

Institutional Change in Urban Environmentalism:  
A case study analysis of state-level land use legislation  
in California and New York

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## ABSTRACT

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This study examines how community development and mainstream environmental groups form coalitions in state-level urban environmental legislation and the effect these coalitions have upon larger processes of institutional change. I argue that the alignment of community development and environmental interests is essential in the efforts to flatten the existing power hierarchy around land use decision-making and open up new possibilities for urban form. It helps to form a “counter-institutional” response which combines “pragmatic” and “purist” interests to resolve the social and environmental dilemmas of land use. This study begins by establishing the extent of the institutional divide between community development and environmentalism through an archival analysis of the 1970s debate over national land use legislation. It then presents two case studies of policies which seek to close this divide: (1) the New York Brownfield Opportunity Area Program of 2003 which was initiated by community groups and (2) the California Senate Bill 375 of 2008 which was initiated by environmental groups. The case studies employ interview data, surveys of organizations, observations of public meetings, and document review. The cases examined provide examples of attempts to expand potential governance outcomes by forming “heterarchic” alliances across policy silos in order to make land use regulation responsive to the wider concerns of urban environmentalists. I find that heterarchy is achieved in the California case, but not in the New York case. The varying degrees to which urban and environmental advocacy groups are able to bridge the institutional divide between them is determinant of these outcomes. The extent to which heterarchic governance is achieved, in turn, impacts the ability of each policy to change the institutional structure of land use regulation.

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## **List of Acronyms**

APS: Alternate Planning Strategy

BCC: Better California Campaign

BOA: Brownfield Opportunity Area

CAFE: Corporate Average Fuel Economy

CAP: Community Action Program

CARB: California Air Resource Board

CEQ: Council on Environmental Quality

CEQA: California Environmental Quality Act

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act

COG: Council of Governments

CRA: Community Reinvestment Act

DEC: Department of Environmental Conservation

DHCD: Department of Housing and Community Development

DOH: Department of Health

DOI: Department of the Interior

DOS: Department of State

DOT: Department of Transportation

EDF: Environmental Defense Fund

EPA: Environmental Protection Agency

FDR: Franklin Delano Roosevelt

FWPCA: Federal Water Pollution Control Act

GHG: Green House Gas

## **List of Acronyms (continued)**

HUD: Department of Housing and Urban Development

LCV: League of Conservation Voters

MPO: Metropolitan Planning Organization

MTP: Metropolitan Transportation Plan

NEPA: National Environmental Policy Act

NGRS: National Goals Research Staff

NLUPA: National Land Use Policy Act

NPCR: New Partners for Community Revitalization

OMB: Office of Management and Budget

RHNA: Regional Housing Needs Allocation

RTAC: Regional Targets Advisory Committee

RTP: Regional Transportation Planning

RTPA: Regional Transportation Planning Agency

SCS: Sustainable Communities Strategies

SRB: Single Regeneration Budget

TOD: Transit-Oriented Development

UAC: Urban Affairs Council

USDA: United States Department of Agriculture

VMT: Vehicle Miles Traveled

WHCF: White House Central Files

YMPJ: Youth Ministries for Peace and Justice

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Early in my doctoral studies I had the benefit of, on a regular basis, witnessing two great scholars debate theories of urban justice and the right to the city. Peter Marcuse and Susan Fainstein made their explorations of urban theory part of the education that they offered their students. The collegiality, rigor, generosity and openness with which they approached these debates left an indelible mark on my academic pursuits. I have tried, imperfectly, to reflect these qualities in my own research. I will carry their influence with me throughout my career.

I suspect it is common for a doctoral dissertation in the social sciences and policy studies to begin from a vague focus with only a broad sense of the direction in which it will head. I feel, though, that this project perhaps began with somewhat more vagueness and broadness in its focus than is usual. My advisor, Robert Beauregard, stuck with me throughout the long development stage and always challenged me to sharpen my thinking, be direct in my writing, and rigorous in the data and analysis that I present. I am a different, and far better, researcher now than when I began as a result of his careful guidance.

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## **Dedication**

There are countless advocates, planners, activists, volunteers, policymakers, and legislators working to make cities more ecologically sound and socially just. In the course of this research, I gained an appreciation for the difficulty of making these goals happen at once. This dissertation is dedicated to those who engage in this work. The greatest compliment I could receive is that this research has in some way been of use in their efforts.

## Chapter 1: Introduction

# The Institutional Challenge of Urban Environmentalism

The barrier to building a better city is not lack of knowledge, but refusal to apply that knowledge.  
-Anne Whiston Spirn<sup>1</sup>

### 1.1| Statement of Purpose

In the United States, urban environmental practice includes a loosely tied set of actions carried out by individuals and organizations working at the intersection of community development and environmentalism. Especially since the 1960s, the community development field has built a large base of professionalized organizations with a focus on urban problems such as residential segregation, neighborhood reinvestment, and housing affordability (see Halpern, 1995). Also since the 1960s, environmentalists have built their own institutional structure with a focus on ecological issues such as habitat preservation, watershed management, and greenhouse gas reduction, some of which are concerned with cities and some of which are not (see Thiele, 1999). In recent years, a subset of community development activists has focused on the connection between the well-being of local communities and healthy natural ecosystems (see Hillman, 2002). As well, some environmentalists have focused on the connection between urban development practices and global warming, leading to greater engagement with local communities and urban issues (Gonzalez, 2005; Solecki and Oliveri, 2004). In this context, urban environmentalism has emerged as a hybrid set of practices that leverage the institutional structure of both community development and environmentalism in order to work on issues such as environmental justice, urban environmental stewardship, and sustainability.

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<sup>1</sup> Whiston Spirn, A. (1984). *The Granite Garden: Urban Nature and Human Design*. Harper Collins: New York, p. 263.

However, the growth of urban environmentalism has been contested. While both community development and environmental activists have increasingly recognized the inseparable character of social and ecological issues, the two sides are often pitted against one another in local land use debates. For example, when the New Jersey Department of Environmental Protection sought to limit the permits for new wastewater infrastructure to ecologically sensitive areas in 2008, community development activists were concerned with how such a move would impact the ability to generate affordable housing and challenged the action.<sup>2</sup> Similarly, in California, state housing advocates have long fought against environmental claims that affordable housing should not be built in sprawled urban areas. California housing groups argue that wealthy suburbs are precisely where affordable residences are most needed because that is where the best schools and greatest economic resources exist.<sup>3</sup> Community development organizations faced similar challenges in Boulder, Colorado, where affordable housing developers met resistance due to anti-growth activism on the part of environmental groups (Gardner et al., 2003). And in New York City, arguments on the part of mainstream environmental organizations for high cleanup standards at “brownfield” sites in low-income and minority neighborhoods have been one factor leading to large, formerly industrial areas lying dormant for decades.<sup>4</sup> The outcome of these battles, which neither side sees as desirable, is often to prolong and even fuel sprawled development patterns. The institutional question that must be resolved is not whether affordable housing or ecological preservation is more important, but how

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<sup>2</sup> Taken from interview notes with a housing activist in New Jersey regarding the New Jersey Department of Environmental Protection’s rules excluding wastewater service provision to environmentally sensitive lands.

<sup>3</sup> Taken from notes of interview with affordable housing activists in California.

<sup>4</sup> Taken from notes of interviewees with local environmental justice activists in New York City.



growth in all types of urban and suburban communities throughout the nation should account for the needs of the natural environment.

The separation between environmentalists and urban reformers that the local land use battles demonstrate is derived from a policy system at odds with itself. At the federal level, laws that direct transportation funding and the mortgage tax credit encourage suburban areas to spread further into undeveloped land, reducing habitat for other species and potentially contaminating water sources. Meanwhile, other federal laws protect these same endangered species and waterways and there is no institutional capacity to bring the two policy arenas together. The division between natural and social regulatory regimes, as well, was institutionalized when urban reformers and environmentalists formalized their efforts into professional fields meant to regulate the negative effects of growth. Urban reform activism professionalized into the fields of urban planning, social work, public health, and, more recently, community development. Environmentalists developed specializations in law, ecosystem management, and lobbying.

These professional and policy fields operate in distinct political geographies for “natural” and “social” issues. Environmentalists are rooted geographically and politically outside of the city while urban reformers are concerned mainly with affecting the internal functions of the city. This political geography reinforces the “obscured...connections to the countryside around them” (Cronon 1991: 349) upon which urban commodities markets have always relied. As a result of the different political geographies for environmental and social regulation, economic interests have avoided the need to respond to the social and ecological impacts of their actions at the same time. Thus, as long as natural and social interests remain spatially and institutionally divided, a true urban environmentalism is impossible.

The purpose of this dissertation is to examine how activists build urban environmental institutions (i.e. laws, norms, rules and regulations) that embody both social and environmental goals. It focuses on two case studies of state-level legislation in New York (2003) and California (2008). The New York law, entitled the Superfund and Brownfield Act, established an “area-wide” strategy for remediating contaminated formerly industrial land and water within cities throughout the state. The California law entitled the Sustainable Communities and Climate Protection Act mandated more compact regional growth patterns in all major urban areas in order to reduce the need for car trips and, thus, reduce greenhouse gas emissions. In each case, community development and environmental organizations attempted to bridge the historic divide between social and environmental regulatory regimes.

Within the case analyses, the focus is upon the extent to which inter-organizational alignments create conditions for “heterarchic governance”. In the literature on political and organizational sociology, the concept of heterarchic governance attempts to explain how organizational alignments form across institutional divisions as the result of a temporary flattening of traditional power hierarchies formed to deal with conditions of uncertainty. The alliances that form during these periods follow a logic which is “neither market nor hierarchy” (Powell 1990) and enable established institutional arrangements to be altered (Stark 1996, Jessop 1997). While this literature has mostly focused on the institutions that govern private corporations, a few authors have applied the concept to urban development processes (see Grabher, 2001; Jessop, 1998; McQuarrie, 2010). I extend this literature to the study of urban environmental policy.

This research examines institutional change in urban environmentalism. My main research questions are: (1) What is the extent of the institutional divide between community

development and environmentalism? (2) Why do alliances form across community development and environmental interests in land use policymaking? (3) How do these alliances alter land use institutions? My argument, in brief, is that the extent to which organizations in the policymaking process successfully create heterarchic alliances determines the ability to create long-term institutional changes. When community development and environmental issues were successfully combined, the traditional power hierarchy around land use regulation was temporarily flattened. As a result, the ability to build a single socio-ecological institution that supports the emerging work of urban environmental practice increased. The case studies, then, highlight how urban environmental planners can recognize, create, and leverage opportunities for changing the institutional structure that has resulted in unsustainable patterns of growth.

In the remainder of this chapter, I develop the background for my study through an examination of the history of urban environmentalism along two tracks: community development and mainstream environmentalism. At times the two sides emphasized their connections, but the history of urban environmentalism in the United States is mainly about the formation of separate institutional structures around social and ecological issues. Urban environmentalism, in fact, would have seemed an oxymoron to many of the early proponents of each field. The desire to undo this divided institutional structure has only recently become incorporated into practice.

In Chapter 2, I describe in detail my research methodology. I rely upon qualitative methods to analyze the institutional challenges that underlie my cases and the dynamics that determine outcomes. I utilize archival analysis of federal documents related to the 1970s debates over national land use policy to establish the extent of the divide between community development and environmental institutions. As well, I employ NVivo software to analyze data from sixty-five semi-structured interviews with the heads of organizations and key informants

involved with my case studies. Finally, I use survey-based organizational network analysis of the groups working to implement the New York State policy to further support and contextualize my findings.

Chapter 3 presents a review of the contemporary literature on urban environmentalism and how the fields of sociology, economics, political science and planning have viewed governance, institutions and institutional change. The urban environmentalism literature demonstrates the extent to which the focus has been on the technical rather than institutional challenges faced by planners and policymakers—a direction I seek to depart from by incorporating the literature on institutional change. The governance and institutional literatures highlight how organizations enforce and maintain established norms, but also how they can be vehicles for institutional change.

In order to demonstrate the extent and effect of the institutional divide between community development and environmentalism, Chapter 4 presents the results of my archival analysis of the failed effort between 1970 and 1975 to create a national land use policy in the United States. Numerous bill proposals were presented in the United States House of Representatives and the United States Congress for a national land use policy, some representing community development interests, some environmental interests, and some attempting a compromise between the two sides. Generally, all proposals sought to encourage states to develop growth plans that preserved ecologically sensitive areas and established guidelines for regional growth. The failure to pass any of the bills, despite strong support from across the political spectrum, expressed the tensions between the newly developing urban and environmental federal regulatory structures and, ironically, cemented the institutional divide that followed. All efforts since this time to create more sustainable and socially just land use patterns

have had to contend with the national institutional structure that resulted from this period. My archival analysis relied on materials contained within the National Archives of the United States including congressional, presidential, Department of Housing and Urban Development (HUD), and Department of Interior (DOI) documents.

Chapters 5 and 6 present the findings from my two case studies of contemporary state-level urban environmental land use legislation. Chapter 5 focuses on the creation of California's Sustainable Communities and Climate Protection Act (2008) and Chapter 6 focuses on New York State's Superfund and Brownfield Law (2003). The key analytic distinction between these cases is that the California policy was formulated within the normal political process of bill negotiation while the New York policy was formulated through a formal consensus-building effort. The different capacities for achieving long term institutional change in each case are highlighted. The California case achieved a greater degree of heterarchic alignment amongst interests through the policy negotiation process. The two case studies offer important lessons about the role that land use planning can play in efforts to build new institutional arenas that combine community development and environmental goals. The case studies rely on interviews with elite representatives from relevant community development groups; mainstream environmental organizations; environmental justice organizations; state, regional and local agencies; and private developers.

Chapters 7 and 8 summarize my findings and present my conclusions. Chapter 7 argues that urban environmentalists must not only create conditions of heterarchic governance that result in new organizational alignments, but must also link those alignments across functional policy silos and multiple geographic scales. Chapter 7 describes the emergent structure of counter-institutions in the cases and demonstrates how they enable the multi-scaled and flexible

institutional structures that are required. In Chapter 8, I present an overview of my findings. I reiterate the evidence that there is an institutional divide which creates distinct policy silos between community development and environmentalism at all levels of government in the United States. I argue that this divide is the greatest institutional hurdle faced by the field of urban environmental policymaking. I then compare the findings from my cases to argue that there is a need to create heterarchic governance moments in order to open up the possibility for institutional change around land use that reflects the goals of urban environmentalism. Finally, I present some limitations of my research and offer some recommendations for policy and directions for future research.

## **1.2| Background**

### *1.2a: Building in a Divide: Urban Environmentalism in the United States*

The internally contradictory system of land use regulation in the United States is one reason why the effort to create sustainable urban development programs by environmentalists and urban reformers alike has generally failed at the national level (see Bulkeley and Betsill 2003). In the postwar years, there was a simultaneous push toward urban sprawl (i.e. low density land uses) and pull toward protection of undeveloped areas. On one hand, federal lawmakers regularly direct transportation funding, affordable housing, and the home mortgage tax credit toward financial and infrastructural incentives for suburban areas to spread further into undeveloped land, reducing habitat for other species and potentially contaminating water sources. On the other hand, some federal legislators work to continually strengthen laws such as the Endangered Species Act of 1973 and the Federal Water Pollution Control Act (FWPCA) to protect these same species and waterways. The legislative forces for growth and environmental

protection generally work in isolation from one another with limited capacity to reconcile the two conflicting policy arenas.

Recent efforts to create sustainability policy have met with similar difficulties. On the local level, state and city initiatives such as Smart Growth and transit-oriented development programs, have highlighted the potential for urbanization to be part of the solution rather than the cause of social and ecological degradation. However, localities seeking to implement these policies are faced with a larger context of urbanization that is not necessarily conducive to their success. A good example of local difficulties is found in efforts to construct New Urbanist developments that proclaim to bring both social and environmental benefits but often generate car-oriented, socially segregated neighborhoods with little more than neo-traditional design finishes to differentiate them from typical suburban sprawl. In this case, explicit social and environmental goals on the part of New Urbanist land use planners are blocked by existing institutional norms (see Meredith, 2003, p. 487). Unless the institutional issues that lead to sprawled and segregated developments are addressed, design-oriented projects like New Urbanism cannot succeed in reducing the environmental impacts of urban growth.<sup>5</sup>

A number of explanations have been developed for why this internally contradictory federal system of land use regulation has developed in the postwar years. Urban historians have detailed the extent to which certain federal policies, such as the Federal Highway Act of 1956 and the lending policies of the Federal Housing Administration (FHA), worked against environmental goals (Jackson, 1985, pp. 163-71; Rome, 2001, Chapter 1). As well, environmental economists focus on the role of a decentralized tax structure in making localities

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<sup>5</sup> To be fair to the New Urbanist perspective, the need to address institutional issues has been acknowledged in their push to change zoning and regional land use goals. However, while the form-based zoning codes that they advocate can address some of the local issues with sprawl development, they do not address the more difficult regional patterns of development that dictate the types of infrastructure that that locality has accessible.

compete to attract business by loosening their environmental regulations (see Revesz, 1992). Other urban researchers examine the role of city boosterism, frontier mentality, and the individualistic character of U.S. culture as a cause of unsustainable economic growth policies that push cities ever-outward (see for example Beauregard, 2006, pp. 87-97; Cronon, 1991). As well, authors have looked at the effects upon land use of a social psychology rooted in a generalized sense of fear derived from an increasing sense of risk. They have focused on the role that fear of disease, bombs, infrastructural failure, and crime has played in driving people toward suburban and fortress-like lifestyles (see Melosi, 2008, Chapter 14; Davis, 1998; Beck, 1992).

In addition to the political, cultural, and practical roots of the inability to create balanced urbanization in postwar America, some authors have explored structural explanations that examine the impacts of modern capitalist democracies. These authors highlight the unsustainable nature of commodities production and its relation to urban growth (see Cronon, 1991, Part II). Harvey (1996) argued that the early development of industrial capitalism characterized by demands for commodification of labor, land, and natural resources mixed with Enlightenment era notions of man's domination over nature created a political-economic system that subordinates nature to the needs of capital. This system, Harvey argued, remains the ideological foundation of contemporary industrial urbanization and constrains the ability of environmental regulations to create ecologically sustainable cities. He argued as well that this ideological base has become global. He writes (p. 131), "The practice and theory of capitalistic political economy with respect to the environment has consequently become hegemonic in recent world history." As several authors have pointed out, this hegemonic position and the worldview it supports is often blind to the ecological base upon which society is built (see Foster, 2002). The result from a structuralist perspective is that existing institutional arrangements which enforce the norms and



rules for urban development are deeply entrenched and will always prioritize economic growth at the expense of the natural environment (see Marsh, Porter, and Salvesen, 1996, p. 130) and local communities (see Logan and Molotch, 1988).

However, efforts to challenge the hegemony of institutional priorities that subordinate social and environmental concerns to urban growth have always been a part of U.S. politics.<sup>6</sup> As such, environmentalism and urban reform comprise two of the most enduring and contentious “counter-attacks” against the urban industrial order.<sup>7</sup> Though these two political movements formed at roughly the same time and have always had threads of connection they comprise distinct arenas of action with their own organizational infrastructures. In order to understand the challenges faced by the contemporary urban environmental movement it is necessary to examine the development of the two major building blocks of the movement: community development and environmentalism.

### 1.2b: *From Urban Reform to Community Development: A Brief History*

Since its formation as a modern professional field in the 1960s, community development has focused on improving the quality of life for local residents (Halpern 1995, 127-148). The mainstream trend amongst community development organizations in recent decades has been to leverage public subsidies and resources to enable real estate development and programming in disinvested communities, including affordable housing development, cooperative housing programs, and communal land trusts. They have done so in order to encourage reinvestment in declining neighborhoods that are often inhabited by low-income minority residents. These neighborhoods are frequently characterized by concentrated poverty; high crime; poor public

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<sup>6</sup> Such efforts are documented as early as Alexis de Tocqueville’s *Democracy in America* (1835 and 1840)

<sup>7</sup> The term is taken from Mumford (1961, p. 474); see also Scott (1969) on municipal reform and Andrews (2006) on environmentalism.

health and education outcomes; and deteriorating physical infrastructure. As well, community-based organizations work to fight displacement of low income residents from areas during periods of reinvestment (see Marwell, 2004).

While the social goals of these programs are imperative to the neighborhoods where groups work, limited time and resources means that there is little capacity to consider the impacts that urbanization processes have upon the natural environment (see Bradshaw et al., 2005, p. 22; Roseland, 2000). The inability to account for environmental impacts has led at times to tense relations between community developers seeking to create new affordable developments and environmentalists seeking to limit the ecological impact of urban growth.<sup>8</sup> While there is a growing set of interests working to bring the goals of environmental sustainability and community development together such as the Enterprise Foundation and the Local Initiatives Support Corporation (LISC),<sup>9</sup> the institutional barriers for doing so remain formidable.

The exclusive focus on quality of life and social issues in cities has not always been a characteristic of community development in the United States. Community development organizing can be traced back to the late nineteenth century as part of the Progressive Era urban reform movement. One of the earliest and most effective strategies was developed by mid-nineteenth century housing advocates in New York City who were motivated by high levels of disease and social unrest that came with the unsanitary and unsafe conditions of poor urban ghettos. Nineteenth century housing advocates sought to address these issues by generating ideas for healthier models of housing through experimental projects and design competitions. They translated ideas for a better urban environment into practice first by engaging sympathetic

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<sup>8</sup> For example, in California environmentalists and affordable housing advocates have been at odds for decades over the proper location for affordable housing.

<sup>9</sup> Both the Enterprise and LISC have recently begun green building and sustainable design initiatives.

developers and later by improving building codes and statewide legislation which was subsequently adopted across the country (Plunz, 1990). Taken as a whole, this nineteenth century activism around slum upgrading served as a catalyst for the creation of many thousands of improved tenement buildings that came to dominate the built form of early twentieth century American cities. It also established a model for community development which combined the work of the public, private and civil society actors in an effort to improve social and environmental conditions (Davis, 2000).

Nineteenth century housing reformers were soon joined by other Progressive organizers from the Settlement House and the urban parks movements to address social and environmental ills in the city. The urban parks movement emerged following the creation of Central Park in New York City in the 1850s. At this time, prior to the formation of the professional fields of planning, public health and community development, the natural environment and the social conditions of the city were indivisible for urban reformers. A leader of the parks movement and one of the most prominent early advocates for planning in the United States, Frederick Law Olmsted, sought to create parks that were accessible to all classes. In so doing, he infused a social agenda of democracy and equality into open space planning for cities. He specifically designed his parks as respites from the industrial urban environment, which he thought necessary for the health of citizens (Schuyler, 1986). For Olmsted, the trees in the park would “supply the lungs with air screened and purified” (Olmsted, 1870, p. 304). He argued for trees to be planted throughout the city and for the creation of designated natural areas accessible for the recreation of all. His designs “embraced Romantic ideals—rejecting the grid system in favor of wandering paths” (Short and Short, 2008, p. 60). For parks and later playground advocates, the virtues of

recreational spaces within the city were self-evident and the ideas and practices that Olmsted espoused spread to cities throughout the United States (Walker 2007, p. 60).

Parks and housing advocates of the late nineteenth century were joined by activists from the Settlement House movement in their push to formulate a new set of Progressive Era institutions. They worked to ameliorate the unsanitary and overcrowded conditions, inadequate schools, and poorly maintained infrastructure that resulted from decades of rapid and disorderly urban growth. For settlement house workers, social ills were both cause and consequence of environmental ills in the industrial city (see Carson, 1990; Corburn, 2005). As a result of their comprehensive approach, settlement house workers were among the earliest practitioners of several modern professions including social work, community development, occupational health, and public health (Abramovitz, 1998; Reisch, 1986).

The neighborhood-based community organizing strain of Progressive Era activism that grew out of the combination of settlement house, parks, and housing activism served as the historical root of a professionalized field of community development that eventually became linked with the federal policy system (see O'Connor, 1999). Beginning with the Housing Act of 1949, which authorized urban renewal, slum clearance, and the creation of public housing, the federal government funded and organized large-scale “brick and mortar” programs to address neighborhood decline in cities. Initially, these programs were an extension of the philosophy that developed during the Progressive Era. Inspired by European public housing models, the Act was meant to be comprised of both social and physical programs to address the slum conditions that Progressive Era activists had been working on for decades. The Housing Act was supported and partially designed by housing reformers such as Edith Elmer Wood, settlement house workers

such as Louis Pink, and progressive activists such as Catherine Bauer (Von Hoffman, 2000, p. 301).

These programs were administered through municipal housing and development authorities created to funnel urban renewal money into local redevelopment plans for disinvested neighborhoods that were often near downtowns. Soon, though, local political and economic interests began to focus their attention on Title 1 of the Act, which provided federal funds and legal support for slum clearance. Growth-oriented municipal interests saw Title 1 as a means for generating new economic development opportunities. This focus on “urban renewal” began to look like “a form of class and race warfare” for those that were being displaced (Von Hoffman, 2000, p. 318). As urban renewal reached its peak in terms of actual demolition and construction during the 1960s, communities began to organize against the top-down directive style of the program that was displacing large low-income and minority communities (Halpern, 1995). The social goals that Progressive Era activists sought had largely been supplanted by economic development goals on the part of local governments. In the end, the localized system of planning in United States which Progressive reformers supported as a good governance strategy (see Weir, 2000) proved to have the unintended consequence of fueling competition for economic growth at the expense of low-income and minority communities.

In this context, the federal government built its next round of large-scale, anti-poverty initiatives which centered on political empowerment of disadvantaged communities rather than on direct provision of housing. The Community Action Program (CAP) section of the 1964 Economic Opportunity Act enabled the creation of Community Action agencies based upon what came to be a controversial premise of engendering “maximum feasible participation” on the part of community residents (see Moynihan, 1969). The CAP program would prove to be politically

infeasible, but was essential for developing the organizational base of the modern community development field (O'Connor, 1996).

In 1965, President Lyndon Johnson signed a bill authorizing the creation of the Department of Housing and Urban Development (HUD) and appointed Robert Weaver as the first black cabinet secretary in the nation's history to head the agency. From the start, urban activists sought to use the agency as a way of affecting "the integral relationship of the physical and social environments" (Pritchett, 2008, p. 282). Many argued that HUD should be a vehicle for empowering communities. While the agency was focused on connecting federal programs with local-level planning, it quickly became clear that HUD would be a bricks-and-mortar agency that supported development rather than employing the controversial empowerment strategy supported by CAP (see Dreier, 1996; Weaver, 1985). One of the first major programs developed by HUD was based on a proposal from the President's Task Force on Urban Affairs and Housing for a "Demonstration Cities" initiative. The initiative targeted federal funds to selected urban areas for comprehensive renewal. For participating cities that developed comprehensive plans, the Demonstration Cities program concentrated resources from urban renewal, public housing and other federal programs as well as nearly two billion dollars in new funds for redevelopment (Taylor and Williams, 1966).

The new bureaucracy and professional policy field that HUD created emphasized physical development over social programming. By this time, the CAP program had raised the considerable ire of many local governments which saw the federal support of local activist groups as an intrusion (O'Connor, 1996). HUD did not take control of CAP and the agency's early leaders were not eager to stoke the political fires that the CAP program had created. As a result, by the time that President Richard Nixon dissolved the CAP program in 1973, the focus of

federally-funded community development programs had moved entirely toward physical construction rather than social programming. Nixon was a supporter of devolving federal policy down to local levels and did not want to be seen as supporting a system that created difficulties for local government. As a result, the organizations supported by HUD and the federal community development apparatus were increasingly professionalized with skills that allowed them to work within, rather than in opposition to, existing local development regimes (Bratt and Keating, 1993).

Before Nixon came into office in 1969, the Economic Opportunity Act was amended to provide grants to non-profit Community Development Corporations (CDCs). CDCs initially focused on neighborhood organizing and job creation. They complemented CAP groups, Civil Rights organizations, and locally-funded community service agencies, as well as tenant and labor organizations. In the post-CAP era, the Nixon administration put CDCs under the Department of Housing and Urban Development (HUD) and in 1974 linked their funding to Community Development Block Grants (CDBGs) administered by city governments. This forced CDCs to become single-purpose service organizations that municipal governments could easily classify in their budgets (Stoutland, 1999). By the 1980s, CDCs became the dominant organizational form for local community development due in large part to the ability of the leaders of these organizations to alter their agendas based upon funding availability (Vidal 1992). At this time, CDCs began to adopt the brick-and-mortar focus that federal programming supported and many groups became affordable housing development agencies. This organizational structure forced groups into narrow niches specialized in physical development—a role far divorced from the broad-based activism of the Progressive Era roots of the field.

At roughly the same time that CDCs were adjusting to the CDBG funding structure, politically-oriented community based organizations (CBOs) formed a national movement aimed at fighting spatially targeted disinvestment on the part of banks. This movement resulted in the creation in 1975 of the Community Reinvestment Act (CRA) which required banks to actively lend in all communities in which they did business, including traditionally disinvested areas. This requirement eventually led most large banks to create community investment offices geared toward meeting CRA mandates. As a result, CRA helped create a new industry of Community Development Financial Institutions (CDFIs) which funnel money to local development projects. Large scale CDFIs, such as the Local Initiatives Support Corporation (LISC) and the Enterprise Foundation successfully lobbied in 1986 for the creation of Low Income Housing Tax Credits (LIHTC) to finance affordable housing construction. The LIHTCs were sold to investors by CDFIs specialized in tax credit “syndication” and the proceeds were funneled to CDCs (Benjamin et al., 2004). The result of this complex system of financing and development of affordable housing has been to make community development a field which leverages resources from the public, private and non-profit sectors, but requires a high degree of sophistication and specialization to do so.

The community development field has become embedded in a complex network of civil society, state, and private market organizations, as well as intermediaries and “public-private partnerships” that connect these organizations (see for example, McQuarrie 2010). Today, high profile CDCs such as The Woodlawn Organization in Chicago and The Bedford Stuyvesant Restoration Corporation in New York use “creative financing” methods to raise money for housing and small business projects forcing them to become increasingly responsive to demands for “short-term returns from subsidized property investments” (Weber 2002, p. 529). This



situation narrows the focus of these groups, limiting their capacity to include a wider base of issues in their everyday work (see Stoecker, 2003).

The funding connection between community development groups and dominant institutions such as state and local governments and banks reveals what DeFilippis and Saegert (2008) label the “difficulties and contradictions in the field” (p.43). In part, these contradictions stem from the fact that community development groups seek self-determination for neighborhoods through institutionalization of pro-community policies. The need to address problems even while seeking support from state and market sources means that community development organizations must fight to change that which they also must seek to be a part of in order to maintain funding. Randy Stoecker (2003) has described the contradictory nature of community development as an “organizing versus development” problem. He argues from a political economy perspective that CDCs ultimately hurt the cause of participatory governance for communities because they internalize the interests of capital and radicalize the more politically-oriented efforts at community-based organizing. Meanwhile, CDC advocates argue that such groups represent an improvement from private market developers because they offer a connection to development processes for poor residents. Stoecker disagrees and asks: “How does the CDC interact with the contradictions of urban capitalism? What are the political-economic forces impinging on the CDC, potentially hindering effectiveness?” In answer to his own questions, he argues that CDCs occupy a middle ground between the interests of use and exchange values. This, he says, is the “internalization of the capital-community contradiction and it leads to trouble” (p. 5).

