

CENTER ON RACE, INEQUALITY, +THE LAW

BUILDING ROADS TO A JUST & EQUITABLE FUTURE

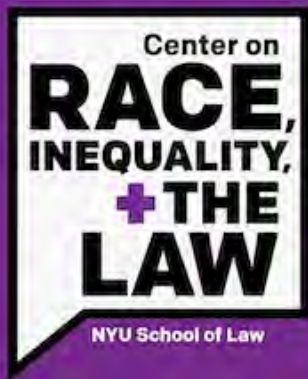
HIGHWAY
ADVOCACY
TOOLKIT



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ABOUT US



The Center on Race, Inequality, and the Law at New York

University School of Law was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. We believe that the racism that permeates our present-day legal system has deep roots. By documenting the history of racism in America, elevating the stories of those affected by race-based inequality, and rigorously applying a racial lens to analyze unremitting disparities, we identify actionable, forward-looking solutions to address the injustices caused by racism and inequality.

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INTRODUCTION



Highways across the country are reaching the end of their useful lives. Over a dozen cities in the United States have torn down or are beginning the process of destroying or renovating these behemoths that have come to play such a dominant role in the transportation infrastructure of the United States.

As these crumbling structures fall, a new space opens. Cities facing the decision of what to do with an aging highway have many options. And which they choose will have massive ramifications for the surrounding communities. Will government agencies choose to replicate the past, in which highways upended neighborhoods and drove out their residents? Or will they learn from that past and advance less destructive alternatives instead?

Highway projects implicate a wide range of concerns at all stages. A highway is not built in a vacuum—it must occupy land. And that land may be home to many people. A highway may be convenient to suburbanites wanting easy access from their homes to their workplaces in a city. But that highway has even greater consequences for the residents of a neighborhood that is destroyed or uprooted to make way for it. The dislocation of residents raises further questions for highway planners: where will these displaced people live? Will there be housing available and affordable to them? Will that housing be in or near their communities, work, school, or family? Will businesses be demolished, depriving people of jobs? How about parks or community institutions?

The question of who is being impacted is also important. Highway projects are not colorblind. There is a long history of highway projects destroying thriving communities of color and, in many cases, those wounds have yet to be healed. Understanding the history of highways in the United States requires an understanding of how little the government has cared about the lives and communities of people of color.

Highway projects implicate issues of community equity beyond those at play during construction.

Once the project is completed, will people living in homes that now surround the highway suffer from pollution? Will the project physically sever the community, increasing the difficulty of accessing jobs, community institutions, and cultural sites? How will residents be compensated for the loss and destruction?

And how will all these decisions be made? Will the community have a voice and authority in answering these questions? Will all members of the community, including those most impacted, have an equal voice? What mechanism will be put in place for meaningful community participation in the planning and implementation of the highway project?

These are all questions that communities in the path of highway projects will confront. Indeed, they were all questions that community advocates of a past generation confronted when the nation's highway system was first built. Communities of color, and Black communities in particular, were struck with an avalanche of demolition, displacement, and devastation. In cities around the country, communities of color continue to live with racial segregation, economic isolation, job loss, and adverse health outcomes. Highways have carried with them all of those phenomena.

The goal of this toolkit is to provide advocates and community members with tools, strategies, and lessons from highway revolts from the 1960s and 1970s, and of more recent vintage.

It is our hope that this information will aid communities in effectively advocating for racial and economic justice as many of the nation's highways are torn down and reimagined. Even when a community is unsuccessful in stopping a highway project, there are opportunities to ensure that equity is a central consideration. Moreover, highway projects can function as an opportunity to organize for reparations, against gentrification, and toward a more racially equitable future for those communities that were torn apart a half century ago. And the lessons learned have applicability to other projects focused on infrastructure developments and investments in communities. Paving this road begins with looking back on how we got here.

BACKGROUND

Much of the United States' modern highway system was constructed in the 1950s and 1960s. Making way for these highways often entailed the demolition of neighborhoods and mass displacement of residents. This burden was not spread equally; neighborhoods of color faced disproportionate destruction. Highways harmed communities of color both through the immediate destruction and displacement that their construction caused and through the segregative effect that often resulted, spatially severing neighborhoods of color from the rest of the city.

The timing of this was not incidental. One of the impetuses for racially discriminatory highway planning was the wave of desegregation victories in the 1950s and 1960s.¹ As activism and litigation tore down the walls of segregation, highways stepped in to fill the breach. Highways destroyed and cut off neighborhoods of color—Black neighborhoods especially—while enabling the growth of largely white suburban communities. Rather than live in a diverse urban environment, residents could commute to cities for work and quickly return to white enclaves at the end of the day.²


Segregation through infrastructure planning thus filled the role previously occupied by more explicit legal measures. Just how thinly veiled this was at time is striking. Birmingham, Alabama's I-59 was built along a route that mirrored the old racial zoning boundary between white and Black residents struck down as unconstitutional just a few years prior.³ Similarly, in Atlanta, Georgia, highway planners spoke openly of the “understanding” that the newly constructed I-20 would serve as a boundary between white and Black residents.⁴

The use of roads to segregate communities was not an innovation of postwar urban planners. In 1917, for example, Atlanta city officials considered constructing

a parkway to separate Black and white neighborhoods.⁵ However, the legal erosion of explicit racial segregation and the boom of the interstate highway system gave new importance to this means of maintaining and entrenching white supremacy. According to Alfred Johnson, the executive director of the American Association of State Highway Officials, city officials viewed highways as a good opportunity to get rid of the local Black neighborhoods.⁶ Officials did not let his opportunity pass them by.

In many cases, local communities fought back against the threats posed by highways. The threats were not subtle: highway construction entailed the destruction of neighborhoods that were “in the way,” while displaced residents received little to no assistance from the government to find new homes.⁷ What remained of highway-ravaged neighborhoods was often sliced off from the rest of the city and condemned to a future of pollution and cultural and economic isolation. That people facing this existential threat to their homes and communities would fight back should come as no surprise.

Several factors, both internal and external to those communities, affected the outcomes of campaigns against highways. In victorious struggles, the size, tactics, and well-placed allies of the movement opposing the highway played an important role. But even dedicated, well-organized movements were at times derailed by factors beyond their control, such as prevailing racist attitudes. Similarly, the level of affluence of the opposition coalition proved decisive in some cases. And victories were not always clear-cut, with movements sometimes buoyed by a “not in my backyard” attitude that undermined the development of highway alternatives. The famous San Francisco freeway revolt illustrates these complexities.



Highways harmed communities of color both through the immediate destruction and displacement that their construction caused and through the segregative effect that often resulted, spatially severing neighborhoods of color from the rest of the city.

The San Francisco freeway revolt during the first wave of highway construction stands as an inspiring victory for those in the modern day who would challenge infrastructure projects. A long, hard-fought battle, this history contains important insights and lessons for communities battling contemporary highway projects.

In the 1950s, encouraged by the newly passed Federal Interstate Highway Act of 1956, the California Division of Highways attempted to enact a transportation plan that would include an elaborate system of freeways across San Francisco.⁸ Freeways, a type of highway characterized by entry and exit ramps that control access,⁹ were to crisscross the city, obliterating many existing homes and businesses and forever altering the character of many neighborhoods and the city's unique aesthetic appeal.¹⁰ Organized opposition began—perhaps counterintuitively—with conservative white property owners on the city's west side. Learning that state and local officials had held secretive meetings on planning a western freeway, these residents began mobilizing. Pioneering direct mailing strategies and engaging in door-to-door organizing, these unlikely activists were able to turn out thousands of people to their first meetings. This included seven members of San Francisco's Board of Supervisors, the city's local legislative body.¹¹

A loose, diverse coalition began to develop in opposition to the highway, representing a variety of motivations. Some coalition members were motivated by the threat the freeway posed to the environment and the city's livability. To others—such as those initial organizers—the threat to property values was key. A surreptitious form of white identity politics could even be found in the movement as the local Catholic leadership warned that the freeway would destroy a “good Christian neighborhood.”¹²

The San Francisco Chronicle, though initially favorable in its coverage of the freeways,¹³ ended up playing a valuable role in the growth of this coalition. The widely read Chronicle came to oppose the highways, calling for the spread of the freeway revolt and publishing letters from residents opposing the highway plan. Other neighborhoods followed the west side's lead, creating a truly city-wide movement.¹⁴

As the movement grew, elected officials took note. Highway opponents scored a major victory in 1959 when the San Francisco Board of Supervisors voted to cancel seven of the nine planned freeways. Refusing to back down, state-level planners continued pushing for more and more highways throughout San Francisco, and the movement continued.¹⁵

During the final years of the freeway revolt, the opposition matured into a more coordinated, inclusive, and environmentally attuned movement, drifting away from its conservative political roots—though it garnered some late support from members of the business community, which was traditionally in support of highway projects. This final phase of the movement, in which labor unions assumed a supporting role as well, saw a wave of mobilization centered in the Haight-Ashbury neighborhood. The movement's vision broadened from the negative goal of stopping the freeways to the positive goal of building a more livable city that was less dependent on cars. Finally, in 1966, the Board of Supervisors voted down the last highway plans of this era. The revolt was brought to a triumphant end.¹⁶

Although the freeway revolt ended, the movement that powered it continued; activists formed the California Citizens Freeway Association, which fought and won highway battles across the state.¹⁷ However, other aspects of the movement's legacy were less admirable. The same year that the revolt came to an end, the same west side activists who had helped launch the movement a decade earlier led the fight against mass transit—perhaps not so surprising for those whose involvement in the movement was motivated in large part by individualistic concern for their property.¹⁸

The troubled aftermath of the revolt illustrates how when coalition members agree on what they are fighting against, they may well have divergent ideas of what they are fighting for. Though San Francisco largely avoided the devastation that the freeways would have wrought, the movement was less successful in advancing equity and the transportation alternatives for which many of the advocates were fighting. Nonetheless, the freeway revolt provides a useful example of the kind of large, broad, and well-connected campaign that contemporary advocates may wish to build.

SPOTLIGHT:

San Francisco

PREPARING FOR A FUTURE HIGHWAY PROJECT

Even if a highway project is not officially underway, advocates can still take constructive action. These actions can include an analysis to understand the historical and generational impact of the highway, looking at present racial and socioeconomic inequities in a community, and looking toward the future by establishing procedures and standards that will advance equity and accountability once a project gets started.

Developing Collective Memory

Advocates should examine and document the history and legacy of highways in their community. The destructive impact of a highway can easily be forgotten or go unnoticed by residents who may have little understanding of the role construction of the highway played in shaping their community, or the potential for further destruction of a new highway project.

Advocates can lay the groundwork for a successful campaign against a future highway project by working to cement the history of a past highway project in the collective memory of a city. Advocates should build relationships with people who were harmed by a past highway project and elevate those voices. Advocates should consider the explanatory power of a highway project. What was a city or neighborhood like before the advent of a highway project, and what is it like now? Advocates can educate residents about how a highway explains a place's current state of affairs—one that might have been quite different without the highway.

Public education efforts can take any number of forms; advocates might organize a public event in which community members speak on how a highway changed their lives for the worst, or perhaps publish a magazine containing these stories. Advocates can also gather research and data on an existing highway's impact, engaging residents to whom quantitative information may be more appealing. Public education can be an interactive and creatively expressive experience, with different activities directed at different parts of the community. For example, children might gain a better appreciation for a highway's legacy by creating artwork of how they imagine their city would look had that highway never been built.

Through public education efforts, advocates can shift the position that a highway occupies in the collective public memory. Rather than merely seeing a highway as an inevitable part of the human environment, a highway may instead be perceived as a monument to racial segregation and the destruction of vibrant communities.





Conducting a Racial Equity Audit or Study

At a time when pursuing racial justice through the courts is increasingly challenging, state and local governments can play an important role in devising affirmative programs to redress and prevent racialized harms. The racial equity audit provides an opportunity for participatory democracy and supports a community's efforts to develop a deep and comprehensive understanding of the history of racism in the jurisdiction.¹⁹ By carrying out the audit well before the initiation of a highway project, the community can take the time needed to fully invest in the audit. This level of investment will be much more difficult to attain if the community is facing the time constraints imposed by the highway planning process.

The aim of a racial equity audit is to investigate how racialized categories have been institutionalized and exploited in a way that advantages some groups and disadvantages others. The primary purpose would not be to establish that specific officials or private parties are acting with a racially discriminatory intent but rather to uncover how race has shaped social institutions.²⁰ For example, a racial equity audit might document how the current racial housing patterns in a city originated with since-abandoned laws that expressly confined particular racial groups to particular sections of the city.

