



NORTHEAST OHIO AREAWIDE COORDINATING AGENCY

MEMORANDUM

TO: NOACA Board of Directors

FROM: Grace Gallucci, Executive Director

DATE: March 3, 2017

RE: **Urbanized Area Funding Policies:
Resolution No. 2017-012 Disadvantaged Communities Policy, and
Resolution No. 2017-013 Environmental Justice Communities Policy**

ACTION REQUESTED

The Board of Directors is asked to approve two items, each of which is a separate resolution:

1. A re-designation of the existing Environmental Justice Communities Policy as the Disadvantaged Communities Policy, with minor revisions.
2. A re-defined and re-named Environmental Justice Communities Policy that meets the strict federal definition of "Environmental Justice."

The Policy Committee recommends these items for approval.

BACKGROUND

In September 2015, the NOACA Board approved the Environmental Justice Communities (EJ) Policy. This policy, an outgrowth of NOACA's original (1999) Urban Core Communities Policy, aimed to ensure that all people and communities received fair treatment regarding transportation investments and projects. It also sought to ensure that NOACA's transportation investments served all population groups, and that no socioeconomic community was unduly burdened by a transportation project

The concept of environmental justice is rooted in the 14th Amendment: "All citizens are created equal and entitled to equal protection." The Federal action requiring environmental justice was Presidential Executive Order 12898 issued on February 11, 1994. The Federal Highway Administration (FHWA) defines Environmental Justice as follows:

Environmental justice at FHWA means identifying and addressing disproportionately high and adverse effects of the agency's programs, policies, and activities on minority populations and low-income populations to achieve an equitable distribution of benefits and burdens. This includes the full and fair participation by all potentially affected communities in the transportation decision-making process.

The FHWA considers EJ in all phases of project development including: planning, environmental review, design, right-of-way, construction, and maintenance and operations. The FHWA also considers EJ in all other programs and activities, such as public involvement, freight planning, safety, Tribal consultation, and the Title VI civil rights program.

A review of NOACA's Environmental Justice Policy by FHWA found that the policy was not in alignment with federal EJ criteria. The NOACA policy considered other groups, such as the elderly or disabled, as part of its EJ criteria. Naming these groups went beyond the strict definition of EJ, which exclusively includes minority and/or low-income populations.

Further, as the analysis was based on the identified urban core communities rather than the NOACA region as whole, it excluded some geographies from consideration. Finally, using population criteria at the village or municipal level overlooked pockets of low income or minority populations that may be not be visible when averaging the data for all members within corporation limits.

Accordingly, to comply with federal guidelines and FHWA's request, NOACA would be required to either revise the name of the policy to remove EJ or to correctly reflect EJ and remove the other criteria. NOACA has developed a solution to address FHWA's concerns by creating a separate EJ policy while preserving the existing policy under a new name which ultimately allows an approach that will lead to more equitable outcomes. This requires the Board to take the actions described below, attached herein as two separate policies:

1. Re-designate the Board-approved "Environmental Justice" communities, adopted in September 2015, as "Disadvantaged Communities." Moreover, whereas these communities were eligible to reduce their local match to as little as zero percent (with 100% NOACA participation), they would instead be eligible to reduce local match to as little as 5% (with 95% NOACA participation).

As these communities were a subset of the Urban Core Communities, the benefits of that program (financial assistance for preliminary engineering for transportation projects and eligibility to apply for federal funds for right-of-way acquisition, less the initial \$50,000 right of way investment) remain available.