Progressive Era activists might have found it difficult to comprehend the organizing versus development debate and the specialized treatment of social issues in the city as separate

from environmental issues. Settlement house workers were directly engaged with the producers of urban space, and they sought better practices in the form of both more rational physical development and higher power regulatory agencies and control. Only in recent years, as the environment has become more correlated with quality of life in the minds of urban residents, as evidenced by the rise in local environmental stewardship activities and the environmental justice movement (described below), has the lost focus on the related ecological and social issues of urban life been re-discovered within the community development field. In recent years, community groups nationwide have made urban environmental issues part of their agenda once again. It is too early to say if this increased attention will lead to alterations in the structure of the community development field, but it is clear that the divide between urban and environmental issues within the profession is breaking down.

### *1.2c: The Growth of Mainstream Environmentalism*

When Henry David Thoreau wrote, “With such huge and lumbering civility the country hands a chair to the city” (1854, p. 186) he was drawing a direct connection between the commodities taken from nature and the urban economies that those commodities supported. As Cronon (1991, pp. 55-147) observes, early conservation strategies developed in the mid-nineteenth century in response to the devastation of forests and grasslands that came when new urban infrastructure enabled mass production methods to be applied to commodities production. As a result, classic environmentalist concerns from land preservation to species protection and pollution regulation are ultimately about how cities and markets for goods and resources impact natural processes. Despite this connection between the disruption of natural processes and urban growth, mainstream environmentalists have avoided the kind of direct engagement with built

form that urban reformers have used to affect social conditions in cities. Rather, conservation strategies have focused on preserving rural land and shrinking the geography of allowable resource extraction.

One reason why the environmental movement has rarely engaged directly with processes of urbanization is because of an internal conflict present from the earliest days between the *protectionists* who sought separation of nature from society and the *conservationists* who sought integration of nature with society (Gottlieb, 1993, pp. 19-29). Both perspectives were concerned with controlling the extraction of natural resources that fueled rapid urban development during the rise of the industrial city in the late 1800s. The problem of how to best go about doing this, though, splintered environmental groups into two camps. The protectionists, represented by the preservation philosophy of John Muir sought to make large pieces of land off-limits to private interests that profited from the destructive spread of resource extraction into the urban hinterlands (Walker, 2007, Chapter 1). The conservationist perspective represented by the philosophy of Gifford Pinchot sought greater integration of nature and society. The conservationists believed in regulating and managing resource extraction processes, rather than stopping them altogether (see Meyer, 1997 for more on the political divide between Pinchot and Muir).

By World War I, modest gains in both environmental protection and conservation were made, but the environmental regulatory structure had already splintered. At the federal level, the National Forest Service adopted Pinchot's "right use" ideology that sought to develop scientific methods for managing forests (Miller, 2001, Part 4). The perspective of this group was exemplified by its placement within the Department of Agriculture, which sought to maintain rural lands as productive sources of agricultural products. Meanwhile the National Parks Service

was formed within the Department of Interior to protect certain large areas of wild lands, mostly in the west. The Department of Interior employed both conservation and preservation strategies, depending on which natural resource was being regulated, but with regard to land often favored protectionism.

The environmental regulatory system grew rapidly in the early 1900s following passage of the Antiquities Act under Theodore Roosevelt. The Act gave the federal government broad powers to claim ownership over land for historic or scientific purposes. This enabled the creation of a number of National Parks and preservation areas. Additionally, John Muir's Sierra Club grew into a large and powerful advocacy organization representing the protectionist philosophy for environmental regulation that pushed hard for the federal government to leverage its new-found powers and set aside increasing amounts of land. The internal contradictions between protectionists and conservationists, though, remained. Overall, the division between conservation- and preservation-minded activists and policymakers exposed a lack of consensus within the movement and "the absence of a clear vision concerning how to contend with the forces of urbanization and industrialization" (Gottlieb 1993, 24).

Between World War I and World War II, the tenure of Harold Ickes as Franklin Delano Roosevelt's head of the Department of Interior exemplified the entrenchment of both protectionist and conservationist interests in the federal government. The trend at the time amongst mainstream environmental organizations such as the Sierra Club and The Wilderness Society became one of immersion in the policymaking processes. Protectionist groups began to lobby the federal agencies as did private utilities and corporations with an interest in accessing resources on federal land (Gottlieb, 1993, pp. 35-36). As well, conservationist strategies that allowed for managed access to natural resources were especially well suited for creating jobs. As

such, they were integral to Roosevelt's New Deal programs for lifting the nation's economy out of depression (Ickes, 1935). Ickes directed his agency toward land use programs drawn from the protectionist agenda such as aiding in the creation of several new national parks. He also supported conservationist strategies for managing resources such as large-scale irrigation and water filtration projects that violated the protectionist principles (see Koppes, 1983).

By the post-World War II years and especially by the 1960s, the accommodation between preservation and conservation within federal policy that Ickes supported began to erode. Though both sides were embedded in the federal institutional structure for land use regulation by this time, a divided ideology came to characterize the environmental movement. As a result, when postwar suburban development patterns became an issue of concern for environmentalists, protectionist and conservationist approaches represented two poles of the mainstream environmental movement's response. There was no consensus over how to best approach the question of urban land use and suburban sprawl amongst the mainstream environmental groups. Many groups deferred to the "unbiased" opinions of a new class of technical experts and professionalized advocates working on their staffs to decide agendas (Gottlieb, 1993, pp. 55-59).

One of the first efforts to theorize how the technical expertise being developed by environmental policymakers could be applied to postwar urban sprawl was put forth by the influential landscape architect Ian McHarg in his best-known work, *Design with Nature* (1969). McHarg argued for a new data-driven approach to urban planning and design that incorporated theories from landscape architecture. He drew upon the ideas of Scottish urban planner and educator Patrick Geddes to design his approach to planning which relied upon an environmental inventory of the area being developed. McHarg's approach focused on protecting the most aesthetically pleasing and ecologically sensitive lands, such as floodplains and aquifers. McHarg

updated Geddes' ideas by calling for new mapping technologies and data processing tools to be incorporated into the practice of planning. He prescribed a type of urban development that started from a data-driven understanding of the natural elements in the area and then built around them. One of McHarg's students, Anne Whiston Spirn (1984), summarized his view: "Cities must resist the habit of fragmenting nature...an understanding of the urban natural environment should underlie all aspects of the physical design of the city" (p. 262).

McHarg's approach emphasized the importance of the technocratic skills developed by the environmental movement in the context of postwar urban growth. While he sought to establish an informed base of action for the practice of environmental planning, McHarg's ideas have been criticized for not attending to issues of power. McHarg did not address how the designs and technologies that he advocated get implemented (see Wheeler and Beatley 2004, p. 38 for a summary). This approach has also been criticized for the possibility that it can exacerbate social inequality (see Marcuse, 1998).

McHarg's efforts notwithstanding, urban development was a peripheral concern for environmental professionals during the postwar period. Many environmentalists had begun to focus on the advancing skills of ecological science and natural resource management. Existing federal environmental regulatory agencies including the Department of Interior and the National Forest Service were known entities for environmental activists and perceived as the best location for environmental policy. These agencies had no expertise or experience with urban policy. This would be an important factor in the 1970s debates over the proper administrative home for a national land use policy. These debates pitted environmentalists against community development activists and were essential in establishing the institutional structure that would support both sides.

The 1970s are often cited as the time when contemporary environmentalism was born. The first Earth Day on 22 April 1970 marked an elevated public consciousness around environmental issues (Odum and Barrett, 1971, p.4). That year, the claim by scientists that a “global warming” phenomenon which had been documented since the turn of the century was accelerating received extensive media coverage. The environmental consciousness that arose as a result of this and other realizations about the impacts of human activities on the environment highlighted individual responsibility for ecological stewardship through such programs as recycling and tree planting (see Fisher et al., 2012). Reflecting this heightened consciousness, President Richard Nixon announced environmental regulation as a major issue for his administration in his State of the Union address in 1970. That year, he established the Environmental Protection Agency (EPA) within his cabinet. The new agency was tasked with consolidating the functions of all agencies that dealt with pollution issues. This marked a considerable advance for the environmental regulatory community (Flippen, 2000).

The heightened attention to environmental issues in the 1970s also highlighted and intensified the institutional structure that divided social and environmental activism. At the first Earth Day in New York City, U.S. Senator Jacob Javitz supported efforts to address environmental concerns but reminded the crowd that had gathered in lower Manhattan that they should not replace social concerns. He stated, “I am concerned that this fight against environmental and physical pollution is so popular that it will [overwhelm] the longstanding and equally vital effort to deal with poverty, alienation, racial tensions, the gross inadequacy of health services, education, housing, and intelligent population control...” As the reporter covering Javitz’s speech commented, he was afraid that “today’s newfound attention to the

environment would distract attention from the misery of the poor.”<sup>10</sup> Javitz’s comments are representative of the competitive politics that characterized arguments over federal policy at the time. These competitive politics continued throughout most of the 1970s.

As well, the 1970s marked a period of professionalization and growth for mainstream environmental groups. Many groups, such as the Natural Resources Defense Council and the Environmental Defense Fund, had formed with the intent of having professionalized staff and technical expertise that could be easily absorbed within the environmental policy system, now led by the EPA. Most organizations, though, still incorporated both “adversarial and system management perspectives on how to achieve environmental change” (Gottlieb, 1993, p. 316). However, the incorporation of both opposition and management into the workings of environmental groups, much like in the community development field, was undone by the introduction of more complex policy instruments. By the 1980s, mainstream environmental organizations were largely focused on expanding and maintaining complex ecological conservation programs.

In response to the technocratic drift amongst mainstream groups, a new set of organizations such as Greenpeace and EarthFirst! formed (Gottlieb, 1993). These groups led an ideological “pushback” against the approach taken by mainstream organizations. They did not seek to join ranks with the established environmental policy system. Rather, these groups became outspoken critics of that system and its muted stance on urban industrial development. Today, many of the 1980s counter-establishment environmental organizations such as Greenpeace have moved closer to the mainstream. As Pulido (1996) argues, it is hard for even these groups, founded on the idea of independence from the established environmental

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<sup>10</sup> Reported on ABC News, 22 April 1970.



regulatory system, to resist the pressure of adopting the discourse of mainstream environmentalism in order to gain access to its institutions and resources.

Despite the shift toward the mainstream, the division between the older and newer environmental groups that expanded in the 1980s as the modern movement began to mature demonstrates that the debate between conservationists and preservationists had not gone away. Today, environmental sociologists focus on the relative roles of technological and institutional change. Specifically, the “ecological modernization” thesis argues that ecological crises created by industrialization will be resolved by the producers themselves through new technologies (Mol and Spaaragen, 1993). The “treadmill of production” thesis sees this approach as limited, contending that technological improvements only ameliorate the worst offenses of industrial production (Gould, Pellow & Schnaiberg, 2004). This perspective is taken further by the “death of environmentalism” argument that the bureaucratization of the environmental movement has diminished capacity to enact fundamental change (see Shellenberger and Nordhaus, 2005). The ecological modernization versus treadmill of production perspectives are an extension of the preservation versus conservation debate in the environmental movement. They demonstrate that the internal division present at the movement’s founding remains in place.

#### 1.2d: *Environmental Justice and Urban Environmental Activism*

Mainstream community development and environmentalism comprise parallel and distinct historical tracks of the urban environmental movement in the United States with their own organizational infrastructures. With the growth of mainstream environmentalism and the modern community development field, the connection between social and environmental issues was largely lost due to professionalization and specialization within the fields. As the Settlement

Movement gave way to the professions of social work and urban planning and as environmentalism became more closely associated with the environmental policy system, the potential for action which combined these interests diminished. The organizing-versus-development debate in community development and the ecological modernization debate in environmentalism highlight the push toward ever more narrow specializations, as well as the internal counter-push toward wider calls for institutional change.

Despite the divided historical trajectory of community development and environmental institutions, the recent growth of environmental justice advocacy has sought to combine the two. Environmental justice groups focus on the racial and social injustices represented by the uneven distribution of environmental contamination in cities (Bullard and Johnson, 2000). They tend to be represented by small neighborhood-based grassroots groups in marginalized communities that seek political power to control their own space. For them, this means more than bricks-and-mortar programs.

Environmental justice activists begin from a recognition that the immediate human consequences of pollution and environmental destruction in the U.S. are felt most directly by poor people of color who live in neighborhoods where environmental hazards and contaminants are disproportionately concentrated (see U.S. GAO 1983; Commission for Racial Justice 1987). For example, attempts to site a landfill for PCB-contaminated soil in largely African-American Warren County, North Carolina in 1982 sparked large, highly publicized protests and gave a name to the concept of environmental racism—the targeting of communities of color for waste disposal and polluting industrial activity (Bullard 1990). Shortly thereafter, dispersed environmental justice struggles coalesced through the groundbreaking 1991 National People of

Color Environmental Leadership Summit and revived earlier emphases on self-determination and grassroots organizing to realize redistributive urban development outcomes.<sup>11</sup>

As a result, environmental justice advocates understand the environment to encompass the totality of life conditions, including air, water, and access to open spaces and recreation, as well as working conditions and wages and the quality of housing, education, health care and transportation. They highlight the connection between environmental and community issues. In order to engender greater equality and health in cities and simultaneously maintain local control, environmental justice organizations such as the cluster of groups that have formed in the South Bronx section of New York City have developed a structure of community-based groups that mobilize active memberships at the local level and form networked coalitions which sometimes then work in dialogue with city and state agencies (see Steil and Connolly, 2009).

The environmental justice movement's founding principles resist commodification, either through the payment of community benefits before development or monetary damages after the fact, seeking instead the transformation of our relations to one another and to the earth. This transformation begins at the grassroots, from the particular context of specific everyday lives. The movement represents a response to the fact that the internal conflicts between organizing and development and between conservation and preservation have limited the political capacity of both sides. Environmental justice organizations seek to connect community and environmental activism by refusing to reduce their goals to specific brick-and-mortar or conservation actions. Rather, they push back against the historical tendency to reduce urban environmentalism to a technological rather than an institutional challenge. They disavow those forces within community development and environmentalism that would ignore questions of power and

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<sup>11</sup> For more on the development of a national Environmental Justice Movement, see *inter alia* Bullard, 1993; Adamson, 2002; Bullard *et al.*, 2004.

politics. In doing so, they are pushing for the institutional divide between mainstream community development and environmentalism to be undone. This is a productive push, but it remains on the margins of the urban and environmental regulatory world.

### 1.3| Conclusion

Through the professionalization and formalization periods in the 1970s and 1980s, community development interests were largely unconcerned with environmental issues and environmentalists were largely unconcerned with urban community issues. From the earliest conservation-versus-preservation debates in the environmental movement and professionalization-versus-reform debates in the community development field to the contemporary ecological modernization and organizing-versus-development debates, the basic conflicts of both movements remain unchanged. In each field, the mainstream has largely adopted the position of rationalizing processes of production, while the counter position has challenged institutions. Within the counter positions of community development and environmentalism, the possibility for connections has been most developed. However, there have been occasional shifts in this direction within the mainstream as well. *The challenge for urban environmentalism is to build a counter-institution that can both rationalize processes of development in order to maintain and extend the positive aspects of urban growth and create institutional change that reorders land use patterns toward more socially and ecologically sustainable outcomes.*

The internal conflicts and contradictions of community development and environmentalism created by the close association of both fields with a professionalized policy system ensure that neither can expand its purview beyond narrow regulatory approaches. As a

consequence, urban policies that seek to transcend the fragmented structure of local zoning regimes which favor economic development have been forced to either focus on social or natural issues. Within this system, discrete federal and state environmental land use policies and discrete federal and state social urban policies work across localities. However, effective urban environmental activities, by definition, must bring these together. The institutional structure of U.S. land regulation militates against such an outcome.

Only now, as the science of climate change has increased the urgency of addressing the roots of environmental degradation has the practice of reserving social issues for the urban professions while leaving matters of nature as non-urban issues begun to be questioned within mainstream practice. While urban environmental practice has developed new technologies and strategies for building cities, it has not developed a concomitant understanding of how to alter the specific institutional norms that direct urban development so as to bring about the adoption of these technologies and strategies on a wide scale. As the quote at the beginning of the chapter states, “The barrier to building a better city is not lack of knowledge, but refusal to apply that knowledge” (Whiston Spirn, 1984, p.263). What type of knowledge is considered pertinent to the method for constructing cities is decided by the institutions that govern land use, which are comprised of rules, norms and laws for human behavior. In order to overcome the barrier that Whiston Spirn points out, urban environmentalists must alter what Davis (2000, p.5) calls the “building culture,” or “system of knowledge, rules, procedures, and habits that surrounds the building process” in American cities. That is, they must change the institutional context of urbanization. To do so, they need strategies for enacting processes of institutional change.

## Chapter 2: Research Design Methods and Framework for Analysis

### 2.1| Statement of Strategy

In order to understand better how to meet the institutional challenges of urban environmental planning and policy, this dissertation addresses three questions: (1) What is the extent of the institutional divide between community development and environmentalism? (2) Why do alliances form across community development and environmental interests in land use policymaking and what are the barriers to such alliances? (3) How do these alliances alter land use institutions? The first question is viewed through an historical lens; while the second and third explore contemporary policy issues.

In order to address these questions I employ two primary methods. First, I examine the extent of the institutional divide between community development and environmentalism through analysis of archival materials relevant to the debate over national land use legislation that took place between 1970 and 1975. This policy debate occurred at a pivotal moment in the professionalization process of the two fields. Both sides had recently achieved increased formal recognition within the federal policy apparatus through the creation of new federal agencies and were re-formulating their roles within the public sphere. In this context the debate over who should administer the National Land Use Policy Act (NLUPA) moved from a simple issue of bureaucratic turf to a struggle over whether land use policy should focus on community development or environmental issues. The Act did not pass but the 5-year-long political battle that it sparked defined the federal role for community development and environmental interests relative to land use policy. In the end, it solidified the institutional divide between these two

sides and this divide is now a key institutional challenge for contemporary urban environmental policymakers.

In order to examine how policymakers are dealing with this institutional challenge I analyzed two contemporary case studies that involved the formation of alliances across community development and environmental interests. I focus on the formulation and early implementation of two recently enacted state-level policies: (1) the New York State Superfund and Brownfield Law (2003) and (2) California's Sustainable Communities and Climate Protection Act (2008). For these case studies, I utilize data from semi-structured interviews, network surveys, public workshop observations, and public documents.

The New York case involved a formal consensus-building process that attempted to align the interests of community development; environmental; private business; local and state government; and regional planning advocates. In this case, the alliance between community development and environmental groups broke down. The California case did not involve a formal consensus building process. Rather, it is representative of a typical political negotiation between community development; environmental; private business; and local, regional, and state government interests. An alliance between community development and environmental groups did form in this case and has been maintained. I examine why the outcomes were different in terms of political alliances between community development and environmental interests in each case. I also analyze what these alliances have meant for the early implementation of the two policies.

The archival analysis describes the institutional challenges faced by urban environmental planners and the contemporary case studies describe strategies for resolving these challenges within the policymaking process. The historical data show the extent to which urban

environmental policy is being created within a divided institutional context. As well, the case studies demonstrate that certain organizations and strategies are especially well suited for constructing bridges across community development and environmental interests. This study presents an analysis of how these organizations and strategies operate within the context of urban environmental policymaking.

## **2.2| Archival Analysis**

Historical analysis enables a better understanding of contemporary society. As Brundage (2002) argues, “history...deals with the past, but it conceptualizes a past in constant dialog (sic.) with an ever-advancing present, one that responds to new questions and reveals fresh insights into the human condition” (p.2). Often, historians seek to expand the manner in which people conceive of a given circumstance by highlighting overlooked details or giving voice to underrepresented individuals. In doing so, historians select the stories that they think are important for contemporary readers to hear, and those stories are always shifting. As well, because the stories that historians tell enable a better understanding of the present, they provide crucial lessons for policymakers. Especially in a rapidly developing area such as urban environmental policy, it is essential to understand the historical context that shaped the contemporary limits for action in order to expand the possibilities for the field.

An essential historical moment that defined the limits of environmental land use planning in the United States occurred in the early 1970s when Congress, the President, and federal agency staff debated the possibility of creating a national land use policy. Though these debates did not result in passage of legislation, they did generate a national conversation about the proper role for social and ecological regulation with regard to land use in postwar America. The



institutional challenges faced by urban environmental planners that were solidified in the wake of the national land use policy debates are the focus of the history presented here.

In order to understand better the institutional structure that formed around community development and environmentalism in the 1970s, I performed a detailed analysis of federal archived documents dated between 1970 and 1975 related to the National Land Use Policy Act. I used largely untapped archival materials from the two federal urban policy entities active at the time, including the Department of Housing and Urban Development (HUD) and the Urban Affairs Council (UAC). I also draw from Richard Nixon's staff files contained in his presidential library collection and a limited number of documents from this period that have been made available in the archives from other federal departments, including the United States Department of Agriculture (USDA), which oversaw development policy for towns with fewer than 5,500 people, and the Department of the Interior (DOI), which managed federal lands. Documents from the Environmental Protection Agency (EPA) were not reviewed because the agency was too new at the time of the national land use policy debates to be an active participant.<sup>12</sup> Even the legislators that sponsored the creation of the EPA did not propose it as the lead agency.

### *2.2a: Archival Data Collection*

The archival data reveal how the day-to-day discussion around the proposal for a national land use policy shaped the subsequent institutional structure for land use regulation. The relevant memos, policy analysis reports, and other materials housed in the National Archives II facility expose the dynamics of the ongoing conversation amongst agency staff members and policymakers engaged with shaping national land use policy. The documents demonstrate the

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<sup>12</sup> See memorandum for Bud Krogh: Decision Paper and Draft Bill on National Land Use," Nixon WHCF Subject Files, Egil Krogh 1969-73, Folder: Land Use Policy, Box 15.

“backstage” aspects of the federal policymaking process. That is, they provide a sense of the internal conversations that lay behind the “front stage” public presentations from the federal agencies and policymakers (see Goffman, 1959). The frustrations, assumptions, and opportunities that shaped the actions of those involved are evident. As well, the archived materials make clear the biases built into the conversation that heavily impacted the roles ascribed to community development and environmental agencies.

The bulk of materials reviewed consisted of correspondence and subject files from Samuel C. Jackson, HUD Assistant Secretary for Metropolitan Planning and Development. Jackson was in charge of coordinating HUD’s response to the many national land use policy proposals being developed in Congress and he was integral to the development of HUD’s own proposal for a national urban growth policy. These materials cover the period between 1970 and 1973. UAC materials consisted of documents contained within the Richard Nixon White House Central Files (WHCF). The documents are primarily correspondence memos from Senator Daniel Patrick Moynihan, who served as Assistant to the President on Urban Affairs when Nixon first entered office and authored an influential report entitled “Toward a National Urban Policy.” These memos are dated primarily between 1969 and 1970. The dynamics of the period between late 1973 and 1975, when the final two votes on a national land use policy occurred, are mainly understood through external policy analyses created by advocacy groups and secondary literature.

All materials were analyzed with close concern for the role of environmental issues in HUD’s formulation of policy at the time. Correspondence files from Assistant HUD Secretary Samuel C. Jackson and President Richard Nixon’s White House Central Files provided extensive material demonstrating the shifting political positions of urban and environmental interests at the

time. The Nixon documents consist of numerous correspondence memos with the President and his staff on the topic of urban growth and land use policies.

All archived documents including relevant memos and policy reports are contained within the National Archives II facility in College Park, Maryland and were accessed over the course of 45 days of active search between 4 January 2010 and 30 March 2010. The documents come from 55 boxes (out of 90 reviewed). After completing training for access to the document room, I reviewed the topic headings listed in catalogs for HUD, DOI, USDA, and Presidential staff archives. I requested all boxes with headings potentially related to national land use policy. Headings were often vague and many boxes that were requested did not contain relevant documents (in all 35 boxes contained no relevant materials).

As Hannam (2002) argues, a system for determining the relevance of materials within an archive is essential to successful data collection. Once I made the box requests, I employed three criteria for determining relevance. First, I selected all documents that pertained to the proposed National Land Use Policy Act or the National Growth Policy. Second, I selected all documents that pertained to the role of community development or environmental interests relative to land use policy. Third, I selected all documents that pertained to arguments about the proper role of the federal government in land use planning processes. By employing these criteria across all 55 relevant boxes, I selected approximately 600 pages of documents to be electronically scanned on site from their original hard copies. After electronically scanning each selected document, I labeled them with citation information following Hill's method (1993, p. 72) that included name(s) of correspondents, date, box, folder, collection and archive location. As well, I carefully noted the location of all documents that stood out as especially important and took 27 typed

pages of notes with citations on the important themes that emerged as I read through the documents.

### 2.2b: *Archival Data Analysis*

The greatest benefit of doing archival analysis in social research is that the documents are “non-reactive.” Archive materials are an unobtrusive measure of social phenomena because the observer is removed from the events being studied. As such, there is no awareness on the part of the author of the archived materials that the documents being produced are part of social research. Thus, the potential for results to be skewed as a result of such awareness is removed. This is an advantage over other types of social data, such as interviews, where respondents are aware of the study and their reactions may skew their responses, altering the results (see Bryman, 2001, p. 370).

Despite the non-reactive aspect of archival materials, all archival data contains biases. While the documents analyzed in this study are almost certain to be authentic (i.e. not forgeries or alterations) given that they are sourced directly from the federal archives, they are reflective of the biases of the people and agencies that created them. They are an expression of the social, political, and intellectual perspectives of those involved with creating federal urban policy in the early 1970s. As Bryman (2001) observes, state documents of this sort “can be interesting precisely because of the biases they reveal” (p. 375). In order to leverage this aspect of state documents, it is necessary to interrogate each document’s purpose. As Hannam (2002) writes, “Few textual sources offer instant answers and certainly many are not reliable sources of ‘truth’, though all provide evidence. Any researcher needs a degree of skepticism when faced with any text” (p. 190). Some questions that must be asked of archived texts are: “Who wrote it, and why?

Who is the audience for this source?...Is the document propaganda? Is it polemical?" (Berkin and Anderson, 2003, p.40). As well, in the context of policy studies, it is important to ask if the document had a strategic political purpose in the policymaking process.

In order to account for these biases, I combined a qualitative content analysis of the selected materials with limited hermeneutics. Qualitative content analysis, also referred to as textual analysis, is closely aligned with "coding" strategies that might be used in grounded theory research (see Bryman, 2001, p. 381; Hannam, 2002, p. 192). Grounded theory allows the important theoretical points of a case to emerge in the process of analysis rather than entering the case with a pre-determined theoretical model (see Glaser and Strauss, 1967). Qualitative content analysis is one technique for developing grounded theory. It calls for breaking the materials up into pre-defined categories, but allowing for other important themes to arise in the analysis. The role of qualitative content analysis is to simplify the materials according to discrete themes but also to draw attention to the overall narrative that the data reveals.

The pre-defined coding categories I employed reflect the three criteria for selection of materials from the archive. These initial coding categories were purely functional, dividing the documents by topic. Within the first criteria focused on the various policy proposals, I created two "sub codes" for documents concerned with the National Land Use Policy Act and for documents concerned with the National Growth Policy. Within the second criteria focused on community development and environmental relations, I coded the documents according to whether they were related to the role of environmentalists, community development activists, or both. I also marked documents according to whether the relations they referenced were cooperative, combative, or neutral. Within the third more general criteria, I created a number of sub codes for each of the federal initiatives related to land use policy at the time. These included

categories for several HUD and UAC programs, such as model cities, urban renewal, land banking, and regional planning.

In addition to the coding of documents according to topic, I recorded 27 pages of type-written notes meant to reflect the narrative story that the documents expressed. The notes focused as well on ordering events referenced in the materials chronologically. In all, they highlighted the main themes that re-occurred throughout the archived materials and the connections between themes. The role of the notes was to look beyond the functional topics of each document in order to outline the connections between the ideas expressed in the document and other documents that had been reviewed. In other words, my notes served to describe how the archived documents were related. The focus within the narrative that these connections expressed was on the manner in which community development and environmental issues were characterized by the various policymakers.

In order to expose the biases embedded in the materials, I employed a hermeneutic strategy. Hermeneutics have been used for textual analysis by literary and biblical scholars for many years. The method involves an attempt on the part of the analyst to derive the meaning of a text from the perspective of its author (see Bryman, 2001, p. 382). It “emphasizes the sociocultural and historic influences on qualitative interpretation. It also exposes hidden meanings” (Byrne, 2001, p.1). I identified the authors’ perspectives by contextualizing their words within the known events of the time. For example, HUD was developing its response to the national land use policy proposals in the context of a pervasive anti-urban sentiment among the American populace that followed a series of riots in cities throughout the country during the 1960s. As well, the national land use policy debate took place within a long historical context of a model of federalism that allocated land use regulation to the states.

I also considered more specific contexts. For example, George Romney, the director of HUD at the time, was growing increasingly disillusioned with the Nixon administration during his early tenure in the position—a fact not made public at the time, but that serves as important context for some of Romney’s statements. Additionally, Samuel C. Jackson spent most of his career before the 1970s working to implement fair housing programs. This background inevitably worked its way into the strategies for national land use policy that he favored, though it was not explicitly acknowledged by Jackson. These and other pieces of context highlighted in chapter Four are employed as filters for the archival information.

Overall, the qualitative content analysis allowed me to classify and understand the major topics covered in the texts relative to one another while the hermeneutic analysis allowed me to account for at least some of the potential biases within the texts. The HUD, DOI, and presidential communications analyzed in Chapter Four provide insight into the strategies used by community development and environmental advocates to interact with the other interests involved. They also demonstrate the extent to which the institutional divide between these two sides was solidified. The contemporary case studies discussed below operate within the institutional environment that the national land use policy debates in the 1970s helped to create. As such, the archival study is an essential background to the institutional issues addressed in the case studies.

### **2.3| Case Studies**

This study employs a small-N comparison of efforts to create urban environmental policy. As Abbot states, small-N comparison “aims to keep the interpretive and narrative subtlety of ethnography and narration but to add to these an analytic strength that echoes standard causal analysis” (2004, p. 58). In other words, the first aim of these case studies was to provide context-

specific knowledge of the process by which the policies were formulated. The second aim was to use their similarities and differences to strengthen claims the findings.