The audit should be carried out not by government officials alone but by a broader "community of inquiry."²¹ This group would include academics, activists, elected officials, residents and other stakeholders, allowing the audit committee to serve as a "civil equivalent of a citizens' grand jury."²² The ultimate objective would be to articulate a "theory of race" that identifies the structural causes of racial inequity in the community across space and time.²³

Part of the promise of the racial equity audit is that it would likely be immune to judicial invalidation. This has been a growing problem for racial justice advocates over the last several decades as federal courts in particular have perversely used the Fourteenth Amendment's guarantee of equal protection under the law to strike down race-conscious public policies and practices.²⁴ The racial equity audit is not a judicial decree requiring involuntary compliance by the community. Instead, it reflects the community's evaluation of its racialized history and serves as a north star to guide the community's future policy choices.

Although explicitly race-conscious programs developed based on the racial equity audit would be vulnerable to judicial invalidation, the racial equity audit could aid local officials in developing targeted race-neutral programs to address systemic racial inequities. And in the event that race-neutral policies are unworkable or ineffectual, the rigorous nature of the audit might convince at least some judges that audit-based race-conscious policies are narrowly tailored and precise enough to survive constitutional challenge.²⁵

The value of the racial equity audit goes beyond providing context for challenging or changing a specific highway project. By engaging a community in a deep conversation about the role that structural racism played in that community, the audit can support broader public efforts designed to overcome the impact of structural racism, whether in transportation, education, housing, voting, or other policy areas. As a community wrestles with the role that racism has played in highway development, it may open its eyes to myriad ways that race proscribes opportunity, space, access, and belonging in a community.



Enacting Racial Equity Impact Study Legislation

The racial equity impact study (REIS) offers a related and powerful tool to evaluate proposed highway development projects. Advocates can press elected officials to pass legislation requiring that government agencies undertake an REIS of any infrastructure project, including highway development. Impact studies are common in other contexts. An environmental impact study, for example, might explore how a proposed project will affect air and water quality; a traffic impact study might look at how a proposed project will affect traffic patterns.

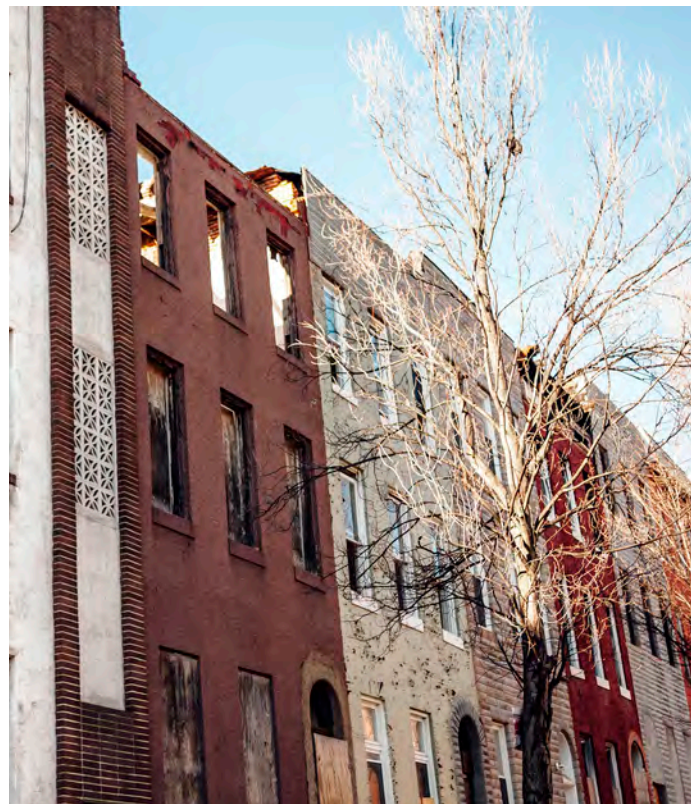
Similarly, an REIS would entail a systematic examination of how the project will differentially impact racial and ethnic groups in the community, providing vital documentary evidence of the racialized harm that a project may cause and considering more racially equitable alternatives.²⁶ The study need not take the form of a dry recounting of facts; it might include community-generated narratives alongside empirical data.²⁷

In the highway context, a racial equity impact study should incorporate at least five key requirements. First, there should be a comprehensive analysis of demographic data at all stages of the project. Second, the REIS should include an analysis of whether the project will comply with principles of transportation justice. Third, the community should be involved in both the evaluative and substantive decision-making stages of the project;

the involvement of those who may be harmed by a project is integral to ensuring the integrity of the study. Fourth, the study should have a broad geographic scope to best capture the full impact of the project. The ways in which a project can impact racial equity—through access to education, housing patterns, and more—cannot be fully understood if the study only examines an individual municipality.²⁸

Fifth and finally, the study should explore strategies to mitigate any of the project’s racially discriminatory effects to the maximum extent practicable.²⁹ Those carrying out the study should be creative in this exploration. Imagine a racially segregated city divided into predominantly Black and predominantly white neighborhoods, and a proposed expansion to a highway running through one of those Black neighborhoods that will displace Black residents almost exclusively. Reducing the extent of the expansion could be a mitigating measure. But another mitigating measure might be to pair the highway expansion with funding for housing development that could support residential integration. In this way, the highway project could provide an opportunity to overcome the underlying segregation at the heart of the highway project’s disparate impact.

At a time when it is exceedingly difficult to prove that policymakers acted with the racially discriminatory intent typically required for judicial relief, the racial

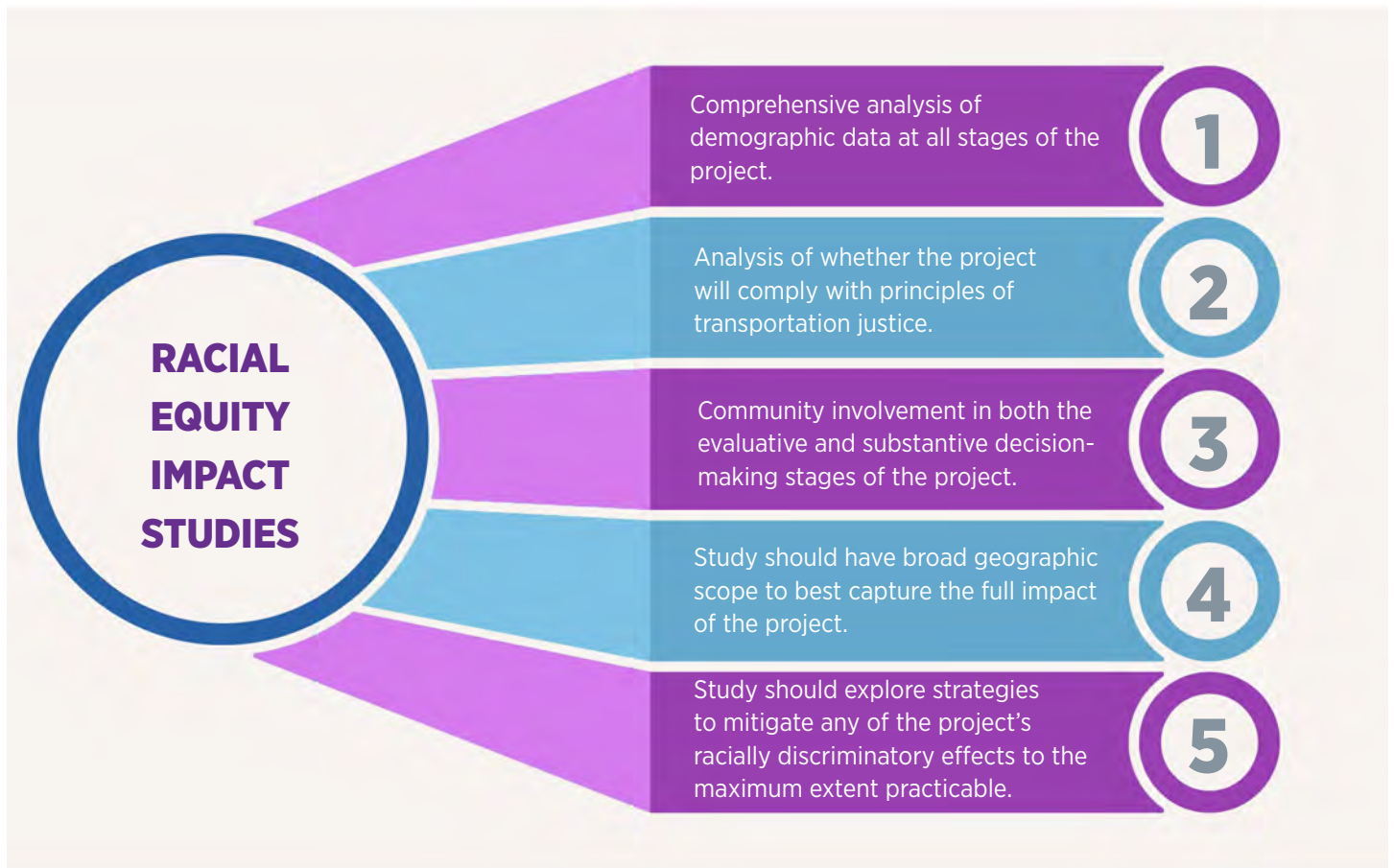


equity impact study can serve as a workaround. An REIS puts government agencies on notice of the impact of a proposed policy and can serve as evidence of intent. While the decision to proceed is, standing alone, insufficient to prove intentional discrimination, it is powerful evidence. By proceeding with the project in the face of this evidence, which will now be in the public record, agencies demonstrate an intent to discriminate based on race—the agencies know their action will have a racially discriminatory impact and have chosen to take that action regardless.

In this way, an REIS can serve a dual purpose. If policymakers are actually concerned about the prospect of carrying out a racially discriminatory project, then an impact study can provide them with the requisite knowledge to avoid doing so. And if policymakers lack that concern, the REIS can serve as valuable evidence should advocates resort to litigation in the future.

Legislatively mandated racial equity impact studies are a relatively new phenomenon in the United States, but they are not unprecedented.³⁰ Washington’s King County, for example, has enacted an ordinance requiring that the county “consider equity and social justice impacts in all decision-making so that decisions increase fairness and opportunities for all people” and that mitigating measures be implemented when this is unavoidable.³¹ Similarly, the city of Seattle has introduced a racial equity assessment that city departments undertake when developing policies.³²

If advocates can successfully compel policymakers to enact racial equity impact study legislation, they will be in a stronger position to influence future proposed highway construction.





PREPARING FOR AN IMMINENT HIGHWAY PROJECT

Once a highway project is officially under consideration, advocates will have some big choices to make. Some of these are about the character of the movement: what will the composition of that coalition look like? How will it frame its cause? Some choices are about tactics: what methods will advocates utilize to influence the course of the project. As the planning process proceeds, advocates will have to carefully consider these questions and more.

Identifying Concerns

At the outset of building a movement to challenge a highway project, advocates should take the time to identify all the concerns they have about the project. Some of these concerns will be obvious and immediate. The project may entail the demolition of homes, businesses, and parks. Advocates will want to identify both these concerns and the remedial measures that will be needed if the development proceeds as proposed: homes for displaced residents, jobs or relief for workers and business owners, and new recreational sites.

Other concerns will relate to the broader impact of the highway beyond what it destroys. Areas surrounding the highway may be rezoned, threatening people currently living in or otherwise using buildings in those areas. Construction work will likely be disruptive to those living, working, or going to school near the highway.

The completion of the project will bring its own set of concerns. Increased vehicle traffic may increase air and noise pollution in ways that are both disruptive and unhealthy. People living on one side of the highway may face great difficulty in getting to the other side of the highway. Nearby business may fall upon hard times as foot traffic decreases and car traffic is diverted.

Advocates should identify what communities will be impacted and work with members of those communities in identifying concerns. For residents facing displacement, for example, it may not be enough to simply call upon the government to provide housing—the ability of residents to remain or return to the area from which they have been dislocated may be a concern as well.

Building a Coalition

Advocates need to build a strong and diverse coalition to effectively influence a highway project. People power can help influence public officials' deliberative processes by packing public hearings and mobilizing demonstrations. A diverse grassroots coalition can improve access to valuable platforms, such as church pulpits, and facilitate relationships with well-placed contacts and sources, such as journalists, social media influencers, and government officials.

Advocates should aim to develop broad coalitions, prioritizing but reaching beyond communities that are directly threatened by a highway project. At the same time, advocates should balance the benefits of a “big tent” approach to coalition-building against the risks that members of a large coalition will have misaligned interests that hinder effective action. That is one lesson to draw from the San Francisco freeway revolt, in which the movement succeeded in stopping the freeways but lacked the social cohesion to successfully advance a mass transit-oriented alternative.

One way to ameliorate this risk is to have coalition members sign on to a set of basic shared principles at the formation stage. In other circumstances, however, requiring a formal sign-on may discourage the involvement of potentially valuable coalition partners.

In deciding how to construct a coalition, advocates should consider building a “power map” that will aid in determining who the coalition should target for membership.³³ Advocates should broadly identify all of the stakeholders in a highway project. Who is carrying out the project? Who else is working to address this issue? Who is geographically relevant? This will yield a list of institutions, organizations, influential individuals, media outlets, and others.

