

Opportunities to Advance Environmental Justice in Renewable Energy Siting



June 2023



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Citation

This paper may be cited as: Y. Li, J. Kim, R. Hayes, & A. Mergen, Emmett Environmental Law & Policy Clinic, *Opportunities to Advance Environmental Justice in Renewable Energy Siting* (2023).

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Introduction

The modern environmental justice (“EJ”) movement began in the 1960s, when communities of color organized to protest against the disproportionate siting of environmental threats in their neighborhoods.¹ Some of the core principles that define the EJ movement are:

- Environmental Justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
- 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.
- Environmental Justice affirms the fundamental right to political, economic, cultural, and environmental self-determination of all peoples.
- 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 containment at the point of production.
- Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation.²

The EJ movement gained momentum throughout the 1970s and 1980s as more and new data showed that hazardous waste sites were disproportionately located near Black communities.³ For its first several decades, however, the EJ movement existed largely independent of the mainstream environmental movement and the long-established, primarily white organizations focused on “protect[ing] wilderness, endangered species, clean air[,] and water.”⁴ In 1990,⁵ EJ leaders called out legacy environmental groups’ “lack of accountability” toward the communities of color who “suffer from the end results of” the groups’ efforts to “clean-up and preserv[e] . . . the environment” without being “full participants in the decision-making.”⁶ In response, legacy environmental groups began to engage more with EJ communities and to

¹ Brian Palmer, *The History of Environmental Justice in Five Minutes*, NRDC (May 18, 2016), <https://www.nrdc.org/stories/history-environmental-justice-five-minutes>.

² *Principles of Environmental Justice*, BULLARD CENTER FOR ENVIRONMENTAL AND CLIMATE JUSTICE, <https://www.bullardcenter.org/resources/principles-of-environmental-justice> (last visited Apr. 20, 2023).

³ Palmer, *supra* note 1. The 1982 protests over PCB-contaminated soil being buried in a landfill in majority-black Warren County, North Carolina, is just one example that garnered national attention and solidified the idea that low-income people of color bear the brunt of the nation’s environmental problems.

⁴ *Id.*

⁵ *Id.*

⁶ Letter from Richard Moore et al., SouthWest Org. Project, to Jay D. Hair, President, Nat’l Wildlife Fed’n (Mar. 16, 1990) (<https://www.ejnet.org/ej/swop.pdf>)

pursue agendas that center EJ principles.⁷ Today, most legacy environmental organizations strive to incorporate EJ principles into their work.⁸

Many entities have attempted to define “environmental justice” or “EJ community.” EPA, for example, 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.”⁹ States have come up with their own definitions of EJ communities, such as disadvantaged vulnerable communities,¹⁰ distressed municipalities,¹¹ frontline communities,¹² and equity-focused populations,¹³ and may use different thresholds for demarcating EJ communities.¹⁴ Finally, environmental organizations tend to define EJ more broadly by focusing, for example, on “who is most at risk” to find where “the institutional harm is interwoven with the impact of the climate catastrophe.”¹⁵ Under this broader lens, EJ communities may include communities of color and “those in need of abortion access, food access, LGBTQ2S+ communities, people with disabilities, and people at intersections of multiple oppressions.”¹⁶ Many groups view environmental justice as “inextricably linked to all forms of justice,”¹⁷ which may “mean moving beyond solving problems one by one to

⁷ Palmer, *supra* note 1.

⁸ *Id.*

⁹ *Environmental Justice*, EPA (last updated Mar. 29, 2023), <https://www.epa.gov/environmentaljustice>.

¹⁰ Cal. Pub. Utils. Comm’n, Decision on Energy Utility Climate Change Vulnerability Assessments and Climate Adaptation in Disadvantaged Communities (Phase 1, Topics 4 and 5), Rulemaking 18-04-019, Decision 20-08-046, at 3 (Sept. 3, 2020), <https://docs.epuc.ca.gov/PublishedDocs/Published/G000/M346/K285/346285534.PDF>.

¹¹ CONN. GEN. STAT. § 32-9p (2012).

¹² H.C.R. 112, 31st Leg., Reg. Sess. (Haw. 2021).

¹³ S.B. 1551, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023) (as introduced by Sen. Terri Bryant).

¹⁴ Compare, e.g., Ma. Exec. Office Energy & Env’t Affairs, *Environmental Justice Populations in Massachusetts*, MASS.GOV, <https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts> (defining an EJ community as a “neighborhood where one or more of the following criteria are true: (1) the annual median household income is 65% or less of the statewide annual median household income (2) minorities make up 40 percent or more of the population (3) 25% or more of households identify as speaking English less than ‘very well’ (4) minorities make up 25% or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150% of the statewide annual median household income”), with, e.g., PA *Environmental Justice Areas*, PA. DEP’T OF ENV’T PROT. <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx> (last visited Apr. 30, 2023) (defining an EJ community as “any census tract where [1] 20% or more individuals live at or below the federal poverty line, and/or [2] 30% or more of the population identifies as a non-white minority, based on data from the U.S. Census Bureau and the federal guidelines for poverty”).

¹⁵ *Environmental Justice*, GREENPEACE, <https://www.greenpeace.org/usa/issues/environmental-justice/> (last visited Apr. 20, 2023).

¹⁶ *Id.*

¹⁷ *Build a Justice-Centered Environmental Movement in Partnership with Communities and Allies*, EARTHJUSTICE, <https://earthjustice.org/our-work/environmental-justice> (last visited Apr. 20, 2023). Sierra Club’s mission regarding environmental justice is “to discuss and explore the linkages between environmental quality and social justice, and to promote dialogue, increased understanding, and appropriate action.” *Environmental Justice*, SIERRA CLUB, <https://www.sierraclub.org/environmental-justice> (last visited Apr. 20, 2023).

eliminating the root causes of environmental injustice.”¹⁸ They recognize that environmental justice means “remediating environmental harms that have been purposefully or incidentally imposed on these communities and preventing similar injustices from happening in the future.”¹⁹

No matter how one defines environmental justice or EJ communities, overburdened low-income minority communities continue to form the heart of the EJ movement. Even today, people in these communities are “sick and dying at higher rates and because they are exposed to the[] cumulative burdens of environmental harm and energy [pollution].”²⁰ They are disproportionately exposed to environmental harms from infrastructure like fossil fuel power plants in their neighborhoods and “highways with single occupancy vehicles running through and dividing neighborhoods.”²¹ People “living under flight paths” suffer from airplane noise and poor air quality, and lack “access to green space to walk and bike and enjoy with families and friends.”²² And, despite legacy environmental groups’ increasing awareness and incorporation of EJ principles in their traditional environmental law and policy work, EJ groups continue to lead the movement for environmental justice.²³

As the EJ principles referenced above make clear, achieving the goal of environmental justice involves promoting both distributive²⁴ and procedural justice.²⁵ However, the very factors that define EJ communities in the first place have made achieving procedural justice for EJ communities a difficult task. Legacy environmental groups’ historically white-centered framework²⁶ and ignorance of EJ issues sometimes created “successes” that actually harmed EJ communities.²⁷ While more environmental

¹⁸ *Who We Are*, ALTERNATIVES FOR COMMUNITY & ENVIRONMENT, <https://ace-ej.org/about/who-we-are/> (last visited Apr. 20, 2023).

¹⁹ *Equity and Environmental Justice at EDF*, ENVIRONMENTAL DEFENSE FUND, <https://www.edf.org/about/equity-and-environmental-justice-edf> (last visited Apr. 20, 2023).

²⁰ María Belén Power et al., *What Do We Mean by Environmental Justice?*, CONSERVATION LAW FOUNDATION (Mar. 16, 2021), https://www.clf.org/blog/what-we-mean-by-environmental-justice/?gclid=CjwKCAjwitShBhA6EiwAq3RqA0oKONi5kr0FwRkR2ScFQZ6RKAAbmXPWyeSo4kC9U18PpB1x28XpTBxoCmycQAvD_BwE.

²¹ *Id.*

²² *Id.*

²³ See, e.g., *Build a Justice-Centered Environmental Movement in Partnership with Communities and Allies*, EARTHJUSTICE, <https://earthjustice.org/our-work/environmental-justice> (last accessed May 5, 2023).

²⁴ Distributive justice involves everyone enjoying “[t]he same degree of protection from environmental and health hazards,” EPA, *supra* note 9, “public policy based on mutual respect for all peoples, free from any discrimination,” and “ethical, balanced, and responsible uses of land and renewable resources in the interest of sustainable planet for (all) living beings,” *Principles of Environmental Justice*, *supra* note 2.

²⁵ Procedural justice involves “giving [people] the ability to express self-determination and influence how they want their environment to look.” Power et al., *supra* note 20.

²⁶ Raymond Foxworth, *Indigenous Communities and Environmental Justice*, NONPROFIT QUARTERLY (Oct. 9, 2020), https://nonprofitquarterly.org/indigenous-communities-and-environmental-justice/?bbeml=tp-pck9Q6QNPEiuBt3JmyTokQ.jYv4o0w-hSEuEX6pUiW9lOw.rTfNko6cG6US-7HX8HNCA_A.l4Bc4p8QxHUmMdxKp7VVr9Q.

²⁷ Mike Gaworecki, *Minority And Low-Income Communities Are Targeted For Hazardous Waste Sites, Research Confirms*, DESMOG (Jan. 22, 2016), <https://www.desmog.com/2016/01/22/minority-and-low-income-communities-are-targeted-hazardous-waste-sites-research-confirms/> (“Decades of research show a clear pattern of racial and

organizations are paying attention to EJ issues today, there is still a risk of repeating past mistakes by failing to center the experiences of EJ communities in environmental advocacy. In addition, environmental groups' histories of ignoring the needs and desires of EJ communities may contribute to strained collaborations.²⁸ To prevent this, environmental advocates need to work closely with EJ communities and respect their concerns. Recent partnerships between advocacy groups and EJ communities demonstrate how productive collaboration can achieve victories for both the environment and environmental justice—for example, by “providing legal representation to communities affected by environmental harm, advocating for policies that prioritize environmental protection and public health, and supporting community-led efforts to address environmental injustices.”²⁹ This success should encourage continued partnerships dedicated to advancing both environmental justice and environmental protection.

This report considers how the cause of environmental justice can be furthered in the next frontier of the environmental movement: the clean energy transition. Many experts and the public alike consider renewable energy to be the most promising solution to growing global energy demand.³⁰ The impending buildout of renewable infrastructure has triggered concerns about the environmental justice implications of siting renewable generation facilities and transmission resources, which may take several years.³¹ Any new facility can impact the surrounding community, even if such facilities are not powered by fossil fuels. Ensuring that decisions about the siting of renewable energy infrastructure adequately incorporate and respond to EJ communities' concerns is critical to ensuring that renewable infrastructure does not cause additional harm to EJ communities, who have already shouldered a disproportionate burden of pollution from existing energy infrastructure. To that end, this report identifies barriers that might inhibit EJ communities' participation in the renewable energy siting process and proposes strategies for overcoming these obstacles.

