separate environmental justice assessment could overcome the challenge of having to wade through a daunting EIR and EIS. Although NEPA and CEQA documents were intended to be concise, they have ballooned into behemoths, prompting executive action to insist on a page limit. This illustrates a recognized disadvantage of the existing practice.

The average person has limited time to engage in public processes. By funneling relevant environmental justice analysis into one document it may facilitate broader readership. For those already engaged in the process due to environmental justice concerns it maximizes their investment. It may also be easier to persuade others to become engaged if the initial investment of time is short and concentrated on specific issues. This may be particularly true in working-class neighborhoods.

Brevity itself could facilitate transparency. Interested parties would not have the burden to find the information that may be most relevant to environmental justice analysis. It will be more difficult to obfuscate potential environmental justice issues when they must be separately identified and analyzed with attendant potential mitigation measures.

### 2. Focusing Resources

A separate assessment document dedicated to environmental justice could help to level an uneven playing field. As previously discussed, some projects with environmental justice implications present complex scientific issues. Within the universe of those projects, some of the science presented could be incomplete or still subject to debate among experts. Many environmental justice communities have limited financial resources to spend on expert witnesses or environmental consultants.<sup>143</sup> A concise and focused environmental justice assessment could help communities better pinpoint areas of greatest concern. This could be used to inform proposals for alternatives, mitigation measures, or the development of specific CBA provisions. Opponents of a separate EJA might argue it would lead to litigation strategy, but having more experts debating the merits at the outset could yield a better project or reconsidered location, which would ultimately avoid litigation.

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143. See EJ 2020 ACTION AGENDA, *supra* note 42, at 40–41 (recognizing that environmental justice communities cannot usually afford technical assistance to aid with environmental matters, and seeking to remedy this by providing grant money to these communities specifically for technical assistance).

### 3. Identifying New Data Points and Information

A separate environmental justice assessment could gather the information that would not have otherwise been included in the analysis of a project. While of immediate relevance for the existing project, important data and baselines are often missing, which prevents minority and low-income communities from achieving greater longterm planning goals. Thus, the EJA for any particular project may have broader positive impacts of providing the community with data and information currently out of reach, given their financial resources (and those of their local governments).

Although EJAs are not currently required by law, the existing CEQ guidelines provide too little guidance when they are conducted. The frame of reference in the Vallejo project illustrates one weakness, as the comparison group was not at the county, state, national, or even international level. The EJA focused on the distributive nature of the environmental justice question, positing that because Vallejo itself is diverse, siting the project in the particular *part of* Vallejo did not pose an environmental justice problem. This misses the point that the Waterfront Policy—adopted as a more proactive land use measure—would not have supported reestablishing the site as an industrial facility.

The problems that plague NEPA analyses are also potentially present for EJAs. There is a robust literature on how to improve NEPA with many of the suggestions applicable for EJAs such as those that advocate for increased attention to clarity and concise analysis.<sup>144</sup> NEPA and the environmental permitting process is a pluralist approach with multiple stakeholders. Often environmental justice communities come to the process with fewer resources and limited capacity to adequately engage, which specific EJAs address. Changing power dynamics with improved information and frontloading the vision and values decisions could stave off “greenwashing” efforts to site unwanted projects in conflict with predetermined community goals. This requires that communities shift from relying on CBAs to respond to unwanted and unplanned development proposals to do more upfront to articulate just development trajectories, as further discussed in the next Part.

#### C. *Future: Environmental Justice Considerations in General Plans*

While CBAs are intended to connect communities to improved education, jobs, and quality health care, this is a project-by-project approach. A broader and more proactive approach is to delineate actions for environmental justice *progress* within a city’s general plan. General plans are a guide for public decisionmaking and represent comprehensive and long-range objectives. State laws often require the adoption of a general plan. When a city or other local government is considering approving a project, it must be consistent with the adopted general plan. Because so many decisions shaping our

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144. See, e.g., Bradley C. Karkkainen, *Toward a Smarter NEPA*, 102 COLUM. L. REV. 903 (2002).

environmental health are made at the local level, implementing an environmental justice element as part of a general plan for development could yield powerful positive changes.

In 2016, California adopted SB 1000: the Environmental Justice and the General Plan. SB 1000 amended Cal. Government Code, section 65302 by adding environmental justice as a new topic that must be included in city and county general plans. It requires: “an environmental justice element or related goals, policies, and objectives integrated in other elements.”<sup>145</sup> As of January 1, 2018, “upon adoption or next revision of two or more elements concurrently,” California cities, counties, and charter cities must either adopt an environmental justice element or policies and goals must be integrated into their general plans for implementation. This applies to jurisdictions with “disadvantaged communities,” which is also a defined term.<sup>146</sup> The environmental justice element must also “identify disadvantaged communities within the area covered by the general plan of the city, county, or city and county.”<sup>147</sup>

Jurisdictions are just beginning to implement this requirement. The areas of concern include pollution exposure, food access, safe and sanitary homes, physical activity, and access to public amenities. Also relevant across these goals is ensuring that the public is engaged in decision making, which has been the traditional procedural dimension of environmental justice. Some cities, such as Jurupa Valley and National City, had already adopted environmental justice elements prior to the new law. Others, such as Richmond, Chino, Arvin, San Diego, and Sacramento, are also cited by the California Office of Planning and Research (OPR) 2017 guidelines as model goals and programs.<sup>148</sup> For example, for pollution reduction, the city of Arvin aspires to “integrate air quality, land use and transportation planning and policy to reduce the emission of criteria pollutants and greenhouse gases from mobile sources.”<sup>149</sup> OPR guidelines highlight San Diego County for the goal of requiring development to be located and designed to reduce vehicle trips by engaging existing regional patterns while *keeping the existing character of the community*.<sup>150</sup> No one size fits all because the needs of each community will vary.

Notably, in Richmond, California, one priority is to focus on regulatory enforcement to address air quality. OPR cited Richmond’s goal as a

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145. CAL. GOV’T. CODE, § 65302(h)(1) (2020).

146. GOV’T. § 65302(h)(4)(A) (defining disadvantaged communities as “an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation”).

147. *Id.* § 65302(h)(1).

148. CAL. OFFICE OF PLANNING AND RESEARCH, GENERAL PLAN GUIDELINES: 2017 UPDATE, APPENDIX A, EXAMPLE MODEL GOALS, OBJECTIVES, AND POLICIES AND PROGRAMS 278–345 (2017).

149. *Id.* at 312.

150. *Id.*

model: “Improve the quality of the built and natural environment in the city to support a thriving community and to reduce disparate health and environmental impacts, especially on low-income and disadvantaged communities.”<sup>151</sup> Given the overburden on air pollution based on Richmond’s industrial facilities, including the Chevron Richmond Refinery discussed previously, this is an important concern. Richmond is a water-fronting community in a densely populated region, so it is, in many ways, ideally suited for industry. Water-adjacency is crucial to industry for the transportation of materials to and from the facilities. As illustrated by the EPA’s capacity building focus on communities near ports, environmental justice issues in near-port areas are critical. In Richmond, the Chevron Refinery has a high capacity for refining crude because it has one of the largest wharves to accept unrefined crude on the West Coast. Richmond’s development pattern is noteworthy, as the refinery was established and then the population grew more densely over time surrounding and adjacent to it. City residents have frequently fought refinery expansion proposals and have been assisted by effective counsel. But community activists did not stop at litigation efforts. The community decided to become more politically active and elected a slate of City Council representatives more focused on mitigating the existing pollution burden. This is now reflected in their general plan documents. It also illustrates the environmental justice strategies beyond existing legal frameworks and explicitly into political arenas where decision-making is located.

In sum, because most facilities are approved at a local rather than federal or state level, incorporating robust environmental justice elements within general plans is a critical area of improvement to ensure we move toward more sustainable communities. These plan elements are not limited to the procedural dimension of environmental justice but implicate ensuring corrective and social justice as important intertwined objectives of the movement.

### CONCLUSION

We should acknowledge the progress on multiple fronts in the fight for environmental justice. The EPA and many states have enhanced the capacity for engaged decision making by traditionally marginalized communities. On the one hand, efforts to empower communities by providing capacity raising programs to advance self-sufficiency are robust. But on the other hand, it is important to measure whether these programs improve the wellbeing of potentially affected communities; the process element must be linked to the substance of self-determination. Reducing the pollution burden is squarely the responsibility of environmental regulators and financially and technically equipped environmental agencies, not on the community itself. Indeed, a roll-back of President Obama era pollution control efforts is a step backwards for

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151. *Id.*

environmental justice simply because overall environmental improvements will help those in more polluted areas in greater measure.

This Article argues that to promote its myriad objectives, the environmental justice movement should advocate for changes which address the past, present and future. This includes remedying past injustice through cleanup funding and requiring separate environmental justice assessments by permitting agencies considering present developments. General plan provisions that reflect the vision of disadvantaged communities are on the horizon in places such as California. As local governments become more proactive with planning specific to environmental justice, this opens up an opportunity for incorporating alternative visions and imperatives that both reduce the burden of pollution and build sustainable, diverse, and inclusive communities. These are complementary and overlapping goals of the youth, climate, and environmental justice movements. Actively creating and enabling mechanisms for these intersecting movements to advance common goals acknowledges people, and their active, enduring support for a brighter future, as the greatest asset of any movement.