Once advocates have a sense of all the parties involved or potentially involved in the highway project, they should research these parties and evaluate how they make decisions, how much influence they have over each other, and whether or not they are supportive of a challenge to the highway project. With a clear understanding of the power dynamics and relationships between all relevant parties, advocates can craft a strategy for effectively targeting valuable allies for coalition inclusion.

There is no single approach to building a successful coalition. Advocates must carefully assess their specific situation in deciding how to account for risks and rewards of building a particular coalition. This section considers several types of alliances that advocates may find valuable in constructing a powerful and successful coalition.

Multiracial Alliances

Highway projects have a long history of disproportionately harming communities of color. Contemporary highway projects pose the choice between repeating this racist history or working toward remedying the harms of the past by replacing dilapidated highways with community-friendly, racially equitable alternatives.

Although communities of color will often be the most directly affected by highway planning decisions, advocates can and should—where possible—build broad multiracial coalitions. The struggle against a planned highway in Washington, D.C. provides a compelling example.

During the era of mass highway expansion, officials proposed to create a 329-mile network of highways in and around Washington, D.C. Derisively described by opponents as a plan to ram “white men’s roads through Black men’s bedrooms,” the project would have destroyed Black neighborhoods to benefit affluent white car-commuting suburbanites.³⁴

The Emergency Committee of the Transportation Crisis (ECTC) played a central role in the eventual defeat of this planned highway. ECTC chair Reginald Booker has described the important role that a multiracial coalition played in the successful opposition to this highway:

The whole theory was to appeal to homeowners, no matter what race they were. Our movement was unique. It was blacks and whites in a common effort, an integrated group, working in their own interests. That was the significant thing. It was an issue that united people.³⁵

ECTC demonstrations were consistently biracial in composition. Leading organizer Sammie Abbott, a white man, was cognizant of the racial dynamics at play. In Booker’s words, Abbott “didn’t want people to feel that he was a white man manipulating a black man” and consistently deferred to Booker.³⁶

A multi-racial coalition was possible in part because the proposed highway plan would have harmed not only Black neighborhoods but also the whiter Maryland suburb of Takoma Park. But given how pervasive residential segregation is, multiracial coalitions composed of directly impacted parties may be more difficult to form than was the case in Washington, D.C. In such situations, advocates will have to find other ways to align with the interests of groups that may not be directly threatened by the proposed development.

SPOTLIGHT:

Washington, D.C.

Last Saturday we began the campaign to remove the boarded up and return these homes to Black homeowners. This Saturday we will continue... and we invite you to be at the

Second Rally to RE-OPEN THE 69 CONFISCATED N.E. HOMES!

10th & Franklin St. N.E. SAT. JUNE 28 12:00 Noon

Look at the picture of some of the 69 boarded-up homes which were confiscated from Black homeowners for the North-Central Freeway, that is a "white men's road thru a Black men's home!" These are substantial homes in a substantial neighborhood, but boarded-up they serve only to run-down the community. City officials would never do this to Georgetown or other basically-white areas. The U.S. Court of Appeals on Feb. 15, 1966, ruled that the Freeway program was illegal. And last Jan. the City Council also rejected the Freeways and the 9-Sixers Bridge. There will be no freeway... why must these homes rot?

Mayor Washington, the Court ruled it illegal to take these homes from the original Black homeowners. It is also a crime to let these homes rot!

Mayor Washington, on Wed. May 14, you came out to Brookland and said that you were anxious to return these houses to homeowners. But nothing has been done to carry out your promises. Two winters have blighted these homes. ACT NOW!

Emergency Committee on the Transportation Crisis
ECTC

Cross-Class Alliances

Low-income communities are disproportionately targeted by highway development. This is hardly an accident—in a society in which there is such a clear connection between wealth and political influence, the government will treat communities that lack wealth as more disposable. Indeed, the opportunity to destroy low-income communities has been an explicit selling point for highway development. Some of the most destructive highway development of the 20th century was promoted as a means to overcome “slums.”³⁷

The people most inclined to fight against a highway project will likely be those coming from such communities, as they have a direct stake in the outcome that those who do not live in threatened neighborhoods lack. For better or worse, however, the presence of more affluent residents in a highway campaign can be very beneficial, and advocates may benefit from cross-class alliances. The contrasts between infrastructure projects in two very different areas of New York City provide an illustrative example.

Over the course of his midcentury tenure, notorious urban planner Robert Moses launched a number of highway and urban development projects in New York City. Among these were the Cross-Bronx Expressway, the Lower Manhattan Expressway, the Washington Square Expressway, and a redevelopment of the West Village.

The Cross-Bronx Expressway was built at enormous cost to Bronx residents and continues to impact the Bronx today. By contrast, the three Lower Manhattan projects were ultimately defeated. The very different fates of these projects demonstrate the role that cross-class alliances can play.

In the Bronx neighborhood of East Tremont, residents banded together in 1953 to oppose the planned Cross-Bronx Expressway that would destroy their neighborhood.³⁸ Residents did not lack commitment, organizing rallies and mass meetings and chartering buses to bring them to City Hall in large numbers for hearings.³⁹

However, their modest financial background limited them in certain ways. Residents were unable to fund a full-scale legal battle against the highway route.⁴⁰ Residents also had difficulty gaining media attention that could have helped attract more supporters.⁴¹ Overpowered by Moses and the multiple levers of government he controlled, the residents of East Tremont were forced out of their homes in defeat.⁴²

Things went quite differently in the later 1950s and into the 1960s when local residents and activists challenged the Lower Manhattan projects. Prominent in these movements were affluent women. With their social connections, activists were able to call upon media and government contacts, receiving significant press coverage and finding a vocal ally in the *Village Voice*.⁴³ Financial security also meant that activists were better able to regularly fill meetings and hearings on the Lower Manhattan projects and engage in other time-consuming actions against the projects without worrying about missing time at work.⁴⁴

The opposition to the Lower Manhattan projects was not exclusively affluent; the coalition was diverse and included many who do not fit into this box.⁴⁵ But the way in which this opposition was buoyed by socioeconomic status—and the contrast with the fate of East Tremont—shows that finding well-heeled allies can help bring a movement well-placed contacts, press coverage, and supporters with greater time and energy to expend.⁴⁶

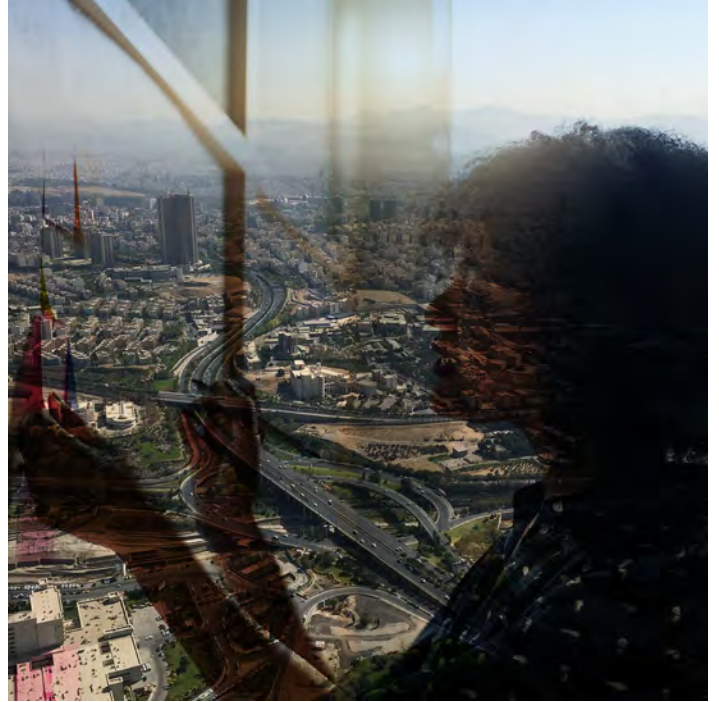
SPOTLIGHT:

The Bronx vs. Lower Manhattan

Business Alliances

Highway projects have enormous consequences for people living nearby. However, they can also affect people who, though not residing near the highway, have business interests in the vicinity. Local business interests can serve as effective coalition members, bringing money and existing organizational structures to the campaign.

Businesses may be concerned about how a harmful highway projects will impact nearby foot traffic or divert drivers who would otherwise frequent their businesses. Conversely, businesses may see opportunity in alternatives to new highway development. For example, building a new walkable boulevard instead of a renovated elevated highway might expand economic opportunity for local retail businesses rather than speed potential customers right past storefronts.



In the middle of the 20th century, Dallas's predominantly Black Deep Ellum neighborhood was a musical capital of the Southwest and a commercial center for the city's Black residents.⁴⁷ This all changed with the erection of I-345 in 1973. Destructive highways were not new to Dallas; transportation planners had rammed I-40 through Old East Dallas in 1964. And the same year that I-345 went up, the elevation of I-45 destroyed South Dallas's Spence neighborhood.⁴⁸ In a similar vein, I-345 annihilated the 2400 block at the heart of the neighborhood and severed Deep Ellum from downtown Dallas. The highway's construction sent this once vibrant cultural center into a spiral of decay.⁴⁹

SPOTLIGHT:

Dallas

Deep Ellum has undergone a revival in recent years, but that revitalization is hindered by I-345's continuing presence.⁵⁰ Space that could be occupied by apartments, restaurants, or parks is instead occupied by a crumbling highway that continues to divide Deep Ellum from the rest of Dallas.

With I-345 now deteriorating, an opportunity has arisen to replace the elevated highway with an alternative design, such as a surface boulevard. Business interests have played a prominent role in the campaign against maintaining I-345. One of the two founders of a leading organization in the campaign, A New Dallas,⁵¹ is a real estate developer.⁵² The broader coalition of which A New Dallas is a part, the Coalition for a New Dallas, also features business officials in leading roles.⁵³ Recognizing that "[t]he business community can potentially get the highest quality property in the state"⁵⁴ if I-345 is replaced with a more community-friendly alternative, this coalition is fighting hard for Deep Ellum's revival.

Religious Alliances

Advocates should consider how they can bring local religious institutions into the campaign against a highway project. Religious institutions bring a built-in membership base, and local clergy may command respect and attention.

SPOTLIGHT:

Boston

In the 1960s, a network of elevated freeways threatened to destroy almost 10,000 homes in Boston, Cambridge, and Somerville, Massachusetts. Most notorious among these was the Inner Belt, a proposed eight-lane highway.⁵⁵

Residents organized a diverse coalition to oppose the Inner Belt and the other highways. A key member of the coalition was the Catholic Archdiocese of Boston. Archbishop Richard Cushing, recognizing the harm the Inner Belt would do to his parishes, took action. Cushing and the Archdiocese formed an advocacy organization, Save Our City, to fight the Inner Belt.⁵⁶

Priests served as advocates and organizers, publicly denouncing the highway and rallying their congregations. Save Our City also reached out to non-Catholic religious institutions to bring them into the campaign. The Archdiocese was one of the most powerful institutions in Boston, with a large membership, significant prestige and deep influence, and it played a powerful role in advocacy efforts.⁵⁷ During one of the movement's culminating moments, Father Richard Butler of Cambridge's Blessed Sacrament Church stood alongside Governor Frank Sargent as Sargent spoke about the need to reconsider highway planning practices to a crowd of highway opponents who had marched on the State House.⁵⁸

As an entity with a preexisting organization apparatus, a large public platform, and a level of moral authority, the Archdiocese was an important and committed ally in the fight. With that support, the campaign succeeded in defeating the Inner Belt and saving thousands of homes.

Editorials...

United Action Needed

For years we have had torrents of talk about the Inner Belt route as a menace to Cambridge.

During all this time it was no secret that the Belt and its threat to our homes, businesses and churches was hanging over our heads like the sword of Damocles.

The state spent over a million dollars on Belt Route studies with the results widely reported in the press. Other studies were originated locally and similarly aired.

Yet oddly enough it was only at the last minute and by the public-spirited action of a few volunteer planners that some humane alternates to the destructive Brookline-Elm street route began to achieve any degree of public acceptance.

And oddly enough too, it is only now, when it may already be too late, that there are some signs of a united front in behalf of such alternates.

Why The Delay?

Why was a constructive approach to the Belt Route problem delayed so long? What led to the almost hypnotic trance which paralyzed the city's will to find and seek agreement on the least objectionable route?

One reason, of course, is that it was easier and more popular to blast away at the general idea of a Belt Route than to get down to brass tacks and try to agree on where the Belt Route (an apparently inevitable juggernaut) ought to be built.

Another reason is that the city's temporary veto power (now, alas, gone with the wind) lulled us to sleep.

Still a third reason is that nobody had the wisdom months ago to form a city-wide organization to deal constructively, and combatively if necessary, with all the threats which highway building poses to Cambridge: the Inner Belt, the Route Two extension and the proposed widening of Memorial drive. These are common problems which should have united rather than split the city.