The report proceeds in three parts. First, it discusses challenges to EJ community participation in the renewable siting process, divided into three categories: (1) financial and accessibility constraints, (2) information constraints, and (3) limitations on power and influence. Next, the report outlines several promising solutions for EJ engagement that mitigate some of these challenges and offers suggestions for how advocacy organizations can help to implement these solutions. The solutions include: (1) establishing intervenor funds; (2) facilitating access to existing free legal services; (3) providing free childcare to enable civic participation; (4) promoting education on key issues relating to infrastructure siting; (5) ensuring early community involvement and requiring the identification of alternative sites; and (6) requiring more inclusive and accessible notice of infrastructure projects;. Finally, the report recognizes the tension between

socioeconomic discrimination when it comes to siting facilities for hazardous waste disposal, polluting industrial plants and other land uses that are disproportionately located in minority and low-income communities.”).

²⁸ Deoohn Ferris, *Environmental Justice: Moving Equity from Margins to Mainstream*, NONPROFIT QUARTERLY (Aug. 15, 2019), <https://nonprofitquarterly.org/environmental-justice-moving-equity-from-margins-to-mainstream/>.

²⁹ See, e.g., *Build a Justice-centered Environmental Movement*, *supra* note 23.

³⁰ See Uma Outka, *Environmental Justice Issues in Sustainable Development: Environmental Justice in the Renewable Energy Transition*, 19 J. ENV'T & SUSTAINABILITY L. 60, 62 (2012).

³¹ The EJ movement initially arose in response to concerns about the siting of polluting facilities (such as landfills) and inequality in toxic exposure. However, the movement has expanded to include concerns about public participation in environmental decision-making. *Id.* at 64–65.

the need for expeditious renewable energy siting and the goal of encouraging EJ community participation in the siting process and proposes some possible solutions to mitigate this tension.

Challenges to EJ Community Participation in the Renewable Energy Siting Process

I. Money and Access

A. Access to Lawyers and Experts

Lawyers and experts play critical roles in enabling communities to effectively influence the renewable energy siting process by helping communities understand siting regulations and policies, analyze technical documents, uncover suspected violations,³² advocate during the siting process, and build relationships with other resources.³³ Furthermore, because the prospect of judicial review causes agencies to pay attention to arguments or information that bear on their final decisions, a group's ability to influence the siting process depends on the quality of its arguments and information.³⁴ However, lack of financial resources can prevent EJ communities from hiring the lawyers and experts they need to participate substantively in such processes, hampering their ability to stop the perpetuation of environmental injustice. When EJ communities lack access to lawyers and experts, permit applicants tend to find that placing renewable energy facilities in low-income minority communities is the path of least resistance.³⁵ EJ communities will have a more effective voice when they can bring persuasive and informed arguments to the table—a task facilitated by lawyers and experts with specialized knowledge of the relevant procedural and substantive law of infrastructure siting.³⁶

³² Alice Kaswan, *Environmental Justice: Bridging the Gap between Environmental Laws and "Justice"*, 47 AM. U. L. REV. 221, 274 (1997). There are numerous examples of lawyers uncovering EJ issues and bringing them to the attention of courts. For example, the Center for Community Action and Environmental Justice filed suit against the Federal Aviation Administration (FAA) in 2021, alleging that the FAA failed its obligation to analyze the environmental impact of a planned construction project in California. *Ctr. for Cmty. Action & Env't Just. v. Fed. Aviation Admin.*, 18 F.4th 592, 596–98 (9th Cir. 2021). In Massachusetts, the Conversation Law Foundation filed suit against Transdev North America for bus idling in violation of the Clean Air Act. Jake O'Neill, *Boston School Buses Illegally Polluting Communities with Tailpipe Exhaust*, CONSERVATION L. FOUND. (July 9, 2019), <https://www.clf.org/newsroom/boston-school-buses-illegally-polluting-communities-with-tailpipe-exhaust/>.

³³ Brad J. Cafel, *The Relationship Between Lawyers and Low-Income Communities*, 37 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 129, 131 (2003) (noting that lawyers, in the community economic development space, can utilize their network and access to help low-income communities "build relationships with business, government, financial institutions, [and] universities").

³⁴ Michael I. Jeffrey, *Intervenor Funding as the Key to Effective Citizen Participation in Environmental Decision-Making: Putting the People Back into the Picture*, 19 ARIZ. J. INT'L & COMPAR. L. 643, 650 (2002).

³⁵ See Kaswan, *supra* note 32, at 272; Richard J. Lazarus, *The Meaning and Promotion of Environmental Justice*, 5 MD. J. CONTEMP. LEGAL ISSUES 1, 4 (1994).

³⁶ *Id.*

B. Physical Access to In-Person Meetings

Many states require that permit applicants conduct in-person public hearings as part of the permit approval process; applicants may also choose to conduct in-person information sessions and host open houses.³⁷ Lack of affordable childcare can prevent EJ community members from participating in in-person events. Research shows that residents who participate in housing development planning and zoning board meetings are more likely to be “older [and] male.”³⁸ The responsibility of caring for young children can prevent EJ community members—particularly women—from attending events in person. In other words, the lack of affordable childcare is an impediment to diversity in civic participation.³⁹

Additional significant challenges to attending in-person events can include the location of the event, as well as transportation to and from the event. EJ community members may find it impossible, inconvenient, or uncomfortable to attend in-person meetings if the location is inaccessible for those with disabilities, unreachable by public transportation, far away from home, or located in government facilities.⁴⁰ Particularly when public hearings are in-person, a poorly chosen meeting location can discourage or impede EJ community members from participating in a substantive manner. Lack of affordable childcare and inaccessible meeting locations are both impediments that interpose physical and mental distance between the permit applicant and affected community members, removing opportunities for EJ community participation.

C. Digital Access to Remote Meetings

A trend that began during the COVID pandemic and has continued thereafter is the use of remote or hybrid meeting formats, including public hearings conducted over Zoom.⁴¹ However, remote meetings can pose particular challenges to EJ communities, who are more likely to have outdated or limited digital devices, unreliable access to the Internet, or a lack of technological literacy or fluency.⁴² As a result, community

³⁷ *E.g.*, N.J. Dep’t of Env’t Prot., Admin. Ord. 2021-25 FAQs 1 (2021).

³⁸ Rebecca Ritzel, *Offering Childcare at City Meetings May Be Key to Diversifying Civic Engagement*, NEXT CITY (May 8, 2019), <https://nextcity.org/urbanist-news/offering-childcare-at-city-meetings-may-be-key-to-diversifying-civic-engage> (citing Katherine L. Einstein et al., *Who Participates in Local Government? Evidence from Meeting Minutes*, 17 PERSPS. ON POL. 28 (2018) (analyzing several thousand meeting minutes of planning and zoning board meetings concerning housing development)).

³⁹ Lisa K. Parshall, Associate Professor of Political Science at Daemen College and local government fellow at the Rockefeller Institute of Government, notes that offering childcare at meetings can increase diversity in civic participation. *Id.*

⁴⁰ Promising Practices for Meaningful Public Involvement in Transportation Decision-Making at 3, U.S. DEP’T TRANSP. (2022).

⁴¹ *See* N.J. Dep’t of Env’t Prot., *supra* note 37 (noting that public hearings must be in-person unless COVID restrictions require remote hearings).

⁴² *See* Courtney B. Cooper, Digital Equity is an Environmental Justice Issue 6–7 (Aug. 13, 2021), <https://repository.usfca.edu/capstone/1249/> (M.A. thesis, University of San Francisco) (on file with PlumX Metrics) (noting that a digital divide exists in four ways: “1) existence of necessary infrastructure (e.g., fiber, cables) to connect a household to the internet; 2) ability of a household to pay for broadband internet and related devices (e.g., laptops, computers, tablets); 3) adequacy of internet speeds to access information and services; 4) ability of household to understand the information presented on the internet (e.g., If the information presented at the correct

involvement may remain low despite a strong desire to participate. Conducting public hearings only remotely, without an in-person option, can be especially problematic for EJ community members who lack adequate digital access because it deprives them of the opportunity to have their objections heard on the record. The permit approval process for Heritage Wind, an onshore wind project located in Barre, New York, illustrates this point. Although a large portion of the impacted community had limited to no access to the Internet, the permit applicant held only one public meeting, which was virtual due to COVID and rife with technical difficulties.⁴³ Further exacerbating the problem, most information about the project was distributed through the permit applicant's website and large e-documents.⁴⁴ In written comments submitted after the public hearing was held, community members reflected that these circumstances strongly impeded their ability to be informed and be heard.⁴⁵

II. Knowledge and Understanding

A. Being Informed and Staying Informed

In the siting permit application process, states generally require that the applicant provide notice to the public of the proposed project and related public hearings. Unfortunately, this requirement does not always translate to adequate notice and knowledge among impacted community members due to the way information is disseminated and certain characteristics of EJ communities. For example, announcements may be printed in small type and placed in inconspicuous locations, such as the back of local newspapers, making them easy to miss.⁴⁶ The notice may also be written in such technical, inaccessible language that their details elude even highly educated people,⁴⁷ or published only in English, even in communities where English is not the primary language.⁴⁸ For example, an environmental impact report prepared to analyze a

literacy level? Is the information provided in a language that the population being prioritized understands? Can the population being prioritized navigate the internet?").

⁴³ Kerri Richardson, Comment Letter on Application of Heritage Wind, LLC for a 94-c Permit for Major Renewable Energy Facility Heritage Wind (May 2, 2022), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={39FB5B23-2605-4FE7-8C6F-D41C91F3020B}> (public comment submitted by resident of Barre in New York Department of Public Service matter no. 21-00026).

⁴⁴ Save Ontario Shores, Inc., Comment Letter on Application of Heritage Wind, LLC for a 94-c Permit for Major Renewable Energy Facility Heritage Wind (May 21, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CBC4905E-4D0B-4A3D-BB25-BF41A9A09364}>.

⁴⁵ One commentator noted that “[a]bout 50% of the community does not have access to broadband internet” and that this commentator “spent over 45 minutes just trying to get to the comment page, and post a comment.” In response, the permit applicant wrote, “Comment noted. This is not relevant to the content of the draft permit, so no further response will be provided.” N.Y. State Office of Renewable Energy Siting, Public Comments Summary Redacted (Dec. 30, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={18C6B977-52EF-4A62-A17F-543984E2CBF8}>.

⁴⁶ LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 110 (NYU Press 2000).