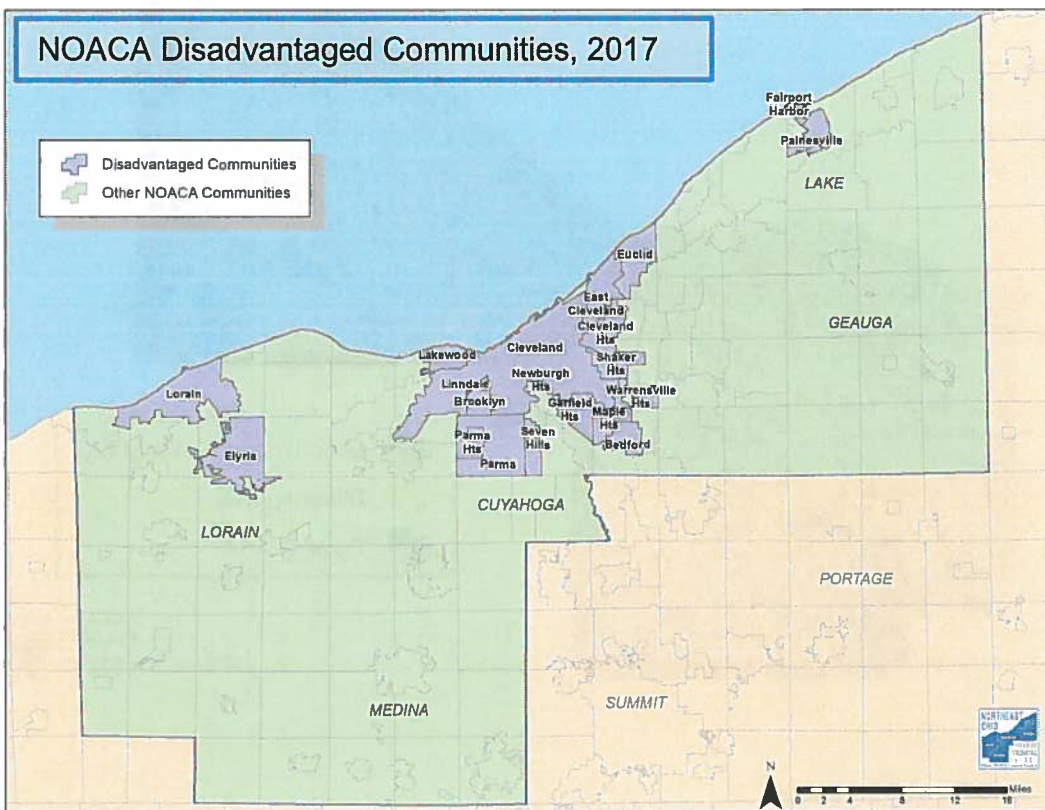
The criteria for designating a community as a "Disadvantaged Community" would remain the same as the 2015 criteria for an Urban Core Environmental Justice Community, with the detail added that the threshold for each criterion be the lesser of the U.S. rate or the regional rate, as follows:

- a. The community must be an "Urban Core Community" as defined by the NOACA Urban Core Communities Policy (adopted September 2015); and,
- b. The community must obtain any 3 of 6 points from the following:
 - 1) a minority population rate at or above the lower of the national or regional rate (1 point);
 - 2) a poverty level rate at or above the lower of the national or regional rate (2 points);
 - 3) an elderly rate at or above the lower of the national or regional rate (1 point);
 - 4) a disability rate at or above the lower of the national or regional rate (1 point); or,
 - 5) a "Low English Proficiency" rate at above the lower of the national or regional rate (1 point).

The current list of communities is as follows:

2015-Designated “Environmental Justice Communities” to be re-designated “Disadvantaged Communities”

Bedford	Fairport Harbor	Painesville
Brooklyn	Garfield Hts.	Parma
Cleveland	Lakewood	Parma Hts.
Cleveland Hts.	Linndale	Seven Hills
East Cleveland	Lorain	Shaker Hts.
Elyria	Maple Hts.	Warrensville Hts.
Euclid	Newburgh Hts.	



2. A new Environmental Justice Areas Policy with revised eligibility criteria and benefits.

Geography: Environmental Justice areas will be identified at the Transportation Analysis Zone (TAZ) level. A TAZ is an agglomeration of Census Blocks, but is smaller than a Census Tract. This allows for a more refined approach with significant accuracy, small enough to capture population within a tiny geography, yet large enough to leverage accurate sample data.