However, this is no time to cry over spilled milk. It is time for Cambridge to wake up, to agree if possible on constructive alternates and then to make a united campaign, even if it should lead right to the White House, to make sure that the Belt Route, when built, does as little damage to Cambridge as possible.

The automobile is admittedly a good servant. We hope the time has not come when Cambridge people will lie down in servile apathy and let it become their master.

FRAMING YOUR MESSAGE

Another important aspect of a campaign against a highway project is framing the message. What is the narrative hook of the campaign? How will the coalition define the problem? Is the harm pollution, the loss of public space, housing dislocation, or something else?

The key messages that advocates choose will shape and determine the composition of their coalition and the broader public response to the highway project. For example, business interests drawn to the campaign because of the pedestrian foot traffic that an alternative, preferred plan will create may wish to emphasize that in messaging. Advocates should not feel compelled to adopt a single framing; emphasizing the racial justice component of a highway campaign may win the support of certain potential coalition members, while emphasizing the commercial benefits of the campaign may appeal to others.

Different highway movements have adopted different approaches to framing their message. This section highlights a few.

Racial Justice Framing

The long history of highway projects devastating communities of color lends itself to framing a challenge to a highway plan as a racial justice issue. Advocates might highlight the racially discriminatory nature of a highway project. Why aren't threatened communities of color being given greater priority in project planning? If a highway project will primarily benefit residents of white suburbs, why aren't they paying the price in displacement and fractured community cohesion?

When a highway project entails modifying an existing highway, advocates should be cognizant of the highway's history. Understanding and documenting the impact that the highway has had on residents of color, both during initial construction and in the years since, is integral to understanding how modifying the highway implicates racial justice. A racial justice approach to a highway project does not only mean preventing the project from having a racially discriminatory impact; it also means seeing how the project can be shaped to remedy the racial injustices of the past. Advocates should seek to heal old racial injuries, not just prevent new ones.



A contemporary struggle in Syracuse provides an example of advocates emphasizing the anti-racist nature of their movement.

In the first half of the 20th century, the 15th Ward of Syracuse, New York became home to many migrating Black Southerners. To Black Syracusans, the 15th Ward was a refuge from racial discrimination, a place in which everyone knew everyone and neighbors looked after each other.⁵⁹

But as the Black population of the 15th Ward grew, external forces grew more hostile. The federal government redlined the area, deeming it a bad credit risk and deterring banks from making loans to residents. Regarding the 15th Ward as a “slum,” the city declared its neighborhoods “blighted,” paving the way for their destruction.⁶⁰

SPOTLIGHT: Syracuse

Following a wave of housing demolitions, Syracuse announced its plan to build I-81 through the 15th Ward in the early 1960s.⁶¹ The construction of the highway displaced over a thousand families and facilitated the exodus of white Syracusans to the suburbs of Syracuse, cementing the physical separation of white and Black residents.⁶² This segregation has severely harmed Black Syracusans, causing intense poverty, stark inequalities in public education, and other racial inequities.⁶³

In 2017, I-81 reached the end of its useful life and officials began searching for redevelopment options.⁶⁴ Some have framed this as an opportunity to redress the injustices of the past. Local organizers have grounded their demands in the history of racism that has produced such high levels of poverty among Black Syracusans.⁶⁵

Advocates have also explicitly connected the struggle for racial justice with other movements, such as the environmental movement and the struggle for economic justice.⁶⁶ Syracuse, with its largely Black population, has a rate of asthma hospitalization for children that is twice as high as those in predominantly white suburbs⁶⁷—a reflection of how environmentalism intersects with racism.

With a somber awareness of how racist highway planning has devastated Syracuse’s Black community, a recognition of how this grim history makes tearing down I-81 morally imperative, and some important victories under their belt,⁶⁸ Syracuse residents will continue fighting to ensure that the mistakes of the past are not repeated.



Economic Interest Framing

For some people, anti-racist convictions draw them to a highway movement. For others, appealing to entrepreneurial interest may be an effective draw. Replacing old highways and the often literal shadows they cast on neighborhoods can open up public space for pedestrians. More public space for pedestrians can mean opportunities for businesses to open new outlets and take advantage of that new foot traffic; a once-desolate underpass might be transformed into a thriving commercial center.

Tree-lined Humboldt Parkway once linked Buffalo, New York's Delaware and Humboldt Parks, designed by famed landscape architect Frederick Law Olmstead. This all changed in the early 1960s when the parkway was replaced by the Scajaquada and Kensington Expressways. Thousands of homes and businesses were demolished to make way for the highways. Delaware Park was sliced in half, isolating northern Buffalo from southern parts of the city.⁶⁹

The largely Black community residing near the park continues to live with this damaged community cohesion.⁷⁰ As one resident has said, "People don't cross the Scajaquada."⁷¹ Local community organizations such as the Restore Our Community Coalition,⁷² the Scajaquada Corridor Coalition,⁷³ and the Olmstead Parks Conservancy⁷⁴ have taken action to change this.

Advocates have called for the replacement of the Scajaquada Expressway with a tree-lined boulevard that would restore the access of those in adjacent neighborhoods to a safer, quieter, and cleaner park.⁷⁵ In an initial sign of success, the New York State Department of Transportation withdrew its original, inadequate highway redesign plan.⁷⁶

Advocates have also thrown their support behind a government proposal to cover up a portion of the Kensington Expressway and reconstruct Humboldt Parkway, reconnecting the neighborhoods divided by this depressed highway and establishing an environment friendlier to pedestrians.⁷⁷

Advocates have emphasized the economic opportunity that would arise from replacing the highways with a restored parkway. The Restore Our Community Coalition has argued that a parkway would create jobs, increase nearby property values, and revitalize local business districts.⁷⁸ Similarly, the Olmstead Parks Conservancy has called for improving the "economic vitality" of the area by replacing the Scajaquada Expressway.⁷⁹

If advocates in Buffalo ultimately triumph in their fight against the expressways, a meaningful factor may be that they effectively appealed not only to racial and economic justice and community cohesion but to the financial interests of people and communities who may not even live near the park.

SPOTLIGHT:

Buffalo

Historical Preservation Framing

Consider another way of framing a highway struggle: as a matter of historical preservation. What is the character of the neighborhood being destroyed? Does it have some distinct historical significance? Does it contain landmarks that a highway project will clear away or limit access to?

Advocates might frame their campaign as a defense of historically significant locales and the rich history they represent. Advocates need not be constrained by whether a neighborhood or landmark is recognized as historically significant at the time that a highway project begins. Instead, advocates can work to influence popular perceptions of the historicity of a threatened place. For example, in the fight against the Lower Manhattan Expressway, advocates helped promote the popular perception of New York's SoHo as an iconic historic district.⁸⁰

This approach has its drawbacks. In economically depressed areas, it can be challenging to alter buildings in a manner consistent with the stringent standards for historic rehabilitation because building valuations are low, traditional financing options are scarce, and historic preservation tax credits are not a likely source of financing.⁸¹ Though historic designations may help advocates in challenging the highway, those designations may subsequently prevent them from utilizing the land stock in the area in a manner that best suits the needs of community members.

Nonetheless, the historical preservation framing can be quite effective. The struggle to save the French Quarter in New Orleans provides a vivid and successful example of this framing.



SPOTLIGHT:

New Orleans

Inspired by an idea originally proposed by Robert Moses in 1946, Louisiana officials in the 1960s tried to take advantage of the flow of funding for highway development opened up by the Federal Highway Act and build an elevated highway through New Orleans's historic French Quarter. The proposal called for a 40-foot-high, 108-foot-wide elevated highway that would separate the French Quarter from its frontage on the Mississippi River.⁸²

As early as 1961, the Louisiana Landmarks Society and Vieux Carré Property Owners and Associates passed resolutions opposing the plan.⁸³ In 1965, at a meeting with highway opponents, Secretary of the Interior Stewart Udall, appalled at the notion of a highway demolishing a beautiful historical section of New Orleans, suggested the French Quarter be designated as a National Historical Landmark and added to the National Register of Historic Places.⁸⁴ The following year, Congress passed the National Historic Preservation Act, providing protection to historic sites. Media coverage of the highway battle spread across the country and the highway plan faced widespread criticism.⁸⁵

In March 1969, the Advisory Council on Historic Preservation released a report stating that the proposed highway would adversely impact the quality of the historic district and urged Secretary of Transportation John Volpe to seek an alternative location for the highway or depress it below grade.⁸⁶ In July 1969, the federal government withdrew its support for the highway, and the French Quarter's defenders emerged triumphant.

Environmental Framing

Highways can cause harm not just to individuals and communities but to the broader natural environment. Along with the harm caused by the construction of a highway project itself, which necessarily involves tearing up the existing land, highways can be major sources of pollution.

As a result of successful environmental activism, officials proposing new or redeveloped highways must consider the environmental impact of those projects as a critical part of the planning process. Emphasizing the environmental impact of a highway project can be an effective way to engage potential coalition members. Environmental organizations that do not have a mandate to tackle racial justice or housing issues nonetheless may be drawn to a campaign that highlights the negative environmental impact of a proposed project.

SPOTLIGHT: Denver

Completed in 1964, Denver's I-70 ravaged the largely Latinx neighborhoods in its path. The northern and southern portions of these neighborhoods were torn apart by an elevated viaduct that sent residents fleeing.⁸⁷ Those who stayed saw their neighbors replaced by dangerous exhaust fumes and roaring traffic. Children living near I-70 now suffer asthma hospitalization rates forty percent higher than Denver as a whole. Heart disease kills residents at a rate thirteen percent higher than the rest of the city. By one assessment, the Elyria-Swansea neighborhood that borders the highway is the most polluted in the nation.⁸⁸ I-70 was not just destructive—it was deadly.

The Colorado Department of Transportation (CDOT) has called for the expansion of I-70. The expansion would replace the current I-70 with a sunken fourteen-lane freeway, requiring the demolition of dozens of homes and other buildings. And those nearby residents whose homes survive would likely face greater and deadlier pollution.

Advocates have launched an ongoing battle that has placed the environmental harm of the expansion front and center. Community group Ditch the Ditch, for example, has publicized the danger of groundwater contamination and the harm to children caused by exposure to vehicle emissions. This framing has been helpful in recruiting environmentalist organizations Earthjustice and the Sierra Club to the coalition, and both have played invaluable roles in legal challenges to the project.



COMMISSIONING INDEPENDENT STUDIES



Advocates do not need to confine themselves to speculation about the harmful effects of a highway project. They can themselves undertake or commission independent studies of the project's impact. Such studies can take a variety of forms and focus on an array of subjects. For example, in the absence of any legislation mandating a racial equity impact study, advocates can conduct an REIS themselves. Advocates may also wish to commission studies focusing on two specific types of impact: environmental and traffic.

Environmental Impact

During the planning process, government agencies will undertake their own environmental studies. However, advocates should not take these studies at face value. Often, these studies are not carried out by a disinterested party, and even studies conducted in good faith may overlook important harmful environmental effects.

Advocates should consider commissioning their own environmental impact study examining the government's proposed replacement options as well as any alternatives that advocates prefer. An independent study can provide advocates with documentation of both the environmental undesirability of a highway project and the poor credibility of the agencies behind it. It can also provide the foundation for later challenges to the adequacy of the government's own environmental studies.

In the 1960s, the Claiborne Expressway was built over New Orleans's Claiborne Avenue. Running through the Black neighborhood of Treme, Claiborne Avenue was a commercial and communal hub and a central gathering space for residents during public events such as sports games and Mardi Gras parades. The construction of the expressway devastated Treme.⁸⁹

In recent years, as the Claiborne Expressway has deteriorated, New Orleans residents have formed the Claiborne Avenue Alliance to push for the restoration of Claiborne Avenue rather than the maintenance of the Claiborne Expressway.⁹⁰ As part of its campaign, the Alliance collaborated with the American Geophysical Union and Louisiana State University to develop hard data on the expressway's negative environmental impacts.

The coalition released a report raising concerns about a wide range of environmental harms caused by the Claiborne Expressway. These include air contaminants, soil lead, and traffic-related noise pollution. The report also looked at how the expressway harms particularly vulnerable populations in the highway's vicinity, such as homeless individuals residing under the expressway. The report concluded with recommendations to policymakers on changes that they might make to the Claiborne Expressway that would address these environmental harms.⁹¹

These findings will surely be useful in strengthening the Alliance's argument, both through the persuasive power of the report itself and by establishing a scientific record in support of the Alliance's claims that advocates can later draw upon.

SPOTLIGHT: New Orleans



Traffic Impact

Highway projects are often justified on the grounds that they will reduce traffic and ease driving. Advocates should consider conducting studies to challenge the government on its own turf and establish that a project does not actually support the goals expressed by transportation agencies.