The small-N case study approach is common, especially among authors focused on urban politics. Castells (1983) used a small-N comparison of organizing efforts in four cities to develop his view on urban social movements. DeFillipis (2004) used a comparison of three models of collective ownership to develop his theory of how communities can gain control of forces dominated by global capital. Ferman (1996) examined two case studies in Chicago and Pittsburgh in order to develop her theory of how communities can effectively challenge the economic development agenda of local organized elites. Additionally, Berry, Portney, and Thomson (1993) examined five core cities in order to develop a theory of local participatory governance in the United States. Small-N case studies have also served as the foundation for several dominant urban political theories. For example, Dahl (1961) examined the distribution of political resources among several citizen groups in 1950s New Haven, Connecticut in order to develop his theory of pluralism in urban governance. Stone (1989) later countered Dahl's assertion that the pluralist model had replaced elite domination of urban development in his study of several interest groups in Atlanta for the development of his regime theory of urban politics.

In all, small-N case study analysis is a well-established means of combining empirical understanding of unfolding events in cities with the accumulated theoretical knowledge of how cities work. As Castells writes, the case studies are "used as steps in the process of theory building and are chosen with this purpose in mind" (1983, p. 339). Castells' characterization of theory-building as an ongoing process rather than a destination for scholarly research is adopted



here as well. The point of these case studies is to refine existing theoretical knowledge rather than provide a singular explanatory model.

Ideally, small-N analysis allows Mill's (1843) method of difference to be employed. Mill argued that analytical leverage could be added to case studies "by comparing instances in which the phenomenon does occur with instances in other respects similar in which the phenomenon does not" (Mill 1843, book 3, Chapter 8, as quoted in Odell, 2001, p.167). In comparing differences across cases and using case studies as a "step in the process of theory building," the benefits gained by the small-N approach are maximized. Mill's method of difference highlights the "analytic strength that echoes standard causal analysis," which Abbot (2004, p. 58) described.

However, the small-N case study method has well-known limitations. Both the internal and external validity of small-N case studies have been questioned. The concerns over internal validity question the ability of researchers to draw causal connections between the various factors described within the cases. Whenever a claim that one event led to another is made by a researcher there is a question of whether that causal claim is correct and of how the connection can be proved. A number of other variables outside of the view of the researcher may have caused the event. That is, every dependent variable that a study seeks to explain may be caused by a number of independent variables. Consequently, authors of explanatory case studies must take care to examine as many independent variables as possible before making any causal claims, and some of those independent variables may be interacting to create the observed effect. While all independent variables cannot be realistically examined, identifying several proximate variables increases the explanatory power of the case.

Yin (2003) described the iterative process of explanation-building that accounts for numerous independent variables in order to make causal links within a case study. He writes, “case study evidence is examined, theoretical propositions are revised, and the evidence is examined once again from a new perspective” (p. 122). In this iterative manner wherein theory and empirical observations are juxtaposed, the list of possible explanatory (i.e. independent) variables can be expanded and the relation between the independent variables and the event being explained can be better understood. Yin writes as well that in this process it is important to consider rival explanations as a means for testing if your causal link is in fact the strongest: “The gradual building of an explanation is similar to the process of refining a set of ideas, in which an important aspect is...to entertain other plausible or rival explanations...the objective is to show how these [rival] explanations cannot be built, given the actual set of case study events” (p.123).

Another common critique of social science research, including case study analysis, is the threat to external validity, or extent of “generalizability” of the findings. Both quantitative and qualitative methods in the social sciences have been questioned for the limited ability to determine if the findings from the analysis are representative of what one might find in other examples across time and space (Bryman, 2001, pp. 282-283). Flyvberg (2001) argues that generalizability can be considerably increased by “strategic selection of *critical cases*” (p. 77). However, he also argues that “formal generalization is overvalued as a source of scientific development, whereas ‘the power of the good example’ is underestimated” (p.77). Most researchers who rely on case studies recognize that even carefully selected cases with clear differences for comparison may not be fully representative. This is why case studies must be considered as steps in the process of theory building, as Castells specified. The purpose of this type of analysis is not to treat the case as a “sample of one drawn from a known population,” as

might be the goal for quantitative analysis. Instead, case studies “generalize to theory rather than to populations” (Bryman, 2001, p. 283).

### *2.3a: Delimiting the Case: The Organizational Field*

The outcome of interest in this study is not the creation of new state laws per se, but the effect of efforts to change the laws and the institutional reorganization that the laws signify. That is, I am primarily interested in the extent to which the processes that led up to and followed from the creation of the legislation in each case have altered the relevant actors in land use decision-making. As such, durable re-alignments in the organizational fields are the key variables to be measured.

The organizational field is the “set of organizations linked together as competitors and collaborators within a social space” (Marwell, 2007, p. 3). As DiMaggio and Powell (1983, p. 148) argue, “The structure of an organizational field cannot be determined a priori, but must be defined on the basis of empirical investigation.” This is because organizational fields are comprised not only of networks of like actors, but of all organized interests concerned with a given field of action. As such, organizational field analysis is concerned with both the extent of connectedness amongst organizations (i.e. the organizational networks) and the structural equivalence of groups. Structural equivalence refers to the extent to which two organizations have the same connections within the network (see White et al., 1976 for an early description of the term). Therefore, two organizations with identical networks would have complete structural equivalence, and a more connected network would have a stronger structural position than a less connected network. An example of an organizational field in the context of urban policy is provided by Lowndes (1998) in his study of British urban regeneration projects. The

organizational fields Lowndes studied were comprised of business, community and not-for-profit agencies, and governmental bodies. Each had different incentives for competition or collaboration based upon their position within the field of organizations involved in the urban regeneration programs.

As Lowndes' study emphasized, the organizational field is a meso-level social space which operates between individual social actions and the larger structural rules of society such as those generated by a system of capitalist democracy (see Hall and Tolbert, 2005, p. 81). As such, organizational fields allow researchers to view a social space that operates in-between the effects of structure and agency. The organizations considered to be within a field share a common set of rules and interests, but are competing for position. As McQuarrie describes it: "field analysis directs us to be attentive to the presence of an organized competitive struggle over a monopoly on the rules that will define what positions will have the most access to field-specific forms of capital and capital exchange with other fields" (2009, p.127).

The goal of field-level analyses in these cases is to understand how shifts in relations between community development and environmental organizations affect the positions of those organizations vis-à-vis all others within the field. Such analysis is especially useful in this study because it includes all organizations, regardless of sector, associated with the creation or implementation of the policy. All organizations that are a part of the organizational field in each case share an interest in shaping the policy proposal in some way. Of course, specific goals for the policy diverge and this drives competition for position within the field. Organizational fields associated with policymaking are contentious in this regard as positions of a given organization shift from policy to policy.

In this study, the organizational field includes all groups involved with the formulation and early implementation of each policy. I did not identify the entire organizational field, as this would have involved several hundred groups in each case. Rather, the included organizations were identified through interviews with key informants and review of the legislative documents. Interviewees were asked to identify other organizations with whom they worked as well as any that were specifically excluded from the core set of negotiations. Both those who were directly involved in the negotiations and those who became involved during the implementation phase are included in the analysis. Through this method, the “core” negotiators were identified and interviewed as well as a sample of all other interests involved.

This research examines how collaboration and hierarchy work to systematically order organizational fields of urban governance and shape planning outcomes. It looks at outcomes that produce planning innovations through collaboration between interest groups seeking to improve their position. The emergent and entrenched interests within the fields exist in a conflicted state of mutual dependence, where the separate demands for innovation through new collaborations on the one hand and maintenance of the hierarchical power structure on the other form a constant push and pull within processes of policy creation.

### 2.3b: *Case Selection*

Case selection for this study follows Flyvberg’s criteria for selection of comparable “critical cases.” Flyvberg writes that the selected cases must have “importance in relation to the general problem” (Flyvberg, 2001, p. 78). The general problem I sought to analyze was how policymakers might meet the institutional challenges of urban environmentalism in the context of land use regulation. Through archival analysis I identified a primary institutional challenge

within the field to be the divide between community development and environmental interests. As such, I selected cases focused on land use wherein attempts to form bridges across community development and mainstream environmentalism were evident.

The cases I selected were, in several respects, extreme examples that are subject to Mill's method of difference. The cases are extreme examples because the conclusion could be made that if an effect is not observed in these examples then it will not be observed anywhere. As well, the cases are subject to Mill's method of difference because they represent a successful and failed instance of building institutional bridges across community development and environmental interests. The California case provides an example where strong connections were formed across community development and environmental actors. The New York case provides an example where these connections largely failed to form. The outcomes of each case can be compared in order to test how the creation of such alliances impacts the types of changes that are possible within local land use planning processes.

The cases were initially selected on several variables. First, I sought to analyze state-level urban environmental policies, as the state is the widest political arena where such policies are possible given the history of federal legislation. A state-level urban environmental policy was defined as a policy (legislation or regulation) that directs urban development throughout the state for the purpose of achieving environmental goals. Second, in order to select critical cases, I sought policies where community development and environmental interests had clearly been engaged in the formulation process. At this point, it was difficult to ascertain whether alliances across these interests had formed or not. As such, this was not a variable in my initial selection phase. Rather, I waited to do more in-depth examination of this dynamic until after I selected my cases. Third, I sought cases where the policy had been enacted recently enough that respondents

could easily recall events but not so recently that the political dynamic would still be so charged as to make it difficult for respondents to speak freely. This temporal variable was defined as a policy that had been passed at least one year but no more than ten years prior to my analysis. Five potential case studies that met these criteria were identified through a search of media, policy, and scholarly reports. They are listed in table 2.1 below.

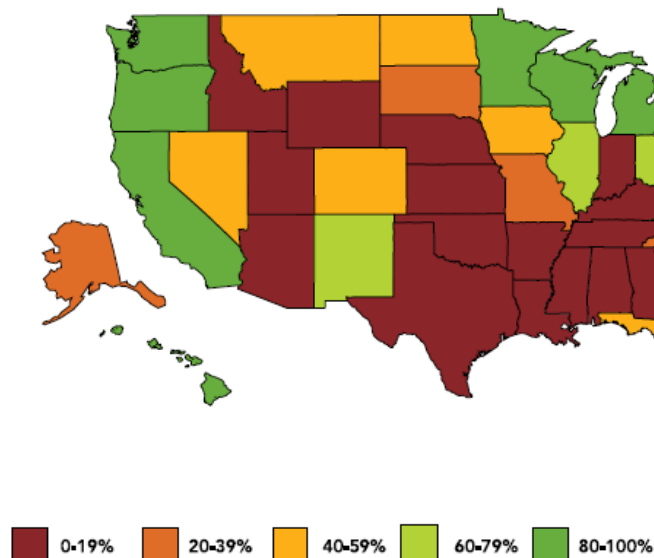
**Table 2.1.** *Initial Candidates for Case Study Analysis.* These five cases were identified as policy actions that met the first three selection criteria: 1) statewide urban environmental policy, 2) community development and environmental interests were engaged with the formulation phase, and 3) the policy had been enacted in the past 1 to 10 years.

State	Policy	Topic	Year Passed
New York	Brownfield Opportunity Area Program	Environmental contaminants	2003
California	Sustainable Communities and Climate Protection Act	Greenhouse gas reduction	2008
New Jersey	Pinelands Wastewater Service Regulations	Utility provision to environmentally sensitive lands	2008
Texas	Updates to Renewable Portfolio Standards	Alternative energy	2005
Wisconsin	New Provisions for the Brownfield Redevelopment Law	Environmental contaminants	2006

In the second phase of case selection, I narrowed the five potential case studies according to two criteria. First, I sought cases in states with comparable environmental voting records in order to establish that the cases had similar political dynamics. In order to identify these trends, I examined the “Environmental Scorecards” from each state over the past ten years. The Environmental Scorecard is a national report on the voting records of congressional

representatives from all states. The scorecard is released each year by the League of Conservation Voters (see League of Conservation Voters (LCV), 2000 through 2010). Four of the states with policies being considered for inclusion in this study were pro-environmental. They consistently scored in the top quintile in terms of states whose representatives voted for national environmental policies. They included California, New York, New Jersey, and Wisconsin. Texas consistently scored in the bottom quintile. Figure 2.1 shows the results by state for 2010, which is representative of the trend throughout the decade. Because of its uniquely anti-environmental policy position, I removed Texas from consideration. The political context in Texas was too different from that of other states being considered, possibly complicating the ability to compare across cases.

**Figure 2.1:** Results from the 2010 League of Conservation Voters Environmental Scorecard. The percentages refer to the number of times that Senators representing each state voted in favor of proposed environmental legislation in the prior legislative session. The trend observed here generally holds throughout the prior decade. Source: League of Conservation Voters (2010).





The next criteria used for case selection combined demographics and geography. Of the four remaining states, the 2010 Census population estimates show that New York and California were the most similar. Since 1950, the two states have been among the top five most populous and, since 1980, have contained the two largest urban regions in the country around New York City and Los Angeles (United States Census Bureau, 2010, p. 6). As well, despite the fact that both states have vast agricultural areas, they remain among the densest in the country. While the two states are relatively politically liberal compared to others in the country, the divided urban and rural geography within them has created a similar political split. In New York, the upstate-downstate dynamic generally divides politically conservative and liberal populations, as does the interior-coastal distinction in California. At times, both states have been so divided across these geographies that there have been calls for secession.<sup>13</sup>

New York and California, as well, have highly centralized legislative processes. In New York, the “three men in a room” represented by the Governor, speaker of the House and speaker of the Senate, largely control which bills move forward and which do not (Lachman and Polner, 2006). In California, the “big five” consisting of the Governor, Assembly Speaker, Assembly Minority Leader, Senate President Pro Tempore, and Senate Minority Leader can nearly always assure their caucuses’ votes on an issue because they control campaign financing and committee appointments (California Department of Finance, 2006). Additionally, New York and California both have large economies—since the 1950s, they have represented two of the top three largest budgets in the country (Dorish, 2011). As well, both states have had budget gaps in the wake of the most recent economic downturn that are among the top ten largest in the country (McNichol, Oliff, and Johnson, 2011).

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<sup>13</sup> For example, there was a 2011 proposal from the “inland empire” counties and San Diego county in California to form a new state, known as Southern California.

The second phase of case selection established a choice between comparing policies in New York and California or in Wisconsin and New Jersey. New Jersey and Wisconsin, with much smaller populations and no large cities are also comparable to one another but have very different demographics and political contexts than New York and California. Another round of selection criteria helped to decide which comparison would likely yield the best data for understanding the institutional challenges of urban environmental planning.

The third phase of case selection focused on identifying which two-state comparison would provide the best critical case example as well as which would provide the most differences for comparison of outcomes. New York and California were selected as the best comparison of critical cases. If state-level urban environmental policy cannot be successful in areas such as these with highly urbanized and pro-environmental populations as well as strong economies, then it is unlikely to be successful anywhere. For this reason, New York and California represent critical cases. As well, initial analyses implied that these cases would provide an opportunity to employ the method of difference. The California case seemed to provide an example where strong connections were formed across community development and environmental actors. In the New York case, these connections largely failed to form.

### *2.3c: Brief Description of Cases*

The legislative actions that are the focus of this study were selected as recent laws that, according to media and scholarly literature, involved a successful and a failed instance of building institutional bridges across community development and environmental interests. They are not the only urban environmental laws passed in New York and California in recent years,

but they are among the most prominent. Each law was developed in response to a specific legislative context.

California's Sustainable Communities and Climate Protection Act (known as "SB 375" for its senate bill designation) is the land use component of a series of greenhouse gas reduction laws passed in the state in recent years. Most notably, SB 375 follows from California's 2006 Assembly Bill 32, the Global Warming Solutions Act, which empowered the California Air Resources Board (CARB) to regulate greenhouse gas emissions statewide. The bill was first proposed by two environmental advocacy groups: the California League of Conservation Voters and the Environmental Defense Fund. The law mandates that metropolitan planning organizations (MPOs) align regional plans for transportation and housing in order to create incentives for people to drive less (Barringer, 2008). The law seeks to create more compact growth that reduces sprawl and leads to less demand for personal car trips by requiring all large regions in the state to develop a regional plan approved by CARB that computer models show will result in reduced air emissions.

In order to reduce emissions through more efficient land use the bill required a number of established political interests in the land use regulatory community to align their agendas. The bill incorporated amendments to the California Environmental Quality Act (CEQA) which requires large developments to show that they will not cause significant environmental harm, the Regional Housing Needs Allocation (RHNA) procedures which set affordable housing mandates for localities, and the Regional Transportation Planning (RTP) process which determines the allocation of state and federal transportation dollars. Additionally, the planning strategy required in SB 375 is influenced by the regional planning model from the Sacramento Metropolitan Planning Organization known as the "Blueprint".

As SB 375 addressed transportation, housing, local zoning, and environmental review laws, the bill had to reflect numerous interests. Four distinct networks of organized interests operated in the negotiation process. During the development of SB 375, these smaller networks of interest mostly worked in isolation, but connected periodically through intermediaries. These networks are the environmental groups (referred to by those involved as “enviros”), the local counties and municipalities (“locals”), the private developers (“builders”), and the affordable housing groups (“housing”). The networks of enviro and housing organizations both shifted their traditional positions in order to align their interests. The coalition between community development and environmental interests that formed greatly impacted how all other actors in the negotiation related to one another. As well, this coalition was maintained in the early implementation of the bill.

A similar set of interests was involved in the New York case. The Brownfield Opportunity Area (BOA) program that was part of New York State’s Superfund and Brownfield Law (2003) was first proposed by community development activists. It creates a mechanism for including community-based organizations within formal land use decision-making processes related to brownfield redevelopment. The program, administered by the New York Department of State, designates community representatives for areas with high concentrations of actual or possible industrial contamination to take the lead in formulating an area-wide strategy for redeveloping brownfields in their community. Conformance with this strategy is then a prerequisite for receipt of some of the public financial incentives that help private developers remediate and redevelop brownfield sites.

While community development and environmental organizations were able to form alliances around the area-wide planning strategy called for in the BOA program, the coalition

dissolved around the issue of what level of cleanup should be required at individual sites. These organizations did not shift their traditional policy positions in this instance. As such, the hybridized norms of practice that formed in California did not form to the same extent in New York. The New York case offers an example wherein durable bridges across the “siloes” institutional structure that divides community development and environmental interests did not take shape.

The cases represent a successful and failed instance of building institutional bridges across community development and environmental interests. The California case provides an example where strong connections were formed across community development and environmental actors. The New York case provides an example where these connections largely failed to form. The outcomes of each case can be compared in order to test how the creation of such alliances impacts the types of changes that are possible within local land use planning processes.

In addition to the types of coalitions that formed, there are a number of other differences between the cases. First, the status of the regulatory agencies was different in each case. In California the entrance of CARB into the land use arena represented a major change with unknown repercussions. CARB was a new agency with no track record which indicated the types of actions it would take with regard to land use. This meant that the entrance of CARB into the land use regulatory field created a great deal of uncertainty amongst the various stakeholders. In New York, the existing state agencies were likely to remain in charge of the brownfield program. Thus, there was far less uncertainty involved in the New York case. In California the question was how the new program for regulating land would be developed and in New York the question

was whether the existing regulatory structure would be formalized. These were different questions with regard to the degree of uncertainty.

There are three additional differences between the policy formulation processes that took place in each state. These include who initiated the policy, the target geography of each policy, and the role of consensus building efforts. The California policy was formally initiated by mainstream environmental interests. The bill was drafted by representatives from the California League of Conservation Voters and the California chapter of the Environmental Defense Fund. The mainstream environmental interests, and especially the League of Conservation Voters, took the lead on negotiating the terms of the policy. In New York, the legislative actions were initiated by community development interests.

In addition to the different interests that initiated the policies, the two laws examined here necessarily focused on different target geographies. SB 375 in California focused on the regional level. From the start, it was meant to encourage regions to plan for smaller urban footprints. It was primarily about pushing sprawl in from the edges. The BOA program in New York expanded the existing site-based focus of brownfield legislation to an area-wide approach, but remained focused on the neighborhood scale. The rest of the New York brownfield law remained focused on individual sites. The local focus reflected the community development goals of creating redevelopment strategies that would allow for urban growth to occur at the city center and would benefit existing residents.

The different target geographies coincide with different administrative structures for each case. Both policies required a new environmental plan to be created by sub-state organizations, but the California case relied upon existing Metropolitan Planning Organizations (MPOs) to create the plan at the regional level, while the New York case relied on newly created

Brownfield Opportunity Area (BOA) organizations to create the plan at the local community level. Thus, when the state and sub-state levels are both considered, each case relied on a mix of new and existing administrative agencies. The different scales at which each case created new agencies (community versus state) allows for comparison of the institutional impacts of scale.

In order to work out the roles of the new agencies that regulate land use in each case, the different interests that initiated the policies approached consensus building amongst the various stakeholders in very different ways. The mainstream environmentalists that shepherded SB 375 through the formulation phase had extensive state-level lobbying experience. They had no expectation or imposition of consensus from the start. Rather, the California process was a traditional policy negotiation. In contrast, the New York case was designed from the start as a process that would require full consensus from all participants. The stakeholders were selected from a variety of competing interests and the intention on the part of the organizers was to find common ground within a consensus building effort. Thus the New York case was the inverse of the California case—it began with a consensus process and then turned to a more traditional policy negotiation whereas the California case began with policy negotiation followed by a consensus process.

The case studies examined in this analysis are examples of programs that reflect the new intellectual context of urban environmental planning. Climate change policy was the impetus in the California case and smart growth policy was the stated framework for the New York case (see Kass et al., 2011). These cases represent both sides of the land use equation for reducing sprawl development. On one side, the California law utilized regional planning to create more compact growth patterns that would reduce the urban footprint of regions and thus limit the ecological impact of growth. On the other side of the equation for reducing sprawl, the New

York case involved the use of area-wide planning for brownfield redevelopment as a means for enabling urban growth in existing downtowns. This approach sought to maximize the potential of urbanized land and remediate prior ecological damage.

Both the differences and similarities across the cases enable lessons to be learned for urban environmental policymaking. In comparing the different outcomes within these critical cases where the basic demographics and political dynamics are similar, it is possible to draw lessons about the minimum conditions needed to create effective urban environmental policy. The ability to form coalitions across community development and environmental interests in each case serves as a central difference for comparison. Table 2.2 below demonstrates the differences and similarities in each case.

#### **2.4.| Case Analysis**

Given the focus on the extent to which urban and environmental interests formed coalitions, it was essential to treat the case studies as a means for “discovering empirical relationships” amongst organizations concerned with urban environmental policy (Lipjhart, 1971, p. 683). The methods described below were intended to serve this purpose. The data that each method generated was cross-referenced in order to determine the findings presented in chapters five and six.



**Table 2.2. Comparison of Cases.** The table below lists the major similarities and differences between the New York and California case studies.

Attributes	Cases	
	<i>California: Sustainable Communities and Climate Protection Act</i>	<i>New York: Superfund and Brownfield Act</i>
<i>Similarities</i>		
Population	among the top five most populous states since 1950	among the top five most populous states since 1950
Large Urban Centers	Los Angeles is one of the two largest urban regions in the country	New York City is one of the two largest urban regions in the country
Environmental Voting Record	consistently scored in the top quintile in terms of states whose representatives voted for national environmental policies	consistently scored in the top quintile in terms of states whose representatives voted for national environmental policies
Political Geography	interior-coastal distinction generally divides politically conservative and liberal populations	upstate-downstate dynamic generally divides politically conservative and liberal populations
Interests Involved	environmentalists; community development activists; private developers and businesses; and local and state government representatives	environmentalists; community development activists; private developers and businesses; and local and state government representatives
Legislative Context	Highly centralized legislative processes, prior legislation made it clear that a new law was needed	Highly centralized legislative processes, prior legislation made it clear that a new law was needed
<i>Differences</i>		
Coalitions	Coalitions between community development and environmental interests formed	Coalitions between community development and environmental interests did not form
Regulatory Leader	CARB was a new regulatory interest in land use	DEC and DOH were existing regulatory interests in brownfield redevelopment
Role of Consensus Building	Consensus building efforts occurred at the end of the process after the open political negotiations had achieved basic alignment of interests	Carried out as a formal consensus building process from the beginning—sought to achieve an alignment of interests in the process
Who Initiated the Policy	Initiated by mainstream environmental groups	Initiated by community development groups
Target Geography	Region	Neighborhood/ Site

#### 2.4a: *Semi-structured Interviews*

To develop my cases, I interviewed 59 (27 in New York and 32 in California) representatives from community development groups, mainstream environmental organizations, environmental justice organizations, state and local agencies, and private developer groups involved in formulating the policies. The interview protocol and analysis was approved by the Columbia University Institutional Review Board (Protocol Number: #IRB-AAAF1648) on 26 May 2010. All interview data was gathered with the understanding from respondents that findings would be reported anonymously. In each case, the goal was to interview all key negotiators in the policy formulation as well as a representative sample of groups that were engaged in the early implementation of the policy. In California, I interviewed heads of organizations identified in the publicly available legislative analysis as both “in favor” and “opposed.” In New York, I interviewed the heads of organizations that were members of the “Pocantico Roundtable,” which served as the impetus for the strategy that was later turned into law. In both cases, I also used a snowball sampling method to identify other organizational leaders that were mentioned by respondents as being especially engaged in the formulation process of the legislation. In order to analyze the implementation of the policies I also interviewed elite representatives of all of the New York City “lead” BOA organizations at the time of my study, and members of the Regional Advisory Task Force (RTAC) in California. These respondents represent the earliest efforts to translate the new policies into action. All of the interviews were scheduled in advance and lasted approximately one hour.

I utilized a semi-structured interview method. This method allowed respondents to identify the issues of importance to them within an established research frame (Cohen and Crabtree, 2006). The research frame was reflected in the interview protocol developed in

advance to guide but not dictate discussion (see Appendix 1, Interview Protocol). This semi-structured interview method has been employed in numerous studies of social phenomena and has been used widely within urban research. For example it was the primary method in studies of attitudes toward urban green space (Balrama and Dragicevic, 2005), the use of climate knowledge in urban planning (Eliasson, 2000), and the social construction of home ownership (Gurney, 1999), among others.

Semi-structured interviewing is a widely deployed method because it is flexible and provides enough structure to allow detailed issues to be explored and compared across respondents. The flexibility arises from the emphasis on exploring the “markers” provided by respondents (see Weiss, 1994, Ch. 3). Markers are issues that respondents mentioned as being important to them, but that they did not elaborate on in their initial response because they were uncertain if the topic was related closely enough to merit further consideration. The researcher can decide if a marker is within the bounds of the substantive research frame. As long as it is, the respondent can be asked to elaborate. This leads to a structure where the issues that each respondent stresses as having the most impact upon their actions become the focus of the interview, in addition to the questions that appear in the protocol.

The possibility of the flexible structure of semi-structured interviews to create data that lacks specificity and cannot be compared across respondents is counter-acted by the use of an interview protocol. The protocol guides the discussion and sets the bounds of the substantive frame (see Bryman, 2001, p.315). For my interview protocol, questions were related to the development of the legislation and how groups interacted in the formulation and implementation processes. It covered how the organizations came to be involved in the legislation, who the organizations worked with, how they worked with them, and what strategies were used to pass

the bills. In the interviews, I also asked respondents how the specific strategies for each policy were developed, what the biggest conflicts were, and what their biggest hopes going forward were. As well, respondents were asked if the strategies and political coalitions they were a part of or observed were novel in terms of their experience. These questions allowed me to understand how observed alliances between community and environmental interests altered the governance networks that directed local land use decision making by offering evidence of the effect these coalitions had upon the normal relationships amongst organizations associated with the policy. I was able to understand from various perspectives if a different inter-organizational dynamic characterized this process and, if so, why.

In terms of analysis, all interviews with the main negotiators of each policy were transcribed. Transcribed interview data was then coded into several categories including: (1) environmental issues, (2) internal organizational issues, (3) inter-governmental issues, (4) inter-organizational issues, (5) planning and development issues, (6) process and history of the bill, and (7) social equity issues. Each of these seven main categories was then further sub-coded into smaller categories that focus on the organizational relationships and strategies specific to each case. For example, the environmental issues category was classified according to whether they were for, against, or neutral on the legislation. It was also sub-coded according to issues that represented a shift in the environmental position, and issues that were urban in nature.

In general, the coded data identified common themes that serve as the foundation for the theoretical assertions developed in Chapter Seven. A common criticism of the coding approach to analysis of interview data is that it fragments the data, possibly disconnecting it from the context and narrative flow of the respondents' words (Coffey and Atkinson, 1996). Coding, however, allows trends across interviews to be more easily identified and substantiated. It allows

the researcher to go beyond simply offering a venue for the respondents' voice to be heard. Rather, in coding the data for its main themes, the researcher is able to theorize and contextualize interview (and other qualitative) data (see Bryman, 2001, p. 400).

A certain narrative coherence for each case is maintained by portraying events in chronological sequence according to their description across multiple interviews and multiple data sources. In this manner, the presentation of the case results from a "triangulation" of data (Yin, 2003, pp. 97-99). In addition to gathering interview data from multiple respondents across all pertinent sectors in the organizational fields, the case studies relied upon three other types of data to corroborate and contextualize the interview data. These included review of public and internal documents; and observation of public meetings.

#### *2.4b: Document Review*

Information gained in interviews was corroborated through the investigation of public documents including review of memos, legislation, policy analyses, agency reports and media coverage. All interview respondents were asked to provide any possible documentation for the processes they described. Seven memos sent to others involved in the policy negotiations (four in California and three in New York) and numerous policy reports (14 in California and eight in New York) were identified. As well, the draft and final legislation in both cases were retrieved from public databases. Finally, especially in the California case, extensive news and advocacy media sources were reviewed in order to provide a broad context of the various perspectives on the legislation.

As with the archival materials, documents in case study analyses must be reviewed with their biases in mind. Given that the case studies I analyzed are both centered on legislative

processes, the biases of authors are usually quite clear. Most documents argue from a particular perspective, which they state upfront. For example, social equity organizations wrote an influential memo to the task force charged with the early implementation of SB 375. This memo stated the position that the authors represented in the beginning. In other words, for most communications, because bias was assumed by the sender and receiver, it was generally made explicit what position was being supported. This was typical of all documents used in both case study analyses.

Other considerations of the use of documents in case studies are that they may be incomplete or inauthentic (see Creswell, 2003, pp. 187-188). It is possible that I missed documents that were not identified by respondents as important but would have been useful for this analysis. However, I did have a substantial amount of information from numerous perspectives. All reports and memos were complete. Draft and final versions of the legislation were available in both cases. All documents that were identified in the interviews as essential to understanding the cases were obtained and complete.

#### *2.4c: Public Meeting Observation*

Observation of public meetings was a part of both case study analyses, but played an especially important role in the California case study. The California state government has an unusually large amount of openly accessible information about government processes available on the internet. The California Air Resources Board, for example, has a video recording of all public hearings related to SB 375 available for download (CARB, 2011). All of the meetings were downloaded (approximately 43 hours of video). Each of the hearings was viewed in its entirety. The same coding categories used to code the interview data were used to code the

public hearings as well. Specifically, all mentions of how the various interests were relating in the process were notated and described in detail. Since several respondents from the interviews appear in the hearings as well, their comments were checked for consistency. While some minor factual statements appear to have been recounted incorrectly in the interviews, there were no major inconsistencies.