⁴⁷ *Id.*

⁴⁸ *Id.*

proposed incinerator in California was published in English in a city with a 95% Latino population and 40% monolingual Spanish-speaking residents.⁴⁹

Lack of notice can be especially problematic for “minority, low-income, and tribal communities [that] have traditionally lacked access to information” necessary “to be[ing] informed participants in complex environmental decisions.”⁵⁰ Lack of access to information can also take a more insidious form. For example, misinformation may be disseminated by permit applicants or individuals or groups with vested interests in the project. This issue was evident during the permit approval process for Horseshoe Solar, a solar electric generating facility located in the towns of Caledonia and Rush, New York, where the Tonawanda Seneca Nation was provided with outdated and inaccurate map plans.⁵¹ Furthermore, even when permit applicants do share information, it can feel performative. For example, EJ communities have reflected that public hearings are just testimony and include no dialogue, making it difficult to elicit answers, develop understanding, and reach a consensus that is “necessary for a legitimate decision-making process.”⁵²

B. Understanding of General Environmental Issues and Specific Technical Information

Environmental decisions, including those made for siting renewable energy sources, are “highly technical [and] complex,” presenting a high barrier of entry to public participation.⁵³ Low literacy rates,⁵⁴ “[l]ower levels of education attainment[,] . . . and limited knowledge about [government] decision-making processes”—characteristics of many low-income minority communities—“are likely to constrain citizens’ motivation to participate.”⁵⁵ EJ communities can find the “deluge of technical information and terminology used by those in the system” challenging to understand, and even intimidating and deterring of participating in the siting process.⁵⁶

⁴⁹ Luke W. Cole, *Environmental Justice Litigation: Another Stone in David’s Sling*, 21 *FORDHAM URB. L. J.* 523, 529 (1994).

⁵⁰ Dorothy M. Daley & Tony G. Reames, *Chapter 6: Public Participation and Environmental Justice: Access to Federal Decision Making*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT’S RESPONSE TO ENVIRONMENTAL JUSTICE* 143, 160 (David M. Konisky ed., The MIT Press 2015).

⁵¹ Council of Chiefs, Tonawanda Seneca Nation, Comment Letter on Application of Horseshoe Solar Energy LLC for a 94-c Permit for Major Renewable Energy Facility (Jan. 4, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0ECA79ED-2700-4D4F-87CA-7E53C32928EA}>.

⁵² COLE & FOSTER, *supra* note 46, at 112.

⁵³ Daley & Reames, *supra* note 50, at 145.

⁵⁴ COLE & FOSTER, *supra* note 46.

⁵⁵ Daley & Reames, *supra* note 50, at 149-150.

⁵⁶ COLE & FOSTER, *supra* note 46, at 105.

III. Power and Influence

A. Time and Timing

Finding and developing a renewable energy site involves numerous considerations and can take years to complete.⁵⁷ Project developers “locate a site, secure financing, conduct environmental reviews, [and] find buyers for the power” before they apply for site permits.⁵⁸ EJ communities have expressed frustration about only being notified of development proposals years after the decision-making process for siting renewable energy infrastructure has already started.⁵⁹ Generally, by the time permit applicants seek EJ community input, they have already devoted significant time and financial resources to researching and developing sites.⁶⁰ This late engagement leaves insufficient time for the community to review the project and its potential impacts, and the applicants may resist investigating alternative sites due to the resources already expended on planning and developing the current site.⁶¹

B. Political Power

Unlike their white, wealthy counterparts, EJ communities “may not be accustomed to organizing around environmental principles,”⁶² which may lead to fewer efforts to protest or legally resist the siting of facilities in EJ neighborhoods. Even where communities do engage in environmental organizing, they may lack the political power necessary to ensure their concerns are considered on a substantive level. For instance, the East Boston Substation, located in a neighborhood already burdened by a long history of pollution and numerous energy-generating facilities, was approved despite years of vocal community opposition and hours of public meetings.⁶³ Despite the procedural protections and opportunities for community input, residents were unable to persuade the state board to withhold approval for the siting plan or even to consider

⁵⁷ Lori Bird & Katrina McLaughlin, *US Clean Energy Goals Hinge on Faster Permitting*, WORLD RESOURCES INSTITUTE (Feb. 9, 2023), <https://www.wri.org/insights/clean-energy-permitting-reform-us> (“[T]he project build time—including permitting, siting and construction—for utility-scale solar and wind facility projects averages four years.”).

⁵⁸ *Project Development Facts*, AMERICAN CLEAN POWER, <https://cleanpower.org/facts/project-development/> (last visited Mar. 30, 2023). *Accord* Robert Springer, Nat’l Renewable Energy Lab’y, *A Framework for Project Development in the Renewable Energy Sector 7* (2013), <https://www.nrel.gov/docs/fy13osti/57963.pdf> (prepared under Task No(s). 2900.3014 and WFC5.1000) (“Generally, without strong development of the Site [(e.g., defining legal property rights, contracting issues, and physical land constraints)], Resource [(e.g., conducting feasibility assessments)], and Off-take [(e.g., finding a market and buyer(s))] elements, significant investment is not made in permits.”).

⁵⁹ COLE & FOSTER, *supra* note 46.

⁶⁰ *Id.*

⁶¹ *See, e.g.*, Jaré R. Cardinal, Consultant for the Tonawanda Seneca Nation, Comment Letter on Application of Horseshoe Solar Energy LLC for a 94-c Permit for Major Renewable Energy Facility (Apr. 27, 2020), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0ECA79ED-2700-4D4F-87CA-7E53C32928EA}> (noting that there was not enough time to comment).

⁶² Kaswan, *supra* note 32, at 272.

⁶³ Miriam Wasser, *In A Blow To Environmental Justice Advocates, State Regulators Approve Controversial East Boston Substation*, WBUR (Feb. 22, 2021), <https://www.wbur.org/news/2021/02/22/east-boston-substation-final-approval-eversource-environmental-justice>.

an alternative site.⁶⁴ The East Boston case is not unique: EJ communities identify a lack of consideration of alternative locations⁶⁵ and a lack of accountability in measuring and reporting on the effectiveness of public involvement⁶⁶ as common frustrations in the siting process.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Cf.* U.S. Dep't Transp., *supra* note 40, at 4 (noting that, in the public transportation space, "a lack of accountability in recording, measuring, and reporting on the effectiveness of public involvement activities and programs also presents a challenge to meaningful public involvement").

Promising Solutions for EJ Community Engagement

I. Intervenor Funds

Economic disadvantage is central to nearly all definitions of “EJ communities” or “EJ populations.” Intervenor funds offer a promising solution for alleviating this disadvantage by enabling EJ communities to participate in the siting process on level economic footing.

Description: An intervenor fund, administered by the state permitting authority, is an amount of money set aside for the exclusive use of facilitating community participation in administrative proceedings.⁶⁷ Specifically, members of EJ communities can receive subsidies or reimbursements from the fund for the expenses they incur to hire experts or lawyers, conduct investigations, perform administrative tasks, and engage in other advocacy work before the administrative authority.⁶⁸ Traditionally used in public utility proceedings, intervenor funds vary in their design, including factors such as eligible applicants, cost limits, compensation limits, funding sources, disbursement methods, and application processes.⁶⁹ The table below summarizes best practices identified in the public utility context that should inform the design of intervenor funds in the renewable energy siting context.

Eligible Applicants ⁷⁰	To prevent potential abuse, fund administrators will need to take care in defining eligible applicants to ensure that only the intended communities benefit. Administrators should limit the pool of eligible applicants to residents of EJ communities or qualified nonprofit groups. Alternatively, eligible applicants may be more broadly defined to <i>exclude</i> specified groups—such as for-profit entities or governmental interests.
Cost Limits ⁷¹	Cost reimbursement should be limited to actual costs and a state-defined limit—whichever is lower. Two alternatives for cost limits emerge from states’ administration of intervenor funds in the public utility context. Some states require that intervenor costs are “reasonable” and leave the determination to the administrator or ALJs; other states limit cost reimbursements to “prevailing market rates.” Market rates could even be a factor in accessing cost reasonability. Furthermore, states differ in their methods of assessing prevailing market rates. California uses its own contracted market studies. Kansas bases its determination on fees for similar services paid for by the utility or the government. Alaska provides for a range, where the upper limit is cost based on prevailing market rates in the state for

⁶⁷ *E.g.*, N.Y. EXEC. LAW § 94-c(7)(a) (“The proceeds of [the intervenor fund] shall be disbursed by the office . . . for the participation of local agencies and community intervenors in public comment periods or hearing procedures.”).

⁶⁸ *E.g.*, N.Y. State Dep’t Pub. Serv., The Certification Review Process for Major Electric and Fuel Gas Transmission Facilities 11 (2022).

⁶⁹ See FTI Consulting Inc., Nat’l Ass’n of Regul. Util. Comm’rs, State Approaches to Intervenor Compensation 7–10 (2021), <https://pubs.naruc.org/pub/B0D6B1D8-1866-DAAC-99FB-0923FA35ED1E>.

⁷⁰ *Cf. id.*

⁷¹ *Id.*

	the “kind and quality” of services provided, and the lower limit is based on surveying the contiguous United States.
Compensation Limits	<p>In addition to cost limits, limits on the total amount of compensation from the fund can also be imposed. Compensation limits can take different forms. Limits can be placed on the amount that each intervenor party can apply for in each proceeding, on the total amount applied for by all parties in a single proceeding, or on an annual basis for all proceedings.</p> <p>Compensation limits may be helpful to ensure broad participation. When the intervenor fund is small and demand for funding is high (such as in states where the source of funding originates in the state government’s annual budget), compensation limits can ensure that intervenor fund proceeds are distributed to a wider group. Fund administrators should establish priorities in allocating funds based on need. Otherwise, if compensation is unlimited and unprioritized, groups with less of a stake in the community might try to be involved.</p> <p>Compensation limits are rarely used in the public utility context. Only a handful of states have adopted specified ceilings.⁷² In Tennessee, the commission has the discretion to put in place a compensation ceiling.</p>
Sources of Funding	<p>Intervenor accounts can be funded by fees imposed on permit applicants that depend on the size of the proposed project.⁷³ Imposing this additional cost on permit applicants may cause some renewable energy projects to become financially unfeasible and result in a marginal decrease in the number of renewable energy projects proposed.</p> <p>Alternatively, funding can come from the state’s annual budget. Government funding is exceedingly rare in the public utility context, occurring only in Maine. To maximize the funds available for EJ communities, we encourage intervenor funding from both sources, and potentially donors as well.</p>
Disbursement Methods	<p>Funding can be made available either on a docket-by-docket basis through requests made to the permitting authority, or on a grant basis whereby money is provided up front for groups to participate in a variety of cases.⁷⁴ We note that even if costs are subsequently reimbursed, paying for intervention costs up front out-of-pocket can pose a burden to EJ communities, particularly when proceedings are time intensive. On the other hand, grants provided up front may discourage late-arrival intervenors from participating.</p>

⁷² *Id.* at 13 (noting that “Minnesota limits awards to \$50,000 per a single intervenor in a proceeding,” “New Hampshire allows for no more than \$10,000 per party in a single proceeding,” “[i]n Idaho, awards are limited to a total of \$40,000 for all intervening parties combined in a single proceeding,” and Wisconsin’s annual budget for all intervenor compensation during the 2022 fiscal year was \$542,500). *See also* Or. Pub. Util. Comm’n, *Intervenor Funding*, STATE OF OREGON, <https://www.oregon.gov/puc/filing-center/Pages/Intervenor-Funding.aspx> (last visited Mar. 30, 2023) (“[Funding of] \$500,000 annually[] is available to groups that represent low income or environmental justice communities.”). The reason why compensation limits are not more widely used in the public utility context is unclear. As noted *infra*, however, intervenor funds are used by only a small number of states.

⁷³ *See* FTI Consulting Inc., *supra* note 69.