In the early 1960s, I-275 plowed through Tampa over the former Central Avenue, tearing through many of Tampa's neighborhoods. Central Park, a predominantly Black neighborhood celebrated as the "Harlem of the South," and the largely Latinx Ybor City, were among those damaged.⁹²

With I-275 growing old, the Florida Department of Transportation has proposed restoring and expanding the six-lane highway and demolishing more homes and businesses to do so.⁹³

Joshua Frank, a local urban planner, launched the #blvdtampa opposition campaign in response, calling for the replacement of I-275 with a wide, landscaped boulevard featuring bike and pedestrian paths and light commuter rail as an alternative.⁹⁴

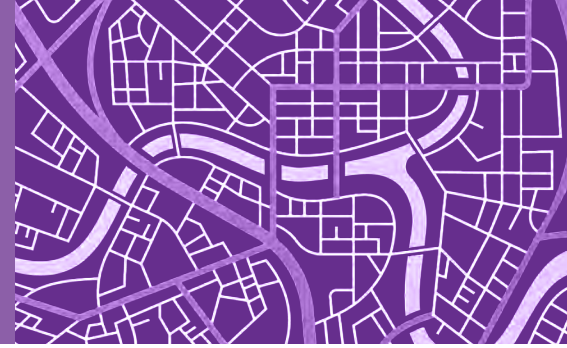
SPOTLIGHT:

Tampa

As part of the campaign, Frank has analyzed traffic data and argued that traffic patterns show that getting rid of the highway would actually have a favorable impact on traffic. In Frank's words, "This amount of local traffic on I-275 is inherently incompatible with the regional purpose of having an interstate."⁹⁵ Armed with traffic data, #blvdtampa has succeeded in getting Tampa's regional planning agency to include the boulevard plan as an option in its transit plan, and the campaign is continuing to fight for a better future.⁹⁶



PARTICIPATING IN THE HIGHWAY PLANNING PROCESS



With a strong coalition built and a compelling message crafted, advocates can now put that power to use. This can involve both participation in the government’s planning process and action outside that formal process.

Meetings and Hearings

Throughout the highway planning process, government agencies will hold numerous public meetings and hearings. Transportation agencies will always do this, but other agencies that oversee areas relevant to the project may do so as well. Highway projects may require zoning changes that entail public meetings by zoning committees. Local housing authorities may hold public meetings to discuss the relocation of residents who will be displaced. Business associations are sometimes involved in highway projects⁹⁷ and may therefore have public meetings as well. Other more general policymaking bodies, such as city councils, may also have public meetings at which highway projects are on the agenda.⁹⁸

These events can be great opportunities for advocates to make their voices heard. They can also be great opportunities for advocates to make their numbers felt. By showing up in force, advocates can make a visual show of strength to agency officials, politicians, and any private entities involved in the project.

Advocates should consider all of a highway project’s zones of impact and research the schedules of relevant agencies, associations, and other organizations to ensure that the campaign does not miss any opportunities to publicly demonstrate opposition to the project. By attending any meeting at which a highway project may be on the agenda, advocates stand not only to influence the people carrying out the meeting but also other members of the public who are attending the meeting. A meeting held by a local housing authority may attract a very different audience than a meeting held by a business association. Expressing opposition at both meetings can both expand and diversify a coalition.

Advocates should also organize public meetings of their own, holding them in locations accessible to all segments of an impacted community. Many residents who will be impacted by a project may be unaware of the nature or extent of that impact, and public community meetings

can serve as important educational opportunities. Advocates should account for the many different factors that can affect meeting attendance, such as irregular work hours, child care needs, and transportation access, and vary meeting locations and times accordingly.

Public meetings can continue to play an important role even once a campaign is well underway and even if community awareness of a highway project is high. During the civil rights movement, mass public meetings functioned as forums in which hundreds of community members and activists could gather to speak, listen, strategize, and channel their emotions into collective action, emboldened by the power of solidarity that comes in seeing oneself as not a lone voice but as part of a broader chorus of dissent. In organizing a highway campaign, advocates should make a conscious effort to encourage mass participation in the planning of the campaign as well as the execution of it.



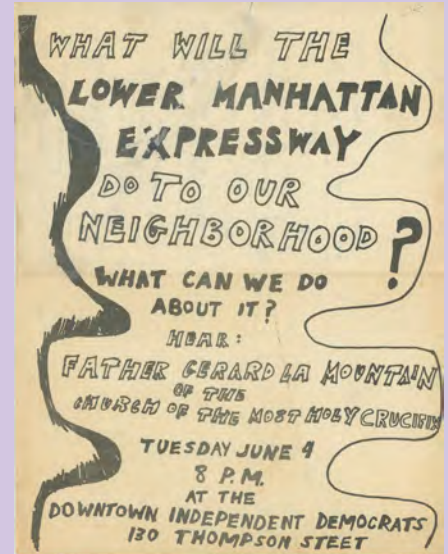
SPOTLIGHT:

Lower Manhattan

In fighting against the Lower Manhattan projects in the 1950s and 1960s, advocates routinely packed public meetings and hearings. In doing so, advocates adopted creative tactics. For example, at a public meeting on the Lower Manhattan Expressway, highway opponents wore gas masks to signify the pollution that would rain down upon residents if the expressway was built.⁹⁹

At times, officials tried to avoid holding these meetings. During consideration of the West Village redevelopment, for example, the City Planning Commission tried to avoid holding legally required public hearings. In response, activist Jane Jacobs obtained a court order directing the Commission to hold the hearings.¹⁰⁰ Nonetheless, the city made a habit of scheduling hearings on short notice to suppress participation. Jacobs countered by utilizing a source within city government to learn meeting schedules sufficiently far ahead of time to mobilize large turnout in opposition.¹⁰¹

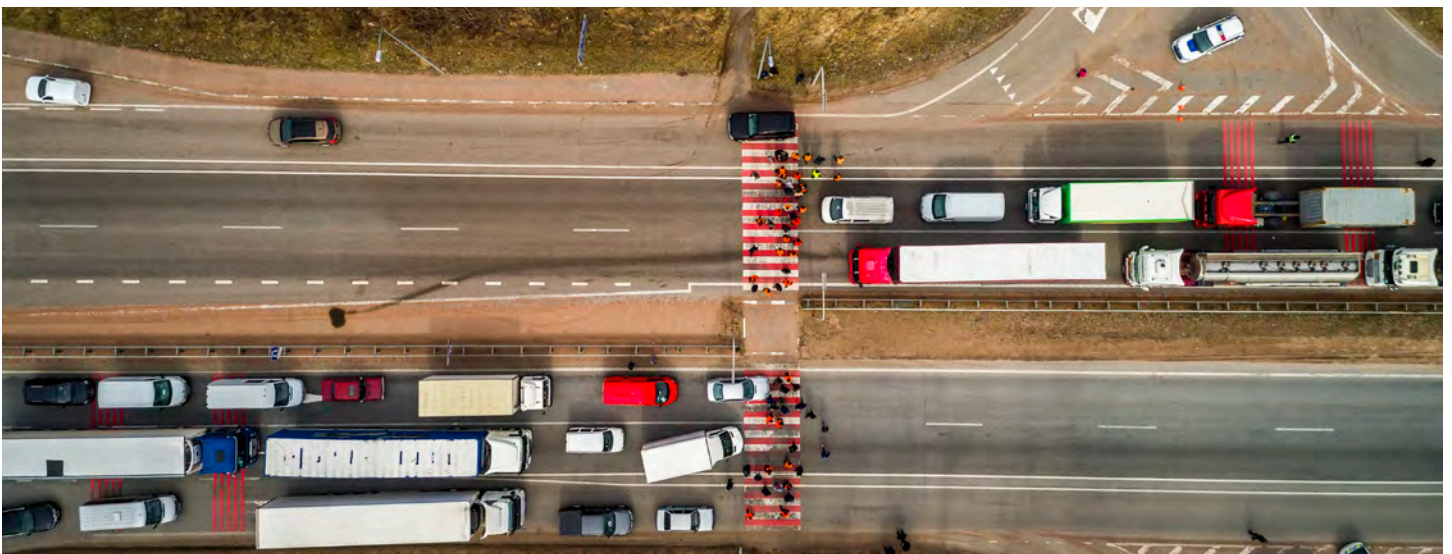
By packing meetings and hearings, the Lower Manhattan activists were able to turn these events into platforms for their own message. With their strong presence, they made themselves impossible for transportation planners to ignore.



Protests and Direct Action

Although formal processes provide substantial opportunities for advocates to exercise their influence, advocates should not restrict themselves to these forums. Advocates should consider how else they can stir up a ruckus for their cause.

Protest methods can take any number of forms. Advocates might organize rallies and marches in opposition to a highway project, submit editorials to local newspapers in opposition to a project, solicit signatures for petitions, and more.



SPOTLIGHT:

Lower Manhattan

The proposed Lower Manhattan infrastructure projects of the 1950s and 1960s inspired a colorful array of protest tactics. The gas masks described earlier are one memorable example. On another occasion, activists held a mock funeral on Broome Street, representing the street's death at the hands of the Lower Manhattan Expressway.¹⁰² Opposition actions took not just visual but also auditory forms, with advocates singing the Bob Dylan-penned protest anthem "Listen, Robert Moses."¹⁰³

Children got in on the action too. Young people were a visible presence at rallies fighting the Washington Square Expressway, chanting and waving posters.¹⁰⁴ Similarly, in the battle against the redevelopment of the West Village, children passed out petitions opposing the project.¹⁰⁵

What these actions all have in common is their theatrical and attention-grabbing nature. A mock funeral attracts public attention in a way that more conventional actions might not. These creative tactics helped garner media attention, disseminating advocates' message to a wider audience.

Submitting Environment Impact Study Comments

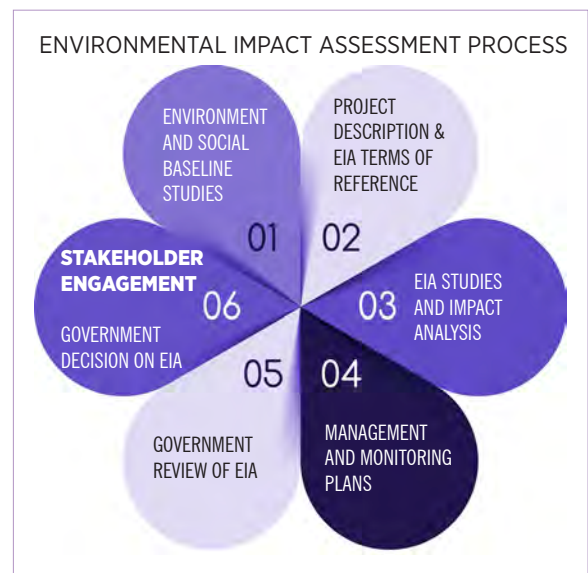
An important federal law that will figure into any highway project with substantial federal involvement is the National Environmental Policy Act of 1969 (NEPA).¹⁰⁶ NEPA regulates the procedures that the federal government and state and municipal partners must go through when undertaking major actions that will significantly affect the environment.¹⁰⁷

One important element of the NEPA process is the environmental assessment (EA). The EA is a concise public document in which the government determines whether or not the project will have a significant environmental impact, providing evidence in support of that determination.¹⁰⁸ If the EA finds that the project will have a significant environmental impact, then agencies must carry out a more involved environmental impact study (EIS).

An EIS details the environmental impact of a government action—such as a highway project—as well as the available alternatives and the environmental impact of those alternatives.¹⁰⁹ The EIS goes beyond discussion of the natural environment per se. Agencies must consider the aesthetic, ecological, historic, cultural, economic, social, and health effects of the project on the human environment, even those that are indirect.¹¹⁰ Agencies must also consider alternatives.¹¹¹

Highway projects usually have a significant environmental impact, so there will be an EIS in most cases. If there is, agencies will publish a notice of intent in the Federal Register that will lay out the "scoping" process—how the government will gather information for the EIS and the scope of the issues to be analyzed.¹¹² Agencies will solicit public participation through workshops, public meetings, formal hearings, and/or other means, providing advocates with opportunities to urge the government to prioritize community interests.¹¹³

After completing the study, agencies will issue a draft EIS for public comment.¹¹⁴ Advocates should submit comments on the draft EIS to highlight any shortcomings. Advocates should consider broadly any points of criticism that can be leveled at the EIS. Advocates should not restrict themselves to outright errors but draw attention to any potential harm caused by a highway project that the EIS does not thoroughly discuss.





Advocates should take an expansive view of what constitutes an environmental impact and consider any impact to the affected community. Will a highway project contribute to racial segregation in a city? If so, advocates should treat this as an environmental impact and discuss it in a public comment. Or what if a highway project entails the destruction of low-income housing? That may or may not impact the air quality or local species or nearby bodies of water—what people typically think of as “the environment”—but it still constitutes an environmental impact and advocates should treat it as such. Since the draft EIS will address alternatives to the highway project plan, advocates should also discuss any benefits of a preferred alternative that the draft EIS does not sufficiently address.

Advocates should seek comments from a broad array of individuals and organizations, leveraging the prestige or expertise that any coalition members may possess. A large number of comments can demonstrate the breadth and depth of public opposition to a highway project. Advocates should also consider crafting model comments that can be submitted by coalition supporters, allowing those who may not have the time to draft a unique comment to support the effort.

After the public has submitted comments, agencies will issue a final EIS for final federal approval. Government agencies are legally required to consider public comments in drafting the final EIS.¹¹⁵ But advocates should not be disheartened if the final EIS still contains the flaws of the draft EIS. The point of submitting comments is not only to influence the EIS itself but to develop a formal record of opposition. If advocates later challenge a highway project through litigation, the EIS comments can establish that agencies had notice of the issues raised in those comments—and chose not to adequately address them. Advocates can also submit comments on the final EIS. However, agencies are not required to take these into account.¹¹⁶

Many states have their own versions of NEPA that provide for similar comment submission periods. The California Environmental Quality Act, for example, provides interested people with such an opportunity.¹¹⁷ Advocates should closely examine relevant state equivalents and utilize any opportunities these present.

CHALLENGING AN APPROVED HIGHWAY PROJECT



Much of this toolkit up to this point has focused on how advocates can use mass mobilization to influence the highway planning process both from within and without. But with the plan approved and set to move forward, other doors open to advocates.

Behind one of these doors are the courts. If transportation agencies will not willingly back down from a destructive highway plan, a lawsuit might force them to. Behind another of these doors are community benefit agreements, a popular mechanism for guaranteeing that affected communities receive at least some compensation for their suffering.

Even if a highway project is carried forward, that does not mean that all of its destructive impacts must follow as well. Advocates should hone in on specific negative impacts and engage with policymakers to shape plans to mitigate those harms. If the highway project will displace thousands of people, advocates might work with policymakers to ensure that there is a plan to provide housing to those displaced. If the danger is increased pollution, advocates might work with policymakers to determine how to reduce that hazard. If the danger is reduced revenue to local businesses, advocates might work with policymakers to develop a plan for compensatory subsidies. If the danger is the destruction of local parks, advocates might work with policymakers to develop new recreational areas.

Advocates can also take this opportunity to address the larger transit picture in their city. An agreement to drop a lawsuit against a highway project might be paired with an agreement to expand public transportation. Advocates should advance their own vision of what transportation should look like. Advocates can additionally consider how the highway project might be used to address grievances that are not directly tied to the highway project. For example, if schools in the impacted neighborhoods are chronically underfunded, advocates might use a legal challenge to a highway project as a bargaining chip to obtain an increase in education funding.

Litigation

Litigation can be a powerful tool in challenging a highway plan. It also presents serious challenges. Lawsuits can involve highly technical matters and considerable financial expense, and advocates must be mindful of their resources. But if successful, litigation can turn a defeat into a victory. And even without an outright legal victory, litigation can pressure highway planners to agree to a settlement that mitigates the damage caused by the project.

The litigation tools discussed in this section fall into two broad categories: civil rights laws and environmental laws. Civil rights laws have long been used to challenge racially discriminatory practices, and they are an intuitive tool to apply in this context. However, because civil rights laws tend to emphasize the intent underlying a government action rather than the effect of that action, victory is often difficult to achieve in the highway context. Environmental laws will sometimes be effective. Over the last half-century, an elaborate regulatory regime has developed in the United States aimed at protecting the environment. This is highly relevant to highway projects, a form of infrastructure that enormously impacts the surrounding environment. When the government fails to abide by this regime, advocates can seek legal redress.

Title VI of the Civil Rights Act

The landmark Civil Rights Act of 1964 marked a sea-change in government protection for civil rights, prohibiting racial discrimination in many settings. Most relevant to advocates challenging a highway plan is Title VI of the statute. This provision prohibits racial discrimination in programs or activities that receive federal financial assistance.¹¹⁸

Most highway projects are covered by Title VI; it is a rare highway project that does not receive federal funds. And as we have seen, highway projects are often racially discriminatory, inflicting destruction on communities of

color that are not the primary recipients of the project's benefits. Title VI can therefore be a powerful tool. If a project is federally funded, advocates can bring a lawsuit that, if successful, will force agencies to either sacrifice that funding or modify the plan to eliminate its discriminatory character.¹¹⁹ Forced to choose, many agencies will opt for the latter.

Prevailing on a Title VI claim is, however, no easy feat for private parties. To do so, a plaintiff must prove that the challenged project not only has a racially discriminatory effect but that this racially discriminatory effect is intentional.¹²⁰ This will often be very difficult to prove. Even if there is a racially discriminatory intent underlying a project, advocates may simply lack access to the clear evidence needed to prove that intent in court.

Advocates can pursue an additional or alternative route. Title VI allows advocates to petition the government to directly enforce the law.¹²¹ Federal enforcement of Title VI functions a bit differently than private enforcement. Advocates can petition the federal government to investigate—and potentially withdraw funding from—a highway project on the grounds that the project has a racially discriminatory intent behind it.¹²² This is the same argument that advocates would have to make in bringing a Title VI lawsuit themselves.

But in contrast to a private suit, advocates can also petition the government to investigate the racially disparate impact of the project on a particular racial group, even if there is no evidence of any underlying racially discriminatory intent.¹²³ For example, imagine that a highway project is being built in a city in which only twenty percent of residents are Black, but eighty percent of the people who the project will displace are Black. In that case, the displacement required by the project has a disparate impact on that city's Black population.¹²⁴ This is a much easier legal theory to succeed on, as it does not require that hard-to-find evidence of intent.

Advocates should strongly consider filing a Title VI complaint with the federal government over bringing a Title VI lawsuit both because of the greater resources required to bring a lawsuit and the higher burden required to prove intent. Unfortunately, the government does not often take up Title VI investigations, and most investigations do not result in a finding of a violation. That is especially true during times when the federal government is less hospitable to claims of racial justice generally. But victory is not impossible.

Advocates who go this route should file Title VI complaints with all of the federal agencies funding the highway project. The Department of Transportation and Federal Highway Administration are obvious ones, but other agencies may also be involved. The Department of Housing and Urban Development (HUD), for example, may be providing funding for the housing relocation aspects of the project. Or if the project impacts schools in the area of the highway, the Department of Education may be providing funding. The threat of losing federal funding for any element of the project can place pressure on planners, and different federal agencies may have different levels of commitment to enforcing Title VI, so advocates should take a liberal view of where to file complaints.

In challenging the expansion of I-70 in Denver, advocates worked with environmentalist organization Earthjustice to file a Title VI complaint with the United States Department of Transportation's Office of Civil Rights.¹²⁵

The complaint adopted a disparate impact theory, arguing that the project would have severe and disproportionate environmental and economic impacts on the predominantly Latinx communities near the highway.¹²⁶ The complaint detailed a variety of negative impacts ranging from dust and pollution exposure to harm to housing to decreased community cohesion.¹²⁷ The complaint also suggested specific mitigation measures, such as funding for health, education, affordable housing, and a community land trust.¹²⁸

Based on the complaint, DOT has launched an investigation of the project to determine if it violates Title VI.¹²⁹ Should DOT find that the I-70 expansion has an unlawful racially discriminatory effect, planners will have to choose between changing the project to eliminate that discriminatory effect or losing federal funding.

SPOTLIGHT:
Denver

Fair Housing Act

The Fair Housing Act (FHA), enacted in 1968, is another landmark civil rights law. Prohibiting racial discrimination in housing practices, the FHA has served as primary tool for challenging such practices even when nominally race-neutral. For example, the FHA has been successfully used to challenge municipal zoning laws that sharply restrict multifamily dwellings, a type of home in which Black families are more likely to reside.¹³⁰

The FHA is not the most natural fit for challenging a highway plan. In contrast to the broad scope of the Civil Rights Act of 1964, the FHA only prohibits racial discrimination in housing.¹³¹ But a highway plan might still be challenged through the FHA if the claim is framed around a common component of highway plans: housing displacement.

Highway projects can cause all manner of harm, but one of the most immediate is the demolition of neighborhoods to pave the way for the project. To tear down a person's home, that person must be relocated, a "housing practice" that is specifically covered by the FHA.¹³²

If the relocation of the residents of to-be demolished neighborhoods can be stopped, then the neighborhood cannot be demolished. And if the neighborhood cannot be demolished, then serious harm will be prevented. Through this careful framing, centering the relocation element of a highway plan and taking aim at that specific component, an FHA claim can force government officials to modify that plan into something less destructive.

Claims under the FHA can be based on intentional discrimination or challenge the racially discriminatory impact of a purportedly race-neutral law. The FHA allows for two types of challenges based on the racially discriminatory effect of a relocation plan. The first of these, disparate impact claims, are already familiar from the Title VI context.¹³³ Segregative effect claims are the other type of challenge.¹³⁴ A segregative effect claim asserts that the challenged practice contributes to racial segregation. Unlike a disparate impact claim, a segregative effect claim does not revolve around the effect that a practice has on a particular racial group. Instead, the focus is on the effect that the practice has on the broader community.¹³⁵

Imagine that a highway project will demolish the only racially integrated neighborhood in a city, and displaced residents will be relocated to neighborhoods in a manner



that will preserve segregated housing patterns. Although this relocation may not disproportionately impact any particular racial group, it may nonetheless have a segregative effect on the city and be unlawful under the FHA.

Though disparate impact claims are well-trodden territory, segregative effect claims have rarely seen their day in court. The exact standards that apply to these claims—for instance, the extent to which a challenged practice must have a segregative effect to be unlawful—are unclear.¹³⁶ But both types of claims do share a common and somewhat complex burden-shifting procedure.¹³⁷

First, the plaintiff must establish that the challenged practice—the forced relocation in this context—will either have a racially disparate impact or a segregative effect. If the plaintiff does so, the burden shifts to the defendant—the government agency implementing the project—to establish that the forced relocation, even if it does have that effect, serves a legitimate purpose. For example, the government might argue that even if a highway renovation will displace thousands of Black residents, that plan is the least expensive way to carry out the renovation.

Finally, if the government successfully establishes that the practice serves a legitimate interest, the burden moves back to the plaintiff to establish that the legitimate interest that the government has asserted can be achieved in a less discriminatory manner. For example, the plaintiff might present evidence that the highway renovation can actually be carried out in an even less expensive way that will not so disproportionately harm Black residents.



This last stage is likely where most of the action in a legal challenge will take place. The government will usually be able to meet their initial burden by asserting some legitimate interest that a highway plan serves—even a highway plan that entails racially discriminatory forced relocation. In seeking to meet their burden and argue that the government’s asserted legitimate interest can be met in a less racially discriminatory way, advocates may be able to draw support from any independent studies that they have conducted on their own.

The FHA presents one final litigation avenue for advocates to explore. In addition to its prohibition on racially discriminatory housing practices, the FHA requires federal agencies to affirmatively further the Act’s guarantee of fair housing in all activities related to housing and urban development.¹³⁸ Because the statute primarily directs this mandate to HUD, and because HUD is the main wing of the federal government that carries out housing and urban development programs, courts have rarely considered what exactly this mandate requires of other federal agencies engaged in these activities.

As applied to HUD, the FHA’s “affirmatively further” provision requires HUD to examine and consider the racial impact of proposed actions and to avoid actions that will contribute to racial discrimination in the housing realm.¹³⁹ Whether the standards that apply to HUD’s duty to affirmatively further fair housing identically apply to other federal agencies is unclear.¹⁴⁰ However, advocates looking outside the box for litigation strategies might bring a claim against the government on the grounds that project-related forced relocation will violate FHA’s affirmative mandate requirement.

An “affirmatively further” claim might look similar to a segregative effect claim; a government agency may engage in an action that is not necessarily in itself racially discriminatory but that will maintain or exacerbate racial segregation.¹⁴¹ The “affirmatively further” provision requires that HUD—and perhaps other federal agencies—adequately consider the racially disparate and segregative impact of their actions. Therefore, even if advocates are unable to prove that planned relocation actually has a segregative effect, they may be able to prevail on the basis that the agency failed to adequately consider this issue.

If advocates are considering bringing an “affirmatively further” claim, it is important to note that the FHA does not directly allow this. Instead, advocates will have to look to the Administrative Procedure Act

(APA), a law that regulates how federal agencies make decisions.¹⁴² The APA allows people to sue a federal agency for making a decision that was “arbitrary and capricious.”¹⁴³ Advocates can sue an agency on the theory that a decision to forcefully relocate residents was arbitrary and capricious because the agency failed to act in accordance with the FHA’s mandate to affirmatively further fair housing.