In addition to the recorded public meetings in California, I attended seven information and planning meetings for the New York case (see Appendix 3 for complete list). These meetings were held by early sponsors of the brownfield legislation in order to inform potential BOA sponsors and brownfield redevelopers of what the legislation is meant to do and to update interested parties on the next steps in brownfield advocacy in New York state. Detailed notes of the proceedings and comments were taken at meetings. Overall, the meetings were informational and positive about the legislation, but there were occasional disputes. These disputes were especially of interest because they seemed to reflect longstanding differences of opinion. The meetings are also interesting because of who they did not include. While developers and state representatives were often present, there was no visible presence on the part of mainstream environmental activists at any of the meetings.

## **2.5| Conclusion**

The rigor applied to a case study analysis determines its validity. Validity of case study findings must be constantly evaluated on several levels. The construct validity, or adequacy of the operational measures being used, was addressed through the use of multiple sources of evidence (i.e. interviews, documents, public meetings) from which a chain of evidence was established. I corroborated accounts from interviews with statements from other interviews as

well as review of public legislative and journalistic accounts. The internal validity, or legitimacy of the causal relationships, was established primarily through analysis and quotations of the content of interviews and archived documents. As such, readers can judge the extent to which interpretations of the data are correct. As well, rival explanations to my conclusions were addressed. The external validity, or the extent to which the study's analytic generalizations apply on a larger scale, was established through the extensive historical frame for my study as well as the small-N case study model. While the findings from two case studies cannot be generalized on a wide scale, when they are considered as a step in the theory building process, common trends and threads of action are important indicators of how the urban environmental field is meeting its institutional challenges.

The data gathered for this study positions the findings to be able to speak to the literature on urban environmental planning, consensus building in planning processes, institutions, and institutional change. A review of each of these literatures is presented in the next chapter. The findings and conclusions follow the literature review.



## **Chapter 3: Literature Review and Theoretical Frame Urban Environmentalism, Institutions, and Institutional Change**

### **3.1| Overview**

In order to contextualize the findings presented in Chapters 4 through 6, this chapter reviews three areas of literature. The first section reviews the contemporary literature on urban environmentalism and presents a case for why environmental land use planning is a state-level issue. This section describes the current knowledge in the field and the failed history of federal efforts to create land use policy. The second section outlines the planning and urban social science literature on organizations, institutions, and institutional change. This section provides necessary background for the theoretical literature on heterarchic governance presented in the third section. Heterarchic governance is one way of understanding processes of institutional change and serves as the theoretical frame used to formulate the findings of this study.

### **3.2| Urban Environmentalism and State-level Land Use Planning**

Urban environmentalism covers issues presented in a broad set of literature on history, planning, sustainability, and local activism. This literature demonstrates that urban environmental land use planning in the United States is best conceptualized as a state-level political issue given the parochial focus of localities and the limited capacity of the federal government to enact land use regulations. This section supports this point with a detailed history of efforts to create a national land use policy. The most recent effort in the 1970s is examined in detail in Chapter 4.

### 3.2a: *Literature on Contemporary Urban Environmentalism*

The intellectual context of urban environmental planning has been changing in recent years. Authors have identified dozens of American cities that since the 1990s have “invested significant amounts of time, resources, and social capital in the development of initiatives to pursue some form of sustainability” (Portney, 2003, ix; see also Wheeler, 2008; Fitzgerald, 2010). These include efforts toward sustainable development, smart growth, transit-oriented development, urban environmental stewardship, new urbanism, environmental justice, and local climate change planning. The new intellectual frame for city-building has led to specific programs for “green” jobs, climate change plans, and urban sustainability reports (see Maclaren, 1996; Kousky and Schneider, 2003; Renner et al., 2008). While the effects of these efforts have largely been confined to the municipal level, their collective impact has been to expand the intellectual justification for urban environmental planning (Bulkeley and Newell, 2010).

The growing literature on urban environmentalism can be classified into four categories: urban environmental history; urban environmental planning; sustainability; and local environmental action such as stewardship and environmental justice organizing. Each sub-literature describes the institutional challenges faced by the urban environmental movement, but none focus on the overall characteristics of the urban environmental policy system that must be addressed in order to meet those challenges. Where strides have been made in this direction, the literature has mostly highlighted the role of discourse in shaping institutions. While useful, it is necessary to augment this approach with organization-level political perspectives in order to outline strategies that urban environmental planners, policymakers, and activists can use to manage processes of institutional change.

First, urban environmental history has become its own specialization. It seeks to “combine the study of the natural history of the city with the history of city building and their possible intersections” (Melosi 1993, 2). Cronon largely founded the specialization of urban environmental history with his book, *Nature's Metropolis* (1991), on the development of Chicago and its hinterlands. On a global scale, this type of history might cover the period as far back as the initial development of cities, but it generally begins in the United States with the growth of the early 19<sup>th</sup> century industrial city. Writers such as Cronon (1991), Walker (2007), Gandy (2002) and Colten (2005) have analyzed various urban regions with a focus on the means by which the process of turning natural resources into commodities has fueled the growth of the city. These authors and others within urban environmental history literature view cities as markets for flows of commodities. They focus on how the development of the hinterlands and trade routes around a city determined the built form and ecological impact of individual cities.

For example, Cronon (1991, Chapters 2 and 3) observes that early conservation strategies developed in response to the devastation of forests and grasslands in regions such as the greater Chicago area. The environmental impacts were rapidly increased when new urban infrastructure such as grain elevators and railroads enabled mass production methods pioneered in the manufacturing sector to be applied to basic commodities like wheat and lumber. Walker (2007) details the process of rural devastation that led to regulation in the San Francisco Bay Area. He writes of the connection between the growth of cities and the growth of early conservation organizations that would ultimately force the private corporations driving urban growth to respect ecological processes. Similarly, Colten (2005, Chapter 1) demonstrates the means by which natural hazards guided the way that New Orleans residents thought about regulation of growth in their city.

Urban environmental history provides an important institutional context for urban environmental planning. The literature demonstrates that classic environmentalist concerns, from land preservation to species protection and pollution regulation, are ultimately about how cities, and the markets for goods and resources that cities support, impact natural processes. Historians in this area have shown as well how the continued understanding of natural processes shaped institutions that guide development. They have pointed out that the underlying system of regional economic development relies on maintaining the political separation between “the city” and “the countryside.” Urban markets are based upon production processes that developed in the industrial era with extensive external costs, such as air and water pollution. These costs, however, remained outside the purview of local regulators as long as urban markets and wider systems of resource extraction were dealt with as separate political issues. The institutional divide between social and natural regulatory regimes that urban environmentalists must contend with is based upon the historic political division between urban growth and resource extraction.

As such, this literature demonstrates why the city and the country, the natural and the social, the urban and the environmental exist in separate political-economic and psychological spheres and why distinct institutions have formed around them (see especially Williams, 1973; Benton-Short and Short, 2008; Light, 2009). The separation served the needs of urban boosters that sought growth at all costs (Cronon, 1991). Literature in this area reminds us that the separation is artificial; it is more for enabling the expansion of markets than reflective of the reality of production processes. Urban environmental history demonstrates the institutional base of urban environmental practice and implicitly raises the question: what would cities be like without this artificial separation?

Second, the literature on contemporary urban environmental planning focuses on professional practice in specific areas of concern such as solid waste and water management, green building, ecological footprints, and air pollution. It views urban environmentalism as a localized response to the negative environmental effects of urban development (see Marcotulio and McGranahan, 2007, Ch.1; Millenium Ecosystem Assessment, 2005). The focus on the city-level response to such far-ranging impacts as greenhouse gas emissions, habitat fragmentation, and concentrations of industrial contaminants in soil and groundwater draws attention to technological improvements that might reduce the negative environmental impacts of urban growth.

This literature generally seeks to enable planners to find “solutions to the problems of negative environmental spillovers from urban activities...and to foster positive environmental spillovers produced by land uses such as wetlands and parks” (Miller and De Roo, 2005, 1). In other words, it seeks to develop discrete strategies for internalizing the long history of ecological impact from cities. This literature gives urban planning practitioners interested in protecting the natural environment a “policy toolbox” to work with (Kousky, 2005). However, it does not address the institutional issues which must be resolved in order to implement technological solutions on a wide scale.

A portion of the urban environmental planning literature has applied the physical science perspective of conservation biology and ecology to urban areas. This literature has focused on modeling urban ecosystems in order to develop strategies for limiting the effects of cities upon ecosystem services and biodiversity. For example, Grove and Burch (1997) argue that the patterns of settlement in the 1920s and 1930s provide an understanding for how to regulate human-ecosystem interactions in urban regions. As well, Wadell (2002) describes the emerging

field of computer modeling being employed by planners to understand how and where growth will occur in order to direct it away from ecologically sensitive areas. Additionally, a number of researchers have focused on how habitats for various species can be constructed within the city (see Beier and Noss, 1998; Bryant, 2006).

In addition to the urban ecology and biodiversity literature, urban environmental planning research has focused on the development of specific interventions that make cities “greener.” These include “brownfield” remediation, green roof technologies, and energy efficient “green building” practices. For example, Lynch and Moffat (2005) describe “bioremediation methods for removing heavy metals from contaminated “brownfields” through the use of certain plant species that naturally extract metals. Del Barrio (1998) presents a model of the cooling capacity of green roofs as a mitigation measure for rising temperatures in urban areas due to trapped atmospheric gases, a phenomenon known as urban heat island effect. As well, the United States Green Building Council (USGBC) has sponsored numerous research projects that refine the techniques employed by developers to reduce the ecological impact of individual buildings (see USGBC, 2000).

There have been efforts as well to develop regional strategies for environmental planning under the rubrics of “Smart Growth” and transit-oriented development. While smart growth planning can include a wide range of activities, it generally involves efforts to create compact development that utilizes urban land efficiently and limits the number of vehicle miles traveled (Greenberg et al., 2001). The notion of smart growth planning as a regional strategy for creating more compact development has been embraced by numerous public agencies at all scales of government (see United States EPA, 2003). The focus of the smart growth agenda is to create transit-accessible nodes of walkable development (Handy, 2005; Downs, 2005; Frank and

Kavage, 2006). As a result, smart growth is closely linked with the notion of transit-oriented development (TOD) (see Cervero, Ferrell & Murphy, 2002, p. 2). TOD has been defined as, “Development within a specified geographical area around a transit station with a variety of land uses and a multiplicity of landowners” (Salvensen, 1996, p. 37).

While the technical and scientific knowledge developed in such areas as ecology, modeling, green development, and regional planning have aided in the understanding of how cities can be made more environmentally sound, it has not focused on how the institutions that guide urban development are changed in order to adopt this knowledge on a wide scale. Implicit to this literature is an understanding of institutional change resulting primarily from technological change. For example, while Randolph (2004, p.3) acknowledges that managing the relationship between society and the environment “depends on technology, human ingenuity, and the values and norms of society,” his textbook for environmental planners focuses heavily upon technology and human ingenuity. While the role of institutions is an important background for Randolph, the bulk of his text focuses only on technological and policy interventions. Bromley (1989) points out that the reliance on technological change as the primary driver of institutional change is tautological because institutions themselves determine the costs and values of the adoption of new technologies. Thus, urban environmentalists should not expect that discrete strategies for implementing technical advancements alone will lead to better cities. The field must address as well the underlying power dynamics that guide the adoption of new technologies.

Third, the growth of urban environmental planning has occurred alongside the rise of “sustainable” urbanization as a global ideal for many urban planning, design, and policy professionals (Brand and Thomas, 2005). Sustainability literature has been generated in

numerous disciplines including ecology, planning, economics, and political science over roughly the past twenty years. Urban sustainability is a term with broad application, but most uses refer to the Brundtland Commission's definition posed in 1987, which states, "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." This literature views cities as integrated elements of their wider bioregions. It often has a normative goal of making sustainability mainstream (i.e. Newman and Jennings, 2008, p.7).

The sustainability literature has broadened quite a bit in recent years and the points of entry for institutional analyses are numerous. Cedric Pugh (1996) argues that the diversity in this area has led to a division between analysts that look at economic, social, and environmental sustainability. This divided analytic structure is reinforced by a focus within sustainability studies on the "green agenda" of ecological issues rather than the "brown agenda" of urban issues. As well, while sustainability studies have paid attention to institutional structure, they have tended to focus on an economic view of institutions as essentially market mechanisms, rather than a social view of institutions (see Solow, 1991). The literature on sustainability that does look at the social construction of institutions consists of either vague calls for collective movements (i.e. Lerner, 1993) or a specific focus on narrow policy tools that only indirectly affect the institutional norms of urban growth, such as the "ecological footprint" technique of Wackernagle and Rees (1996; see also Maclaren, 1996). As a result, the utility of these studies to those interested in resolving the institutional challenges of American urban environmentalism is limited.

While authors have recognized the need to address the institutional context of urban environmentalism, few have discussed the specific processes by which the challenges in the field



can be met. Graham Haughton (2007) has described the discursive language which supports and reinforces an institutional divide in efforts to make cities sustainable. He argues that simplistic dualisms plague “the ways in which policy domains are discursively constructed” (Haughton 2007, 279). He describes the tendency within the literature to present society and nature; town and country; mega-city and small settlement as distinct entities. He also criticizes as overly-simplistic the tendency to describe cities only as environmentally destructive. Haughton argues that these claims ignore the fact that the dualisms he describes are all inter-related outcomes of complex social systems. While Haughton correctly highlights false dualisms and over-simplifications, his approach is representative of much literature on discourse and citizen participation in this area. It offers ways of framing the problem, but does not offer specific tools for bringing about institutional change that accounts for existing power dynamics in urban development (see also Petts and Brooks, 2006).

Authors writing about best practices have also focused on the institutional challenges that arise from diffuse political agendas. Harriet Bulkeley (2006) argues that local policymakers necessarily re-conceptualize best practices to suit their own political needs. As such, Bulkeley finds that the logic of urban sustainability lacks a central organizing principle and is always subject to the “competing governmentalities” that shape urban development. Bulkeley correctly highlights the limits of the expansive literature on sustainability best practices geared toward practitioners (see also Newman and Jennings, 2008; Portney, 2005). While these local practices might have been successful at steering a particular condition toward a more environmentally sustainable direction, they did so under certain local political circumstances that, because of the lack of an established institutional frame, must be reconfigured at new sites.

Connor and Dovers (2004) offer an explicit argument for the need to develop an institutional frame for urban sustainability. They directly address the “purposive institutional change” needed for sustainability to be adopted as an international goal. In order to do so, they develop a list of common institutional challenges to the widespread adoption of principles of sustainability. Like much of the literature on the institutional issues of sustainability, Connor and Dovers tend toward a narrow analysis of discourse and a wide focus on international issues (see also Frank, 1967; Meadows et al., 1972). In the end, they do not go much beyond literature which reduces all institutional issues to questions of discourse.

Finally, the literature on local urban environmental action, including stewardship and environmental justice, has drawn attention to the challenges of the field at the local level. The contemporary urban environmental stewardship literature examines organizations and individuals that work to conserve, manage, monitor, advocate for, and educate the public about a wide range of issues related to sustaining the local environment (for more details on this definition of stewardship, see Fisher et al., 2007). Stewards serve as direct managers of small parks and gardens, street trees, wetlands, and other sites that provide ecosystem services including air and water filtration, micro-climate regulation, drainage, and recreational/cultural benefits, among others (Barthel, 2006; Bolund and Hunhammar, 1999; Boyer and Polasky, 2004). They also form a crucial component of the urban environmental governance structure by networking with other local groups and citywide advocates and agencies.

The stewardship literature, in combination with literature on social-ecological systems, has begun to examine the institutional challenges of integrating environmental management into urban governance systems (see Connolly et al., forthcoming). It has also focused on combining community development and environmental action (see Svendsen and Campbell, 2008). This

literature is developing a framework for contextualizing individual actions of stewardship within larger systems of governance. Stewardship literature is also focused on the inter-organizational challenges inherent to urban environmental governance (see Fisher et al., 2007). However, authors in this area have only looked at the local municipal context and have not focused specifically on processes of institutional change.

Finally, the environmental justice literature has focused on the fact that “environmental issues have emerged in the context of urban and industrial change” (Gottlieb 1993, 240) and that this should lead the environmental movement toward questions of social justice. Environmental justice research has focused on confirming the over-representation of minority groups in environmentally hazardous areas (i.e. Bowen et al., 1995; Jerret et al., 2001) and the history and structure of the movement (i.e. Bullard, 1990; Bullard and Johnson, 2000; Towers, 2000; Schlosberg, 2007). While the environmental justice movement has drawn increasing attention to the connection between community development and environmental issues, it has not dealt with how the social and environmental perspectives are integrated.

The ideas that inform the intellectual context for urban environmental planning are not new, but the extent to which they guide urban policy is a recent development. Strategies for land use planning that focus on ecological preservation and social equity have been around since Howard’s (1902) *Garden Cities of To-Morrow* and include the Progressive Era parks and public health initiatives of the early 1900s (Fine, 1972; Corburn, 2005) as well as McHarg’s (1969) *Design with Nature*. These earlier efforts continue to inform the work of urban environmental planners. They inspired experiments with the built form of cities and suburbs but did not provide a counterforce for the unrestrained sprawl of postwar urban regions. Several cities were planned in accordance with Howard’s vision (Mumford, 1961, pp. 516-524), and the Garden Cities

concept inspired master planning efforts of the 1960s (Jacobs, 1961, pp. 23-29). As well, Progressive Era activists successfully advocated for numerous parks and housing improvements, but soon splintered their activities into various professionalized fields (Fine 1972; Plunz, 1990). A clear frame for urban environmental planning never arose in any of these efforts. McHarg's ideas have directed the design of specific developments, most notably in Woodlands, Texas (see Forsyth, 2002). These projects, though, are unique—more outliers than the norm for urban development.

The literature on urban environmentalism focuses on the historic, technological, discursive, and localized aspects of the institutional issues involved. The literature does not specify a view of institutional change which accounts for the wider social and political context within which technological and discursive innovations occur. In order to develop this perspective, it is necessary to understand how organizations work as agents of institutions and how they can be leveraged in processes of institutional change. First, though, a brief analysis of the proper arena for efforts toward creating institutional change through the political process is needed.

### *3.2b: Why the state level? The history of national land use policy*

Land use policy in the United States is largely controlled by municipal zoning laws but environmental activists have won some federal- and state-level legislative victories in this area. National laws that regulate urban growth include the National Environmental Policy Act of 1969 (NEPA) which mandates environmental reviews on large federally funded urban developments, the Federal Water Pollution Control Act amendments of 1972 (FWPCA) which limit development on wetlands, and the Comprehensive Environmental Response, Compensation, and

Liability Act of 1980 (CERCLA) which mandates cleanup of contaminated formerly industrial sites. Taken together, these laws form what Popper (1988, 296) describes as a system of “specialized centralization” of land use controls at the national level. These federal environmental laws set broad limits on specific types of development and on development in a narrow range of ecologically sensitive or contaminated areas, but do not generally impact the capacity of private builders to develop low-density housing in undeveloped areas that are subject only to local land use controls.

The parochial interests that local planning institutions support have historically left little room for comprehensive protection of ecosystems. With few exceptions, the municipal zoning system has a long history of disregarding regional and environmental impacts. Many researchers have found that complete reliance on local zoning is socially and ecologically unsustainable (see Gould, Schnaiberg & Weinberg, 1996; Danielson, 1976; Sager, 1969). For example, researchers examining the “ecological footprint” of the current pattern of development and consumption in the United States conclude that if the entire world had similar land use patterns then humans would require several planet Earths to maintain the level of needed resources (Wackernagel et. al, 2006). Despite this, other societies seek to replicate America’s land use patterns in search of a similar living standard, further exacerbating environmental impacts of land use worldwide.<sup>14</sup> As such, the lack of a strong system of regional and federal land use policies that mandates a more sustainable growth model in the United States creates social and environmental problems on a global scale.

Four major efforts tried to bring order to the fragmented system of federal land use policy in the United States. First, in the early nineteenth century, Congress proposed federal infrastructure improvements to aid the growth of the developing nation. Second, in the early

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<sup>14</sup> See Wackernagel et. al (2006) for a quantification of this assertion using the “ecofootprint” method

twentieth century President Theodore Roosevelt proposed a national plan for preservation of land and natural resources. Third, in response to the need for coordinated federal action following the Great Depression of the 1930s, President Franklin Delano Roosevelt's National Resources Planning Board sought to develop a federal role for land use planning of major infrastructure. Finally, in the 1970s, there was a concerted effort on the part of President Richard Nixon and several Congressional representatives to pass a national land use policy. Each employed some variation on the model of cooperative federalism, wherein states have final implementation power for a set of federally designated programs. All of these efforts, however, failed to pass or were quickly dismantled.

### 3.2b.i: *The Gallatin Plan*

In 1808, treasury secretary Albert Gallatin first confronted the political difficulties attached to federal land use planning when he proposed a national plan for "internal improvements." Gallatin's plan was focused on physical infrastructure and laid out a proposal for federally sponsored construction of major projects, such as canals and roadways. The plan sought to connect all of the major cities at the time and open up new opportunities for industrial trade and inland travel (see Goodrich 1958). Gallatin viewed cities as a set of trade partners rather than competitors and sought to cement these relationships through the provision of large-scale federally coordinated infrastructure. In order to implement his goals, Gallatin relied on an institutional model of "cooperative federalism." He proposed that the federal government should develop an infrastructure plan but implement it through flexible negotiations with the states. He argued that the federal government should seek approval from each state that would be impacted by the plan on a project-by-project basis (Lacey 2000, 101).

In the end, no action was taken by Congress on the Gallatin proposal. Concerns on the part of some members of Congress over the proper role of the federal government could not be overcome (Lacey, 2000). There was a strong defense of states' rights by several representatives who comprised the intellectual precursor to Andrew Jackson's base of support that took shape two decades later. Jackson's political platform curtailed the role of the federal government in all domestic affairs. Though the debate over national plans for internal improvements continued in muted terms, Jackson's presidency brought an end to all considerations of the issue as it marked a strong turn toward states' rights and an increased role for private enterprise in development. In Jackson's mind at least, this left no room for federal land use planning (Ellis, 1987). Just as with the "cooperative federalism" model, the conflict over the proper role of federal government would play a major part in every subsequent debate over national land use planning.

### 3.2b.ii: *Theodore Roosevelt's New Nationalism*

It took one hundred years from the time of the introduction of Gallatin's plan for the idea of a national land use policy to be taken up again. Theodore Roosevelt's platform of "New Nationalism," which he developed during the first decade of the 1900s, was his response to the uncoordinated and often failed endeavors of private industry to provide adequately for the basic necessities of the country. He had initially gained prominence as a police commissioner in New York City who had been one of the only public figures during a great heat-wave in 1896 to champion a coordinated government-based program to aid the residents of the tenement houses, roughly 1500 of whom died because of the crowded conditions and prolonged exposure to high temperatures (Kohn, 2010). The 1896 heat wave cemented Roosevelt's reputation as a reformist

politician. His rise in popularity was a decided swing away from the hands-off Jacksonian approach to government.

Roosevelt's presidential platform of New Nationalism was premised on the notion that the devolution of powers to localities crippled the ability of the public sector to regulate private interests. Most importantly for him, devolution of powers and the outsized influence of private interests enabled industrial development to irrevocably deplete natural resources, which he argued was an issue of clear national significance.<sup>15</sup> In a famous speech presenting his doctrine of New Nationalism in which he directly addressed accusations from his political rivals that he was a communist, Roosevelt said, "Conservation is a great moral issue for it involves the patriotic duty of insuring the safety and continuance of the nation. Let me add that the health and vitality of our people are at least as well worth conserving as their forests, waters, lands, and minerals, and in this great work the national government must bear a most important part."<sup>16</sup> This approach to conservation which linked protection of natural resources with public health presaged the arguments that Progressive Era urban reformers would soon develop and that came to underlie much of the work of contemporary urban environmental activism.

Theodore Roosevelt's New Nationalism employed earlier strategies of cooperative federalism seen in the Gallatin plan through its call for a permanent federal conservation commission which would gather data and coordinate land use and development planning via state commissions (Lacey 2000, 121). Even this relatively tempered effort to create federal institutional support for states to guide land use was decried as too revolutionary and socialist by

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<sup>15</sup> See New Nationalism speech given by Roosevelt in which he forcefully argues for the need to regulate private interests. Available at: <http://www.theodore-roosevelt.com/images/research/speeches/trnationalismspeech.pdf>, accessed on September 14, 2011

<sup>16</sup> Available at: <http://www.theodore-roosevelt.com/images/research/speeches/trnationalismspeech.pdf>, accessed on September 14, 2011



Roosevelt's critics. Because of these allegations, Congress did not act on the conservation commission land use proposal. Entrenched disagreements over the utility of local control and the proper role of national government made such legislation impossible in 1910. Roosevelt was forced to address his conservation platform in a more piecemeal fashion.

### 3.2b.iii: *Franklin Delano Roosevelt's National Resources Planning Board*

Two decades after Theodore Roosevelt's conservation planning proposals failed to be taken up by Congress, the Great Depression served as an impetus for his distant cousin and then President Franklin Delano Roosevelt (FDR) to make a third attempt in the history of the nation to create a national land use planning policy (see Gelfand, 1975 for an overview of federal urban policy at the time). In July 1933, Franklin Delano Roosevelt appointed the initial members of what eventually became known as the National Resources Planning Board (NRPB). The Board was developed in response to calls for a better coordinated use of public utilities construction as a counter-cyclical economic development strategy (Reagan 1999, p. 181). It was comprised of reform-minded elites associated with a network of social research institutions. One central task of the Board was to ensure that public works programs protected environmental resources (Hays, 1999, Chapter 11). As well, members of the Board had connections with leaders of urban social movements, such as the settlement house and occupational health movements. These movements had already sought at the municipal level to systematically address degraded urban environments as a way of improving the health and well-being of city residents (see Gottlieb 1993, Ch. 2).

The connection between environmental quality and public health that Theodore Roosevelt emphasized in his conservation platform was made more explicit during the presidency of Franklin Delano Roosevelt. This time, though, it was more connected with urban

reform efforts than conservation of natural resources outside of cities. The NRPB was one of FDR's "New Deal" agencies and was tasked with coordinating the actions of private business, civil society and government decision-makers through application of newly developed social scientific thought on institutional design. The plans that came out of the board tended to be "research oriented and open ended in recommendations" (Reagan, 1999, p. 191). Its planning agenda was broad and extended into economic development as well as land use strategies. While the NRPB worked closely with members of the business community to develop its recommendations and thus had supporters amongst private business, it was perceived as a threat to the power of many Congressional leaders (Clawson 1973).

In the end, the short-term local interests of Congressional politicians conflicted with the long-term national benefits that members of the NRPB argued their plans would provide. By 1940, as a result of congressional pressure the National Resource Planning Board had been moved out of executive control and its agenda had become divorced from FDR's direct interests. As well, there was heated criticism of the President's programs as involving too much government interference (Brinkley, 2000, p. 179). The NRPB faced substantial hostility from several members of Congress in the spring of 1943. As a conciliatory move toward his critics, FDR did not contest the action when "in some of the most sweeping language Congress has ever used, it abolished the Board and forbade the expenditure required to make it function" (Clawson 1973, p. 43).

#### 3.2b.iv: *The Postwar Context of National Growth Policy*

As Reagan (1999, p. 238) points out, shortly after Franklin Delano Roosevelt's planning board was abolished, United States metropolitan areas experienced a period of economic and

population growth. Wartime production for the Second World War and postwar prosperity created a boom in jobs and suburban housing production. The economic growth also fueled the dual effects of urban decline and environmental degradation (see Beauregard, 2006, Chapter 2; Rome, 2001). The primary apparatus employed by private developers for meeting the postwar rise in demand for new housing focused on building single family homes in previously undeveloped suburban areas. Federal policy and private industry created mechanisms for enabling massive and rapid construction of new suburban communities beginning in the 1950s (Jackson, 1985, Chapter 13). However, this new frontier of housing was unavailable to many non-white buyers. Racist housing covenants of the 1930s that forbade sale to minorities were later outlawed even as their segregationist intent was institutionalized by the 1950s in the uneven lending practices of banks. On the whole, the suburbs developed as “a self-fulfilling prophecy” which equated property values with race (see Jackson 1985, 178-218). Racism combined with uneven levels of spatial mobility across class to create what Teaford (1986) calls the “age of the urban crisis” (p. 128). The economic gaps that grew wider at this time between rich and poor were expressed not only in higher levels of inequality in terms of wealth and income, but also in the uneven distribution of tax resources between wealthy suburbs and declining inner cities.

By 1970, the move away from the central city on the part of whites was propelled forward by ubiquitous images and descriptions of riots, crime, and filth in cities. In 1968, Richard Nixon remarked in his acceptance speech for the Republican nomination, “As we look at America, we see cities enveloped in smoke and flame. We see sirens in the night. We see Americans hating each other at home.”<sup>17</sup> He was echoing the popular and news media portrayal which repeatedly painted cities in a negative light and increasingly equated declining urban

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<sup>17</sup> Quoted in Beauregard, Robert (2003) *Voices in Decline: The Postwar Fate of U.S. Cities*,” Routledge: New York and London. Page 128.

environments with black residents. As Beauregard (2006, 76) summarized the situation, “Postwar antiurbanism was racial animosity transferred to the cities.”

The rapid move toward the suburbs motivated by social conflict had visible effects upon the environment. One of the leading voices that pointed out the intertwined social ills of the city and environmental ills of the suburbs was landscape architect Ian McHarg. McHarg despised the growth of subdivision housing developments built with little concern for the natural environment around them. He called these residential areas the “most complete conjunction of land rapacity and human disillusion” (1967, p. 39). McHarg also had a deep disdain for the central cities of his time, using language reminiscent of the dramatic portrayals of the slums in the early years of the industrial revolution. He called them “imprisoning gray areas...Race and hate, disease, poverty, rancor and despair, urine and spit live here in the shadows...united in poverty and ugliness” (p. 39). McHarg was among several that called for improved land use planning as a means of managing the problems.

In the wake of the increasing visibility of the negative environmental effects of ever-expanding suburban growth fueled by social conflict in cities, states began to comprehensively regulate urban growth. In response to the weak federal controls over the rapid spread of postwar suburbs, Hawaii, Wisconsin, and California created the first state regulations to protect large environmentally sensitive areas in the late 1960s (see Rome, 2001, Chapter 4). As well, urban regions including metropolitan areas around San Francisco, Minneapolis, and New England developed region-wide water resource protection legislation (Bosselman and Callies, 1971). By the early 1970s, the first statewide land use policies were created in Vermont, Maine and Florida (Rome, 2001, pp. 225-230) and hybrid governmental agencies were created to protect environmentally sensitive areas in New York, New Jersey, and Delaware (Bosselman and

Callies, 1971). This movement on the part of many states was significant for national efforts at land use planning. As the history demonstrates, a cooperative federalist model which relies upon state-federal coordination would be required and state support would be essential for countering the inevitable argument that national land use policy represents an over-extension of federal governmental powers.