⁷⁴ *Id.*

Application Process ⁷⁵	<p>Intervenors can be required to apply for funding at the outset of the proceeding, or at the end of the proceeding with a breakdown of actual costs incurred. Most commonly, intervenors are required to apply at both times to receive funding. We recommend the “double application” process as it gives applicants peace of mind before they start spending out of pocket, while incentivizing applicants to keep careful record of expenses incurred.</p> <p>Additionally, intervenors should generally be required to show that (1) their participation is necessary for a fair determination in the proceeding, potentially because their interests are not adequately represented by other parties, and (2) planned or incurred costs would pose a financial hardship, if not for intervenor compensation.</p>
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Why It Matters: Intervenor funds have the potential to be a particularly impactful mechanism for empowering EJ community members and groups to become substantive advocates in renewable siting processes. This type of targeted funding source will enable EJ communities to hire lawyers and experts who are well-equipped to handle the complexity of formal siting proceedings—such as making public comments for rulemaking or advocating in administrative adjudication—and who can devote the necessary time and leverage their experience and professional networks to give the intervention the best chance of success. Although public interest environmental law organizations are powerful advocates and may provide limited legal assistance, they have not historically specialized in the direct representation of communities in state-level administrative proceedings. The provision of financial resources through intervenor funds will be a valuable financial supplement.⁷⁶

Action Items: Advocates can lobby state legislatures to enact legislation establishing intervenor funds to support EJ community participation in the renewable energy transition. In states with statutorily authorized EJ offices or agencies, advocates can also ask state agencies to establish intervenor funds under existing statutory authorization for EJ policies and programs. Since intervenor funds are an existing strategy, advocates can leverage success stories from the public utility space and language from existing legislation. Even after intervenor funds are authorized, it remains critical that advocates continue to ensure the funds are actively administered for the solution to be effective. As of December 2021, of the 16 states who have authorized intervenor compensation programs for public utility proceedings, only six states actively use them.⁷⁷ Advocates might also consider strategies aimed at repurposing or reinvigorating these existing but underutilized intervenor compensation programs.

II. Facilitate Access to Free Legal Services

EJ communities may lack the financial resources to afford effective legal representation during administrative proceedings or may face difficulties in locating lawyers with expertise in administrative law. Although these issues may arise for EJ communities in all environmental matters, they can be particularly detrimental during siting processes, which tend to be opaque, complex, and protracted.

⁷⁵ FTI Consulting, Inc., *supra* note 69, at 12.

⁷⁶ See generally Jeffery, *supra* note 34.

⁷⁷ FTI Consulting Inc., *supra* note 69, at 5.

Description: Advocacy organizations can help EJ communities secure the free or low-cost legal services they need to participate in siting processes by connecting communities with organizations that provide the needed services.

For this, organizations can establish communication channels through which EJ community members can request legal representation related to renewable energy infrastructure siting. Organizations that do not provide legal services directly can partner with organizations that do provide such services, such as university clinics, legal aid organizations that work on environmental issues, and legacy environmental organizations. For example, the UK-based Environmental Law Foundation (ELF) developed a hotline and online application where individuals can request assistance with environmental issues.⁷⁸ An ELF employee assesses how the organization can help with requests. For informal guidance, ELF often handles such inquiries entirely on its own.⁷⁹ For inquiries with no deadlines, ELF may refer the individual to a university clinic, where students engage in the practice of law under the supervision of licensed attorneys.⁸⁰ In more complex cases, ELF may refer the individual to environmental law firms that specialize in the issue at hand.⁸¹

ELF provides a model for how advocacy organizations that do not provide direct services can facilitate EJ communities' access to organizations that do provide such services. The universe of environmental law organizations is large and varied: some organizations provide direct representation in litigation or administrative proceedings, others engage in political advocacy on behalf of affected communities, and some engage in impact litigation on behalf of EJ community plaintiffs. Individuals and community groups may be unaware of these nuances; advocacy organizations, which are familiar with the varied players in the field of environmental law, are well-positioned to facilitate introductions and help maintain connections.

For example, the community-based organization Alternatives for Community & Environment (ACE) in Roxbury, MA advocates to pass laws that create better protections for EJ communities in Massachusetts, participates in a community advisory committee on fair housing, and organizes a free legal service provider, the Massachusetts Environmental Justice Advocacy Network (MEJAN), which offers legal and technical assistance to EJ community group.⁸² As another example, Earthjustice represents EJ communities in litigation in federal and state court that seeks to hold polluters accountable under state and federal law. In Louisiana, for example, Earthjustice has represented RISE St. James, a community organization based in the predominantly African American community of St. James Parish, Louisiana, in its ongoing battle to hold a petrochemical plant responsible for violating the terms of its permits.⁸³ And, in California,

⁷⁸ *Get Help*, ELF, <https://elflaw.org/get-help/#contact-us>. Environmental Law Institute has a similar form accepting pro bono applications. *Pro Bono Clearinghouse: intake form – general assistance*, ELF, <https://www.eli.org/probono/general-matter-submission>.

⁷⁹ *How We Can Help*, ELF, <https://elflaw.org/get-help/#how-we-can-help>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Our Services*, ACE, <https://ace-ej.org/what-we-do/services/>.

⁸³ Emilie Karrick Surrusco, *Cancer Alley Rises Up*, EARTH JUSTICE, (Sep. 14, 2022), <https://earthjustice.org/feature/cancer-alley-rises-up>; <https://www.facebook.com/risestjames/>

Earthjustice represented the Center for Community Action & Environmental Justice in a lawsuit challenging the FAA’s finding that a planned cargo facility would have no significant environmental impact—a case that the dissenting judge argued “reeks of environmental racism.”⁸⁴

Knowing which environmental organization is best suited to assist an individual or community with their legal issue can be a challenge even for lawyers and is likely to be even more difficult for individuals with little knowledge of the law or legal process. Advocates can help bridge this gap by serving as intermediaries between EJ communities and environmental organizations of different sizes and focuses.

Why it matters: Environmental law organizations have substantive knowledge of environmental law and administrative procedure that is critical for effective challenges to siting plans. By facilitating EJ communities’ access to this high-quality knowledge and representation, advocates can help level the playing field and empower EJ communities to participate in complex legal processes that would otherwise be inaccessible due to financial or access barriers.

Action Items: Advocacy groups can develop communications channels like ELF’s hotline and actively screen and refer potential cases to environmental law organizations that are equipped to represent the individual or community plaintiffs’ needs. Since local and regional advocacy groups may have stronger connections with EJ communities than do national environmental organizations, their participation may help community members feel more comfortable with the process. Internally, advocacy groups can hire employees dedicated to community outreach to ensure that they are building and maintaining these connections. In addition, the facilitative role of local advocacy organizations may help ensure that EJ communities are not simply being used as nominal plaintiffs in pursuit of the national environmental organization’s goal, and instead that the communities’ goals are adequately represented and at the center of the legal representation.

III. Childcare Services for In-Person Participation

EJ community members who care for children may have difficulties participating in in-person events hosted by permit applicants or state agencies. Physical transportation, waiting in lines to enter the venue, and sitting through lengthy hearings while accompanied by children can be very demanding and may make it difficult for caregivers to fully engage with the hearing or the open house.⁸⁵

Description: The nonprofit organization Politisit was founded in 2017 to provide free childcare services to enable an individual’s participation in civic activities, such as voting and testifying at a legislative hearing.⁸⁶ Nonprofit organizations, including Politisit, have also provided drop-in childcare services for civic events.

⁸⁴ Center for Community Action & Environmental Justice v. Federal Aviation Administration (U.S. Court of Appeals, 9th Cir., Nov. 18, 2021), THE NETWORK FOR PUBLIC HEALTH LAW, <https://www.networkforphl.org/resources/center-for-community-action-environmental-justice-v-federal-aviation-administration/>.

⁸⁵ Saphara Harrell, *One Nonprofit is Trying to Get Parents More Civically Engaged Through Babysitting*, SALEM REPORTER (Feb. 17, 2020), <https://www.salemreporter.com/2020/02/17/one-nonprofit-is-trying-to-get-parents-more-civically-engaged-through-babysitting/>.

⁸⁶ *Frequently Asked Questions*, POLITISIT, <https://www.politisit.org/faqs> (last visited Apr. 20, 2023).

For example, on election day in 2020, Care.com and the Armed Services YMCA worked together to provide childcare services at 27 locations around the country, where each site offered a minimum of four hours of free childcare for at least 20 children per site.⁸⁷ These models can be adapted by environmental advocacy groups to support childcare for EJ community members who want to attend in-person events during the siting process.⁸⁸ Below, we outline some of the key features of these programs.

<p>Eligible Applicants</p>	<p>EJ community residents who want to participate in in-person events such as hearings, information sessions, or open houses should be eligible for free childcare services during the time of the event.</p> <p>Politisit accepts individual or group applications from parents and other caregivers of minors who want to become more civically engaged. Politisit prioritizes requests made by those with the greatest need and least civic engagement experience and Oregonians, where the organization is located.⁸⁹ Regardless of how eligibility is defined, the availability of childcare reimbursement for civic participation should be well publicized and the eligibility guidelines should be easy to understand.</p>
<p>Application Process</p>	<p>EJ community members should be able to receive free childcare by being reimbursed for either the cost of a caregiver’s visit or the cost of leaving their children at a childcare center during the time of the in-person event.</p> <p>Politisit’s reimbursement process for individuals involves four steps: (1) fill out an online form for the day when applicants plan to participate in the in-person event, (2) make arrangements for childcare, (3) report back to Politisit with proof of attendance at the in-person event, and (4) receive reimbursement. Minimizing the complexity of the reimbursement process, while also ensuring that reimbursement serves the purpose for which it is intended (i.e., attending a civic engagement), is important to ensuring that eligible caregivers actually take advantage of the service.</p> <p>On-site childcare during public meetings represents an alternative model. Childcare could be made available to all interested citizens, with free childcare available to eligible applicants and paid childcare available to others. In this case, eligibility would have to be defined in advance. Advocacy groups, state agencies,</p>

⁸⁷ Christina X. Wood, *Want Free Child Care on Election Day? Here's How*, CAFÉ MOM (Oct. 19, 2020), <https://cafemom.com/news/free-child-care-election-day/free-childcare-on-election-day-in-27-locations> (noting that Care.com and the Armed Services YMCA provided free childcare on Election Day in CA, CO, FL, GA, IL, NC, NY, OK, TN, TX, and UT); *see also Annual Report 2020 & 2021*, POLITISIT, (last visited Apr. 20, 2023) (noting that Politisit worked with 7 childcare providers to have drop-in childcare available to hundreds of parents in Florida and Texas who planned to stand in line to cast their ballot in 13 locations, making childcare available to voters for both early voting and on Election Day).

⁸⁸ *See Annual Report 2020 & 2021*, POLITISIT, <https://static1.squarespace.com/static/63348ecaac41465eb9d15879/t/633b751b93f7362498106951/1664840993790/2020%2B%26%2B2021%2BAnnual%2BReport.pdf> (last visited Apr. 20, 2023) (noting that Politisit worked with 7 childcare providers to have drop-in childcare available to hundreds of parents in Florida and Texas who planned to stand in line to cast their ballot in 13 locations, making childcare available to voters for both early voting and on Election Day).