National Environmental Policy Act

Turning away from civil rights laws, advocates can use NEPA to enforce environmental mandates in court. Even after an EIS receives federal approval, advocates can sue the federal government under NEPA on the grounds that the EIS was wrongfully approved.¹⁴⁴

The basic premise of this legal claim will be that the EIS was insufficiently rigorous and ignored or inadequately addressed the project’s environmental impacts. Advocates should scrutinize the EIS closely and hammer away at any shortcomings. In doing so, advocates can draw from their own past interventions in the planning process. For example, if the EIS did not expressly consider independent studies conducted by advocates and submitted as part of the study, that failure might be presented as evidence in a lawsuit challenging the adequacy of the EIS.

There will not always be an EIS. Perhaps in carrying out the EA, government agencies found that an EIS was not necessary. But even in those cases, advocates seeking to leverage NEPA against the project are not helpless. They can instead challenge the issuance and approval of the EA, raising similar arguments.

NEPA does not directly allow a person to sue the federal government for approving an EIS. Instead, advocates will have to look to the APA. Advocates can argue that the decision to approve the EIS was arbitrary and capricious—that the EIS did not meet the standards that NEPA requires and should not have been approved.

NEPA only requires that federal agencies undertake a particular procedure and not that they promote any particular goals.¹⁴⁵ Winning a NEPA suit can thus be quite difficult, and courts rarely side with advocates in these challenges.¹⁴⁶ But as a recent case in Denver illustrates, even a more limited victory can be valuable.

SPOTLIGHT:

Denver

In 2017, local organizations fighting against the expansion of I-70 worked with the Sierra Club to file a lawsuit challenging the Federal Highway Administrations’ approval of the Colorado Department of Transportation’s [“CDOT”] EIS for the I-70 expansion.¹⁴⁷ The organizations sought to stop the project from going forward.

This was not the Sierra Club’s first intervention in the I-70 expansion project. The Sierra Club sued the EPA in 2016 for lowering air quality standards in the project area.¹⁴⁸ The organization also submitted comments on CDOT’s draft EIS citing deficiencies in the study’s assessments of the project’s impact on air quality and the effects of air pollution on community health. These comments served as the substance of allegations in the lawsuit, which argued that CDOT had failed to adequately address these issues.¹⁴⁹

The district judge overseeing the case ultimately denied the Sierra Club’s request for a preliminary injunction, which would have halted the project pending further study of the adequacy of the EIS’s air quality analysis.¹⁵⁰ However, the lawsuit gave the Sierra Club and local advocates the leverage to settle the case and require that CDOT financially contribute to an independent health study of the project’s environmental hazards.¹⁵¹

Department of Transportation Act

Another law that may lend itself to legal challenges to a highway plan is the Department of Transportation (DOT) Act of 1966. Though this lengthy piece of legislation establishing the federal Department of Transportation is very complex, advocates need only focus on one specific provision: Section 4(f).¹⁵²

Section 4(f) comes into play when a highway project 1) involves the use of land from publicly owned parks, recreational areas, wildlife or waterfowl refuges, or public or private historical sites and 2) will have more than a “de minimis”—marginal—impact on the land.¹⁵³ The use of such land requires DOT approval, and that approval will only be granted if two conditions are met.

First, there must exist no prudent and feasible alternative to the proposed use of the land.¹⁵⁴ Can the highway project be carried out just as expediently in a way that will not significantly impact this type of land or in a way that at least has less impact on the protected land?¹⁵⁵ If so, this condition will not be met.

Second, the agencies carrying out the project must undertake all possible planning to minimize harm.¹⁵⁶ If a highway will be constructed through a wildlife refuge, for example, highway planners must carefully consider how to limit the harm to the wildlife residing there. Transportation agencies are not required to implement any specific mitigating measures, but they are required to carefully consider the options.

This Section 4(f) evaluation often occurs within the NEPA-mandated process of developing an EA or EIS.¹⁵⁷ However, the NEPA and DOT Act mandates are distinct. NEPA requires that agencies thoroughly consider all environmental impact of a project but does not require agencies to come to any particular conclusion about how to deal with those impacts. By contrast, the DOT Act does require that agencies come to a particular conclusion: that there is no prudent and feasible alternative to the use of the protected land. And whereas NEPA only requires that agencies consider a project’s environmental impact, the DOT Act requires that agencies also consider how to limit the harm of that impact.¹⁵⁸ Section 4(f) thus establishes a higher bar for the government to meet. But it is also applicable in fewer situations: only when the project has more than a de minimis impact on publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public or private historical sites.

So how do advocates actually win a Section 4(f) claim? Again, the APA must serve as the vehicle for a lawsuit. Plaintiffs would need to prove that DOT’s approval of the use of protected land was arbitrary and capricious.¹⁵⁹ Advocates can argue that there was a prudent and feasible alternative to using as much protected land. Or advocates might argue that government agencies failed to undertake sufficient planning to minimize harm. Either way, preparatory work completed earlier in the planning process can pay off here. An independent study might demonstrate the existence of a prudent and feasible alternative or of harm limitation options that project planners failed to examine.

Endangered Species Act

A final environmental law that advocates should consider is the Endangered Species Act (ESA). Enacted in 1973, the ESA provides a powerful prohibition against harming endangered animal species, both directly and through harmfully modifying their habitats.¹⁶⁰

The strength of this protection makes the ESA a uniquely powerful sword in a fight against a highway project. If a highway project will harm the habitat of an endangered species, the project cannot go forward no matter the cost.¹⁶¹ Even if abandoning or modifying a highway project to avoid harm to an endangered animal will be extremely expensive, the government has no choice.

For this reason, transportation agencies are likely to have thoroughly searched for the presence of any endangered species in the vicinity of the project-impacted area and designed the project to avoid any harm. But with over 1,200 endangered animals recognized by the federal government, many obscure and microscopic,¹⁶² it is entirely possible that advocates can uncover an unnoticed threat to an endangered animal’s habitat that can be used to force the modification of a highway project threatening human communities as well.

The ESA enables private parties to bring direct legal claims; there is no need to work through the APA.¹⁶³ However, the ESA does present its own procedural complexities. Because the ESA is aimed at protecting animals—not humans—plaintiffs can experience difficulty establishing that they have themselves suffered an injury from an ESA violation, as is required to bring a lawsuit.¹⁶⁴ Advocates will be on stronger ground if the chosen plaintiff is a person with a demonstrable connection to the threatened species or habitat; for example, a local resident with a history of spending time in a threatened habitat.¹⁶⁵

Advocates who wish to bring an ESA claim should consider partnering with an environmentalist organization, such as the Sierra Club or National Resources Defense Council. In addition to bringing experience, expertise, and resources to a fight, the organization may itself be able to serve as a plaintiff under certain circumstances.¹⁶⁶

State Laws

The discussion up to this point has focused on federal laws. This is because federal law will apply no matter where the highway project is taking place. But advocates should also consider relevant state laws or local ordinances, as these may impose stricter requirements on transportation authorities than federal law. California provides one expansive example.

California enacted the California Environmental Quality Act (CEQA) in 1970.¹⁶⁷ The law requires that state and local agencies disclose and evaluate the significant environmental impacts of proposed projects.¹⁶⁸ Though this sounds similar to the NEPA EIS, NEPA and the California law differ in important ways. Whereas NEPA requires that agencies consider alternatives but not necessarily choose the most environmentally friendly option, CEQA requires that agencies mitigate significant adverse environmental impacts to the maximum extent feasible.¹⁶⁹

SPOTLIGHT: California

The case of the High Desert Corridor freeway, a planned highway project that sought to connect cities in Los Angeles County with cities in San Bernadino County, exemplifies the usefulness of CEQA. After the project's CEQA-required Environmental Impact Report (EIR) was filed in 2016, the Los Angeles-based organization Climate Resolve filed a lawsuit alleging that the California Department of Transportation (Caltrans) failed to adequately address the highway's potential impacts on global warming. Climate Resolve projected that the project would result in an additional four million miles of driving per day, increasing greenhouse gas emissions¹⁷⁰

The court sided with Climate Resolve, finding that the EIR was insufficient in its consideration of biological and greenhouse gas impacts.¹⁷¹ In September 2019, Caltrans entered into a settlement agreement halting the project until the agency undertakes a supplemental environmental impact study.¹⁷²



Community Benefits Agreements

Litigation can be an effective way to deal with obstinate government agencies. But in many situations, litigation may simply be too expensive or too time-consuming, and the likely outcome too unclear. Community benefits agreements (CBAs) offer an alternative way forward for advocates considering how to respond to the approval of a destructive highway project.

CBAs are legally enforceable contracts negotiated and executed directly between developers and community representatives. These agreements allow communities to use their voices in planning and provide developers with a source of public support for projects. The collaborative nature of these agreements may provide developers with comfort that their projects are less likely to be challenged legally.¹⁷³

CBAs do have shortcomings. The community groups that negotiate CBAs do not always adequately or effectively represent the interests of the community. CBAs can also be challenging to enforce.¹⁷⁴ Advocates should consider these concerns when assessing the viability of community benefits agreements.

CBAs can be an appealing option for advocates if a highway project is approved. Leveraging the desire of transit agencies to avoid litigation, advocates can work to persuade the government to agree to a CBA that will mitigate the project's harm to the community or satisfy other community grievances. A CBA might call for funding for affordable housing, for instance, or for expanded public transportation access.

CBAs have rarely if ever been used in highway projects. CBAs in other contexts, however, offer instructive examples to advocates.

SPOTLIGHT:

Staples Center

The expansion of the Staples Center in Los Angeles is one of the paradigmatic examples of a successful community benefits agreement.¹⁷⁵ The original Staples Center was completed in 1999 with little consultation of the community. The Center's presence led to increased congestion, reckless driving, and crime in the area.¹⁷⁶

Community members mobilized and successfully obtained a CBA when an expansion to the Center was announced. The 2001 agreement included a goal that seventy percent of jobs created through the project would pay a living wage, a first source hiring program for low-income individuals near the Center and those displaced, funding for affordable housing, and a one million dollar commitment to meeting the community's park and recreation needs.¹⁷⁷

SPOTLIGHT:

Kingsbridge Armory

Another example of a successful CBA is the redevelopment of the Bronx's Kingsbridge Armory in New York City. Advocates negotiated a CBA in 2013 with many favorable terms for community members. The developer agreed to pay a living wage to all workers on the project, hire a majority of non-construction employees from the community, contribute millions of dollars to a fund for community needs, grant priority community access to the armory's athletic facilities, and comply with community enforcement of CBA commitments.¹⁷⁸

Many of the terms of the agreements in these examples could be applicable to highway projects. In deciding whether to pursue a CBA and what specific terms to press for, advocates should learn from the successes that have been achieved in other infrastructure development projects.



CONCLUSION

Highway fights are never easy. Advocates and community members are almost always going to be up against opponents with financial, legal, and technical advantages. A government will usually have more experience building highways than opponents will have in stopping them.

But as history shows, these battles can still be fought and won. With more old highways falling into ruin and government agencies considering how to rebuild them, advocates have greater opportunity than they have had in decades to both remediate the racist destruction that the original wave of highway construction promulgated around the country and to prevent future harm to affected communities.

Recalling decades later the fight against Robert Moses’s Lower Manhattan Expressway, Jane Jacobs described the rage of one of the most powerful men in New York City at seeing his plans derailed:

None of us had spoken yet because they always had the officials speak first and then they would go away and they wouldn’t listen to the people. Anyway, he stood up there gripping the railing, and he was furious at the effrontery of this, and I guess he could already see that his plan was in danger. Because he was saying: “There is nobody against this – NOBODY, NOBODY, NOBODY but a bunch of . . . a bunch of MOTHERS!” And then he stomped out.¹⁷⁹

In the end, a community was able to band together to defeat the vast state power opposing them and save their homes. With dedication, creativity, and the force of mass mobilization, people today can achieve the same result.



ENDNOTES

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² See Paul Mason Fotsch, *Watching the Traffic Go By: Transportation and Isolation in Urban America* 170 (2007) (“[L]ocal authorities planned freeways so they would create a barrier between the downtown of corporate headquarters and nearby racially mixed neighborhoods.”).

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⁵ *Id.* at 26–27.

⁶ RICHARD ROTHSTEIN, *THE COLOR OF LAW* 128 (2017).

⁷ See, e.g., *Garrett v. City of Hamtramck*, 503 F.2d 1236, 1239–43 (6th Cir. 1974) (discussing the failure of officials in Hamtramck, Michigan to provide housing for the largely Black residents displaced by the Chrysler Expressway).

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¹¹ HENDERSON, *supra* note 8, at 43.

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¹³ See WILLIAM L. GARRISON & DAVID M. LEVINSON, *THE TRANSPORTATION EXPERIENCE* 301 (2d ed. 2014) (discussing the Chronicle’s early criticism of highway opponents).

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¹⁵ *Id.* at 44–45.

¹⁶ *Id.* at 45–46.

¹⁷ *Id.* at 46.

¹⁸ *Id.* at 48–49.

¹⁹ See Robin A. Lenhardt, *Race Audits*, 62 HASTINGS L.J. 1527, 1534 (2011) (describing “the enterprise that those conducting the audit would undertake as one that would ultimately create a counternarrative about race, a retelling of how race operates in the jurisdiction and how some members of the community came to be so disadvantaged”).