Important institutional innovations at the federal level changed the context of the national land use planning debate by 1970. New federal urban and environmental agencies were created in the late 1960s. These included the Department of Housing and Urban Development (HUD), which was primarily meant to address issues of homeownership and urban decline, as well as the Environmental Protection Agency (EPA), meant to address issues of environmental degradation. By giving formal cabinet-level representation to urban and environmental interests, Presidents Lyndon Johnson (in the case of HUD) and Richard Nixon (in the case of the EPA), established a federal basis for these policy agendas. These agencies were essential in professionalizing the community development and environmental movements respectively and in creating a natural constituency for federal-level action on land use issues that impacted both fields.

The new federal agencies sparked the growth and professionalization of non-profit organizations in these areas with technical expertise and advocacy capacity in order to shape and work with the growing federal regulatory apparatus. A national land use policy would only increase the tools available to both fields. Land use planning fit well within their professionalized model as it offered the possibility of applying data-driven approaches to social and environmental challenges. This was the approach advocated by McHarg and developed in the numerous state policies. As such, the new federal agencies helped to build a professional urban and environmental constituency rooted in the technocratic approach that federal land use

planning would require. The agencies also comprised an existing apparatus for administering such a policy, which would avoid the challenge that prior legislative efforts faced in their calls for a new federal entity.

Together, the elevated public consciousness of urban and environmental issues, the growth of professionalized community development and environmental policy fields led by cabinet-level federal agencies, and the move on the part of a number of states to address the issue represented a new frontier of opportunity to address land use at the national level. In 1970, it seemed to several members of Congress and President Richard Nixon's staff that after 162 years and three failed large-scale efforts, the time for a national response to the negative impacts of uncoordinated growth had come. However, as explored in the next chapter, the 1970s proposals for a federal land use policy that were developed were greatly weakened by claims from existing agency heads seeking to protect their bureaucratic turf. Several new and old federal agencies wanted land use programs under their control. Rather than resolving the social and ecological goals for land use, the federal agencies that would be implementing a national land use policy sought to protect their narrow interests (see Flippen, 2000, p.101). As such, the competition for regulatory control at the federal level made it impossible in the 1970s to create a single national land use policy.

The repeated failure to create a model of cooperative federalism in land use policy and the role of states in granting local zoning powers to municipalities dictate that the states are currently the most viable political level at which to develop urban environmental land use policy. Neither national nor municipal governments can effectively perform this function. As President Richard Nixon argued in defense of his administration's proposal for a national land use policy that required statewide land use planning, "The states are uniquely qualified to effect the

institutional reform that is so badly needed, for they are closer to the local problems than is the federal government and yet removed enough from local tax and other pressures to represent the broader regional interests of the public” (Corrigan, 1971, p.598).

As the history of efforts to create national land use policies demonstrates, the U.S. model has never allowed the federal government to take the lead in this area. Rather, the institutional structure for land use policy has made municipal governments “the primary institutions in America that exercise power over land use” (Frug and Barron, 2008, p. 2). This institutional structure pushes hyper-local competition for resources amongst municipalities. As a result, the issues of local politics are defined by “development, taxes, services and exclusion” (Burns, 1994, p. 113). While some localities have ventured into sustainability policy, land use decisions tend to be filtered through a narrow set of economic and social concerns. Within this system, “The most significant restrictions of local power in the United States come from state governments not the national government” (Frug and Barron, 2008, p. 44). As a result, the states must be the laboratories for extra-local land use policymaking.

### **3.3| Organizations, Institutions, and Institutional Change**

In order to provide context with which to understand the institutional challenges of creating a state-level system of urban environmental land use planning, this section outlines the role of organizations, institutions, and institutional change in the planning and urban social science literature. As well, literature on urban governance and organizational networks is reviewed with a focus on institutional change. These topics establish a foundation on which to build a more robust model of institutional analysis in urban environmental land use planning. They also serve as context for the next section on heterarchic governance.

### 3.3a: *Organizations and Urban Social Science*

Within the planning and urban social science literatures, it is far from obvious that efforts to create more socially and environmentally sound cities should start at the organizational level. Current paradigms focus instead upon the importance of enabling pluralism and consensus amongst individuals with differing levels of prior knowledge and resources. Advocacy planners working in the tradition of Davidoff (1965) argue that planners should openly serve as representatives of individual interests in land use disputes. This pluralist democratic model structures planning processes similarly to the courts. It relies on the tensions amongst interests being worked out between individuals through open debate. More recently, the communicative (Healey, 1992) and collaborative planning (Innes 2003) literatures have viewed the field from the perspective of the individual planner working to facilitate conversations amongst interested parties about how the city should be managed. The “communicative turn” in planning focuses on the role of planners as mediators in discussions about the proper outcomes for planning (see Healey, 1995).

While mediation and advocacy are undeniably important aspects of every urban planner’s job, there are limits to what can be accomplished at the individual level. Every mediation and attempt to advocate for a given side occurs within an institutional context. Often, this context is the biggest barrier to accomplishing planning goals (see Fainstein, 2009; Mollenkopf, 1983; Harvey, 1989; Krumholz and Clavel, 1994). The “internal dissonance” between the stated progressive goals and structures of institutions that guide urban development has long been frustrating for planners working to resolve differences amongst interests in the public arena (see Goudie, 2005). This situation does not occur only because planners are unable to engage with the community in a meaningful way. It also occurs because the institutional structure blocks even the



best advocates and mediators from achieving their goals.<sup>18</sup> The planning field requires some capacity to alter the institutional context of the advocacy, participation and mediation that it carries out. This capacity is limited within scholarship focused on the work of individual planners rather than the organizational context that planners work within.

The focus within the planning literature upon individual actors rather than organizations mirrors a trend, at least since the 1960s, within the social sciences. The relative lack of interest in organizations as a unit of analysis amongst social scientists has only recently been questioned, and this trend is more the case with regard to inter-organizational activity. The main focus for urban research since the 1950s has been upon individual-level analyses, but this was not always so. Beginning with the Chicago School in the early years of the twentieth century, urban-oriented social scientists took formal organizations and institutions of all sorts into account with their ecological approach to studies of urban community (Park et al., 1928; Burgess, 1925). This tradition held until the 1950s when many social science disciplines, urban researchers included, turned toward what has been labeled “methodological individualism” (Arrow, 1994). Aligned with a rise in the sophistication of quantitative statistical techniques and econometric analyses, individual-level analysts concerned themselves mostly with correlating specific characteristics of people with their life chances, such as race and occupational mobility (Blau and Duncan, 1967). As Marwell (2007) puts it, “organizations disappear in this kind of analysis.”

The social sciences generally continued down the path of methodological individualism into the later decades of the twentieth century when questions of urban poverty and race effects came to dominate the urban literature. In the 1980s, William Julius Wilson (1987, p. 56) presented his now-famous argument on the underclass that painted a picture of poor

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<sup>18</sup> Often by the time that developers engage community-based plans, there is no arena available for effective advocacy—the project is too far along (see Fainstein, 2010, chapter 3).

neighborhoods as institutionally barren. This reinforced the turn away from the organization as a unit of analysis for most urban researchers. If there were no organizations in these poor neighborhoods that had become increasingly the focus of urban social science, then studies that began with the organization as a unit of analysis did not make sense.

Of course, the urban-oriented social sciences were not *completely* divorced from organizations. Organizational functions make up a long-standing topic of study for scholars of public policy. Charles Lindblom (1959, p. 88) focuses his classic account of planning and policy-making in the United States on explaining why agencies adjust their policies “to the concerns of other agencies in the process of fragmented decision-making” (86). Such a formulation aligns with studies of inter-organizational relations within urban policy fields that followed soon after Lindblom’s article. In the 1960s and 1970s, a small cohort of sociologists developed a strong base of studies concerned with inter-organizational linkages that initially focused on urban processes (see Laumann, Galaskiewicz, & Marsden, 1978 for a good review). For the most part, though, these studies appeared only in the administrative science journals and by the 1980s could hardly be found. The inter-organizational studies that remained from this line of research turned almost entirely toward the private industry firm as the organization of interest, leaving behind promising advances in the study of urban governance. This turn away from public organizations coincided with Reagan-era national policies that elevated the role of private actors in public service and was paralleled by a number of similar moves in other social science endeavors. For instance the rise of regime theory in political science focused on the governing role of private actors vis-à-vis public institutions (Stone, 1989), economics rose even higher in status as *the* science of policy (Fourcade-Gourinchas, 2001), and a ubiquitous spread of globalization,

neoliberalism and privatization as topics of study became prevalent at this time (Peck and Tickell, 2002).

The end result of the turn toward methodological individualism and private organizations as foci in the social sciences has been that the growing complexity in systems of governance formed by fields of varied organizations is relatively understudied. Recently, though, there has been a surge of interest in urban organizations in part as a result of the discussion around social capital (Burt, 2000; Putnam, 1995). This connection comes about because social capital is formed by the “accumulation of negotiations based on mutual confidence that simplify, or obviate the need for further negotiations” (Degenne and Forse, 1999, p. 115). Much of this accumulation of negotiations is embedded within an individual’s organizational ties. Thus, the connection between individuals and organizations is a focus for social capital researchers.

The recent interest in organizations has been fueled further by the rise of the “new institutionalism” which views “actors and their interests as institutionally constructed” (DiMaggio and Powell, 1991, p. 28). This line of thought has generated powerful explanatory mechanisms for understanding the connection between social dynamics and formal organizations. One example is institutional isomorphism, which posits that forces operate within organizational fields that encourage organizations to become more and more alike over time (DiMaggio and Powell, 1983).

Additionally, some authors studying globalization and neoliberal social processes turned their attention to the organizational structures of governance processes (i.e. Brenner, 2004). Cities have grown much more organizationally complex since the days of the Chicago School and even since the 1960s when policy analysts began examining inter-organizational relations. A

lot of organizational ground remains uncovered with respect to urban research, and especially with respect to organizations and planning.

The increased organizational complexity within cities is driven in part by more organizational linkages that have formed as privatization of social services and devolution of government to the local level has created new demand for more local organizations (see Marwell, 2004). Researchers that have studied these increasingly complex urban organizational systems generally examine them from the perspective of egocentric networks (for example Small, 2006; Arum, 2000). In other words, these linkages have mostly been studied by starting from the position of a single organization and working out to develop that organization's network. Rarely has the total sociocentric network of urban governance processes been examined. Sociocentric analysis allows for the positioning of egocentric networks relative to all other organizations and linkages. It enables many recent advances in network theory to be operationalized (Degenne and Forse, 2006, pp. 2-17). For example, the importance of an absence of direct links between two types of organizations that form "structural holes" where certain types of actors are not connected to others in the network can be fully developed (see Burt, 2000). This allows for the structural position of organizations, referring to the amount of links and centrality of the organization, to be derived. When coupled with an analysis of the types of connections made, sociocentric analysis enables the character of networked systems to be explained (*ibid.*: 118-123).

Organizational fields can serve as a representative sample of the sociocentric networks in a metropolitan region. The narrowed field of a specific policy process is likely exemplary of the political dynamic of the region. As such, examination of the field enables a sociocentric approximation of overall governance networks. Organizational fields, though, contain multiple

scales of activity at the micro-, meso-, and macro-levels. At the macro-level researchers have focused on structural conditions that dictate the actions of organizations (see for example Weber, 1968; Alexander, 1988, p. 3). One example of macro-level research is work done under the banner of regulation theory which posits that certain political-economic structures have shaped cities according to “fordist” and “post-fordist” spatial patterns determined by demands for labor (see Painter, 1995).

At the micro-level of intra-organizational processes, analyses of social networks and organizational structure have yielded established knowledge about how individual connections shape outcomes for urban residents (see for example Davies, 1966; Israel et al., 1998). Work on “small worlds theory” (see Watts and Strogatz, 1998) and the “strength of weak ties” (Granovetter, 1973) have done much to build a stable understanding of micro-level urban social dynamics. The meso-level, which Mollenkopf (1981) labels “political mediation” and Alexander (2005) associates with inter-organizational networks is less identifiable within a specific genre. Clearly, though, there is a macro-meso-micro relation between the organizational levels of urbanization processes which must be accounted for and which calls for a research method that can relate them.

Bourdieu has written extensively on the need to explore the meso-level of social processes. In the explanation of his concept of “habitus,” Bourdieu argued that “social practice cannot be understood “solely in terms of individual decision-making, on the one hand, or as determined by supra-individual ‘structures’ ...on the other hand” (cited in Jenkins, 1992, p. 74). Bourdieu sought to focus social analysis on the “acquired system of generative schemes objectively adjusted to the particular conditions in which it is constituted” (Bourdieu, 1990, p. 95). For Bourdieu, these schemes were often played out in fields of social action populated

mostly by organizations that shifted position constantly according to changing conditions in order to maximize their economic, social, cultural and symbolic capital. In essence, Bourdieu argued that most of the action of social life happens at this meso-level where the micro- and macro-levels interact.

Within the planning literature, the task of directing practitioners toward the meso-level of organizations and organizational ties as a means of affecting the institutional context that the field operates within has been an active project for some time. Forester (1989) has sought to provide a framework for a “practical and politically critical understanding of organization that can inform progressive planning practice”(p. 67). He argues that “popular thinking” and academic theory generally view organizations in one of two ways: instrumental or social. The instrumental view sees organizations as a tool of society. The publicly stated goal of the organization is what defines and directs the actions and purpose of the organization. Forester argues that the instrumental is only partially correct, as it does not describe activities wherein organizations are also deeply social in nature and maintain themselves only through the creation of ongoing relationships, both inside and outside of the organization. A strictly social view of organizations is also incomplete from Forester’s perspective. He argues that this view tends to be apolitical.

Forester argues that a third, more synthetic view of organizations is needed in planning scholarship. The “critical view of organizational action” focuses, via their social and instrumental roles, on the extent to which organizations shape “selective claims and arguments” by reproducing “social relations of trust or distrust, cooperation or competition, amiability or hostility...” (pp. 68-69). Forester writes, “Citizens may...be exploited not only through the lack of democratic control over what private and public organizations produce in this society but also

through the lack of democratic control of the social relations those organizations reproduce” (p. 78). The social reproductive role of organizations in the planning process is, for Forester, the necessary analytic component that introduces political aspects to the social and instrumental actions of organizations. This lens requires a synthetic view of organizations as interrelated entities which direct planning processes through their functional roles (i.e. administering the construction of infrastructure), their social roles (i.e. facilitating such construction through the centralization of stable social relationships between interested actors), and their political roles of legitimating selected actions within contested political arenas. Planning agencies are often historically positioned as functional organizations, but recent developments toward a decentralized, less hierarchical structure for planning have coincided with a move toward governance models that have made the social and political roles of planning organizations more visible. As such, in different ways, Mollenkopf, Alexander, Bourdieu, and Forester all argue that planning analysis must account for social actions at the meso-level where organizations balance the micro and macro forces that shape cities.

### 3.3b: *Urban Governance and Organizational Coalitions*

Urban governance refers to a mode of public decision-making that involves state and non-state actors working in unison (Stoker, 1998). Governance theory is an organizing framework which conceptualizes the shift away from the top-down state-centered approach to directing urban processes through formal hierarchic government toward interactive policymaking processes. Governance incorporates public, private, and voluntary sectors into all levels of urban management. It includes government, but is more complex. Governance processes supposedly have more capacity to deal with the rapidly changing conditions, such as those brought on by

globalization (Brenner, 1999) and urban decline (McQuarrie, 2010). As such, the governance literature focuses on the meso-level of socio-political practice.

The literature offers a number of possible organizational types that might be considered pertinent to the practice of urban environmental governance. These include neighborhood, community, service, subcultural, interest group, bureaucratic, corporate, representative, participatory, appointed, and inter-organizational group. As Forester (1989) reminds us, all of these organizations are political actors (even if some have a primarily cultural purpose), meaning they work to shape public policy toward their interests. At various times and places they are connected to networks of urban governance which include public, private, and civil society organizations linked through formal contract, interpersonal relations, or personnel/resource flows to jointly create public policy.

While the shift toward governance signals a wider base of participation in both decision-making and service provision at the municipal level, it does not necessarily change institutional norms (see Coaffee and Healey, 2003). Networks that form within governance regimes are generally shaped by pre-existing power structures (LeGales, 2001). This limits the capacity for fundamental shifts in the distribution of the benefits of urban growth and, while it does have potential to improve performance of urban management practices, it is unlikely to alter the existing outcomes for an elite-dominated city.

Some authors have pointed to the fact that the participatory democratic benefits of governance partnerships are sometimes limited by the evolving relationship with established hierarchic power structures (Whitehead, 1997; Jessop, 1999). Whitehead (1997) argues that pre-existing hierarchies of power continued to express themselves in the Single Regeneration Budget (SRB) partnerships that were developed as participatory governance programs in Britain's cities



under the “Third Way” ideology of the New Labour party government in the 1990s. Whitehead follows Jessop (1999) in describing a situation wherein, along with the rise of the new governance regimes across state, private, and civil society sectors, came a “meta-governance” structure which sought to maintain control over these regimes. Meta-governance processes counter the openness and multi-lateral nature of governance relations because pre-existing political authorities set the ground rules for the relationships, provide the information that guides expectations, and become the final arbiter of disagreements (Jessop, 1999). Whitehead is critical of the ability of governance language to “deflect attention away from the hidden hierarchies built into the architecture of partnership forms” (p. 20). He argues that it can be a cover for true power structures.

Within the urban literature, work on civic capacity has focused on the means for building a lasting and flexible base for decision-making. Judd (2006) argues that operational civic capacity involves a coalition of organizations that persists over time and has sufficient means of mobilizing resources. His view of civic capacity (a somewhat more complex definition than others such as Stone et al., 2001) focuses on the extent to which the ability of a community to bring various sectors together determines its political power. Judd describes the case of St. Louis where “a restructuring of the local state made it possible to build civic capacity without a governing coalition and even without strong civic leadership” (p. 45). Auspos and colleagues (2007) also focus on the convening power of community organizations. They find evidence across nine cities of “local community development systems that are resilient enough to adapt to changes in the macro environment and take on a [broad] scope of work” (p. iii). For these authors, the important point is that civic capacity does not take one form and is not necessarily dictated by the local state. They draw attention toward the meso-level of organizational inter-

relations by further contextualizing the work begun by Stone (1989) on urban regimes through their specification of “regime” as only one of the possibilities for the assemblage of “power to” shape cities.

Critics of the civic capacity literature have argued that there is scant evidence that community coalitions are successful and that the ones that are either focus on a narrow agenda or involve relatively tight-knit and homogeneous communities (Kadushin et al., 2005). They argue, as well, that the coalitions imagined are generally too broad to be realistic, assume the existence of a community that often does not exist, are plagued by conflicts over power differences often drawn along race, class, and ethnicity lines, must navigate a history of “organizational debris” within cities which often make it more difficult to develop trust amongst organizations, try to put organizations with different norms, values and styles together, and result in a random often irrational solution based upon the idiosyncrasies of the organizations involved. This view fundamentally asserts that “the hope that social capital generated by coalitions will substitute for the lack of financial capital” is a false hope (Kadushin et al., 2005, p. 271). The notion that networked organizational structures provide a permanent power base for communities, though, should not be dismissed. Rather, it is only in their ability to mobilize these networks that community coalitions become powerful actors.

The social-ecological systems literature offers one perspective on analyzing governance networks specifically concerned with managing the interplay between natural and human resources. Social-ecological systems are “intricately linked to and affected by one or more social systems” (Anderies et al. 2004, section 2). In a social-ecological system, some relationships between people are “mediated through interactions with biophysical and non-human biological units” (Anderies et al., 2004, section 2). The social-ecological systems literature, then, bears a

relationship with Actor-Network Theory (ANT) developed initially by Bruno Latour (see 2005 for a full description). In Actor-Network Theory, the non-human entities are given agency in social networks. The example that Anderies et al. (2004) give of a social-ecological system, is when a fisher's activities are affected by another fisher's activities via interactions with the fish stock. In a social-ecological system, the fish stock has agency in social networks because outcomes for one person in the network (a fisher) are altered by the actions of the fish, which themselves are altered by interactions with another fisher. A social-ecological system then is a particular type of actor network which focuses on management of natural resources. Further, most authors concerned with social-ecological systems are generally concerned with the social and physical infrastructures that support cooperative action relative to natural resources (see Ostrom and Schlager, 1996; Anderies et al., 2004; Bodin, 2006).

In a sense, all cities are social-ecological systems. Cities are comprised of a series of public infrastructures built around natural resources. Resources, resource users, and public infrastructure all interact in order to maintain quality of life. Because of this, cities and nature cannot be considered in isolation since each is constituted by and constitutes the other. As Benton-Short and Short (2008, p. 18) argue, cities are “a transformation of the physical environment to a built environment.” The economic processes that support the built environment are, as Cronon (1991) argues, premised upon processes of extraction and commodification of natural materials altered for human use. The understanding of nature in such a system is shaped by our built environment. From the early periods of urbanization, walls for security were built around cities. These walls were meant to protect the city from attack, but they also created a differentiation between the “urban” and the “wild”. This sense of separateness was built into the urban way of life and, like all aspects of the built environment, intensified during the industrial

revolution. The “social construction of nature” as not only apart from, but subject to, the needs of the built environment has largely been supported by the institutions that have organized land use and resource extraction for at least the past 300 years (Castree and Braun, 2001).

Therefore urban environmental governance must be concerned not only with the impact of pre-existing power structures relative to communities, but also with the impact of changing ecological circumstances, from climate change to decreased oil and natural gas reserves. Governance for urban environmentalists must manage the social-ecological systems that determine the relationship between the natural environment and the built environment. This is a more and more pressing concern as the impacts of human activity upon the natural world become apparent and is increasingly viewed as an question of shaping institutional structures.

### 3.3c: *Institutions*

Institutions are generally defined as the rules and conventions that direct individual and organizational behavior. Sjöstrand (1993, p. 9) writes, they are “a human mental construct for a coherent system of shared (enforced) norms that regulate individual interactions in recurrent situations.” They are the “infrastructures of human interactions” that include laws, regulations, rules, routines, conventions, traditions, customs, myths, and habits (ibid., p. 61). Institutions employ external, formal sanctions to “govern the behavior of a well-defined group of persons” (Elster, 1989, p. 147). The goal of the sanctions, which may take many forms, is generally to make an undesirable practice more costly for those who might be tempted to engage in it” (ibid., P. 148).

A distinction is often made between institutions and organizations (North, 1990). Organizations work within institutions and, as DiMaggio and Powell (1983) point out, might be

an arena for several competing institutional interests, but generally are not themselves institutions. As Bromley (1989, p. 32) argues though, “Even to settle on the definition of institutions as rules and conventions that define individual choice sets leaves open the issue of how best to conceptualize their role, and to understand the pressures that come for institutional change.” Campbell (1993) partially responds to this observation by incorporating the role of the governance regimes that enforce institutionalized conventions (see also Williamson, 1991).

In giving “meaning, scope, and responsibilities to organizations” (Bromley 1989, p. 23), institutions make organizations their stewards. The connections across several organizations that such stewardship often requires in order to create sufficient external sanctions are the raw material of institutional structure. For instance, the legal institution in the United States is comprised of written laws and unwritten conventions as well as an established set of associations between judicial, legislative, and executive organizations and individuals that are required to enforce and legitimate those laws and conventions. While no one organization can be said to comprise the legal institution, the established relationship between organizations, as much as the laws and conventions themselves, are part of the legal institution. Associations between those responsible for enforcing institutional rules and conventions are especially important for the consideration of institutional change because they create points of access to the governance regime associated with the institution.

These associations, and the institutions they are a part of, are the meta-infrastructure that maintain the underlying building culture of cities. For example, the Board of Trade in Chicago was established as a set of organizational alignments formalized to represent the institutional norms of commodities markets which directed the rapid expansion of grain elevators and compartmentalized shipping, forever altering the function and growth of major port cities (see

Cronon, 1991, chapter 3). In doing so, it formed a political structure capable of making cities build physical infrastructure that supported the norms of mass-produced commodities markets. This amounted to a formal expression comprised of both organizational alignments and rules and norms that represent a certain set of ethical decisions about the use and exchange of commodities. It also became one of the central institutional forces guiding the construction of industrial cities. Market-based organizations like the Board of Trade create formal sanctions that enforce a certain building culture which views urban growth as a tool for market expansion. Thus they support market institutions. Similar organizations also direct the construction of housing and infrastructure (Davis, 1999).

Market institutions are not the only ones competing for control over urban space. As Michael Teitz (2007, p. 26) writes, “urban planning... can scarcely be said to exist without institutional structures” and, as such, is constantly faced with the effects of the ethical decisions embedded within institutions that direct urban form. Especially with concern for land use planning in the United States, local governance arrangements (i.e. organizational alignments both inside and outside of formal government) express the institutionalized norms which will be favored in cities. Numerous empirical and theoretical analyses have examined these governance arrangements, including the operations of urban regimes (Stone, 1989), political machines (Eerie, 1988; Merton, 1957), elite-centered growth coalitions (Logan and Molotch, 1988; Hunter, 1953), pluralist governance processes (Dahl, 1961), participatory democratic programs (Young 2000; Berry, Portney & Thomson, 1993), urban social movements (Castells, 1983; Fainstein and Fainstein, 1974) and various paradigms of cross-institutional communication including consensus building and communicative planning processes (Fischer, 2009; Healey, 1998). These approaches have often led to the development of typologies of urban institutional environments

based upon differing historic power structures within cities, such as “elite-centered” or “machine style” cities (see Weir, 1999). The motivations of individual and organizational actors have also been analyzed (for example Jacobs, 1961). However, this literature has rarely focused on how the urban institutions within these political structures change.

### 3.3d: *Institutional Change*

Healey (2005, p. 305) states that planners must be able to “‘read’ the dynamics of the context in which they are situated” in order to form what Beauregard (2005, p. 206) calls the “bridge...from the technical knowledge that planners embrace to the institutional change that seems necessary for planning to be effective.” Within such efforts, organizational connections that form governance regimes are primary variables in determining the shape of institutions. Thus, organizational strategies meant to alter existing power relations by reconfiguring those connections are essential elements in processes of institutional change. In order to convert technical knowledge into widely adopted strategies for urban development, environmental planners must understand processes of institutional change and how they can interact with them.

The institutional change literature within planning has centered on two areas: a transactions cost perspective and a social constructivist agenda. The transactions cost perspective is influenced largely by North’s (1990) work on institutions as “friction” within markets. This approach is most strongly represented by the writings of Alexander (2005; 2007) who focuses on how planned institutional environments affect individual decisions in the market. This economic understanding of institutions assumes that change arises from an aggregation of individual decisions. While this is a clear means of institutional change within markets, it ignores the effect that organization-level alterations to existing institutional environments have upon

shaping the context within which individual decisions are made. Alexander does not account for the interventions of organization-level and inter-organizational activities and thus does not move to the level of analysis necessary to address the more direct mechanisms for institutional change that planners as organizational actors can connect with. In all, the market approach to institutional change does not focus on why organizational commitments to changing institutions arise.

Another explanation of institutional change is outlined within the social constructivist approach. Authors in this area are influenced by the “new institutionalism” in sociology. They emphasize the role of both individual and organizational connections in determining the shape of institutions. Healey (2007) points to individual actions, systemic biases, and cultural norms as the foundations of an ever-changing multi-level institutional environment. She argues that the norms of urban development which determine the shape of cities and are formalized within institutions are constantly reshaped by the actions of individuals and organizations. This assertion can be aligned with Lefebvre’s (1974) notion of the social production of space as a process of interacting social forces that are embodied within institutions formulating the limits of action for a given space. In this line of thought, institutions are part of “embedded governance cultures” (González and Healey, 2005, p. 2063) contained within larger institutional fields (see Jessop, 1997; Hillier 2007). These interacting cultural forces highlight the situated nature of institutions but do not explain what causes institutional change in these conditions.

Increasingly, social constructivist planning theory employs the notion of complexity to explain institutional change. Complexity is an apt concept given the numerous non-linear relations between intersecting institutions that urban environments possess. Healey (2005, p. 304) describes the complex environment with which planners must engage. She writes,



“Planning activity...is inherently a governance activity, situated in a complex landscape of formal government organizations, and all kinds of other public, semi-public, voluntary and private agencies providing some kind of collective goods.” For Gualini (2001: 25), this environment requires non-hierarchical problem solving which generates “emergent and concurrent” policy directives enacted by “multiple decentralized actors in the framework of evolutive processes.” Thus, Gualini argues that a decentralized governance environment creates opportunities for innovation which works across institutional boundaries.

The current tendency among most social constructivist institutional theory is to rely upon consensus building to empower emergent forces for institutional change. Authors writing from the collaborative planning perspective theorize that a normative concept of collaborative dialogue based on the concept of communicative rationality proposed by Habermas (1981) can create flexible, adaptive, learning institutions that direct land use decisions (Innes and Booher, 2003). Habermas (1970) postulated that if conditions could be created where all speakers legitimately represent interests for which they speak, speak sincerely, speak comprehensibly, and speak accurately, then the “ideal speech situation” could be approximated. Under such conditions, “more broadly discursive and more personally and publicly satisfying” decisions for public action can be achieved (Innes and Booher, 2003; see also Gualini, 2001). Collaborative planning theorists argue that a diversity of actors with interdependent interests is required as well to create the benefits of new creative answers for land use and resource questions built upon new lasting relationships.

There are many examples of successful efforts to engage in formal consensus building for the purpose of collaborative policymaking (Axelrod and Cohen, 1999; Innes, 1992; Innes and Booher, 1999; Ostrom 1990). However, these cases are quite specific. They all require resources

and time to engage in a structured consensus building effort. They are all selective in who is involved. As well, it is unclear what conditions brought the diverse and interdependent actors to agree to engage with the consensus process under specified rules. In fact, within such explanations, the emergence of new organized interests remains under-theorized. Collaborative planning moves theories of institutional change mostly to the individual level, downplaying the role of organizations. It does not address the conditions under which emergent interest groups shape the parameters of the consensus process or how they deal with pre-existing power relations. This is especially the case for groups working for change outside of existing institutional norms. Thus, consensus processes describe how competing interdependent groups that already have motivations for consensus arrive at new answers. Required is a view of institutional change which accounts for how competing interests are first brought to roughly equivalent negotiating positions.

Proponents of collaborative planning recognize the limitations of the approach. Innes and Booher (2003), two leading authors on collaborative planning, state that the collaborative policy dialogue approach does not fit well with hierarchically organized governance models (p. 50). Thus, most planning issues that are subject to the traditional political process and the typical alignment of interests around land use cannot be resolved through collaborative planning. As Innes and Booher (2003) explain, this approach is quite different than the “social movement model” of planning which challenges existing power structures (p. 53). The social movement model relies on advocacy for specific goals; collaborative planning is not based on a pre-defined set of goals. Rather, goals emerge through dialogue. The goal of collaborative planning is, instead, to create flexible and adaptive institutions capable of learning and changing according to changing conditions. While this is a necessary condition for effective urban environmental

institutions, there also needs to be a way of specifying desired outcomes. Thus, urban environmentalists require an institutional strategy that combines collaborative and social movement models.