⁸⁹ *Id.*

	and permit applicants likely would all have a role to play in organizing and providing on-site childcare.
Reimbursement Limit; Sources of Funding	<p>Reimbursement limits for EJ community participation may be necessary based on the budgetary constraints of the organizations and sources of funds. Politisit clients are limited to free childcare services for \$200 or 15 hours per month, whichever comes first.⁹⁰ Politisit is currently funded through individual donors,⁹¹ by a family foundation⁹² whose funding priorities include climate and equity,⁹³ and two local law firms.⁹⁴</p> <p>However, the requirement to provide proof of attendance at qualifying in-person events, and the likely lower frequency of infrastructure siting hearings and meetings (relative to all civic participation opportunities covered by Politisit), may reduce the need for stringent reimbursement limits in the energy infrastructure context.</p>

Why It Matters: Lower-income, ethnic minority communities are more likely to face childcare constraints.⁹⁵ When childcare is unaffordable or unavailable, caregivers may be unable to participate in civic life. Providing free childcare alleviates one barrier to EJ community members’ participation in the permit approval process. By allowing more voices from EJ communities to contribute to discussions about infrastructure siting—in particular, including the voices of women—a free childcare program will contribute towards achieving procedural justice and possibly substantive justice.

Action Items: Advocacy groups can advance the goal of providing free childcare services to EJ community members in need by supporting organizations like Politisit, by themselves playing the role of a childcare intermediary like Politisit, or by working directly with childcare services like Care.com in their region to create a childcare-service program that enables EJ community members to participate in local hearings. Advocacy groups can also support the work of organizations like Politisit by connecting EJ community members in need with the organization and helping them raise adequate funding.

Where such programs exist, advocacy groups can ask renewable energy siting applicants to give instructions on how to apply for free childcare services when they announce in-person events or help community

⁹⁰ *Id.*

⁹¹ *How To Help*, POLITISIT, <https://www.politisit.org/how-to-help> (last visited Apr. 22, 2023)

⁹² *Who We Are*, RWN FOUNDATION, <https://www.rwnfoundation.org/who-we-are/> (last visited Apr. 20, 2023) (noting that RWN Foundation was created in 2019 by Dr. Ron Naito based in Portland, Oregon).

⁹³ *How to Apply*, RWN FOUNDATION, <https://www.rwnfoundation.org/how-to-apply/> (last visited Apr. 20, 2023) (noting that RWN Foundation currently offers unrestricted grants in the range of \$5,000–50,000).

⁹⁴ GILROY NAPOLI SHORT, <https://www.gilroynapolishort.com/> (criminal justice attorneys in Oregon); DUMAS & VAUGHN, <https://dumasandvaughn.com/> (sexual abuse and assault attorneys in Oregon).

⁹⁵ Even before the pandemic, “more than half of Latinx and American Indian and Alaska Native (AIAN) families lived in a child care desert—an area with an inadequate supply of licensed child care.” Affordability has been a huge issue as well. “A typical, median-income Black family with two young children would have to spend 56% of its income on child care, a larger share of total family income than that of any other group.” Cristina Novoa, *How Child Care Disruptions Hurt Parents of Color Most*, AMERICAN PROGRESS (Jun. 29, 2020), <https://www.americanprogress.org/article/child-care-disruptions-hurt-parents-color/>.

members qualify or apply for drop-in childcare services near where the in-person events are held. Advocates can also help eligible EJ community members who are unfamiliar with working online submit individual applications.

At a higher level, environmental advocates can form a coalition with groups with similar goals and lobby state legislatures to establish state-funded programs that provide childcare services to low-income families. One way to secure additional funding for such a program would be to require permit applicants to contribute to the cost. By working towards establishing a state-funded childcare program, advocacy groups can help ensure that EJ community members have more stable access to affordable and reliable childcare services, allowing care providers to freely participate in the siting process and providing children with a safe environment.

IV. Promote Education on Environmental Rights

Informational barriers can prevent EJ community members from learning about new renewable energy developments planned for their neighborhoods at a time when they can meaningfully impact siting decisions. And, even where communities are aware of potential projects, they might be unaware of the projects' full implications or how they can influence project development.

Description: Advocates can play a role in mitigating these informational obstacles. Specifically, advocates can provide informal legal education to EJ communities by (1) familiarizing EJ community members with general environmental issues relevant to their community and (2) disseminating informational material about how the development of renewable infrastructure affects community members' rights and interests.

A. Familiarize Communities with General Environmental Issues

Many nonprofit organizations already use a variety of multimedia tools to familiarize people from diverse backgrounds with environmental issues. For example, the podcast *Climate Change for Beginners* produces short 10-minute episodes on topics like “How quickly we can stop global warming?,”⁹⁶ and the Think Earth Environmental Education Foundation publishes cartoons to educate young people about environmental issues like “What causes waste and pollution.”⁹⁷ At the local level, podcasts like *Hudson Mohawk Magazine* locally publishes news on topics specific their community in New York, such as an “update on PFOA Water Contamination in Poestenkill.”⁹⁸ ACE offers a more hands-on educational program in the form of toxic walking tours, which guide participants through Roxbury, Massachusetts so they can see for

⁹⁶ See CLIMATE CHANGE FOR BEGINNERS, <https://podtail.com/en/podcast/climate-change-for-beginners/>. The Harvard Environmental and Energy Law Program produces another podcast that provides up-to-date news on environmental regulations. *CleanLaw*, HARV. ENV'TL LAW & ENERGY PROG., <https://eelp.law.harvard.edu/cleanlaw-our-podcast/>. There are also podcasts that provide forums for activists interested in promoting EJ to discuss their research and ideas. *E.g.*, *Podcasts*, AGENTS OF CHANGE IN ENV'TL JUSTICE, <https://agentsofchangeinej.org/podcast/>.

⁹⁷ *Think Earth Curriculum*, THINK EARTH ENVIRONMENTAL EDUCATION FOUNDATION, <https://thinkearth.org/curriculum>. Users can sign up for educational materials, and previews are provided on their website. A preview of its educational material on “Waste Invaders Fourth Grade Mini-Unit.” <https://thinkearth.org/images/zdocs/WasteInvadersPreview.pdf>.

⁹⁸ *Update on PFOA Water Contamination in Poestenkill*, HUDSON MOHAWK MAGAZINE (May 10, 2023), <https://soundcloud.com/mediasanctuary/update-on-pfoa-water-contamination-in-poestenkill>.

themselves how environmental pollution affects the community.⁹⁹ And, at a more global level, Friends of the Earth International produces a radio program in English and Spanish that highlights environmental movements around the world with a focus on grassroots organizations and communities.¹⁰⁰ Advocates can adapt these models to provide substantive information about the environmental issues implicated by renewable energy siting, such as the sources and effects of greenhouse gas and pollutant emissions, the science behind renewable energy resources, pollution burdens, and state and federal environmental laws.

In addition to providing substantive information, advocacy groups can offer trainings and support so that EJ communities can collect data on the environmental harms present in their neighborhoods. For example, the NAACP worked with middle schools in East Chicago to equip them with the tools needed to collect soil, air, and water samples in the neighborhood. They then partnered with Indiana State University, the Union of Concerned Scientists, a local state senator, and a church to host trainings where students learned how to test those samples themselves, and how to document their stories in the media.¹⁰¹ Similarly, in Houston, TEJAS facilitates community air quality monitoring¹⁰² and has partnered with a local high school to empower students and educators to document environmental problems in the city and to innovate solutions.¹⁰³ Environmental advocacy organizations can support existing EJ partnerships like these and provide similar services where such programs do not currently exist. Engaging communities in citizen science can be relevant to the renewable siting process, as citizen scientists might identify vulnerabilities that would be exacerbated by siting new infrastructure within a community—either during the construction process or through the increase in infrastructure burden. In addition, by engaging with youth in EJ communities, environmental advocates can help foster the community’s environmental citizenship in the long run.

Finally, environmental advocates should ensure that they stay current on the issues that are most important to EJ communities. Conservation Law Foundation (CLF), for example, employs EJ advocates who spend time “listen[ing] to learn what issues residents worry about the most and hear their ideas for solutions,” such as the lack of trees in the Southern neighborhood of Manchester, New Hampshire.¹⁰⁴ CLF advocates have facilitated EJ advisory groups that brainstorm, prioritize, and design plans for how CLF should address these important issues.¹⁰⁵ Developing mechanisms, such as EJ advisory groups, through which

⁹⁹ Our Services, ACE, <https://ace-ej.org/what-we-do/services/#toxic-tours>.

¹⁰⁰ *Real World Radio*, FRIENDS OF THE EARTH INT’L, <https://www.foei.org/who-are-friends-of-the-earth/real-world-radio/>.

¹⁰¹ *Unleashing the Power of the People: Lessons on Public Engagement for Environmental and Climate Justice*, NAACP, <https://naacp.org/resources/unleashing-power-people-lessons-public-engagement-forenvironmental-and-climate-justice>.

¹⁰² *Services*, T.E.J.A.S., <https://www.tejasbarrios.org/services>.

¹⁰³ *In Partnership with Furr High School*, T.E.J.A.S., <https://www.tejasbarrios.org/partnerships>.

¹⁰⁴ *Helping Justice Take Root*, CONSERVATION LAW FOUNDATION, <https://www.clf.org/blog/feature/manchester-helping-environmental-justice-take-root/>

¹⁰⁵ *Id.*

environmental advocacy groups can stay up-to-date on the critical issues facing EJ communities can benefit both the communities and the groups' execution of their missions.

B. Provide Information on Legal Rights Affected by Infrastructure Development

EJ community members might be unaware of the legal rights they possess in the environmental space. Ensuring communities are aware of their procedural and substantive rights and giving them the skills and information they need to enforce those rights might facilitate earlier and more constructive engagement between EJ community members and renewable energy developers.¹⁰⁶ Environmental advocates can help ensure that EJ communities are fully apprised of their legal rights in the environmental space. Several statutes at the federal level guarantee procedural rights to EJ community members with energy project proposals.

<p>National Environmental Policy Act (NEPA)</p>	<p>NEPA requires federal agencies to “prepar[e] detailed statements [EISs] assessing the environmental impacts of and alternatives to all major federal actions significantly affecting the environment,” including permit approvals.¹⁰⁷ Individuals can help shape the scope of an EIS by sharing feedback and concerns via “public meetings, conference calls, formal hearings, informal workshops, . . . [or] written comments.”¹⁰⁸ Once a draft EIS is published, individuals can submit comments on the document.¹⁰⁹</p> <p>Many states have laws similar to NEPA that provide mechanisms for community members to participate in the administrative process, including the California Environmental Quality Act (CEQA) and the Massachusetts Environmental Policy Act (MEPA). Some of these state laws provide additional protections. For example, CEQA implements a mitigation monitoring and reporting program that requires the government to ensure that mitigation is completed if the EA promises to make such actions.¹¹⁰</p>
<p>Clean Water Act (CWA)</p>	<p>The CWA requires a project developer to obtain a permit for the discharge of pollutants into navigable waters, and requires a notice and comment period for any proposed permit.¹¹¹ The CWA also provides a provision for citizen suits, whereby any citizen can file suit against an entity that is violating its permit, subject to certain procedural requirements.¹¹²</p>

¹⁰⁶ Brain J. English, COMMUNITY EMPOWERMENT THROUGH ENVIRONMENTAL EDUCATION 27, <https://core.ac.uk/download/pdf/267849873.pdf>.