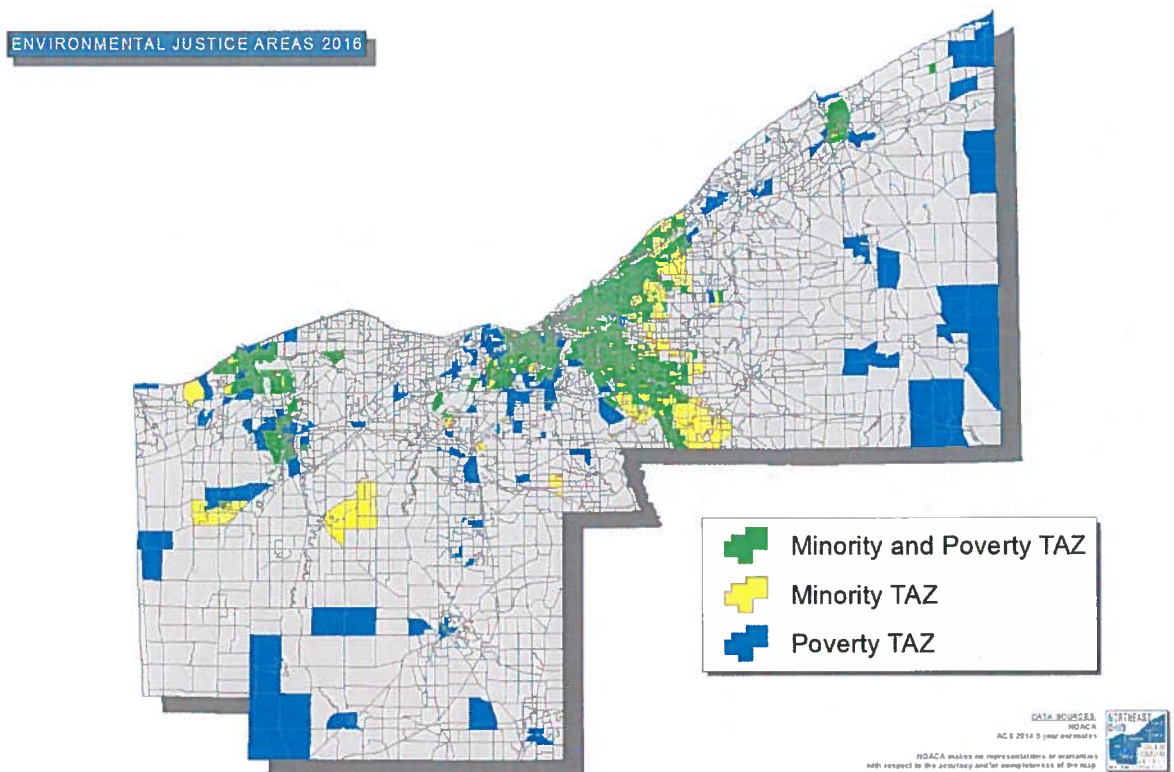
Criteria: A TAZ will be identified as an EJ Area if it has a minority population percentage at or above the lesser of the regional average or the national average and/or a population in poverty

whose percentage of the full TAZ is at or above the lesser of the regional average or the national average.

Though rates will change over time, based on the latest data currently available, the current locations are identified as an EJ area if they meet either or both of the following thresholds:

- Percent of residents of minority status at or above: 28.81%
- Percent of residents below the poverty level at or above: 14.72%

The resulting analysis has identified the following Transportation Analysis Zones as EJ Areas:



Projects that will be implemented in Environment Justice Areas are eligible for the following benefits:

- Sponsors may apply for funding for preliminary engineering for transportation projects
- Sponsors may apply for federal funds for right-of-way acquisition, less the initial \$50,000 right of way investment
- Sponsors may apply for toll credits, reducing local match to as little as zero percent (100% NOACA funding participation) by using up to 20% funding from NOACA toll credits.

Note that the benefits above are not new; they were adopted by the Board in September 2015 for then-designated Environmental Justice Communities.

Under the attached EJ policy, these benefits apply to projects within an EJ area. For projects that span both EJ areas and non-EJ areas, the 0% match requirement and other benefits would apply only to the portion of the project that lies within the EJ area. (The preliminary engineering and right-of-way acquisition assistance and a 5% or 10% match requirement benefit would still be permitted if the remaining portion of the project falls within an Urban Core Community or a Disadvantaged Community.)

In addition to these benefits, each major project funded or approved by NOACA will be assessed for its potential negative impact on EJ areas as well as its potential positive outcome for EJ areas.

FINANCIAL IMPACT

For the 2015-designated EJ communities that are re-designated as Disadvantaged Communities, the local match participation increases from 0% to 5%, unless the project is in an area defined as an Environmental Justice area under the new (2017) Environmental Justice policy. Projects that fall within locations designated in Environmental Justice Areas under the new (2017) Environmental Justice Policy will be eligible for a 0% local match requirement. For projects that span both EJ areas and non-EJ areas, the 0% match requirement would apply only to the portion of the project that lies within the EJ area.

CONCLUSION/NEXT STEPS

With Board approval, the Disadvantaged Communities Policy and Environmental Justice Areas Policy will be implemented accordingly.

ATTACHMENTS:

Disadvantaged Communities Policy
Environmental Justice Communities Policy

GG/rl/2937b

January 27, 2017

ENVIRONMENTAL JUSTICE POLICY

POLICY STATEMENT

Environmental justice is a framework to ensure that the benefits and burdens of regional transportation investments are shared by low income and minority groups. The Northeast Ohio Areawide Coordinating Agency's (NOACA's) Environmental Justice Policy designates Environmental Justice areas based on the income level and/or minority status of a location's population, and develops specific programs for these communities, in order to align with the principles and policies of Presidential Executive Order 12898.

AUTHORITY

14th Amendment to the US Constitution
Presidential Executive Order 12898 (February 11, 1994)

SUPERSEDEENCE

This policy replaces the Environmental Justice Communities Policy, adopted in September 2015.