The social-ecological systems literature supports the call for adaptive and flexible institutional structures. It relies on a model of institutional change that is closely related to the social constructivist perspective in planning, but adds a focus on the need for flexible institutional structures that can constantly adapt to changing environmental conditions. Generally, the need to manage complexity in networks has led the social-ecological systems literature to focus on the need for institutional arrangements that work across multiple scales and flexibly respond to changing environmental conditions (see Crona & Hubacek, 2010; Ernstson et al., 2010; Prell et al., 2009). Olsson and colleagues (2004) argue that because ecosystems are complex and adaptive they require flexible governance structures that can change along with new knowledge and new ecosystem conditions (see also Dale, 2000; Walker, 2002). The authors are specifically concerned with the “social features” that enable resilient systems of adaptive co-management. They highlight the fact that adaptive social-ecological systems can “emerge through organizational change within existing institutional arrangements” (2004, p. 83).

This model of institutional change involves an emergent and self-organizing process of interactions within organizational networks that result in rapid adaptation to changing environmental conditions (see Buck, 2001; Ruitenbeek & Cartier, 2001). The argument is that effective institutional structures for managing social-ecological systems are characterized by the emergence of localized responses to problems that are then adopted by the larger institutional context. Such systems must work within existing institutional contexts, but also require flexible institutional structures that enable the conditions for emergence to be effective. As such, both

individual acts of stewardship and the governance system that supports them are crucial to a strong and resilient social-ecological system of adaptive co-management of ecological resources.

In order to achieve the flexible and adaptive structure that is required, this literature focuses on bridging organizations that connect different areas of an organizational network as necessary components of a strong and effective institution. Bridge organizations are brokers that create flexible and adaptive qualities needed for a resilient social-ecological system (Ernstson et al., 2010). Ernstson and colleagues explain the role of bridge organizations in their description of “midscale managers” that incorporate new information into the network of organizations in a city to help local stewards flexibly respond to changing knowledge and ecological conditions. They also examine the role of “scale-crossing brokers” that unite the work of small scale ecosystem service managers with citywide and landscape-wide actors in order to create multi-scaled management practices. Ernstson and associates find balances “between centralization (for effective collective action) and decentralized modularity (for distributed diversity of autonomous and localized knowledge generation in preparation for change)” (2010, p. 5). In other words, the meso-level brokers that they analyze both centralize the functions of a sub-set of local stewards and allow for decentralized innovative practices by connecting local autonomous groups with higher-scale resources and knowledge.

All of these approaches add important elements to the understanding of processes of institutional change in the urban environmental context. However, each of these perspectives is limited as well. The transactions-cost perspective relies upon the aggregation of individual preferences as an explanation for institutional change. Social constructivists concerned with institutional change in planning such as Healey, Hillier, and Gualini rely heavily upon notions of consensus building within complex, but underspecified emergent processes of social change. The

social-ecological systems perspective also relies upon emergent and self-organizing actors as drivers of institutional change, but does not explain how such systems are built within actual systems of urban governance.

These approaches embrace only one type of institutional change: bottom-up. While atomistic, grassroots, and emergent forces can be sources of institutional change, the opportunity to alter the actions of entrenched interests that enforce existing institutional norms is limited for each of them. Because they do not explain change outside of the existing institutional boundaries, these perspectives embrace the circularity that Bromley (1989, p. 30) ascribes to many neo-institutionalist explanations in economics.<sup>19</sup> Thus, these explanations cannot fully satisfy the needs of urban environmentalists seeking to move cities toward a new institutional frame that reflects a new set of norms for the built environment.

There are a number of additional approaches to institutional change outside of the planning and urban ecosystems literature. One of the most established explanations is that it is a byproduct of technological change. Marx (1904) observed that “mankind always sets itself only such tasks as it can solve,” asserting that the material conditions for a solution must be present before a problem can be posed.<sup>20</sup> This is an important notion for efforts to create environmentally conscious urban development, wherein the material conditions for a solution are present (or at least perceived to be in the form of alternative energy technology, green building strategies and sustainable planning programs), but the destructive model of classic sprawled urban growth

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<sup>19</sup> This is the case for the sociological institutionalists in planning because they presume a set of actors that consensus can be sought from is already present—these actors are defined by existing institutional arrangements and thus limit the types of change that consensus processes make possible. For transactions cost analysts in planning this is the case because institutions themselves determine costs and values, a critique also leveled at the work of institutional economists such as O. Williamson, D. North, K. Arrow. See Bromley 1989 for more on this critique.

<sup>20</sup> Importantly, as Bromley (1989) points out, institutional economists have observed that the functionalist explanations for institutional change as a byproduct of technology are tautological because institutions themselves determine the costs and the values of the adoption of new technologies.

continues to spread. Clearly, the fact that the technology exists for a more environmentally sound system of urban development is not enough to change the way we build cities. If the functionalist view of institutional change as a byproduct of technological advancement is incomplete, what additional social mechanisms are needed to unite problem and solution within urban environmental planning and how do these mechanisms work?

The mechanisms of institutional change have also been a focus for authors that analyze the discursive practice of sustainability (see Harvey, 1996; Rydin, 2003; Torgerson, 1995). For them, sustainable development offers a language for framing issues and setting goals, but is not associated with a particular set of political actions. Brand (2004: 10) critiques this perspective as limited. He writes, that “the problem with much discourse analysis [of sustainability] is that it limits itself to discourse as some discrete entity and ignores the ‘conditions of its emergence.’” In order to understand the impact of sustainable development, Brand argues, discourse, institutions, and spatial form must all be considered in dialectical relation to one another. Thus, the current view of the actual and potential impact of the abundant and continuing efforts at creating environmentally conscious urbanization is decidedly mixed.

### **3.4| Heterarchic Governance**

The “conditions of emergence” which connect discourse with processes of institutional change and thus affect the shape of cities make up the largest persistent grey area in the analytic efforts to sort out these impacts. The heterarchic governance literature in sociology is one perspective that has addressed this issue with a specific focus on explaining how emergent social forms take shape in meso-level interactions to manage institutional change. Heterarchic governance involves a temporary alignment amongst competing organizational interests and has

been described most prominently as “neither market nor hierarchy” (Powell, 1990). The literature on heterarchic governance describes the conditions under which competing interests align within organizational fields. Stark (2000) writes that, “Whereas hierarchies involve relations of dependence, and markets involve relations of independence, heterarchies involve relations of interdependence” (p.12). The concept is especially suited for understanding situations where established institutional arrangements are in the process of being altered and, as a result, there is a general context of uncertainty that all organized interests must contend with (Stark, 1996; Jessop, 1997). Heterarchic governance has been applied to the study of regional economies, industrial districts, transitioning national regimes, and urban planning processes (see Powell 1990, Stark 1996, Jessop 1998, Stone 2006; McQuarrie, 2010).

Heterarchy as a formal principle for framing interactions amongst groups was first established in the natural sciences (see McCulloch, 1965; Findlay and Lumsden, 1988). It was later applied to the activities of private corporations (see Hedlund, 1986; Grabher and Stark, 1997; Stark, 1999). Grabher (2001) pioneered research that applies it to processes of urban and regional governance. He described five required features of any heterarchic social assemblage. The most important for him was diversity of organizations and rivalry amongst them. The benefits of adaptability to changing and complex environments that organizations gain from participation in heterarchic arrangements are derived from organizational diversity. This principle has long been established within the study of organizational ecology, which holds that “a system with a greater variety of organizational forms...has a higher probability of having in hand some solution that is satisfactory under changed environmental conditions” (Stark 2000, p.10 summarizing Hannan 1986, p.85).

Heterarchic systems, though, are not fundamentally about altruistic cooperation amongst heterogeneous actors. Within heterarchic arrangements, there is a rivalry between “competing and coexisting value systems” (Stark 2000, p. 13). Rivalry amongst organizations holds each of the groups accountable according to multiple logics and values, and to reflexive questioning of “the assumptions of one’s own organizational behavior” (Grabher 2001, p. 354). Rivalry combined with organizational diversity makes groups within a heterarchic assemblage better at finding answers within complex and dynamic moments of institutional crisis because each organization has “more than one way of evaluating worth” (Stark 2000, p. 13). When “sticky norms” (Kahan, 2000) make a new resolution difficult, heterarchic assemblages are one way of loosening those norms through contestation. This is because heterarchic governance situations leave open the question of which conception of worth, or which value system, should prevail in any given circumstance. As Grabher (2001) writes, “Rather than being built on a static coexistence of organizational forms, [heterarchies] are driven by *rivalry* between them” (p. 353). While rivalry and heterogeneity are essential to enabling organizations to reflexively evaluate their position within a changing institutional structure, so too is the ability to integrate and align the practices of organizations as a new set of norms, rules, and laws are being structured.

In processes of urban development, heterarchic governance has been used to characterize periods where private market actors give up autonomy in decision-making and state actors give up top-down authority. In order to bring this about at the inter-organizational level, Jessop (1998, p. 36) argues, “the ‘added value’ that comes from partners combining resources rather than working alone” must be evident to all involved. The heterarchic governance literature focuses on the role of institutional crisis and uncertainty in creating such a condition. Here, the literature is open to the same criticism that collaborative planners are in requiring “ideal speech situations” to



be created without specifying how power structures are re-aligned to make such a condition possible. Heterarchic governance literature, though, has focused on some mechanisms that help to bring this about. Grabher (2001) argues that “tags” such as “sustainable development” and discrete projects that cut across institutional boundaries are the mechanisms of integration that allow diverse groups within a heterarchic governance assemblage to discover the possibilities for added value through partnership. As such, heterarchic governance situations require both advocacy and communication at the organizational level in order to structure a new set of institutional norms, rules and regulations. The literature, though, is limited to explaining how situations are managed when institutional norms are in the process of changing.

In his analysis of the organizational responses to the institutional crisis of a collapsing “growth machine” in the city of Cleveland, Ohio, McQuarrie (2010) offers a recent example of urban heterarchic governance. He describes the heterarchic arrangements of groups working there as important because “they get beyond idealistic conceptions of ‘policy paradigms’...and toward seeing how institutional change actually happens in experimentation and political contestation” (2010, p. 240). Immediately following World War II, Cleveland was a booming manufacturing city with a growing economic base and an institutional structure largely focused on expanding and investing in manufacturing infrastructure. By the mid-1960s and throughout the 1970s, the decline of the manufacturing economy in the United States, the migration of firms from union cities such as Cleveland, and ongoing unrest over civil rights combined to cause a severe economic decline. The growth machine institutions that focused on expanding the economic base no longer had much financial capital and open conflict ensued between neighborhoods starved for investment. The primary rivalry that would define the next several decades was a contest between neighborhood interests and growth-oriented elites. In the end,

Cleveland's political environment did not stabilize until the late 1990s. One of the results of its institutional crisis was a reconfiguration of affordable housing from a publicly provided good in the 1960s to a multi-interest tool for economic development in the 1990s and 2000s. As new institutional arrangements formed to link non-profits with state-provided tax credits which they sold to raise private capital for the creation of affordable housing, developers became a source of capital and began to be incorporated into the governance regime of the city.

McQuarrie (2010) rejects the notion that the new governance regime can be solely explained as a consequence of external shock such as economic decline. Institutional innovation, he points out, is not an automatic response to such situations. Nor does McQuarrie subscribe to the generalized notion that "policy paradigms" or new diffusions of ideas explain the new arrangements that can be seen in Cleveland following the institutional crisis that arose in the 1970s. Rather, McQuarrie is interested in "the practical experimentation that underpins institutional innovation" (p.246) across different types of organizations. McQuarrie turns to heterarchic governance precisely because it is the condition under which specific experimentation across institutional logics can develop into a new and possibly permanent institutional form.

The institutional innovations that McQuarrie highlights in Cleveland involve the uses of Community Development Corporations and mediating organizations that linked those corporations to state and private actors. In the end, leaders of the CDCs were given high ranking positions in the municipal government, which McQuarrie argues signals a permanent shift away from hierarchic growth machine politics. In the new governance arrangement the state played a more marginal role than it had in the 1970s, private sector guided by mediating organizations brought capital and sector-specific modes of management and problem solving to the

arrangement, and nonprofits acted as developers and attracted foundation capital. As well, they “enable[d] a degree of community-based control and input into land use and development processes” (p.259). Nonprofits were the primary mediating organizations that worked across the different institutional logics of the governance assemblage. They were “the distinctive organizational forms in heterarchic governance” (p. 261).

As this example demonstrates, the “ad-hoc forms of cooperation” (McQuarrie, 2010, p. 261) that come with heterarchic governance arise in moments of institutional crisis and change because they combine different institutional logics across organizations (see Stark, 1996; McQuarrie, 2010; Jessop, 1997). Heterarchic governance in this example enables “a higher problem solving capacity in complex and dynamic situations” (Zimmerman, 2009). In Cleveland, it incorporated more perspectives than the prior hierarchically designed, growth-oriented structure of governance processes would allow. Greater interdependence amongst the units of governance (state, private, and civil society) increased the need for coordination across sectors and created complex feedback loops that could not be governed by one hierarchically organized bureaucracy. As such, even as the interdependence of groups increased, so too did the governing power of the marginalized.

Heterarchic governance should, however, be applied narrowly. It refers to moments where uncertainty creates an impetus for institutional change and not to general conditions of governance. Some authors have taken heterarchy so far as to view it as the norm for governance in most advanced political economies. Gilles Paquet (1996), for example, argued that the organizational resources of most western societies are comprised roughly equally of “society, economy, and polity.” Paquet then argues that in reality there is not a pecking order amongst them. He describes the relationship as one where the state (polity) is neither properly

conceptualized as fully subservient or dominant to private interests. In his view, heterarchy is the norm for governance.

While Paquet's application of heterarchic governance would apply to far more situations than the theory can adequately explain, he does draw a useful connection between processes of heterarchic governance and the organizational ecology concept of co-evolution. Institutional co-evolution involves "feedback processes among interacting systems (social, economic, political) going through a reciprocal process of change" (Paquet, 1996, p. 6). Akin to the punctuated equilibrium theory of biological evolution<sup>21</sup>, institutions likely co-evolve slowly all the time—learning from the norms, rules, and laws of one another—but during periods of crisis and uncertainty when learning across institutional logics in order to problem solve becomes a matter of survival for organized interests<sup>22</sup>, co-evolution proceeds rapidly. Heterarchy, then, is the condition that typifies the punctuation in institutional co-evolutionary processes.

Given the functional role in the co-evolution of institutions played by heterarchic governance relations, they need not necessarily lead to progressive institutions. McQuarrie concludes that "heterarchic governance in Cleveland has little accountability and has seriously skewed the distribution of resources in the city" (p. 262). Jessop (1998, p. 39) emphasizes the dangers of uncritically celebrating heterarchic forms of governance since they do not change market principles. Rather, it is simply a new, if more complex arena where the antagonisms created by competition for capital are expressed. Whitehead (2007) describes circumstances under which heterarchy became a facade placed over the normal hierarchic power structure of urban policymaking under Britain's New Labour policies. The dark side of heterarchy that

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<sup>21</sup> This theory posits that species generally evolve slowly over millennia but occasionally experience rapid processes of evolution due to environmental stimuli.

<sup>22</sup> This is also a period when heterarchic governance relations become common

Whitehead describes, though, arises when it is a pre-designed rather than emergent outcome and thus the partnerships are used as a way to market certain policy choices. Similar to Whitehead, in his study of heterarchic governance scenarios in the workforce development networks of Boston, Herranz (2008) demonstrates how the various management strategies which were designed to be heterarchic tended to actually reflect the pre-existing bureaucratic, entrepreneurial, or community focus of the dominant set of organizational actors in each workforce development program.

The heterarchic governance situations that are important for processes of institutional change are not those that are consciously designed in advance, but rather those that result from moments of institutional crisis or from concerted and risk-taking efforts to innovate governance processes from within. Any analysis of heterarchic governance must be wary of the use of heterarchic facades by those in power to serve as a veneer of a flattened power structure over what is actually a hierarchic control over urban space. It cannot be said, though, that this is the situation for all heterarchic alignments, especially not those that are emergent within evolving political processes.

### **3.5| Conclusion**

In line with the sociological literature on institutions, this study maintains the distinction between organizations and institutions. In this study, I focus on the “institutional arrangements” (Connor and Dovers, 2004, p. 19) that include the organizations that represent a given institution and the connections between those organizations. Thus, an institution is defined here as the rules and conventions that guide human activity and institutional arrangements are the core organizational associations that emanate from those rules and conventions. However, the focus on institutional arrangements should not be construed as an argument that institutions are the

same as organizations—rather, they are the norms that organizations support. In short, institutions are the infrastructure of human relations and organizations are components that comprise the infrastructure. The organizational relations that hold the components together determine how effectively the norms are enforced and thus are essential to consider in social processes.

If institutions are “rules of the game” then institutional change is about changing those rules. Following the social constructivist approach in planning literature and the social-ecological systems approach, this study views institutional change as the result of an emergent process of interactions within organizational networks. These interactions impact the core organizational associations that enforce existing rules and conventions of urban development. However, from this perspective it is necessary to explain how emergent interests alter the actions of entrenched powerful organizations in the network. That is, existing organizational networks have uneven distributions of power and the entrenched interests will not simply change their actions because a new set of groups request it. Emergence of new institutional paths must be further specified in order for this model of institutional change to be useful for urban environmental planners.

The literature on heterarchic governance has focused on how opportunities arise for emergent interests to direct other organized actors in the network. A more robust model of institutional change combines the social constructivist view with theories of heterarchic governance. This robust model can guide urban environmental planners who face a divided institutional context amongst the community development and environmental interests toward effective actions that will create institutional change. Urban environmentalists also face a deeply entrenched power imbalance within the institutions that direct urban development. As such, specification of a model of institutional change as an emergent process of inter-organizational

activities that builds upon moments of heterarchic governance is especially useful for urban environmental planners.

An analysis of institutional processes that employs a heterarchic governance approach focuses on how the moment is created where traditionally hierarchically aligned powers become flattened. In this moment, new outcomes for land use become possible because the traditional approach of those at the top of the hierarchy is no longer the only one considered. Contestation does not go away. Rather, it is empowered. The outcomes of contestation within an established hierarchy are basically predetermined. The outcomes of contestation in a heterarchy are open. Thus, heterarchic governance analysis focuses not only on how the contestation is managed once the heterarchy is achieved (as is the case with collaborative policymaking), but also on how the heterarchic moment is achieved.

## Chapter 4: History

### The National Land Use Policy Debates, 1970-1975

“Those who believe that we are talking about the Grand Canyon and the Catskills, but not Harlem and Watts, are wrong.”

-Senator Edmund S. Muskie at the first Earth Day Teach-In, 1970<sup>23</sup>

#### 4.1| Introduction: “Battlelines” in the National Land Use Policy Debates

In order to demonstrate the extent and effect of the institutional divide between community development and environmentalism, this chapter presents the results of an archival analysis of the failed effort between 1970 and 1975 to create a national land use policy in the United States. During this time, Congress, the President, and federal agency representatives debated the proper role for federal and state governments with regard to regulation of land use in urban regions. The failure to pass a national land use policy, despite strong support from across the political spectrum, expressed the tensions between the newly developing federal urban and environmental regulatory structures and cemented the institutional divide between them. All efforts since this time to create more sustainable and socially just land use patterns have had to contend with the national institutional structure that resulted from this period.

In reference to the developing dynamic within the debate over national land use policy, Robert M. Paul, the Department of Housing and Urban Development’s (HUD) Acting Director of the Office of Program Evaluation and Development stated that he was “very uncomfortable with the battlelines that are being drawn up.”<sup>24</sup> Paul was concerned that a fundamental divide between the urban and environmental regulatory spheres was forming. He referred to the

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<sup>23</sup> Quoted in Gottlieb (1993), p. 112. Originally reproduced in: Environmental Action (1970) *Earth Day—The Beginning, A Guide for Survival*. Bantam Books: New York.

<sup>24</sup> Memo from Robert Paul to Frederick McGlaughlin, Subject: Jackson Bill. January 12, 1971. (s. 3354). Record Group 207, E135, Bin 14. Folder: Jackson-Javitz Bills.



divisions between HUD's national growth policy, the Council on Environmental Quality's (CEQ) proposal for a national land use policy, and a bill authored by Senator Henry M. Jackson then under consideration in Congress which prioritized environmental issues and was to be directed by the Department of Interior (DOI). The "battlelines" that made Paul uncomfortable were being drawn between HUD's urban constituency and the rising environmental lobby. Paul saw the potential for the environmental approach to national land use policy focused on alleviating pollution and congestion to appeal to a middle class suburban constituency that had already left cities, and to supplant urban policy focused on addressing poverty and social equity.

In 1970, environmental and community development interests were relatively new additions to the federal regulatory apparatus. As a result, urban and environmental agencies were in the process of setting their long-term agendas and carving out their policy domains. HUD established a programmatic focus on community development and residential desegregation, as well as widespread homeownership in urban and suburban areas. The agency enforced the Fair Housing Act which banned discrimination in home buying and lending, and administered federally-backed home loans which made credit available to a much wider market than had previously been possible. These efforts were linked with pre-existing "Urban Renewal" and Model Cities initiatives focused on redeveloping urban centers, as well as the New Communities program which provided federal support for development of new urban centers. All of these programs were part of ongoing efforts to halt processes of urban decline and enable expansion of new development outside of existing city centers (Weaver, 1985).

For its part, the newly created Environmental Protection Agency (EPA) as well as the Department of Interior (DOI) and the Water Resources Council (WRC), were focused on environmental resource management. The DOI, which houses the National Parks Service (NPS),

administered a number of conservation-oriented land use programs. The EPA and the WRC were recent inventions at the time, reflecting a new wave of environmental policy including the National Environmental Protection Act (NEPA) of 1969 and the Clean Air Act of 1970. These agencies focused mainly on controlling pollution.

One of the most contentious early issues within the national land use debates centered on which federal entity would be the “lead agency” for the proposed policy. The primary question was whether the policy should be directed by HUD— the federal agency responsible for community development programs — or another department more connected with environmental issues such as the DOI or the WRC. The battle over which “institutional home” (see Bonastia, 2000, p.1) was right for national land use policy was not a simple battle for bureaucratic turf. It was a statement on which goals—community development or environmental—would have greater political importance in the new federal regulatory structure of the 1970s.

Despite overwhelming support from the President, Congressional leaders, and the public, five years of negotiations over national land use policy resulted in a proposal that no longer appealed to either urban or environmental interests (Weir, 2000). The battle between the agencies and the committees that represented them led to a vague legislative proposal (see Corrigan, 1971; Flippen, 2000). Eventually, the community development and environmental advocates involved could not be sure exactly whose interests the legislation would serve and the effort was abandoned in 1975. As a result of the failure to pass legislation, the divided institutional structure of urban and environmental policy that developed during the debate became entrenched at the federal level. No attempt at national land use planning has been taken up since.

Weir (2000) established the centrality of the national land use planning policy debate for the field of urban environmental planning.<sup>25</sup> Though her analysis was based upon secondary literature and media reports, she argued that urban interests at the time viewed environmental interests as potential competitors for federal resources and largely saw the National Land Use Planning Act as an environmental bill which might usurp what regional planning capacity HUD possessed (pp. 203-204). She focused on the deep mistrust amongst urban advocates over the possibility that the rising environmental agenda would displace the progress made in addressing urban social issues. For their part, Weir argues, the environmentalists at the time were oriented toward specific local battles against development and had little interest in or capacity for state-level land use planning (pp. 206-208). Weir argued that the act would have created “an alternative institutional setting where advocates from both groups (urban and environmental) could interact” (p. 212). She concludes that the missed opportunity to create such an institutional space is one of the largest missteps that both groups made at the time.

This chapter builds on Weir’s argument. It employs primary documents from the time to focus on the institutional effects of the missed opportunity that Weir describes. It reports the findings from analysis of roughly 600 pages of archived memos, policy reports, and other materials relevant to the debates over the proposed National Land Use Policy Act dated between 1970 and 1975. The documents came from the National Archives II facility in College Park, Maryland. They are drawn from collections deposited by HUD, the Urban Affairs Council (UAC), Richard Nixon’s staff files, the United States Department of Agriculture (USDA), and

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<sup>25</sup> Weir’s argument is mostly conceptual. It does not extend to the institutional structure that current policies must contend with and does not utilize the primary documents presented here. Rather her argument is based on secondary literature and media reports. Several other authors have addressed this topic within the academic literature, but none have focused on the institutional issues in the debate. See Corrigan (1971), Graham (1976), Lyday (1976), Hanson (1982), Popper (1988), Daly (1996), Flippen (2000), Kayden (2000), Lacey (2000), Rome (2001).

the Department of the Interior (DOI). As well, secondary literature is employed to further contextualize the events referenced within the archived documents.

In the sections that follow, I present a detailed analysis of the political battles over national land use policy in the 1970s with a focus on the role played by urban policy agencies. I ask how the urban interests represented by HUD constructed their position within the debate relative to environmental interests. I conclude with a description of the institutional structure that developed in the wake of these unresolved tensions over the direction of land use regulation. This structure, I argue, became the essential context to which the state-level urban environmental policies examined in subsequent chapters had to respond.

#### **4.2| Nixon's Urban and Environmental Policy**

The 1970s debates over national land use planning were paradoxical; they took place at a time when sweeping federal action was becoming increasingly improbable in the United States (Hudson, 1980). The Administration of President Richard Nixon covered most of the period between 1970 and 1975, when the policy was proposed. In 1969, Nixon presented his doctrine of “New Federalism” which called for a dramatic reduction in the role played by the federal government. He favored state and local government as the proper level for deciding appropriate action in most cases and sought through “revenue sharing” to give states and localities greater power in deciding how to best spend federal grants for infrastructure and social programs (Conlan, 1988; Hanson, 1982, p. 64).

However, one year after Nixon presented his doctrine of New Federalism, his own appointees to the Council on Environmental Quality (CEQ) cited the need for a national land use planning policy as the highest priority environmental issue (Council on Environmental Quality

(CEQ), 1970). The CEQ report stated, “The time has come when we must accept the idea that none of us has the right to abuse the land and that, on the contrary, society as a whole has a legitimate interest in proper land use...we must work toward development of an effective National Land Use Policy...” (pp. xii-xiii). The report concluded, “Urban land misuse is one of today’s most severe environmental problems” (p.10). The authors pointed to suburban growth as the primary culprit which destroyed open space, covered floodplains, led to the expansion of space for cars at the expense of natural areas, and drove demand for infrastructure that hindered natural processes (p. 170). The CEQ report observed that this process led to an annual conversion of two million acres of rural land to developed purposes. It concluded that “there is a need to begin shaping a national land use policy” (p. 191).

Given that land use had always been a sacrosanct power of localities in the United States, it was paradoxical for Nixon to embrace CEQ’s recommendation. Clearly, a federal land use policy would contradict the doctrine of New Federalism. However, as Nixon entered office, the issues of water and air pollution rose to the top of the public’s consciousness. In 1969, an oil slick on the Cuyahoga River in Ohio caught fire and burned two railroad trestles. *Time* magazine ran a piece on the incident using it as an example of the extreme level of pollutants in formerly industrial urban waterways. The Cuyahoga River fire then became a powerful national symbol that mobilized a wide set of interests around the cause of addressing the “ecological crisis” in postindustrial urban regions (Straddling and Straddling, 2008, p. 518).

The extent of public interest in taking action to protect the environment was made clear soon afterward on 22 April 1970 at the first Earth Day. The event was initially organized as a “teach-in” on environmental issues at Harvard University, but quickly became a nationwide series of rallies and protests attended by 20 million people (Flippen, 2000, Chapter 1). As a result

of the large crowds and media attention, Earth Day is credited with marking the beginning of the modern environmental movement in the United States. At least early on, conservative and liberal politicians alike sought to capitalize on the mass appeal of the movement (Gottlieb, 1993, pp. 7-8).

Nixon told his staff even before he had taken office to “get out in front of the environmental issue” (Lazarus, 2004, p. 75). By 1970, he was desperate to court the increasingly powerful environmental lobby in order to offset public outrage at his support for continued military action in Viet Nam (Flippen, 2000, Chapter 1; Train 1996). In addition, the politically conservative director of CEQ, Russell Train, was appointed by Nixon himself; the policy prescriptions that Train produced could not be easily ignored. As a result, Nixon embraced the contradictory position of supporting New Federalism on the one hand and a national land use policy on the other. Such contradictions were a part of Nixon’s political strategy, wherein he commonly spoke to conflicting interests as if they were both a part of his agenda (see Graham, 1976, pp. 190-198). He made his position clear during the 1970 State of the Union address. After describing both urban and environmental challenges that the country faced, he stated, “I propose that before these problems become insoluble, the nation develop a national growth policy” (Nixon, 1970, Paragraph 101).

In using the language of “growth policy” rather than the more specific land use policy, Nixon was acknowledging the fact that in 1970 the environment was only one of two domestic issues that commanded the American public’s attention; racial unrest in cities associated with urban decline was also a domestic concern on the minds of many. For each of the six years prior there had been at least one large and widely televised riot in a major US city. The riots, which came to be associated with an “urban crisis” in postindustrial America, were sparked by specific

racist incidents such as police brutality or overt acts of discrimination, but expressed deep and widespread frustrations on the part of minorities who had been largely excluded from the benefits of American postwar prosperity (see Sugrue, 1996). Recognizing the high level of public interest in addressing both the urban and environmental crises, Nixon stated in his 1969 inaugural address that, “in pursuing our goals of...excellence...in rebuilding our cities...and in protecting our environment...we will and must press urgently forward” (Nixon, 1969, Paragraph 35). Indeed, in Nixon’s early years as president, he addressed both of these issues within his domestic policy agenda (Hanson, 1982, pp. 9-11).

In light of the importance of developing both an urban and environmental agenda, Nixon’s embrace of national land use planning was politically pragmatic (Graham, 1996). It was as an opportunity to appeal to his most important domestic policy constituents. Initially, Nixon responded to pressure to develop a national urban policy by supporting HUD as the lead agency in this effort. In putting national land use planning which environmentalists wanted under the direction of HUD, the primary urban agency, Nixon could take care of both urban and environmental issues. As will be seen though, HUD was weary of the proposals coming out of the environmentalist camp. Fred McLaughlin, Director of the HUD Office of Plans, Programs and Evaluation offered this critique of one of the first versions of a bill proposal for national land use policy created by environmental interests:

The bill, as we read it, approaches land use planning primarily from the standpoint of physical planning, with the emphasis on environmental protection, recreation, and industrial land-use. It does not appear to give attention to the broader issues of national urbanization patterns nor the impact of emerging land-use patterns in urban areas on housing choices and job opportunities, indeed, on the social fabric of urban America (see Appendix 4 for McLaughlin’s complete draft comments).<sup>26</sup>

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<sup>26</sup> McLaughlin, Fred. Draft comments for the Senate Hearing on S.3354. 24 April 1970. Record Group 207, E135, BIN 15. Folder: Legislation 70.