¹⁰⁷ *What is NEPA?*, EPA, <https://www.epa.gov/nepa/what-national-environmental-policy-act>.

¹⁰⁸ *How Citizens can Comment and Participate in the National Environmental Policy Act Process*, EPA, <https://www.epa.gov/nepa/how-citizens-can-comment-and-participate-national-environmental-policy-act-process>.

¹⁰⁹ *Id.*

¹¹⁰ Mitigation Monitoring and Reporting Plan, CITY OF LOS ANGELES, https://planning.lacity.org/eir/SwanHall/FEIR/Swan_Hall_FEIR/5.0_Mitigation_Monitoring.pdf.

¹¹¹ 40 C.F.R. §§ 25.1-14; *see also Public Participation in the NPDES Permit Issuance Process*, EPA (Sept. 2013), https://www.epa.gov/sites/default/files/2018-07/documents/npdes_public_participation_fact_sheetr.pdf.

¹¹² 33 U.S.C. § 1365.

Clean Air Act (CAA)	The CAA requires states and localities to develop implementation plans to achieve and maintain air quality standards ¹¹³ and provides for public participation, via reasonable notice and public hearings, in the development of such plans and. ¹¹⁴ Like the CWA, the CAA also contains a citizen-suit provision. ¹¹⁵
Federal Power Act (FPA)	The FPA gives the Federal Energy Regulatory Commission (FERC) jurisdiction over the interstate transmission and sales of electric power, including electricity from renewable sources. ¹¹⁶ Individuals can intervene in proceedings before the Commission. ¹¹⁷ The FERC Office of Public Participation is available to help individuals participate in FERC matters and find information related to FERC proceedings. ¹¹⁸

Action Items: Advocacy groups should adopt some of the strategies discussed in Section IV.A to ensure that EJ communities have access to information on general and specific environmental issues. Of particular relevance to the renewable energy siting context, advocates should consider teaching communities how renewable energy siting works and how it can affect their substantive and procedural rights.

V. Early Community Involvement and the Identification of Alternatives

A common objection raised by members of EJ communities is that their input on proposed infrastructure projects was not sought until after the permit applicant had already decided to site the facility within their community. EJ community members often express frustration that their feedback is merely collected to meet procedural requirements instead of being put to substantive use.

Description: Permit applicants must involve EJ communities as early in the siting process as possible. Some states require permit applicants to engage directly with members of overburdened communities in advance of (and in addition to) formal public hearings. For example, New York specifically requires applicants to conduct at least one meeting with community members who may be adversely affected by the siting at least 60 days before the application date.¹¹⁹ Other states, such as New Jersey, do not have similar requirements but encourage early engagement.¹²⁰ Our survey of permit cases approved through the New York Office of Renewable Energy Siting reflects a mixed record of early engagement efforts as a result of this state “encouragement.” Permit applicants generally self-report that they go above and beyond to follow the recommended procedures.¹²¹ However, given the existence of cases in which applicants fail to meet

¹¹³ 42 U.S.C. § 7410.

¹¹⁴ *Id.*

¹¹⁵ 42 U.S.C. § 7604.

¹¹⁶ 16 U.S.C. § 791a et seq.

¹¹⁷ *Id.* § 825g; 18 C.F.R. § 385.214.

¹¹⁸ Off. of Pub. Participation, *What OPP Does*, FERC, <https://www.ferc.gov/what-opp-does>.

¹¹⁹ N.Y. COMP. CODES R. & REGS. tit. 19, § 900-1.3 (2021).

¹²⁰ N.J. Dep’t of Env’t Prot., *supra* note 37.

¹²¹ *E.g.*, Chris Maye, CMI’s Team Helps Bring Manufacturing Back to Pennsauken, NJ, COMPLIANCE MANAGEMENT INTERNATIONAL (Nov. 16, 2022), <https://www.complianceplace.com/cmis-team-helps-bring->

even the required engagement efforts (such as the case where an applicant disguised a formal public hearing as an informal outreach “public information session”),¹²² mere “encouragement” will never be effective as a requirement for early engagement.

Applicants should also be required to identify and evaluate alternative sites. Then, the applicant should explain the selection and consideration process to affected communities and seek their input with regard to site location and design that uphold EJ principles. Applicants should be required to identify at least one site that is not situated in an EJ community so that communities are not merely choosing the “lesser evil.” EJ communities should be given the opportunity to weigh the benefits and costs of locating renewable energy projects in their neighborhood and decide for themselves whether the siting burden is worth it.

Why It Matters: Meaningful EJ community participation requires the existence of a possibility of change in the facility siting location and design. As the siting process moves into the later stages, plans become finalized and entrenched. Once the applicant has already committed time and effort into the existing location and design, the applicant will be (understandably) reluctant to make modifications.

Action Items: Advocates should push applicants to seek feedback from potentially impacted EJ communities during the site feasibility study stage. Advocates should highlight the valuable contributions that EJ community members can make to site location and design. For example, EJ communities may be able to provide information regarding existing stressors. Based on this information, applicants can conduct further investigations to ensure that the project site meets applicable environmental commitments and siting restrictions and minimally exacerbates these existing stressors.¹²³ Applicants can also investigate mitigation measures upon which permit approval might be conditioned.¹²⁴ In addition, EJ communities can assist in the design of mitigation measures, such as reducing the project footprint, designing visual blockades, and instituting noise baffling. For example, the Green Corners Solar Project in New York worked with neighboring residents to increase the project setback.¹²⁵ Such collaboration can result in higher buy-in from

[manufacturing-back-to-pennsauken-nj/](#) (noting that the applicant made “extensive efforts” to comply with state’s “recommended” public outreach).

¹²² Ironbound Cmty. Corp. et al., Comment Letter on Proposed Environmental Justice Rules, DEP Docket No. 04-22-04 (Sept. 6, 2022), https://earthjustice.org/wp-content/uploads/2022-09-06_ice_njeja_comments_dep_ejrule.pdf (referencing the Covanta Essex Resource Recovery Facility in NJ, where the applicant failed to indicate that a “public information session” was actually a public hearing, and failed to indicate when the public comment period began and ended).

¹²³ N.Y. COMP. CODES R. & REGS. tit. 19, § 900 (2021).

¹²⁴ E.g., Danny McDonald, *State Board OK’s Controversial East Boston Substation; Foes Vow to Appeal*, THE BOSTON GLOBE (Feb. 22, 2021) (The East Boston Substation’s state board approval was conditioned on “requiring Eversource to enter into good-faith negotiations with neighborhood representatives before construction begins.”).

¹²⁵ Green Corners Solar LLC, 900-2.3 Exhibit 2 Overview and Public Involvement, Application of Greens Corners Solar LLC for a 94-c Permit for Major Renewable Energy Facility 12–13 (June 11, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1FD0B943-6642-4BD3-A3A0-4947D2410032}> (noting that the applicant voluntarily increased project setbacks and “proposed vegetated screening” in response to community feedback and a new solar bylaw that was passed while the applicant “was in the final stages of the [permit application] submission preparation”).

the community and benefit the reputation of the project sponsors, resulting in a win-win for both EJ communities and permit applicants.

Advocates can strive to ensure that applicants abide by the above-outlined practices by requesting that permitting authorities require applicants to substantively engage in dialogue with EJ communities prior to submitting permit applications. Through legislation, regulations, or agency policy guidance, state legislatures and agencies have the power to mandate best practices. Advocates can encourage this change by drafting policies and coordinating among sister organizations to lobby multiple states at the same time. It may be easier to persuade some state parties to codify change if advocates can point to other states (such as New York) who are leading the way in the EJ movement.

VI. Information and Notice Requirements

EJ communities face the information asymmetry common to all communities in which renewable projects are planned: that is, permit applicants generally possess more information on the details and likely effects of proposed developments than impacted communities. Moreover, due to their minority status, language barriers, and historical exclusion from and inequitable access to resources, EJ communities face additional challenges in accessing and understanding information about infrastructure development siting processes.

Description: A survey of state regulations and permit case studies reveals the following best practices for disseminating information to members of EJ communities.

<p>Notice Content and Information Channels</p>	<p>Permit applicants' first point of contact with members of the EJ community is notifying members of the existence of a proposed renewable energy project. To ensure effective notice, applicants should be required to use a variety of notice channels, including but not limited to: direct mail, print and broadcast media outlets,¹²⁶ alternative media outlets (such as community or ethnic newspapers),¹²⁷ and online platforms (through social media or the applicant's website).¹²⁸ Particularly when the affected EJ communities are non-English based, applicants should be required to provide notices in a variety of languages and be trained in culturally appropriate communication.¹²⁹</p>
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¹²⁶ E.g., N.Y. State Dep't Pub. Serv., *supra* note 68, at 9.

¹²⁷ E.g., Ma. Exec. Office Energy & Env't Affairs, Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs 9 (June 24, 2022) ("EEA shall develop a list of alternative information outlets to be made available to EEA agencies seeking public comments and to project proponents who may be asked to publish public notices for projects that are in or may otherwise impact EJ populations. EEA shall continually maintain this list by adding new outlets, as needed, for newly identified EJ areas, keeping contact information up to date, and by deleting outlets that are no longer in business or relevant for this purpose.").

¹²⁸ E.g., Ma. Exec. Office Energy & Env't Affairs, Environmental Justice Strategy 84 (Oct. 2022) (noting that the Massachusetts Department of Environmental Protection is evaluating "ways of implementing new technologies to share EJ information," including "social media, Twitter, Instagram, and alternative media outlets").

¹²⁹ Applicants can train their staff based on existing communication standards from other fields of service, such as health care. See Washington State Board of Health, CLAS Standards Training and Resources, HEALTH EQUITY, <https://healthequity.wa.gov/councils-work/clas-standards-training-and-resources> (last visited Mar. 30, 2023) (providing e-learning modules and in-person training curriculum).

	<p>Certain considerations apply to written notices in particular. Minimum font and margin sizes can improve readability of print notices. Furthermore, notices should be written in accessible language. New York defines accessible language to be phrasing that the “average person” can understand;¹³⁰ Washington’s standard for accessible language is “plain talk.”¹³¹ Regardless of the state differences, an eighth-grade reading level should be generally appropriate for most members of EJ communities.¹³² Applicants should also consider providing visual information in the form of diagrams, photographs, or videos to support written notices.¹³³ Visual displays can transcend language barriers and capture the attention of EJ community members more easily.</p> <p>Translation and interpreter services are also important for ensuring that EJ communities are well-informed. Some states are already working to provide translation and interpreter services through the siting authority.¹³⁴ Applicants should proactively employ bilingual or multi-lingual staff.</p> <p>Overall, notice is most effective when it is disseminated in a variety of formats and through a variety of channels to reach the widest audience possible. Variety is the only way to ensure that permit applicants can reach community members with visual impairments, hearing disabilities, or other accessibility impediments.</p>
<p>Information Disseminated</p>	<p>Not only does the method of information dissemination matter, but the informational content also matters. To empower EJ communities to meaningfully engage and participate in the siting process, applicants should be required to provide the following information:</p> <ul style="list-style-type: none"> • A map and description of the facility and construction schedule;¹³⁵ • An analysis of the expected environmental and health impacts of the proposed facility during its construction and operation and any mitigation measures;¹³⁶ • Other key documents related to permit review and decision; • The date(s), time(s), and location(s) of public hearings and other planned informational events;

¹³⁰ N.Y. COMP. CODES R. & REGS. tit. 19, § 900-6.2(d) (2021).