PURPOSE

To comply with Presidential Executive Order 12898, issued on February 11, 1994, recipients of federal funds and agencies charged with the distribution of federal funds must ensure that low income populations and minority populations are not unfairly burdened by transportation investments and are treated fairly in processes expending federal funds.

The concept of environmental justice is rooted in the 14th Amendment: "All citizens are created equal and entitled to equal protection." The Federal action requiring environmental justice was Presidential Executive Order 12898 issued on February 11, 1994, that states, in part:

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

Accordingly, this policy allows for NOACA to support reinvestment in environmental justice areas and to ensure such groups are not disproportionately impacted by transportation projects. Moreover, this policy outlines the criteria for determining locations of environmental justice concern and the benefits of such a designation.

CRITERIA

Environmental Justice areas will be identified at the Transportation Analysis Zone (TAZ) level. A TAZ is an agglomeration of Census Blocks, but smaller than a Census Tract, allowing for a

refined approach with significant accuracy, small enough to capture population within a tiny geography, yet large enough to leverage accurate sample data.

A TAZ will be identified as a location of EJ concern if it has a minority population percentage at or above the lesser of the regional average or the national average and/or a population in poverty whose percentage of the full TAZ is at or above the lesser of the regional average or the national average.

Though rates will change over time, based on the latest data currently available, the current locations are identified as an EJ area if meets either or both of the following thresholds:

- Percent of residents of minority status at or above: 28.81%
- Percent of residents below the poverty level at or above: 14.72%

USES OF THE DESIGNATION

Projects that will be implemented in environment justice areas are eligible for the following benefits:

- Sponsors may be eligible to apply for financial assistance for preliminary engineering for transportation projects;
- Sponsors may apply for federal funds for right-of-way acquisition, less the initial \$50,000 right of way investment typically required;
- The use of toll credits to reduce local match requirements: project sponsors are eligible for 100% NOACA funding participation, utilizing 20% funding from Toll Credits.
- Other programs that may be conceived of in the future.

These benefits apply to projects within an EJ area. For projects that span both EJ areas and non-EJ areas, the 0% match requirement and other benefits would apply only to the portion of the project that lies within the EJ area.

In addition to these benefits, each major project funded or approved by NOACA will be assessed for its potential negative impact on EJ areas as well as its potential positive outcome for EJ areas.

FUTURE UPDATES OF DESIGNATED TAZ'S

The list and map of designated environmental justice areas shall be updated periodically, as newer data are released and geographic socio-economic changes are observed in the region.

**RESOLUTION 2017-013
(ENVIRONMENTAL JUSTICE
AREAS POLICY)**

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
NORTHEAST OHIO AREAWIDE COORDINATING AGENCY**

WHEREAS, the Northeast Ohio Areawide Coordinating Agency (NOACA) is the Metropolitan Planning Organization (MPO) for the counties of Cuyahoga, Geauga, Lake, Lorain, and Medina, and the City of Cleveland; and the areawide water quality management agency for the same region; and

WHEREAS, NOACA's Urban Core Communities Policy was revised by the NOACA Board of Directors (Res 2015-055) in 2015; and

WHEREAS, NOACA's Environmental Justice Communities Policy (Res 2015-056) was created in 2015 to ensure support for Urban Core Communities and for communities with concentrations of minority, low-income, elderly, disabled and low English proficiency populations; and

WHEREAS, NOACA's Environmental Justice Communities Policy went beyond the criteria established in Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which requires federally funded agencies to specifically address the needs of minority and low-income populations, and

WHEREAS, NOACA's Board of Directors has since revised and renamed the Environmental Justice Communities Policy as the Disadvantaged Communities Policy in order to meet the original goals of the Environmental Justice Policy, and

WHEREAS, as an agency administering funds from federal programs, NOACA is required by federal regulations to support environmental justice goals as established by the U.S. Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Northeast Ohio Areawide Coordinating Agency, consisting of 45 principal officials serving general purpose local governments throughout and within the counties of Cuyahoga, Geauga, Lake, Lorain, and Medina that:

Section 1. A new Environmental Justice Areas Policy that adheres to the strict federal definition of Environmental Justice, as described in the attached policy document, is hereby approved.

Section 2. The Executive Director is authorized to implement NOACA's investment policies to reflect the Environmental Justice Areas Policy.

Section 3. The Executive Director is authorized to transmit certified copies of this resolution to the appropriate federal, state, and local agencies.

Certified to be a true copy of a Resolution of the
Northeast Ohio Areawide Coordinating Agency Board
of Directors adopted this 10th day of March 2017.

Secretary: 

Date Signed: 3-10-2017