Twelve years after McGlaughlin's comments on the environmental land use legislation that was proposed, Hanson (1982) summarized the concerns of the urban policy agency. He wrote:

The environmental emphasis allowed "urban problems" to be translated to mean high densities, congestion, crime, and pollution. A suburban constituency for preventing these conditions was gathering force. The same constituency was not much interested in the "old" urban problems of poverty and racial conflict. (p. 13)

McGlaughlin's statements reflected, as well, that the agency's concern with "old" urban issues left little capacity or desire to substantively incorporate the issues of the new environmental movement. Reflective of the agency's inherent reticence to address environmental issues for fear that they would overwhelm social issues, one HUD staff report states:

Growth...may...strain the capacity of the urban ecology to provide air, water—and the solitude, perhaps—of the quality necessary to sustain a "proper" balance between man and the natural environment...However...we [HUD] are concerned not so much with growth itself, but with the way we are growing—and the impact on community development, housing, and community management.<sup>27</sup>

The lack of institutional space for urban and environmental policy to be co-created at the federal level complicated Nixon's push for a national land use planning policy that served both interests. The environmental policymakers had shown little interest in the "old" urban problems and the urban policymakers had little capacity to address the "proper" balance between man and the natural environment. This hurdle was never addressed, let alone removed. In the end, Nixon gave up his hope for a united policy. He accepted and even fueled the institutional divide between the two sides as he pulled away from both urban and environmental approaches to national land use planning.

Nixon, however was not the only one directing the push for national land use policy. For a number of strong proponents of environmental regulation, a national land use policy was the logical next step from the National Environmental Policy Act of 1969 (NEPA). As a result, the

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<sup>27</sup> Response to Papers on Problems and "Hidden Policies." Frederick A. McGlaughlin. 10 September 1971. Record Group 207, E135, Bin 38. Folder: Urban Growth policy Division 1 of 2.



CEQ proposal was one among several calls for a land use policy from the environmental community. Congressional sponsors, including Senators Henry M. Jackson, Edmund Muskie, and Representative Wayne N. Aspinall, pushed back forcefully when Nixon and the CEQ signaled support early in the discussion for HUD as the lead agency. The Congressmen's own competing proposals for legislation supported the DOI or the WRC to direct national land use planning. Under pressure from the growing list of environmental interests, Nixon himself soon switched his support from HUD to the DOI, at least offering hope that national land use planning could move forward as an environmental initiative. However, even this hope was soon undone.

The lack of resolution among legislators over where land use policy belonged and the failure to pass any policy at all despite initial support from a broad spectrum of political interests reinforced the institutional divisions between community development and environmentalism with regard to land use regulation. As such, the separation between urban and environmental policy became entrenched at the federal level. The result was a divided institutional structure for urban environmental policy. However, given the overwhelming push for national land use policy as an environmental initiative, urban interests likely would not have even been a part of the discussion if Nixon had not already been pressured to create a coherent national urban policy.

#### **4.3| Toward a National Urban Policy**

Senator Daniel Patrick Moynihan used his position as head of President Richard Nixon's Urban Affairs Council (UAC) to substantially shape the initial terms of the debate over national land use policy. On 3 February 1969, only two weeks after Nixon's inauguration and before the newly appointed Secretary of HUD, George C. Romney, had fully commenced his duties, Senator Moynihan presented a paper he wrote, *Toward a National Urban Policy*, to members of

the recently created Urban Affairs Council (see Appendix 5 for the full report).<sup>28</sup> Romney was a member of the UAC and Moynihan was Executive Secretary. Moynihan used his prerogative to set the agenda by presenting his paper very early in the Council's existence. *Toward a National Urban Policy* was a 10-point statement of priorities which stressed the need for more and greater federal incentive programs for cities, but also aligned his approach with the Nixon administration. In it, Moynihan wrote (p. 3):

As yet the federal government, no more than state or local government, has not found an effective incentive system—comparable to profit in private enterprise, prestige in intellectual activity, rank in military organizations—whereby to shape the forces that work in urban areas in such a way that urban goals—whatever they may be—are in fact attained. This search for incentives and the realization that present procedures such as categorical grant-in-aid programs do not seem to provide sufficiently powerful ones must accompany and suffuse the efforts to establish goals as such.

While this language seems carefully formulated to appeal to the incoming administration that had publicly criticized the grant-in-aid programs of Lyndon Johnson's "Great Society" initiatives, Moynihan in fact had been an architect of several of these programs and sought to extend them even if in a new guise under Nixon. In the remainder of the paper, Moynihan established the goals that he believed federal incentive programs should have. First and foremost, Moynihan thought that urban policy goals should focus on social programs. For his first point, he asserted the primacy of efforts to address conditions of "poverty and isolation of minority groups in central cities" (p. 4).<sup>29</sup> Second, Moynihan attacked the simple calculus used in most federal urban policymaking. He sought for all policymakers to recognize that interventions in the urban environment create multiple feedbacks for which policymakers must account. Moynihan's

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<sup>28</sup> "Toward A National Urban Policy," From Pat Moynihan Nixon WHCF Subject Files Local Government Folder 1

<sup>29</sup> Moynihan's understanding of the reasons for the isolation of minority groups in cities was highly controversial. The "Moynihan Report" published in 1965 focused on the relative absence of nuclear family structures as a cause for the continuation of poverty. He was accused of, in essence, blaming the victims rather than acknowledging the systemic inter-relation of race and poverty.

recognition of urban policy as part of a complex system implicitly acknowledged the shortcomings of Great Society programs that met resistance because they empowered activists to circumvent local governments. Nixon's own critique of Great Society programs was primarily that they were too costly and overly-bureaucratic (Glazer, 1973). Moynihan left room for this critique without actually restating it.

Moynihan called for a number of other initiatives including re-organization of local governments and increased state-level involvement in urban affairs. However, in order to avoid a specific political challenge, he framed his national urban policy broadly without naming any detailed programs. His intent was clear, though: *Toward a National Urban Policy* called for maintaining the Johnson-era focus on federal grants that address issues of inequality between races, classes, and across jurisdictions. That this agenda conflicted with Nixon's preferred approach was, for Moynihan, a matter of semantics. He sought to reframe those goals within language that Nixon could embrace and his national urban policy proposal was a primary vehicle for doing so.

At the time that he was developing his paper, Moynihan was working closely with Nixon's staff to invent a new structure for welfare policy (see Moynihan, 1973). Moynihan designed Nixon's amendments to the Aid to Families with Dependent Children welfare program, which was a high-profile initiative that received a lot of media attention. This gave Moynihan especially close access to the President just as Nixon was coming into office (Weisman, 2010, p. 173). Moynihan sought to capitalize on his access. Communications between Moynihan and the White House indicate that John Ehrlichman, Assistant to the President for Domestic Affairs who Nixon had largely put in charge of urban and environmental policy, was aware of Moynihan's *Toward a National Urban Policy* report but was largely unconcerned about its contents. He was

focused instead on the welfare policy discussions. This was the case even when Moynihan pushed his urban policy priorities into the public realm before the Nixon administration had fully developed its own set of priorities. It was widely known that Nixon held Moynihan in high esteem, but in this case the Senator was working both with and against the new administration. On 21 April 1969, Moynihan moved to forward his urban agenda within the Nixon administration. He wrote in a memo to the president that:

There are now quite a few copies of this document [his paper, *Toward a National Urban Policy*], originally presented to the Urban Affairs Council on February 3, circulating. I fear one is likely to end up in the press. Worse things could happen. I think the time has come when a reasoned, and fairly detailed statement of administration thinking in this area would be extremely helpful.<sup>30</sup>

Moynihan's suggestion was clearly that his paper should serve as the administration's statement of urban policy. He offered to present the report at his next public speaking event, an address to the Honors Convocation at Syracuse University two weeks later.

Moynihan knew full well, as staff Secretary of the UAC, that Nixon had not developed a "reasoned, and fairly detailed statement of administration thinking" on urban policy. Still, he casually implanted his own thinking on the issue in the public realm and implied that it represented the administration. He cornered Nixon's staff into accepting its public presentation. As he was the producer of the report, the "threat" of his paper going to the press clearly originated from Moynihan or others to whom he had shown it. In seeking the administration's approval to speak of it publicly as the UAC Secretary, he was committing Nixon's administration to either adopt the agenda that the report laid out or respond to it in specific terms. This meant that the issues Moynihan thought were most important would shape the debate about urban policy regardless of whether his report was adopted or not.

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<sup>30</sup> "For the President," From Pat Moynihan April 21, 1969 Nixon WHCF Subject Files Local Government Folder 3

In a memorandum for the record filed by Moynihan, he notes that Ehrlichman called on the morning of 24 April 1969 to approve his request to present the urban policy paper at Syracuse University.<sup>31</sup> However, in written response to Moynihan's memo, Ken Cole, an Assistant to the President, is more circumspect. Cole writes, "the president feels that it is still too soon to put out the Administration's statement which you recommend or that if such a statement were issued it should omit welfare."<sup>32</sup> Moynihan took the latter option and publicly presented his report without mentioning welfare. Rather, he proposed to double federal aid to state and local authorities in order to accomplish the goals of his desired national urban policy, most of which he discussed at the Syracuse convocation.

Moynihan's push for a national urban policy established the initial context for discussions about national land use policy. He had entered the federal government as Assistant Labor Secretary for Policy and Planning Research. From this position and later as Senator, he helped to define urban social policy for several presidential administrations and was one of the architects of former President Lyndon Johnson's "War on Poverty" initiatives. He sought to continue in this direction in the face of a new administration that was openly hostile to direct federal grant-in-aid programs. His manipulation of the urban policy discussion was typical of Moynihan's efforts to push Nixon toward framing his administration as conservative in its base but supportive of liberal democratic principles; a direction that was also reflective of Moynihan's own "neoconservative" tendencies. In this regard, Nixon was fond of citing Moynihan's comparison between him and British Prime Minister Benjamin Disraeli who was known for supporting "Tory men and Whig measures" (Weisman, 2010, p. 201).

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<sup>31</sup> "Memorandum for the Record," From Pat Moynihan April 21, 1969 Nixon WHCF Subject Files Local Government Folder 1.

<sup>32</sup> "Memorandum for Pat Moynihan," from Ken Cole April 28, 1969 Nixon WHCF Subject Files Local Government Folder 3.

This characterization of his administration as one that balanced conservative ideals with liberal actions and Moynihan's call for a federal vision on urban issues informed Nixon's original decision to position land use policy as an urban program under the control of HUD. Despite this, George Romney, the Republican director of HUD and Chair of the Urban Affairs Council was less enamored of Moynihan and became frustrated with the Senator's efforts to control the urban policy discussion without HUD's input. Romney complained to Ehrlichman that Moynihan did not consult him or others in developing his policy statement. When Moynihan presented the paper to the UAC on 3 February 1969 Romney had only been in his position for two weeks and apparently was not present as he was unaware of the report and Moynihan's intentions until one year later. On 19 February 1970 Romney wrote in a memo that *Toward a National Urban Policy* had not been reviewed by him and was not developed in collaboration with his agency or other members of the Urban Affairs Council:

Policy matters of this character certainly deserve to be brought before a Council created to consider urban problems. And our Department, more responsible for urban problems than any other department, should have an opportunity to discuss them in that form with the President present.<sup>33</sup>

Ehrlichman responded that early drafts had been circulated but did not deny Moynihan had taken it upon himself to write and publicize the document. Generally, Ehrlichman expressed little concern about the situation which clearly bothered Romney. In part, the low-level of concern from Ehrlichman reflected the high esteem that Nixon held for Moynihan, especially early in his administration (see Weisman, 2010, p. 198), but it also reflected the low priority that Nixon gave to HUD and urban issues.

Moynihan, though, continued leveraging his position as Staff Secretary of the Urban Affairs Council and publicly discussed *Toward a National Urban Policy*. Reference to the paper

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<sup>33</sup> Memo from George Romney to John Ehrlichman, February 19, 1970. Nixon WHCF Local Government Folder 9.

in connection with the UAC's activities began to appear in news reports by May 1969 (*Spartanburg Herald*, 1969). As a result, HUD was in an uncomfortable position. It was the agency ostensibly responsible for urban policy, but had no direct connection to the major urban policy statement being attached to Nixon's Administration. As a result of the publicity given to Moynihan's paper, by June 1970, HUD was calling for a decision on the issues that Moynihan raised. In a letter filed by John Ehrlichman on 2 June 1970, an unidentified HUD staff member wrote, "The major remaining issue is urban growth policy. Here the orders have not been given, the course has not been set. The administration's position is ambiguous."<sup>34</sup> The memo goes on, "Pat Moynihan has suggested as the first point of his 10-point urban policy, 'The poverty and social isolation of minority groups in central cities is the single most serious problem of the American City today.'" The author presents two "threshold questions," the first of which is:

Does the Administration accept the Moynihan premise that poverty and social isolation of minority groups in central cities must be attacked with urgency, and with a greater commitment of resources than has heretofore been the case?

This call on HUD's part for clarification further forced Moynihan's report to be the central reference point for the Nixon administration's still-developing approach to urban issues. The author argued that the administration should accept the premise along with what was labeled the "Romney premise" to ensure that every American is able to live within reasonable distance of their workplace as the foundation of a national urban policy. The author noted as well that this would require vastly more resources for HUD programs and institutional change around land use decision-making.

During his early time as president, Nixon demonstrated that he did not have a political appetite for large-scale urban programs such as those called for in the Great Society of Lyndon

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<sup>34</sup> "Basic Questions Relating to an Urban Policy." Memo from George Romney to John Ehrlichman. Nixon WHCF Subject Files Local Government Folder 12.

Johnson. He scaled back or eliminated Johnson's Community Action and housing programs (Nathan, 1996). However, Moynihan's maneuvering forced a situation where members of his own administration were calling for a national policy to address urban social inequities. The "Moynihan premise," then, became Nixon's starting point in issues of national growth policy, which later fueled his motivation to support HUD as lead for national land use policy.

Without any direct engagement with the national land use planning policy debate that arose around environmental issues, Moynihan had stressed very early in Nixon's presidency the social and urban aspects of national land use policy. Through his staff position on the UAC, Moynihan leveraged the political opportunity he saw in the interim period between administrations to force his perspective onto the agenda. He clearly wanted urban issues to be treated as a national issue. While HUD resented his involvement, Moynihan's political maneuverings boosted the agency's position relative to environmental interests in the initial discussion about national land use policy. At least at first, urban interests were at the fore of the policy goals for the administration because Moynihan had forced Nixon's hand in this regard. Given the extent to which environmental interests soon began to take ownership over the issue of land use policy and the extent to which Nixon became hostile toward what he referred to derisively as the "HUD Planners" (Hanson, 1982, p.23), this was essential to keeping HUD and the goals of urban policymakers in the discussion.

#### **4.4| Toward a National Land Use Policy**

Moynihan's attention to national urban policy was diverted in early 1970s as the debates over welfare policy heated up. However, several representatives, including Congressman Thomas Ashley picked up the issues he had raised. Ashley was a member of the House Banking



and Currency Committee. He had a close working relationship with urban advocates including the Conference of Mayors and the League of Cities that sought to focus national growth policy on a social agenda. He shared their interest in issues of equity and inner city community development (Hanson, 1982, p.14). Throughout 1970, Ashley fought for the National Urban Growth Policy and New Community Development Act,<sup>35</sup> which required the newly created Domestic Growth Council (Domestic Council) to submit to Congress a bi-annual report on national growth policy. The Act was primarily presented as supporting legislation for the New Communities program administered by HUD but included the requirement of a bi-annual report on the social goals for urban growth which the federal policy sought to support. Ashley's legislation was a response from those concerned with inner city redevelopment to calls from several environmental interests for a national land use policy. It was an effort to regain control over the national land use policy issue on the part of community development-oriented urban interests.

The call for national land use policy from environmental interests was forceful. President Nixon had proclaimed that the 1970s would be "the environmental decade" at the signing ceremony for the National Environmental Policy Act (NEPA) on January 1, 1970 (Lyday, 1976, p. 1). NEPA's sponsor and Chairman of the Senate Interior Committee, Henry M. Jackson, argued that "intelligent land use planning and management provide the single most important institutional device for preserving and enhancing the environment" (Lyday, 1976, p.7). As a result, Jackson proposed the National Land Use Policy Act (S. 3354) in late January 1970. For Jackson, the proposal was a means of asserting a strong role for the Interior Committee in the emerging arena of environmental regulation. Jackson wanted to get ahead of others that might

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<sup>35</sup> "Summary of Draft Legislation," Subject Files of Assistant HUD Secretary Samuel C. Jackson, Land Use Policy 69-70 1 of 3 Folder, Record Group 207, Entry 135, Box 14.

seek to propose land use policies in order to claim the topic for the Interior Committee. As a result, the initial version of the bill was put out hastily and was not envisioned as a final statement. Rather, Jackson commented that it “furnishes a working draft which federal, state, and local officials, planners, and representatives of industry, business, and public groups may comment upon” (ibid).

The simultaneous but separate calls for a national urban policy focused on social issues and a national land use policy focused on environmental issues were indicative of a disagreement amongst policymakers over the proper focus for federal land use policy. As one observer wrote, “Within Congress, the ‘environmental’ and ‘urban’ interests were following separate tracks” (Hanson, 1982, p.14). Nixon had a vested interest in shaping the outcomes of both of these tracks in order to support his domestic agenda and protect his doctrine of New Federalism. Initially, he sought to do so by combining the urban and environmental interests in one piece of legislation. This strategy, however, was abandoned once it became clear that such an approach was untenable because of the divisions between the two positions.

#### 4.4a: *The Environmental Proposal for Land Use Policy*

Jackson’s draft bill provided funds to states to plan for land uses outside of incorporated cities and created a federal council that would approve the plans, mostly to ensure that they did not have unacceptable environmental impacts. The legislative purpose as stated in the bill was:

...to establish a national policy to encourage and assist the several states to more effectively exercise their constitutional responsibilities for the planning, management, and administration of the Nation's land resources through the development and implementation of comprehensive "Statewide Environmental, Recreational and Industrial Land Use Plans" ... and management programs designed to achieve an ecologically and environmentally sound use of the Nation's land resources.<sup>36</sup>

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<sup>36</sup> Senate Bill 3354, *supra* note 7, §402(a).

Jackson framed nearly every provision of the bill in environmental terms with few references to social impacts. At the hearing for his proposal, he stated:

To a very great extent all environmental management decisions are ultimately related to land use decisions. All environmental problems are outgrowths of land use patterns. The collective land use decisions which we make today and in the future will dictate our success in providing the American people with a quality life in quality surroundings.<sup>37</sup>

Importantly, the bill excluded cities from its provisions. It had a proviso that states could exclude “lands which are incorporated within the boundaries of any incorporated city.”<sup>38</sup> Far from an activist, Jackson wanted to deflect claims that he was unduly impinging on local control over land use. Jackson was a moderate Democrat and Chair of the Interior Committee. While his sponsorship of NEPA made him a leading member of Congress on environmental issues, he also had longstanding connections with mining and oil interests. As a result, his intentions with national land use policy were not entirely clear. As Graham (1976) writes, “Jackson wanted a broader context, but he was not eager to be cast as a communist or visionary” (p.220).

Jackson sought to rationalize the process of land use decision-making in favor of environmental goals. In addition to sponsoring NEPA, he was on the side of environmental groups in several high profile land use and natural resource conflicts during the 1960s. He opposed the Bridge Canyon Dam which would have flooded the Grand Canyon and the Miami Jetport proposal which would have threatened the Everglades National Park (see Pearson, 1994; Gilmour and McCauley, 1975). Jackson’s primary concern within the Bridge Canyon Dam and Miami Jetport debates was that multiple governmental programs were working at cross-purposes. This informed his approach to national land use policy. He commented at the hearings on the bill that “the thing that disturbed me and which led to introduction of this legislation is the fact that

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<sup>37</sup> Senate Bill 3354, Background Papers I, *supra* note 1, at 35.

<sup>38</sup> Senate Bill 3354, *supra* note 7, §406(b).

in all 50 states...we do not have an adequate forum to adjudicate these conflicts” (as cited in Plotkin, 1980, p. 423, note 37). He argued that “the solution is to be found in a framework in which all proposals to utilize environmental resources can be balanced against one another and measured against the demands they collectively impose on the environment” (ibid.).

Jackson’s somewhat ambiguous identity relative to environmental issues and his focus on procedural rather than substantive concerns served him well in muting the response to his initial proposal for a national land use policy. While Jackson’s legislation was only meant to be a starting point for discussion, it did not generate any heated response, either for or against. The bill was vague enough and Jackson’s own loyalties were diffuse enough that a diverse set of interests including farmers, local governments, the energy industry, environmental preservationists, and the Nixon administration all saw potential benefits in its passage, at least initially (Lyday, 1976, pp. 12-15).

#### *4.4b: HUD’s Response to the Jackson Bill*

HUD was one of the few organized interests to express concern about Jackson’s bill. It seemed to several members of HUD that Jackson’s bill would be a duplication of the existing 701 land use planning program, but without sufficient attention paid to social issues. The section 701 grant, known as the Comprehensive Planning Assistance Program, was created in 1954 (before HUD existed) to support metropolitan comprehensive planning efforts and was amended in 1965 to support the planning activities of Councils of Governments (COGs), which are regional governing bodies. The program was placed under HUD’s control when the agency was created and was amended again in 1968 to require that housing be included in regional plans funded by the 701 program. The Housing and Urban Development Act of 1970 provided

substantially more planning funding for states and regions under the program. HUD saw the 701 program as its primary national land use planning initiative and it was looking to increase the resources and profile attached to 701 plans.

The incentive-based approach of the 701 planning program encouraged incremental changes in regions. It represented the stated strategy of HUD staff in developing regional planning capacity, even before Romney pushed it as a priority toward the end of his tenure. One HUD staff member wrote:

To propose and support a quantum leap forward into metropolitan government—even if there was consensus on the desirability of such government—is infeasible. Rather, the federal government should use its leverage and leadership to make incremental improvements and to identify targets of opportunity—beginning with the coordinative aspects and extending into the operational aspects.<sup>39</sup>

The 701 strategy stood in stark contrast to the more ambitious efforts to intervene in land use planning that the environmental community was proposing. In the eyes of environmentalists, the Section 701 program was an established effort to direct urban growth from the federal level that had failed to reduce the environmental impacts of sprawl. The 701 program was not only competing with Jackson’s bill for policy turf, its incremental incentive-based approach ran counter to the “quantum leap” that environmental interests sought in a new national land use policy that would support the goals of NEPA. The restrained approach to regional and national planning on HUD’s part was a point of contention that pushed some legislators to argue that a national land use policy should be administered by another agency not invested in existing land use planning regimes.

HUD, however, saw the 701 program as an effective national planning tool. In prepared remarks before the Interior Committee hearing on Jackson’s bill, Fred McGlaughlin, Director of

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<sup>39</sup> “A Federal Strategy for Achieving Effective Metropolitan Land Strategies,” Subject Files of Assistant HUD Secretary Samuel C. Jackson, Land Use Policy 69-70 1 of 3 Folder, Record Group 207, Entry 135, Box 14.

the Office of Plans, Programs and Evaluation, began by affirming HUD's support for national land use planning policy. He went on, though, to say:

The bill's proposed program of land use planning grants to the States would duplicate the land-use planning grants already being made to State planning agencies as part of HUD's Comprehensive Planning Assistance program. In fact, this program established by Section 701 of the Housing Act of 1954 and with an appropriation of \$50 million for this fiscal year, provides assistance—already extended to all 50 states—that would cover every work item listed in Section 403 of S. 3354 [Jackson's bill].<sup>40</sup>

As well, McGlaughlin argued in favor of HUD remaining as the primary land use agency. He stressed this point:

...reference to our burgeoning metropolitan population identifies one of the reasons why the Federal Government's existing grant program for broad land use and comprehensive planning is administered by HUD...The 701 program is important to us in helping the States and localities develop the comprehensive plans—in many cases required by federal statute—that are necessary to ensure that other HUD investments in housing, supporting public facilities, and new communities are wisely spent.

In the agency's written position on the S. 3354, HUD Secretary George Romney wrote:

S.3354...does not...undertake to deal with the full range of physical, social, and economic issues that are embraced within the broadest kind of comprehensive planning that can be assisted under Section 701 or which is contemplated by some of the requirements for planning attached to this Department's programs.<sup>41</sup>

The “battlelines” that the national land use policy debate created separated HUD from environmental interests when it came to the preferred approach to federal land use policy. HUD's interests in national land use policy that would work with its 701 program were best represented in its 1970 proposal for an anti-exclusionary zoning law attached to the Housing and Urban Development Act of 1970. Romney described the provision as one that would “prohibit local governments or their agencies from using any form of land use controls to prevent the

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<sup>40</sup> McGlaughlin, Fred. Draft comments for the Senate Hearing on S.3354. 24 April 1970. Record Group 207, E135, BIN 15. Folder: Legislation 70.

<sup>41</sup> Papers prepared by the Committee on Insular Affairs for the Hearings on S.3354 to amend the Water Resources Planning Act to provide for a National Land Use Policy.8 July 1970. P. 479.

reasonable provision of low- and moderate-income housing eligible for federal assistance in undeveloped or predominately undeveloped areas which are in the path of development.”<sup>42</sup> As Corrigan described it, “Unlike the National Land Use Policy...[the HUD proposal] was designed to further a social—not an environmental—goal” (Corrigan, 1971, p. 605).

While environmental interests saw HUD as too restrained in its approach to national land use planning, HUD saw environmental interests as too narrowly focused on physical planning to the exclusion of social issues. McGlaughlin’s comments go on to argue that planning must be a people-centered process:

In the priority of things, we believe that a “people policy” is a prerequisite to a land-use policy. Too often in the past we have undertaken land-use policy as though it were an art unto itself, unrelated to the lives of people and the needs of our society. This has made some unfortunate contribution to the separation within that society.<sup>43</sup>

This was a clear statement of the divide that urban and environmental regulators saw between themselves. Jackson’s bill was evidence that environmental regulators saw HUD’s planning program, which had been in existence for almost two decades by that time, as unable to account for environmental issues. HUD saw the environmental proposals as failing to account for the impacts of land use upon people. Each side fought for its own legislative jurisdiction over land use planning rather than develop programs that substantively addressed both goals.

#### 4.4c: *The Scramble to Control Land Use*

HUD’s critique notwithstanding, the overall lack of organized opposition and widespread support for the procedural aspects of the bill, made it seem as though Jackson’s national land use

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<sup>42</sup> Romney, G. Testimony on 26 August 1971 before the Senate Select Committee on Equal Educational Opportunity.

<sup>43</sup> McGlaughlin, Fred. Draft comments for the Senate Hearing on S.3354. 24 April 1970. Record Group 207, E135, BIN 15. Folder: Legislation 70.

policy proposal would move to a vote of the full Senate in the same year it was introduced. However, just before the end of the session, Senator Edmund Muskie put a hold on the bill arguing that it overlapped with the legislative jurisdiction of the Public Works Subcommittee on Air and Water Pollution which he chaired (Lyday, 1976, p. 14-15). Muskie's action forced the bill to be held over until the next legislative session. It also opened the door for a much wider debate on national land use policy.

As the jurisdictional battle over environmental policy between Muskie and Jackson heated up, the Administration took the lead in the conversation on land use as an environmental issue. In his "President's Message" published at the beginning of the CEQ report, Nixon concurred with the call for a national land use policy. He entitled a lengthy section of his message "Toward a Land Use Policy" (p. xi). In it, Nixon wrote (p. xii-xiii):

We have treated our land as if it were a limitless resource. Traditionally, Americans have felt that what they do with their land is their own business. This attitude has been a natural outgrowth of the pioneer spirit. Today we have come to realize that our land is finite while our population is growing. The uses to which our generation puts the land can either expand or severely limit the choices our children will have... I believe we must work toward development of a National Land Use Policy to be carried out by an effective partnership of Federal, State and local governments together and, where appropriate, with new regional institutional arrangements.

Now Nixon was devoted to national urban policy focused on social issues as a result of Moynihan's lobbying and national land use policy focused on environmental issues as proposed by CEQ. Because of the issues that HUD's opposition to the Jackson bill raised, these dual purposes proved difficult to resolve.

As the 1971 legislative session began, several competing interests were ready with national land use policy proposals. Jackson re-introduced his bill as the Land and Water Resource Planning Act in January 1971 (S. 632) and Muskie was near to completing a competing bill. As well, given Nixon's statements on national land use policy in the CEQ report, Jackson



challenged the Administration to either support his bill or present a bill of its own. Nixon responded by directing CEQ staff to develop a competing proposal. They submitted the National Land Use Policy Act (S. 992) in February of 1971 (see Lyday, 1976, Chapter 3 for more on this exchange).

The CEQ bill was written by two staff members—Boyd Gibbons and William Reilly. Gibbons and Reilly were both young lawyers with an interest in asserting the right of states to regulate private land more strongly than had Jackson’s proposal. They wanted to undo the exemption for incorporated cities, but also had to stay within the confines of Nixon’s doctrine of New Federalism. Reilly came from a social policy background. He was a lawyer and planner who had helped to author the American Law Institute’s *Model Land Development Code*. In that process, Reilly sought to shift land use power back to states in order to undo the ability of localities to create exclusionary housing policies. Reilly was sympathetic to HUD’s goals in this sense. Gibbons had helped to write the Coastal Zone Bill which mandated states to regulate large ecologically sensitive zones that crossed multiple local jurisdictions. Together, Gibbons and Reilly had experience in policy models that shifted land use authority from localities to states in order to achieve both social and environmental goals. They represented the best hope for creating a bill that crossed this divide (see Lyday, 1976, pp. 19-22 for more on Gibbons and Reilly).

In the end, the CEQ bill that Reilly and Gibbons produced sought to keep national land use planning focused squarely on environmental goals but provided tools that could be of use to social policy planners. The strategy proposed was similar to Henry Jackson’s in that it created grants to states to carry out planning, but rather than requiring all areas with the exception of incorporated cities to be planned, the CEQ bill required that states identify and plan for areas of “critical environmental concern” and “regional benefit.” These areas were at once more narrow

(they did not necessarily cover the entire state) and more open to interpretation (they might include incorporated areas).

The CEQ authors wanted to frame the administration bill in narrower terms than the Jackson bill, but leave plenty of room for interpretation once the bill had passed. As a result, the CEQ bill was much more concerned with disabling the ability of localities to create serious environmental damage or to stop development of infrastructure needed by the entire region than was the Jackson bill. Gibbons and Reilly saw this as a tool that could be used to fight exclusionary housing laws within localities through the argument that affordable housing was a necessary component of regional infrastructure. While this was Reilly's intent, it was never explicitly written into the bill in order to avoid objections from local interests. However, "Ehrlichman and, according to Reilly, a few officials at HUD understood the implications for open housing" (Lyday, 1976, p. 22).