¹³¹ WASH. REV. CODE § 70A.02.050 (2022).

¹³² See *What is Readability and Why Should Content Editors Care About It?*, CTR. FOR PLAIN LANGUAGE (Mar. 22, 2017), <https://centerforplainlanguage.org/what-is-readability/>.

¹³³ Elise Rasmussen et al., *Recommendations for Prioritizing EJ in Washington State Government 100* (2020) (Environmental Justice Task Force report to the Washington State Governor and Legislature).

¹³⁴ E.g., Mass. Exec. Office Access & Opportunity, *Language Access Policy and Implementation Guidelines 7* (Mar. 20, 2015), <https://www.mass.gov/doc/language-access-guidelines/download> (“[E]ach Agency shall provide interpretation services to non-English speaking . . . persons . . . who seek to access or participate in the services, programs, or activities offered by the Agency.”); see also *Language Access Laws and Legal Issues: A Local Official’s Guide*, INST. FOR LOCAL GOV’T 30 (2017), https://www.ca-ilg.org/sites/main/files/file-attachments/language_access_guide.pdf?1505165572.

¹³⁵ N.Y. COMP. CODES R. & REGS. tit. 19, § 900-6.2(d) (2021).

¹³⁶ E.g., N.Y. PUB. SERV. § 164(1)(b) (2021); N.J. REV. STAT. § 13:1D-160(a)(1) (2023); 2021 Mass. Legis. Serv. Ch. 8 (S.B. 9).

	<ul style="list-style-type: none"> • The name(s) and contact information for the appropriate facility contact(s) for the proposed site(s);¹³⁷ and • Where and how interested community members can receive updates, provide feedback, and register objections. <p>Applicants should not only inform EJ communities about the existence of proposed projects, but also provide EJ communities with progress updates.</p>
Supplemental Methods of Community Engagement	<p>Most states require permit applicants to participate in public hearings before an ALJ and to receive and respond to public comments. However, the formal nature of public hearings is not conducive to dialogue and reaching a mutual understanding between the permit applicant and EJ community members. Applicants should also endeavor to engage the EJ community through informal events and other information dissemination practices.</p> <p>Community engagement initiatives can include hosting open public forums, giving guided tours of the proposed facility area, offering one-on-one discussions, gaining insights via focus groups, establishing a field office or toll-free phone lines, collecting feedback via questionnaires or surveys, and offering speakers to community groups that meet regularly.¹³⁸</p> <p>Additionally, independent of the pandemic-related reasons for doing so, applicants and administrative bodies should consider adopting a hybrid format for outreach events and public hearings. Individuals without ready access to childcare or transportation can thus more easily participate in the process substantively, while individuals with limited Internet access can still participate in-person. In order to limit participation to local residents, applicants can ask community members to register before the public hearing and verify their identity. Alternatively, applicants can send the remote hearing link only to local residents.</p> <p>As a general principal, applicants should meet EJ communities where they are. That is, applicants should work within the existing physical and social structures of the community. Applicants should establish a presence at physical locations where community members frequent, such as the library and the town hall. Applicants should also leverage existing networks and organizations within the community. Town and county officials may have ideas for tailored outreach efforts. Government offices and agencies may have a mailing list of EJ community and advocacy organizations that applicants can use to disseminate information.¹³⁹ The assistance from community organizations and regional networks may be the key to successful EJ participation.¹⁴⁰</p>

¹³⁷ *E.g.*, N.Y. COMP. CODES R. & REGS. tit. 19, § 900-6.2(d)(4) (2021).

¹³⁸ *See* N.Y. State Dep't Pub. Serv., *supra* note 68, at 6.

¹³⁹ *E.g.*, Ma. Exec. Office Energy & Env't Affairs, *supra* note 127 (“[T]he Director [of the Massachusetts Executive Office of Energy and Environmental Affairs] shall develop and maintain a list of EJ community and advocacy organizations and an ‘EJ Mailing List’ consisting of these organizations and interested members of EJ populations, and others.”).

¹⁴⁰ *Cf.* COLE & FOSTER, *supra* note 46, at 105 (“We attribute the success of grassroots environmental justice struggles, ultimately, to strong community organizations and regional networks.”).

Why It Matters: Disinformation and misinformation can create confusion within the community. Without being adequately informed, EJ communities will not be able to meaningfully participate in the siting process. Procedural requirements for the applicant to share information in a transparent and timely manner can facilitate more open dialogue between the permit applicant and members of the EJ community. Although it is difficult to directly address the problem of misinformation, requiring open dialogue is a starting point that reduces the potential space for misinformation to fill.

Action Items: Advocates should lobby permitting authorities to impose and enforce the aforementioned procedural requirements in the siting process. Otherwise, applicants may do the bare minimum in giving notice. A 1991 California case is illustrative of this point. A permit applicant for an incinerator attempted to meet CEQA notice requirements by publishing a written report in English in a city with a 95% Latino population and 40% monolingual Spanish-speaking residents.¹⁴¹ The judge blocked the construction and ruled that the Spanish-speaking people's "right to public participation had been violated," but only after a lawsuit was filed. Advocates can lobby for change in numerous ways, such as through letter or email correspondence, personal visits, by telephone, or by testimony before a committee that is hosting public hearings on an issue or a bill.¹⁴²

In instances where the state and the applicant are unable or unwilling to provide translation and interpreter services, advocacy groups can fill this important gap. Advocacy associations can also partner with community-based organizations and ethnic news outlets to ensure EJ communities can access culturally appropriate interpretations and translations. For example, advocates can work with organizations like Ethnic Media Service, which facilitates communication between important decision makers, like federal agencies, and ethnic minority community members by participating in and facilitating public forums and convenings.¹⁴³ Advocacy organization with a more intensive focus on one geographic area or community can also facilitate these types of engagements within their region without needing to hire an external player like Ethnic Media Services. Advocates can also connect permit applicants with experienced translators that provide more affordable services.

Community engagement efforts should be tailored to the characteristics of the community. Advocates may be able to recommend and suggest engagement strategies for permit applicants to adopt. In the transportation space, the U.S. Department of Transportation has compiled public engagement tools and made recommendations for when specific tools should be utilized.¹⁴⁴ Advocates can look to the transportation space for ideas for engagement strategies and adapt them for the renewable energy siting context. Qualitative concepts such as changed perceptions, projects leading to other community

¹⁴¹ Cole, *supra* note 49, at 529.

¹⁴² Legal Aid Bureau, Inc., *A Citizen's Guide to Lobbying in Maryland*, MARYLAND ALLIANCE FOR JUSTICE REFORM (Sept. 1981), <https://www.ma4jr.org/wp-content/uploads/2014/11/Lobbying.pdf>; Wash. State Legis., *A Citizen's Guide to Effective Legislation Participation*, LEGISLATURE HOME, <https://leg.wa.gov/legislature/Pages/EffectiveParticipation.aspx> (last visited Apr. 3, 2023).

¹⁴³ Peter Schurmann, *FTC Briefing Targets Scams Hitting API Communities in California*, ETHNIC MEDIA SERVICES (Mar. 31, 2023), <https://ethnicmediaservices.org/scams/ftc-briefing-targets-scams-hitting-api-communities-in-california/> (noting that Ethnic Media was at a forum hosted by the FTC during which Asian residents of San Francisco shared their experiences with online scams).

¹⁴⁴ See U.S. DEP'T TRANSP., *supra* note 40.

enhancements, or changes made to a program as a direct result of community input can be valuable metrics in measuring the effectiveness of a permit applicant's engagement strategy.¹⁴⁵ Advocacy organizations can track and evaluate the effectiveness of various strategies for both permit applicants and affected communities.

¹⁴⁵ *Id.* at 4.

Challenges to Expeditious Renewable Energy Siting

To uphold EJ principles and prevent further oppression of these overburdened communities, the best solution is to avoid placing facilities in EJ communities entirely. However, where such avoidance is not feasible, expeditious siting requires strong EJ community engagement, as outlined in the previous section. Otherwise, project sponsors will need to respond to community opposition in the administrative context of applying for a site permit, which will be more time-intensive and expensive than proactive or informal community engagement due to the formal nature of administrative proceedings.

On the other hand, where renewable energy facilities are not located in EJ communities, legal opposition based on NIMBY¹⁴⁶ concerns can unnecessarily prolong the permit application process. The permitting process alone for renewable energy sites can take years to complete, in part due to lawsuits filed by litigious and well-resourced neighbors.¹⁴⁷ Although this issue of expediting renewable energy siting requires further study, we have identified two major challenges to expeditious renewables siting in the following section.

I. Frivolous Lawsuits versus Legitimate Opposition

In contrast to EJ communities, wealthy communities are more likely to use legal means to oppose the siting of renewable energy infrastructure, whether such lawsuits are well-grounded or not.¹⁴⁸ Legal battles can successfully prevent the siting of a renewable generation facilities near wealthy neighborhoods, either on the projects' merits or by "increasing the delay and expense associated with a proposed project."¹⁴⁹ Furthermore, the mere threat of potential lawsuits "may discourage the project proponent from pursuing the planned action in [a] particular geographic area" in the first place.¹⁵⁰ Cape Wind, which would have been the first and largest offshore wind farm in the U.S. at the time it was proposed, failed after 16 years of litigation and millions of dollars in legal fees.¹⁵¹ Despite broad public support, minimal ecological risks, and proven negligible effects on commercial industries,¹⁵² the project was scrapped due to vigorous

¹⁴⁶ NIMBY is an acronym for "Not in my backyard." See Michael B. Gerrard, *The Victims of BIMBY*, 21 *FORDHAM URB. L.J.* 495, 496 (1990) (identifying "waste disposal facilities, primarily landfills and incinerators[,] . . . low-income housing[, and] . . . social service facilities, group homes and shelters" as the primary targets of NIMBYs). Dr. Robert Bullard has suggested that "[t]he cumulative effect of not-in-my-backyard (NIMBY) victories by environmentalists appears to have driven the unwanted facilities toward the more vulnerable groups." ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 46 (1990).

¹⁴⁷ Paul Bledsoe & Elan Syke, *America's Clean Energy Transition Requires Permitting Reform*, PROGRESSIVE POLICY INSTITUTE (Sept. 2022), <https://www.progressivepolicy.org/publication/americas-clean-energy-transition-requires-permitting-reform-policy-recommendations-for-success/> (noting that the "average time for permitting [is] 4.3 years for transmission, 3.5 years for pipelines, and 2.7 years for renewable energy generation projects").

¹⁴⁸ Kaswan, *supra* note 32, at 274.

¹⁴⁹ *Id.* at 277.

¹⁵⁰ *Id.*

¹⁵¹ Katharine Q. Seelye, *After 16 Years, Hopes for Cape Cod Wind Farm Float Away*, *THE NEW YORK TIMES* (Dec. 19, 2017), <https://www.nytimes.com/2017/12/19/us/offshore-cape-wind-farm.html>.

¹⁵² Jared Keller, *Can Wind Power Survive the NIMBY Syndrome?*, *THE ATLANTIC* (Apr. 20, 2010), <https://www.theatlantic.com/personal/archive/2010/04/can-wind-power-survive-the-nimby-syndrome/39251/>.

opposition from wealthy waterfront owners including billionaire William I. Koch.¹⁵³ Koch’s strategy, in his own words, was to “delay, delay, delay” to bleed developers financially dry and to elect politicians who are opposed to alternative energy.¹⁵⁴

Complicating the situation, renewable energy projects can be opposed by NIMBY concerns as well as legitimate objections from indigenous nations. For instance, the Aquinnah Wampanoag tribe raised concerns that Cape Wind “would mar the horizon and its unique cultural significance to the tribe.”¹⁵⁵ Similarly, in Hawaii, the “indigenous Kanaka Maoli communities opposed an interisland wind project due to perceived impacts on their subsistence and cultural practices.”¹⁵⁶

II. State-Wide Renewable Energy Targets

The goal of expediting siting of renewable energy should be carefully balanced with meaningful EJ community involvement. Problems can arise when a state sets ambitious renewable energy targets but fails to consider the effects of those targets on impacted communities. For instance, New York’s aggressive renewable energy goals, coupled with the state’s land characteristics, result in certain towns bearing a disproportionate burden of contributing towards the renewable energy movement.¹⁵⁷ Furthermore, states that do not allow local municipal input in the creation of these renewable energy goals risk facing public backlash and diminished buy-in to the renewable energy buildout.¹⁵⁸ When setting renewable energy targets, states should be mindful of past and current infrastructure burdens and the communities that bear those burdens. Failure to do so may result in communities objecting to specific projects, which will make it more difficult for states to meet overall renewable energy targets.

¹⁵³ Seelye, *supra* note 151.

¹⁵⁴ Bruce Mohl, *Look Who’s Talking*, COMMONWEALTH MAGAZINE (Apr. 9, 2013), <https://commonwealthmagazine.org/environment/001-look-whos-talking/>.

¹⁵⁵ Outka, *supra* note 30, at 79.

¹⁵⁶ *Id.*

¹⁵⁷ *See, e.g.*, Gerald Kusse, Comment Letter on Application of Horseshoe Solar Energy LLC for a 94-c Permit for Major Renewable Energy Facility (Apr. 22, 2022), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0ECA79ED-2700-4D4F-87CA-7E53C32928EA}> (“Rush [. . .] will contribute [7] times what might be expected on a per town basis across the 931 towns in NYS, 12 times what might be expected on a per square mile basis in NYS, and over 37 times what might be expected on a per person basis in NYS.”); Janet Glocker, Comment Letter on Application of Horseshoe Solar Energy LLC for a 94-c Permit for Major Renewable Energy Facility (Apr. 27, 2022), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0ECA79ED-2700-4D4F-87CA-7E53C32928EA}> (reflecting that the 2019 local solar law, if fully built out, already has town contributing “[5] times the NYS goal for the average power per town, [9] times the NYS goal for the average power per square mile and [28] times the NYS goal for the average power per resident”).

¹⁵⁸ *See generally* N.Y. State Office Renewable Energy Siting, Compilation of Mailed & Emailed Comments (Redacted) (Dec. 9, 2022), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0ECA79ED-2700-4D4F-87CA-7E53C32928EA}>.

Promising Solutions for Expeditious Renewable Energy Siting

I. Utilize EJ Mapping Tools During the Planning Stage

EJ mapping tools can be powerful tools to support the expeditious siting of renewable energy. Generally, socioeconomic mapping tools use GIS technology to present demographic information in combination with geospatial data, such as geographic formations, zoning and tax maps, the location of infrastructure and buildings, and the estimated availability of solar and wind energy resources. For example, EPA has developed EJScreen, which provides a model for how to combine and present environmental and socioeconomic indicators using publicly available data. Environmental indicators include air and water quality indicators,¹⁵⁹ and socioeconomic indicators include race, income, age, and English fluency and employment rates.¹⁶⁰ Some states have created their own interactive tools that allow stakeholders to easily access similar kinds of information.¹⁶¹ For example, California developed the CalEnviroScreen Data Dashboard, where users can filter data by geography and any combination of 21 CalEnviroScreen indicators, including the burdens of various pollutants and a variety of socioeconomic indicators.¹⁶²

EJ mapping tools can offer “a common starting point between [government] agenc[ies] and the public when looking at issues related to environmental justice.”¹⁶³ States can use and develop mapping tools to assist in their development of state-wide energy plans. For example, states can use mapping tools to identify areas where EJ communities are located and which therefore should be de-prioritized when siting renewable energy projects. States might also impose limits on development in EJ communities to help ensure that they are not disproportionately burdened.

¹⁵⁹ *Overview of Environmental Indicators in EJScreen*, EPA, <https://www.epa.gov/ejscreen/overview-environmental-indicators-ejscreen>.

¹⁶⁰ *Overview of Socioeconomic Indicators in EJScreen*, EPA, <https://www.epa.gov/ejscreen/overview-socioeconomic-indicators-ejscreen>.

¹⁶¹ In New York, the Climate Leadership and Community Protection Act (Climate Act) required the Climate Justice Working Group (CJWG) to establish criteria to identify disadvantaged communities statewide. CJWG settled on 45 indicators when developing the draft disadvantaged community criteria. *Disadvantaged Communities Criteria Development Frequent Questions*, CLIMATE JUSTICE WORKING GROUP, <https://climate.ny.gov/-/media/project/climate/files/Disadvantaged-Communities-Frequently-Asked-Questions.pdf>. CJWG considered environmental indicators like wastewater discharge and traffic, health indicators like drivetime to healthcare, premature death. Unlike a similar map developed by California EPA, economic factors like whether they live in homes built before 1960 or mobile homes were also considered in the CJWG map. Technical Documentation Appendix: Draft Disadvantaged Communities Indicators Workbook. *Disadvantaged Communities Criteria*, NEW YORK STATE GOVERNMENT, <https://climate.ny.gov/resources/disadvantaged-communities-criteria/>. *CalEnviroScreen 4.0*, THE OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

¹⁶² *CalEnviroScreen supra* note 161.

¹⁶³ *Purposes and Uses of EJScreen*, EPA, <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen>. Such tools can be also used to “identify and prioritize areas that may require special attention or additional action to improve health and health equity; educate and inform the public about their community; analyze the unique, local factors driving cumulative impacts on health to inform policy and decision-making, and; establish meaningful goals and measure progress towards environmental justice and health equity.” *Frequently Asked Questions*, EJI, https://www.atsdr.cdc.gov/placeandhealth/eji/faq_eji.html.

In addition to using maps to restrict development, states can design incentive programs using EJ maps to encourage more equitable distribution of development across the state. These programs can offer bonuses or incentives for development outside designated EJ communities, such as expedited administrative review, waiver of local zoning rules, or any number of other possibilities. Finally, states can impose different requirements for project design that vary based on the demographic nature of the community in which development is proposed. For example, states might require additional environmental protections or community engagement efforts in communities with higher percentages of low-income residents or people of color.

Some of these programs likely could be implemented administratively; others might require legislative enactment. In all cases, however, EJ maps and the designation of EJ communities would form the backbone of the program. The maps should also be publicly available and easily accessible, so that both applicants and affected communities can visualize the implications of state incentive programs or development limitations.

EJ maps can also offer significant benefits even if states do not adopt mandatory or voluntary programs designed around EJ community designations. For example, a state attorney general might adopt a policy of paying more attention to lawsuits filed in areas identified as EJ communities according to EJ maps. Developers of renewable resources might also benefit from access to a centralized resource identifying EJ communities and renewable generation resources.

There are at least three ways for environmental advocates to support the adoption and implementation of programs using EJ maps to expedite the development of renewable energy resources. First, advocates can support the creation of better EJ maps that are tailored to presenting two kinds of relevant information: (1) the location of EJ communities, including socioeconomic characteristics and existing pollution and infrastructure burdens; and (2) the location of renewable generation resources. Currently, most EJ maps are developed from publicly available national-level data from the government agencies such as the U.S. Census Bureau, the U.S. Environmental Protection Agency, and the Centers for Disease Control and Prevention.¹⁶⁴ Few, if any, maps contain information on both EJ communities *and* renewable generation resources. Nonprofit organizations can work with research institutions to develop maps that incorporate both state and local demographic data on EJ communities and scientific estimates of renewable generation resources.

Second, besides developing new and better EJ maps themselves, advocates can play an important role in persuading states to adopt siting policies designed around EJ maps. After all, setting limitations on development in EJ communities or providing incentives for development in non-EJ communities will likely require official state action. But advocacy organizations can draft model legislation or policies, and advocate in statehouses and before state administrative agencies to persuade state legislatures and executive branches to adopt those policies.

¹⁶⁴ David Konisk, Daniel Gonzalez, Kelly Leatherman, *Mapping for Environmental Justice: An Analysis of State Level Tools*, O'NEILL SCHOOL OF PUBLIC AND ENVIRONMENTAL AFFAIRS, at 5 (Jul. 2021), <https://eri.iu.edu/documents/ej-mapping-tools-report.pdf>.

Finally, advocates can incorporate EJ maps into their own strategies for promoting expeditious siting of renewable energy.¹⁶⁵ Advocacy groups can adopt policies of supporting and advocating on behalf of renewable generation located in non-EJ communities and policies against supporting proposed renewable projects when those projects unnecessarily burden EJ communities. By making their policies publicly available, advocacy groups might influence renewable developers to site future projects in non-EJ communities where they are likely to draw more support from local environmental advocates.

Conclusion

Encouraging the participation of EJ community members in renewable energy siting processes is an ongoing challenge that requires continuous effort and support. Since EJ communities that are most affected are usually people of color, low-income, and often marginalized, they lack the power and resources to meaningfully engage in the process as identified in our challenge section. This further compounds the issue of environmental injustice by making them easier to neglect. Getting EJ communities meaningfully involved in the decision-making process early on is critical to ensuring that their needs and concerns are considered. To create a level playing field, it is important to implement solutions that provide more financial, political, and educational support to EJ community members as identified in this report. This report has also recognized a tension between facilitating the implementation of renewable energy and keeping EJ community members engaged and informed. Utilizing EJ mapping tools and advisory committees can help facilitate this process. The key to overcoming challenges is collaboration between advocates, the government, and the EJ communities. By working together, we can create a more equitable and sustainable future for all.

¹⁶⁵ *Frequently Asked Questions*, Agency for Toxic Substances and Disease Registry, EJ https://www.atsdr.cdc.gov/placeandhealth/eji/faq_eji.html.