²⁰ *Id.* at 1548.

²¹ *Id.* at 1551–52.

²² *Id.*

²³ *Id.*

²⁴ See, e.g., *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (striking down public school programs in Washington and Kentucky aimed at increasing racial diversity in schools); *Gratz v. Bollinger*, 539 U.S. 244 (2003) (striking down the University of Michigan’s affirmative action system).

²⁵ Lenhardt, *supra* note 18, 1568–69.

²⁶ William Kennedy, Gillian Sonnad, & Sharon Hing, *Putting Race Back on the Table: Racial Impact Statements*, 47 J. POVERTY L. & POL’Y 154, 157–59 (describing racial equity impact statements).

²⁷ See *Id.* at 160–61.

²⁸ Archer, *supra* note 3 (manuscript at 71–73) (detailing these requirements).

²⁹ *Id.* (manuscript at 73–74).

³⁰ See *Id.* (manuscript at 69–70) (surveying racial equity impact study legislation).

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- ³⁶ *Id.*
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- ³⁸ ROBERT CARO, *THE POWER BROKER* 864–65 (1974).
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- ⁴¹ *Id.* at 869.
- ⁴² *Id.* at 881–84.
- ⁴³ ERIC AVILA, *THE FOLKLORE OF THE FREEWAY* 61–62 (2014).
- ⁴⁴ *Id.*
- ⁴⁵ See Anthony Paletta, *Story of Cities #32: Jane Jacobs v Robert Moses, Battle of New York’s Urban Titans*, *GUARDIAN* (Apr. 28, 2016, 2:30 AM), <https://www.theguardian.com/cities/2016/apr/28/story-cities-32-new-york-jane-jacobs-robert-moses> (describing how in the campaign against the Lower Manhattan Expressway, “[a]n organic network of support was developed, drawing on a diverse set of local residents, Puerto Ricans, Italians, intellectuals, labourers . . . united by a common opposition to their homes and businesses becoming a merge lane”).
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- ⁵⁰ *Id.*
- ⁵¹ A NEW DALL., <https://www.anewdallas.com/index.html> (last visited July 21, 2020).
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¹¹⁰ 40 C.F.R. § 1508.8 (2020); *Id.* 40 C.F.R. § 1508.14 (2020) (“When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”).

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¹²⁰ *Alexander v. Sandoval*, 532 U.S. 275, 281 (2001) (“Title VI itself directly reach[es] only instances of intentional discrimination.” (quoting *Alexander v. Choate*, 469 U.S. 287, 293 (1985))).

¹²¹ 49 C.F.R. § 21.11(c) (2020) (“The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part.”).

¹²² See *Sandoval*, 532 U.S. 275, 289 (2001) (“Section 602 [of Title VI] empowers agencies to enforce their regulations either by terminating funding to the ‘particular program, or part thereof,’ that has violated the regulation or ‘by any other means authorized by law.’” (quoting 42 U.S.C. § 2000d–1)).

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¹³¹ See *Jersey Heights Neighborhood Ass’n v. Glendening*, 174 F.3d 180, 192 (4th Cir. 1999) (finding a “challenge to the highway site selection process . . . too remotely related to the housing interests that are protected by the Fair Housing Act”).

¹³² 42 U.S.C. § 3604.

¹³³ See *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2525 (2015) (holding “that disparate-impact claims are cognizable under the Fair Housing Act”).

¹³⁴ See 24 C.F.R. § 100.500(c) (2020) (prohibiting any housing practice that “creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin”).

¹³⁵ See *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977) (“The second type [of discriminatory effect] is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.”).

¹³⁶ See generally Robert G. Schwemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 *N.Y.U. J. LEGIS. & PUB. POL’Y* 709 (2017).

¹³⁷ See 24 C.F.R. § 100.500(c) (2020) (laying out this procedure).

¹³⁸ 42 U.S.C. § 3608(d).

¹³⁹ See *Shannon v. U.S. Dep’t of Hous. & Urb. Dev.*, 436 F.2d 809, 821 (3d Cir. 1970) (finding that HUD “must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts”); *N.A.A.C.P. v. Sec’y of Hous. & Urb. Dev.*, 817 F.2d 149, 156 (1st Cir. 1987) (“[T]he need for such consideration itself implies, at a minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess positively those aspects of a proposed course of action that would increase that supply.”).

¹⁴⁰ Some courts have, however, spoken to this. See *Resident Advisory Bd. v. Rizzo*, 425 F. Supp. 987, 1015 (E.D. Pa. 1976). (“Other courts have agreed with our Third Circuit and have held that the affirmative duty required by Title VIII of the 1968 Civil Rights Act applies not only to HUD but applies as well to other governmental agencies administering federally financed housing programs.”).

¹⁴¹ See *Otero v. New York City Hous. Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973) (finding that agencies administering federally-assisted housing programs must consider “the impact of proposed public housing programs on the racial concentration in the area in which the proposed housing is to be built,” and that “[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat”).

¹⁴² See *Latinos Unidos De Chelsea En Accion v. Sec’y of Hous. & Urban Dev.*, 799 F.2d 774, 793 (1st Cir. 1986) (“In view of these provisions, it is unlikely that ‘Congress absentmindedly forgot to mention an intended private action’ against HUD under section 3608(d). We therefore hold that a remedy against HUD for failure to comply with section 3608(d) is available only pursuant to the APA.” (citations omitted)).

¹⁴³ 5 U.S.C. § 706(2).

¹⁴⁴ See, e.g., *Milwaukee Inner-City Congregations Allied for Hope v. Gottlieb*, 944 F. Supp. 2d 656 (W.D. Wis. 2013) (challenging the FHWA for issuing an allegedly inadequate EIS).

¹⁴⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“Although these procedures are almost certain to affect the agency’s substantive decision, it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.”).

¹⁴⁶ See *Archer*, *supra* note 3 (manuscript at 60 n.342) (surveying this record).

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¹⁴⁸ *Id.*

¹⁴⁹ LLOYD BURTON, COLO. SIERRA CLUB ISSUE TEAM ON ENVTL. JUST. & SOC. EQUITY, REPORT TO THE CLUB ON THE SETTLEMENT OF SIERRA CLUB ET AL. V. CHAO, ET AL. (D. Colo. No. 17-1679), at 3 (2019), <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u18882/SC%20et%20al%20v.%20Chao%20et%20al%20Settlement%20Report%20Compressed.pdf>.

¹⁵⁰ *Id.* at 4–6.

¹⁵¹ *Id.* at 6–9.

¹⁵² This portion of the DOT Act has been recodified but is still commonly referred to as “Section 4(f).” *Section 4(f) of the Department of Transportation Act*, U.S. DEP’T OF TRANS. FED. TRANSIT ADMIN., <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/section-4f-department-transportation-act> (last visited July 23, 2020).

¹⁵³ 49 U.S.C. § 303(c)–(d).

¹⁵⁴ 49 U.S.C. § 303(c)(1).

¹⁵⁵ See OFF. OF PLANNING, DEV., & REALTY, U.S. DEP’T OF TRANSPORTATION, SECTION 4(F) POLICY PAPER 19 (2012), <https://www.environment.fhwa.dot.gov/legislation/section4f/4fpolicy.pdf> (“Minimization of harm may entail both alternative design modifications that reduce the amount of Section 4(f) property used and mitigation measures that compensate for residual impacts.”).

¹⁵⁶ 49 U.S.C. § 303(c)(2).

¹⁵⁷ 23 C.F.R. § 774.9(b) (2020).

¹⁵⁸ *City of Alexandria v. Slater*, 198 F.3d 862, 871 (D.C. Cir. 1999) (noting that, in contrast to NEPA, Section 4(f) “imposes a substantive mandate on the Administration: It prohibits the agency from taking an action that ‘uses’ a historic resource unless there is ‘no prudent and feasible alternative to using that land’ and the agency engages in ‘all possible planning’ to ‘minimize harm’ to the sites”).

¹⁵⁹ *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971) (affirming the appropriateness of using the APA to review Section 4(f) determinations).

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¹⁶¹ *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978) (“The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost.”).

¹⁶² See, e.g., *GDF Realty Investments, Ltd. v. Norton*, 326 F.3d 622, 625 (5th Cir. 2003) (describing the endangered animals at issue as subterranean, mostly eyeless, and no larger than eight millimeters).

¹⁶³ 16 U.S.C. § 1540(g).

¹⁶⁴ See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 571–74 (1992) (discussing the limitations of the ESA’s citizen-suit provision).

¹⁶⁵ See *Am. Soc’y For Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 337 (D.C. Cir. 2003) (“[A]n injury in fact can be found when a defendant adversely affects a plaintiff’s enjoyment of flora or fauna, which the plaintiff wishes to enjoy again upon the cessation of the defendant’s actions.”).

¹⁶⁶ See *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entm’t, Inc.*, 659 F.3d 13, 24–25 (D.C. Cir. 2011) (discussing these circumstances).

¹⁶⁷ See Elijah Chiland & Adrian Glick Kudler, *A Guide to CEQA: California’s Environmental Law That Developers Love to Hate*, CURBED (Oct. 10, 2018, 9:47 AM), <https://la.curbed.com/2012/2/7/10398386/ceqa-california-environmental-quality-act-law>.

¹⁶⁸ CAL. PUB. RES. CODE § 21082.2 (West 2020).

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¹⁷⁰ The Times Ed. Bd., Opinion, *It Was a Terrible Idea to Build a New Freeway in Los Angeles County. Now It's on Hold for Good*, L.A. TIMES (Oct. 6, 2019), <https://www.latimes.com/opinion/story/2019-10-06/high-desert-corridor-freeway-stopped>.

¹⁷¹ Joe Linton, *Caltrans Settles Environment Lawsuit, Cancels High Desert Freeway Project*, STREETS BLOG LA (Oct. 2, 2019), <https://la.streetsblog.org/2019/10/02/caltrans-settles-environment-lawsuit-cancels-high-desert-freeway-project/>.

¹⁷² The Times Ed. Bd., *supra* note 169.

¹⁷³ See JULIAN GROSS ET AL., COMMUNITY BENEFITS AGREEMENTS MAKING DEVELOPMENT PROJECTS ACCOUNTABLE 9–11 (2005) (describing the concept of community benefits agreements).

¹⁷⁴ See Matthew Raffol, *Community Benefits Agreements in the Political Economy of Urban Development*, ADVOC.'S F., 2012, at 28, 31, https://www.ssa.uchicago.edu/sites/default/files/uploads/AdvocatesForum_2012_web_1.pdf (noting that “[d]evelopers might not faithfully implement the terms of the CBA if community groups do not monitor the process, and violations of the agreement have no chance of legal enforcement if CBA signees do not file for judiciary redress”).

¹⁷⁵ See GROSS ET AL., *supra* note 172, at 29 (describing this as “[p]erhaps the best-known community benefits agreement”).

¹⁷⁶ David A. Marcello, *Community Benefit Agreements: New Vehicle for Investment in America's Neighborhoods*, 39 Urb. Law. 657, 658 (2007).

¹⁷⁷ GROSS ET AL., *supra* note 172, at 14.

¹⁷⁸ *Policy & Tools: Community Benefits Agreements and Policies in Effect, P'ship for Working Fams.*, <https://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect>.

¹⁷⁹ Jim Kunstler, *An Interview With Jane Jacobs, Godmother of the America City*, METROPOLIS MAG. (May 4, 2016), <https://www.metropolismag.com/cities/jane-jacobs-godmother-of-the-american-city/>.

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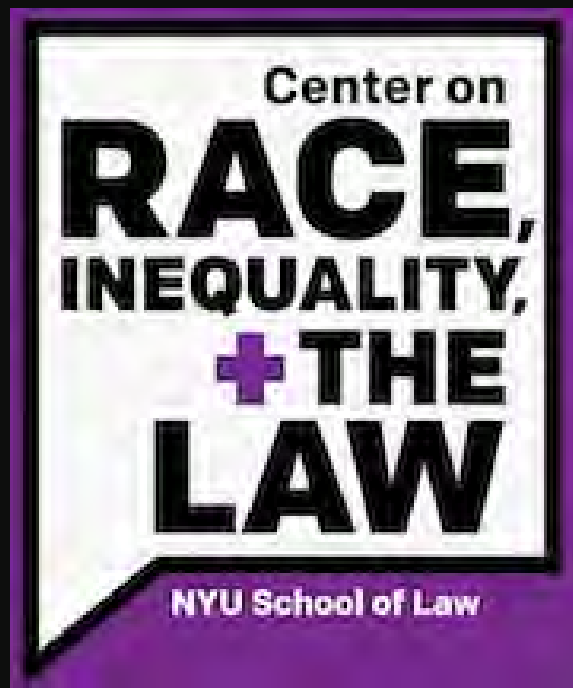
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