Indeed, Reilly and Gibbons were in close contact with HUD as they developed their proposal which left the 701 program intact and supported HUD as the lead agency. In a memo dated 11 August 1970, Robert Paul wrote to Samuel Jackson in reference to an "advanced copy of Boyd Gibbons' outline of the 'necessary elements' of the proposed national land use policy."<sup>44</sup> While no specific mention was made of the open housing potential for the bill, it is clear that Gibbons and Reilly directed many of their recommendations toward HUD's interests.

The CEQ bill also included penalties for states that did not comply with the Act. Any state that did not create an approved plan within 4 years would lose 7 percent of its federal funding for highways, land and water conservation, and airports. This would accrue each year of non-compliance up to a 35 percent reduction. The imposition of penalties for non-compliance

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<sup>44</sup> Memo from Robert Paul to Samuel Jackson, Subject: National Land Use Policy. 11 August 1970. Record Group 207, Entry 135, Bin 14, Folder: Land Use Policy 69-70, 2 of 3.

raised immediate internal opposition over the extent to which a national land use bill of this sort meshed with the principles that Nixon espoused for his presidency. In hand-written notes on the margins of Boyd Gibbons' request for review of the decision paper that laid out the direction of the policy, Deputy Counsel Egil "Bud" Krogh, who would later become infamous as the director of Nixon's Special Investigative Unit (or the "plumbers") that was responsible for the Watergate break-ins, wrote:

- 1) What would be the political effect of forcing the states into land use planning? How would National Governor's Conference react? Would they ask that it be voluntary? Is the 7% cut-off the wrong approach, particularly with our laissez-faire policy with respect to state and local authority? Isn't planning money available inducement enough?
- 2) Is this just another categorical grant program with a planning objective? Looks like it.<sup>45</sup>

Krogh then seems to resolve his own conflict with a conclusion noted separately: "Is categorical grant program. But strengthens hand of state with money." The rationalization that seems to have been used by Krogh and others was that while national land use planning was counter to Nixon's doctrine of New Federalism, it was also a states' rights bill. It could be argued that it sought to further empower the role of states relative to the federal government.

The decision paper sent to Krogh indicates that HUD, DOI, the EPA, Office of Management and Budget (OMB), CEQ, and a new agency created expressly to administer national land use policy were all considered as possible lead agencies. In the end, the decision was made to support HUD as the lead agency with a subordinate role given to the Department of Interior. The decision paper indicates that CEQ staff recognized the need for HUD's historic connection to land use planning to be maintained:

HUD would administer the funds and annually certify whether State programs were in compliance with the policy. Interior would be empowered to certify that portion of the program dealing with areas of critical environmental concern.<sup>46</sup>

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<sup>45</sup> Memorandum for Bug Krogh: Decision Paper and Draft Bill on National Land Use," Nixon WHCF Subject Files, Egil Krogh 1969-73, Folder: Land Use Policy, Box 15.

While HUD's prescribed role assured their overall support for the CEQ bill, several staff members were concerned that the environmental interests that drafted the bill had inadequate experience with land use planning. They expressed misgivings about whether the CEQ staff understood the complexities of the task. In an analysis of the CEQ bill's recommendation for states to exercise more fully their land use powers, Charles Markham, Acting Director of the Office of Planning Assistance and Standards, wrote:

This recommendation involves very debatable complexities of what level of government should control land development. Although there is some support for this kind of recommendation (increased State control) it is too fuzzy to deal with as it stands. There is a hierarchy of planning and controls that must be worked out, and the State may have no interest nor capacity to deal with controlling the location of "major industrial, commercial and residential developments."<sup>47</sup>

Despite these concerns, the CEQ proposal was supported by John Ehrlichman, who with Nixon's approval pushed it as a high priority. Opposition to the bill, though, remained. The OMB vigorously opposed the CEQ bill on the grounds that it conflicted with the goals of Nixon's platform for New Federalism (Weir, 2000). The OMB only desisted in attacking it when Ehrlichman stepped in with a forceful statement of support from the President (Lyday, 1976, p.23). HUD, for its part, was named as the lead agency for land use policy by CEQ. As a result, HUD staff came to generally support the strategy, but remained doubtful that empowering states to carry out planning was an effective strategy. Robert M. Paul, Acting Director of HUD's Program Evaluation and Development Office commented in a memo to Samuel C. Jackson, "They haven't thought enough about how it can be accomplished. The general goals are sound but someone will have to come up with a lot of 'carrots' (or sticks) to motivate State and local

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<sup>46</sup> Memorandum for Bug Krogh: Decision Paper and Draft Bill on National Land Use," Nixon WHCF Subject Files, Egil Krogh 1969-73, Folder: Land Use Policy, Box 15.

<sup>47</sup> "Notes CEQ's National Land Use Policy," Memo from Charles Markham to Charles J. Orlebecke, Subject Files of Assistant HUD Secretary Samuel C. Jackson, Land Use Policy 69-70 2 of 3 Folder, Record Group 207, Entry 135, Box 14.

governments.”<sup>48</sup> Paul was critical not because of the bill’s intent but rather its implementation strategy. If the CEQ approach to national land use planning was passed, from Paul’s perspective, it “would have a major impact on HUD,” but not necessarily a good one.<sup>49</sup>

Meanwhile, Senator Henry Jackson, as Chair of the Interior Committee, was determined to keep national land use policy in the domain of the Department of Interior. He allowed an advisory role for HUD in his bill, but Interior would be in charge of the program under Jackson’s terms. In response to the conflicting structure of the CEQ bill and his own, Jackson asked an Interior Committee staff member to work on a compromise bill. During this process, Henry Jackson and Russell Train had a very public debate over the various benefits of the two approaches on the editorial pages of the *Washington Post*.<sup>50</sup>

The combined bill that Jackson proposed retained the call for planning that focused on environmentally sensitive and regionally important areas which the CEQ draft called for, but also required a plan for how these areas fit into statewide development patterns. It also retained the consequences for non-compliance and created a new National Land Use Planning Advisory Committee comprised of members from all agencies with substantial land use responsibilities. Interior would direct all programs for the combined bill, which gave no mention of HUD’s concerns about the missing social component or the complexity of state-level planning processes (see Lyday, 1976, Chapter 4).

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<sup>48</sup> “NOTE TO MR. JACKSON, Re: CEQ National Land Use Policy,” Subject Files of Assistant HUD Secretary Samuel C. Jackson, Land Use Policy 69-70 2 of 3 Folder, Record Group 207, Entry 135, Box 14.

<sup>49</sup> NOTE TO MR. JACKSON, Re: CEQ National Land Use Policy. 11 August 1970. Record Group 207, E135, Bin 14. Folder: Land-Use Policy 69 to 70, 2 of 3.

<sup>50</sup> *Washington Post*. 20 November 1971. Editorial. See also: *Washington Post*. 15 December 1971. Letter to the Editor from Russell E. Train, Chairman, Council on Environmental Quality. Also: *Washington Post*. 28 December 1971. Letter to the Editor from Henry S. Jackson, Chairman U.S. Senate Committee on Interior and Insular Affairs.

With the new combined bill coming out of the Interior Committee, Richard Nixon had to decide whether or not to abandon his hope of combining social and environmental agendas in land use policy by making HUD the lead agency. On March 20, 1971, *The National Journal*, a weekly insider's report on federal policy negotiations in Washington, D.C., devoted an eleven-page article to the maneuverings over who would control the national land use bill supported by the Administration. The article was entitled "Interior Department Finesses HUD in Scramble over Land Use Program." It focused on a meeting that took place between Ehrlichman, Secretary Romney and Rogers C.B. Morton, the Secretary of the Department of Interior. Romney, should have had the upper hand. His agency after all had been identified as the lead on land use policy in the draft version of the Administration's CEQ bill and had extensive land use planning experience. However, as Richard Corrigan, the environment and resources staff reporter for *The National Journal*, described it, a "last-minute power play" (p. 597) on the part of Morton undid Romney's position in favor of Interior. As Corrigan described it, "the subject of land use control is intrinsically controversial, and...could change the current institutional framework by injecting a state and federal overview of local land use decisions" (p. 597). The impact this would potentially have upon community development and environmental regulations was not lost on the directors of the federal agencies vying for control over implementation. However, in the end, the Administration acquiesced to Henry Jackson's desire for Interior to control the land use bill.

With HUD pushed aside, the combined version of the National Land Use Policy Act which brought together Jackson's and CEQ's proposals passed the Senate by a vote of 60 to 18 in September of 1972. Passage in the Senate made the combined bill the leading statement on national land use policy. While Muskie and a few other Senators remained critical of the bill and had their own competing proposals that supported extending the powers of the Water Resources

Commission, there was little they could do to stop the Jackson-CEQ bill from taking center stage in the debate, which moved next to the House. Once passed the House, national land use policy would certainly become law. However, the Chair of the House Committee on the Interior, Congressman Wayne N. Aspinall, sought to use the opportunity to push for public land review reform. He wanted to make it easier for private interests to access public lands and sought to insert this goal into the national land use policy debate. Aspinall combined his proposal with the House version of the national land use planning bill in order to force the Senate to consider it. Aspinall's amendments were unacceptable to organized environmental interests, so much so that they opposed the entire House bill regardless of the land use planning aspect. Aspinall's actions effectively killed any chance of the bill going to vote in 1972. It would have to be taken up in the following session.

Congressman Aspinall was defeated for re-election to his post in 1972 and the new Chair of the House Interior Committee, Stuart Udall, favored national land use planning, creating an opening for the combined Jackson-CEQ bill. Once again, the combined bill was easily passed in the Senate, but it stalled in the House. Despite Udall's support, a refrain arose which had been avoided until that point. It was the argument that had dogged all efforts at national land use planning throughout the history of the United States. A vocal group of opponents in the House forced a highly contentious debate over the issue of whether the bill would comprise a "taking" of private property. This was the opposition to planning as an overreach of governmental authority that had undone all prior efforts at national land use planning including those directed by Secretary Gallatin, Theodore Roosevelt, and Franklin Delano Roosevelt (see Chapter 3 of this report). For the first few years of the 1970s debate, such claims were muted, but by 1973 they became the central issue.

The “taking” issue stopped national land use planning policy in its tracks. It assured that the bill would not pass the House without considerable alteration and eventually was used as an argument by conservative supporters to convince Nixon to remove what had been strong and sustained support for the bill. Many complained that the conservatives had threatened to remove their opposition to impeachment proceedings connected with the Watergate scandal that had just come to light if Nixon did not oppose national land use planning. While Udall and Jackson continued to fight for its passage, the upheaval of Nixon’s Watergate scandal and the force with which the takings issue was used to condemn the policy made passage impossible. In the end, no legislation cleared the House, despite several successive efforts between 1973 and 1975. National land use policy was finally abandoned after the 1975 legislative session.

The poor outcome for HUD in the battle for control over national land use policy was indicative of Romney’s overall disenchantment with the Nixon Administration (see Graham, 1976, p. 255). However, while frustrated, he turned his focus to the National Growth Policy that had by this time been passed as a provision of the National Urban Policy and New Community Development Act under Thomas Ashley’s sponsorship.<sup>51</sup> Environmental and community development interests would now officially proceed on separate tracks, with the environmental interests pursuing a national land use policy under DOI’s control and urban interests pursuing a national growth policy under HUD’s control. Neither side had much success.

#### **4.5| Toward a National Growth Policy**

Moynihan left his staff position in the Nixon Administration in 1971 to return to Harvard University where he had been Director of Joint Center for Urban Studies. His national urban

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<sup>51</sup> “Summary of Draft Legislation,” Subject Files of Assistant HUD Secretary Samuel C. Jackson, Land Use Policy 69-70 1 of 3 Folder, Record Group 207, Entry 135, Box 14.



policy agenda had been picked up in a small way by Congressman Ashley's bill. The bill passed in late 1970 because it was attached to the larger effort to create the New Communities initiative which had wide support. The national urban policy aspect of the bill was a relatively minor provision that required a bi-annual national growth policy report from the Domestic Council. The specific entity within the Council that would be responsible for creating the report was not established in the first year after the legislation. In response, roughly seven months after Romney had been denied control over national land use policy, he requested that the Domestic Council make HUD the lead agency in developing the report (Hanson, 1982, p. 16). The Domestic Council agreed and, for Romney, the national growth policy report would be HUD's detailed outline of national urban policy. The report, due one year later would also be HUD's counterweight to environmental interests in the national land use policy discussion.

Samuel C. Jackson, Assistant Secretary for Metropolitan Development, headed the effort within HUD to develop the national growth policy report and designated Fred McGlaughlin as project manager. Jackson had been involved in the formulation of Ashley's national growth policy legislation and made it clear early on that he saw its development as an initiative with far-reaching potential but also as one that faced serious institutional challenges. On 9 June 1970, one week after the memo from a HUD staff member calling for an administration position on a national urban policy and several months before the National Urban Policy and New Community Development Act was signed, Jackson gave a speech before the Institute on Comparative Urban Systems at Macalester College wherein he described the extent of institutional change that Ashley's proposed statement on national growth policy would require. He highlighted the ways in which land use institutions expressed basic cultural, social, and political norms in the United States. This connection between the entrenched norms of 1970s America and the direction of

urban growth, for Jackson, was the greatest impediment to creating more socially just and environmentally sound cities. Before a room of young urban scholars and professors he summarized the extent of change that HUD sought through its National Urban Growth Policy:

I believe that we can develop an effective urban growth policy, but it will be effective only if as a nation, we are prepared to accept certain basic changes in our institutions and in our traditional ways of managing urban growth. However, there are major obstacles to this kind of institutional change. If we naively ignore these very real impediments, planning for a national growth policy is doomed to oblivion.<sup>52</sup>

One of the biggest obstacles was the fact that by 1970 many middle class white Americans were running away from cities and moving to the suburbs. Jackson's talk was given in the context of an America where urban areas were declining in wealth and population and suburban areas were growing rapidly. As one of the few high-ranking black federal officials at the time, Jackson was well aware of the intersecting issues of class and race that had developed into an urban crisis. He was politically moderate, but had been a member of the Equal Employment Opportunity Commission prior to his appointment as Assistant Secretary at HUD and was an active member of the NAACP.<sup>53</sup> He was certainly aware of the social norms that factored into his call for "changes in our institutions and in our traditional ways of managing urban growth." He was also aware that the man who appointed him, Richard Nixon, was growing increasingly reticent about taking federal action to address the social roots of urban decline. In this context, the growth policy report, which he directed, adopted the concept of "balanced growth" as an organizing principle.

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<sup>52</sup> Jackson, Samuel. The Tough Issues in an Urban Growth Policy. 9 June 1970. Record Group 207, E135, Bin 138. Folder: Urban Growth policy Division 2 of 2.

<sup>53</sup> The American Presidency Project, available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=43966#axzz1pJhBmNtG>, accessed June 2, 2009.

#### 4.5a: *Balanced Growth*

In addition to widespread public sentiment against cities, deeply embedded institutional racism in postwar development patterns, and Nixon's unwillingness to address social issues directly, HUD developed its national growth policy within the context of a deep and growing anti-urban bias amongst federal legislators that challenged the agency's core programs. In a note dated 12 October 1970 which responded to a proposal from Senator John L. McClellan of Arkansas to use federal procurement, development and funding as a mechanism for decreasing rural to urban migration, the tenor of the anti-urban sentiment that HUD was responding to as it developed its policies and the tone of the agency's position in the midst of this sentiment is clear. McClellan describes "unmanageable urbanization" as comprised of a "multitude of problems associated with highly congested, over-populated and slum-infested cities." He sought to create legislation that fostered "balanced and orderly growth," which for McClellan meant redistributing economic activities to rural and peri-urban areas and encouraging population growth to occur outside of cities. McClellan was fundamentally arguing for HUD to give up on existing cities and to start anew in undeveloped areas.<sup>54</sup>

McClellan's suggestion was not radical at the time. It had been institutionalized within the New Communities program which provided guaranteed federal financing for private developers to build new towns outside of existing urban centers. The Housing and Urban Development Act of 1970 included renewal legislation for the New Communities program and the Ashley bill that required a national growth policy report augmented the available resources. For HUD staff members, the new initiatives provided a laboratory in which they could test ideas for redirecting urban growth patterns away from sprawling suburbs and declining inner cities. In a presentation

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<sup>54</sup> Letter from John McClellan to Richard Nixon, cc: George Romney. 12 October 1970. Record Group 207, Entry 131, Bin 17, Folder: Leg 3 Legislation Federal.

on the status and future of the New Communities program given by several HUD staff members to the UAC on 26 March 1970, the unspecified presenter noted, “New Communities planned to meet federal criteria will not in themselves bring about orderly growth on a national scale, but they may serve as a beginning from which we will learn and on which we will build.”<sup>55</sup> Later in the same presentation, Samuel Jackson commented that one of the goals of the program was to “provide knowledge and experience which will aid in formulating a national domestic growth policy.”<sup>56</sup>

The desire to build new cities in the hinterlands demonstrated the pervasive feeling among those who could afford to leave cities that they were not worth saving. Rather, for many, cities were overcrowded and uninhabitable—not a place to be happy. In a presentation by an unnamed HUD staff member given in March 1970, it was noted that “interest in new community development as a possible antidote for disorderly sprawl is higher today than at any time in the nation’s historical experience with new communities.”<sup>57</sup>

McClellan’s focus on stopping the flow of rural migrants to cities through “balanced and orderly growth” was a bit different than the desire to create new laboratories for urban growth. As Romney and the HUD staff were certainly aware, McLellan was primarily making reference to halting the movement of African-Americans from the rural south into northern cities. The “Second Great Migration” encompassed the period between 1940 and 1970 during which 5 million rural migrants moved to cities (Lemann, 1991, Chapter 1). 80 percent of black Americans were urban inhabitants by the end of this period and most had settled in racially

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<sup>55</sup> “Presentation to the Urban Affairs Council,” March 26, 1970. Subject Files of Assistant HUD Secretary Samuel C. Jackson, Urban Affairs Council 69-70 Folder, Record Group 207, Entry 135, Box 37.

<sup>56</sup> “Presentation to the Urban Affairs Council,” March 26, 1970. Subject Files of Assistant HUD Secretary Samuel C. Jackson, Urban Affairs Council 69-70 Folder, Record Group 207, Entry 135, Box 37.

<sup>57</sup> “Presentation to the Urban Affairs Council,” March 26, 1970. Subject Files of Assistant HUD Secretary Samuel C. Jackson, Urban Affairs Council 69-70 Folder, Record Group 207, Entry 135, Box 37.

segregated enclaves in cities across the country, especially in California and the Northeast. As Graham (1976) wrote, “Translated into the perspective of many whites [in the 1960s]...urban growth since the early 1940s had meant a stream of black people dismounting from Greyhound buses and trains just in from the South, spreading the ghetto outward toward the city limits, sending whites scattering before them into the suburbs” (p. 194).

The rural black migrants that were moving into cities sought improved employment and educational opportunities that were still largely unavailable to them due to overt and institutionalized racism in rural Jim Crow South (see Lemann, 1991). Conservative politicians like McLellan, and ultimately Nixon, used the principle of “balanced growth” as an oblique means of addressing the social and political upheaval that these migrations brought about. The need on Romney’s part to navigate between the interests of those who favored balanced growth, an essentially anti-urban approach, and the community development aspects of HUD’s mission was an especially difficult challenge.

The issue of population planning that “balanced growth” implied was first raised in the early 1960s when Orville Freeman, who served under President John F. Kennedy and President Lyndon Johnson as Secretary of Agriculture, questioned the role of federal policy in aiding the decline of rural America. Freeman held a conference on growth policy in 1967 at which HUD’s first director, Robert Weaver, argued that “the increasing concentration of population in our great metropolitan centers is a phenomenon being experienced in all of the great nations of the world. Whatever our feelings may be about this trend, there is no evidence available that it is reversible” (quoted in Graham, 1976, p. 196). Weaver decisively dismissed the notion that the federal government should be in the business of undoing the ability of black migrants to seek greater opportunities in cities. Rather, HUD’s role was precisely the opposite in Weaver’s mind—to

facilitate the arrival of new immigrants in central cities and to undo the continued segregation of black populations that still limited their access to the benefits of the postwar economic boom (see Pritchett, 2008, Chapter 9).

Weaver's successor, George Romney, was less assured of HUD's role. Romney's response to McClellan's proposal for "balanced and orderly growth" is especially telling of HUD's political position within the anti-urban context of legislative talks at the time. Originally Romney drafted a letter which highlighted the particularly problematic nature of McClellan's proposal for HUD. McClellan essentially sought to direct federal programming away from cities and HUD was almost entirely concerned with federal programming focused on cities. Romney offered a point-by-point response which, while couched in polite language that highlighted where common ground could be found, detailed why HUD could not support any of the proposals. Romney closed his original draft with the fact that there were a number of federal policy proposals, including national land use planning, national urban growth policy, aid for new towns, and water resource bills with which McClellan's proposal would contradict or overlap. He concluded that "enactment of the resolution might be somewhat premature."<sup>58</sup>

On Romney's first draft, Charles Markham made a hand-written note asking whether the tone of Romney's response, which was respectful throughout, was too negative and urged Assistant Secretary Jackson to consider this before concurring. In the end, the original draft received an X across it with a note that reads "rewritten." The final draft of the response sent to McClellan was far more muted than the original.<sup>59</sup> Despite McClellan's suggestion to completely redirect HUD's programmatic focus and his overtly anti-urban bias, Romney included in his final

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<sup>58</sup> Letter from John McClellan to Richard Nixon, cc: George Romney. 12 October 1970. Record Group 207, Entry 131, Bin 17, Folder: Leg 3 Legislation Federal.

<sup>59</sup> Letter from John McClellan to Richard Nixon, cc: George Romney. 12 October 1970. Record Group 207, Entry 131, Bin 17, Folder: Leg 3 Legislation Federal.

response only a reference to a number of other bills being considered with which the proposal might conflict. Given this context, Romney wrote, it was a bit early to consider McClellan's proposal.

This interaction demonstrates that in developing its national growth policy HUD had to walk a fine line between its own interests and those arguing for distinctly anti-urban policies. Markham, Romney and Jackson all came to the conclusion that to directly critique the claim that American federal policy ought to simply abandon existing cities was not a tenable approach in the climate in which they were operating. Rather, HUD's policy in this tense environment was to appease the anti-urban interests of which McLellan was a prime example. As such, what came to be a full commitment on Nixon's part in support of a "balanced growth" strategy was also adopted as a central principle in the national growth policy report that Jackson developed.

The balanced growth strategy in fact became the cornerstone of Nixon's urban policy. Nixon mentioned balanced growth several times in reference to national growth policy and supported it as a guiding principle. In the 1970 State of the Union Address, Nixon said that future decisions would be made "with a clear objective of aiding balanced growth." In an early summary of the national growth policy report sent to Romney, Fred McGlaughlin described the objectives as: "(1) balanced growth (2) orderly growth and (3) strengthened governmental capacities."<sup>60</sup> Balanced growth was a reference to the goals McLellan had stated but was toned down in HUD's usage. It referred to "shifting some future growth from metropolitan to non-metropolitan communities." Orderly growth referred to management of that increment of population growth which would remain in metropolitan areas. Governmental capacities mostly focused on increased coordination among federal programs (pp. 4-9). In a later memo, Jackson

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<sup>60</sup> "NUGP Report," October 22, 1971. Subject Files of Assistant HUD Secretary Samuel C. Jackson, Urban Growth Policy Division 1 of 2, Record Group 207, Entry 135, Box 37.

described the balanced growth objective as “one-half of the thrust for a growth policy.”<sup>61</sup>

Clearly, the primacy given to the balanced growth approach signaled a major shift from Weaver’s assertive support for central cities toward acceptance of the notion that people should move away from urban centers.

The background materials for the National Growth Policy report, present an analysis by a short-lived research arm of the executive branch created by Nixon at Moynihan’s behest. The research office known as the National Goals Research Staff (NGRS) entitled their only publication *Toward Balanced Growth: Quantity and Quality*. The NGRS report states:

To promote the objective of balanced national growth, several basic strategies have been proposed... (1) spread population by generating growth in sparsely populated rural areas (2) foster the growth of existing small cities and towns in non-metropolitan areas (3) build new cities outside of the large metropolitan regions.<sup>62</sup>

The National Goals Research Staff report was its first and last, as Nixon dissolved the office shortly after Moynihan departed. Despite this, the details it offers on the proposed strategies demonstrate that the idea of the federal government actively undoing the growth of cities was prevalent at the time. HUD’s approach to the national growth policy reflected a widely-promoted strategy for urban policy that had deeply problematic undertones for how to deal with racial unrest and for controlling the environmental impacts of suburban growth.

In one exemplary document entitled *An Urban Growth Policy: From Motherhood to Abortion* (see Appendix 6 for the complete document),<sup>63</sup> Fred McGlaughlin demonstrates the

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<sup>61</sup> “Status Report on Urban Growth Report,” November 15, 1971. Subject Files of Assistant HUD Secretary Samuel C. Jackson, Urban Growth Policy Division, Record Group 207, Entry 135, Box 37.

<sup>62</sup> Memo from Fred McGlaughlin to members of the HUD task force on national urban growth policy. “Background for First Meeting,” July 26, 1971. Subject Files of Assistant HUD Secretary Samuel C. Jackson, Urban Growth Policy Division 1 of 2, Record Group 207, Entry 135, Box 37.

<sup>63</sup> “Urban Growth Policy: From Motherhood to Abortion,” Memo from Fred McGlaughlin to Samuel C. Jackson, November 12, 1971. Subject Files of Assistant HUD Secretary Samuel C. Jackson, Urban Growth Policy Division, Record Group 207, Entry 135, Box 37.



basic acceptance of the balanced growth premise within HUD. The brief document, which McGlaughlin notes is “a ‘spare’ time piece that I prepared for those people who ask me for a copy of our urban growth policy”, was sent to Jackson and Charles Markham, on 12 November 1971. This was roughly one month into the process of formulating the national urban growth policy report. In it, McGlaughlin observes:

Getting consensus on a broad policy statement is as easy as getting agreement on the proverbial virtues of motherhood...But as one goes through the various stages of defining the specific nature of the policy and of articulating the means for implementing it, one rapidly loses friends—until the whole thing aborts.

McGlaughlin then goes on to offer an example of what he describes as an uncontroversial proposal. His example is balanced growth. He writes:

Policy: It shall be the policy of the nation to encourage balanced growth.

Now that’s a reasonable policy. The President and the Congress have come out strongly for it and some federal policies are actually seeking to carry it out—in a harmless way. You’ve got to be for balanced growth.

McGlaughlin then walks through a series of steps wherein the assumed support for balanced growth is complicated once numerous divergent interests become involved. This document stands out for its blunt description of the frustrations that HUD staff felt at the time with its inability to effect the kinds of institutional change that Jackson spoke of at his Macalester speech, but also for its acceptance of the notion that migration to cities should be reversed and that HUD should be doing all it can to aid this process.

The difficulties that McGlaughlin wrote of in his *From Motherhood to Abortion* memo were not simply due to discordant politics—there were fundamental conflicts of interest with social and environmental goals due to the assumed unproblematic adoption of balanced growth as a goal for national urban policy. HUD was, in fact, supporting precisely the dispersion of population that many environmentalists saw as sprawl development. Of course HUD would have

argued that they had a more nuanced model for the growth of new population centers, but this position certainly elevated their suspect status in the eyes of environmentalists who were trying to rein in sprawl through their national land use planning efforts.

HUD faced numerous challenges beyond just environmental interests to the balanced growth approach. Members of its own advisory committee representing the full spectrum of political perspectives also disagreed with the idea. Herb Stein, a conservative economist and Chairman of the Council of Economic Advisers argued that the growth patterns of cities represented the market allocation of population and a balanced growth initiative would distort that market process. As well, the committee representative for the Department of Labor argued that HUD's goals ought to be exactly the opposite of those stated in the balanced growth objective. From a labor perspective, dense central cities were essential to adequate provision of basic needs. All of these critiques were dismissed by HUD staff as incomplete or ill-informed.<sup>64</sup> In the end, these conflicts caused the national urban growth policy report to fall into precisely the oblivion that Jackson had commented on in his Macalester College speech.

#### 4.5b: *Nixon Grows Disenchanted*

Despite the objections, HUD proceeded to develop the report with a number of new proposals focused on achieving balanced growth. The political context changed, though, as Nixon grew increasingly disenchanted with the idea of any new major urban policy initiative. By late 1971 Nixon was less equivocal about his New Federalist platform and developed a belief that there in fact *was* no urban crisis, at least not of the sort with which the federal government should be dealing. In a memo dated 17 March 1972, Staff Assistant to Nixon, Ray Waldman

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<sup>64</sup> Comments on Urban Growth Report. 10 November 1971. Record Group 207, Entry 135, Bin 37, Folder: Urban Growth Policy Division.

wrote that “the trouble with...most planners’ thinking is that they see the urban forest and not the individual trees. The urban crisis is made up of lots of little crises...The President’s stance should be that we are...dealing with each one in a systematic, orderly fashion.”<sup>65</sup> The implication of this approach was that urban issues were local problems to be dealt with on an individual basis. As well, by 1973, a number of articles refuting the existence of the urban crisis were circulating amongst the heads of the Nixon administration. These included Edward Banfield’s *A Critical View of the Crisis* marked “THE PRESIDENT HAS SEEN”<sup>66</sup> and *There is no Urban Crisis* by M. Stanton Evans which was circulated widely by Ken Cole, assistant to Nixon’s domestic affairs advisor.<sup>67</sup> By the time that HUD presented its report on a national urban growth policy, Waldman’s suggestion reflected Nixon’s favored strategy.

As a result of Nixon’s greatly diminished support for any new urban policy, when McGlaughlin discussed the draft of the report that had been created in Fall 1971 with John Ehrlichman, he was bluntly told that all new policy proposals had to be removed from the report, per the President’s instructions (Hanson, 1982, p. 17). McGlaughlin complied, but when Romney saw the politically impotent result of this cut-down version, he could not accept it as HUD’s statement of national urban policy. Romney ordered it rewritten with new recommendations that reflected his personal desire to build a national program of planning around regional governance based on what had earlier been referred to as “the Romney premise”. Romney personally presented this rewritten version to the Domestic Council, which had approval power over the report. Romney’s version was rejected. In the end, McGlaughlin’s redacted version of the

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<sup>65</sup> Memorandum for Ed Harper, “Urban Crisis Proposal for City Visits,” March 17, 1972. Nixon White House Central Files, Subject Files, Local Government, Folder 24.

<sup>66</sup> Nixon WHCF Subject Files Local Government Folder 27.

<sup>67</sup> Nixon WHCF Subject Files Local Government Folder 29.

National Growth Policy Report was submitted to Congress with no new recommendations for federal urban policy. It was a reification of the status quo. Congressional supporters of the legislation that mandated the report be filed were intensely critical. They held hearings that focused on the shortcomings and labeled the report “an abrogation of the responsibility to make policy” (Hanson, 1982, p. 18). Indeed HUD, the report’s reluctant author, agreed.

In the end, the national growth policy report that HUD created had little impact. