



MICHIGAN LAW
UNIVERSITY OF MICHIGAN

Environmental Justice Perspectives On Land Use Planning

Scope

- Environmental justice and injustice
- Legal perspective
- Local government—land use planning

Definitions

- Environmental justice vs injustice (EJ vs EI)
- EI exists where, all too often,
 - Environmental **benefits** are too far from marginalized communities,
 - And where environmental **hazards** are too close to marginalized communities

Definitions

- Marginalized
- Disadvantaged
- Overburdened

Definitions

- Which communities are marginalized?
 - Black and Brown
 - National origin
 - Limited English proficiency
 - Low income
 - Rural
 - Persons with disabilities

Definitions

- Environmental justice
 - Procedural justice
 - Distributive/outcome justice
 - Reparative/restorative justice

EI in the early 20th century

- Redlining and restrictions on development
- Realtor bias
- Restrictive covenants
- Read Richard Rothstein, **THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA**

El & local government law

- Siting
- Deprivation of resources
- Underenforcement of code violations

Environmental justice legal framework

- Environmental justice law is any law that addresses environmental injustice
 - Civil rights
 - Environmental
 - Administrative
 - Tort
 - Contract
 - Land use & zoning

Environmental justice legal framework

- Environmental justice law took a turn in 1990s
 - Started out as mainly civil rights law
 - In 1994, President Clinton issues Exec. Order 12,898
 - EO12898:
 - Directs federal agencies to achieve EJ
 - Reminds federal agencies to exercise EJ oversight over state/local agencies to whom they give money
 - EO opened up administrative law opportunities

Environmental justice legal framework

- Title VI of the Civil Rights Act of 1964
 - 601: do not discriminate based on race, color, national origin
 - 602: enforcement of 601 by federal government

Environmental justice legal framework

601:

No person in the United States shall, **on the ground of race, color, or national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under **any program or activity receiving Federal financial assistance**.

Environmental justice legal framework

- Section 602 allows federal agencies to enforce section 601 against federal recipients
- Local governments receive money from various federal agencies
- Effectuation of 601
 - Federal agency can exercise direct oversight
 - Impacted persons can file grievance with federal oversight agency
- Main remedy: conditioning financial assistance on compliance

Example: California, SB1000

- SB1000 enacted in 2016
- Purpose: to incorporate EJ considerations into master plans (“general plans”)
 - Identify disadvantaged communities—must include environmental hazard exposure factor
 - Community engagement
 - Policies to reduce health risks
 - Implementation measures: monitoring & enforcement

Example: Jurupa Valley, Riverside County

- 2017 General Plan
 - Environmental impact report by planning commission
 - Land use elements, often focused on residential land uses that border commercial/industrial uses
 - EJ element focused on
 - Meaningful input and capacity building
 - Land use
 - Mobility and active living
 - Healthy and affordable housing

Example: Clean Up, Green Up

- Los Angeles ordinance, enacted 2016
 - Goals
 - Reduce pollution
 - Promote public health
 - Functions as overlay district
 - In district:
 - Strengthen pollution reduction laws, enforcement
 - Provide technical assistant to polluters to mitigate
 - Create buffers between incompatible land uses
 - Phase out relocation of most injurious uses
 - Redirect industrial traffic along land use border roads
 - Improve community engagement

Example: Newark impacts ordinance

- Newark, NJ ordinance, enacted 2016
 - Addresses environmental justice and cumulative impacts
 - Requires city to develop environmental justice assessment, which accounts for cumulative impacts
 - Requires applicants seeking certain conditional use approvals and variances to submit environmental impacts statement

Opportunities: governance

- Institutional governance
 - Interdepartmental task forces
 - Community liaison
 - Mayoral office
- A relationship with the state attorney general
 - Cooperative
 - Collaborative
 - But also, enforcement

Opportunities: zoning

- Vegetative buffers
- Fugitive dust
- Green stormwater infrastructure
- Heat island elimination
- Tree canopy
- Rezoning where undeveloped tracts would otw lead to industrial uses adjacent to sensitive receptors

Opportunities: other

- Consider zoning even where adjacent land uses are outside the jurisdiction
- Development impact fee to mitigate harms to nearby populations

What is needed?

- Direction from state law
- Regardless of state law, early adopters
- Prompts through mayoral executive order
- Collaboration with philanthropic and nonprofit partners, who can assist with resources

What is needed?

- Michigan's planning and zoning enabling laws
 - Silent on environmental justice
 - Leave room for EJ interpretations
- Race conscious or race neutral policies?

Thank you!

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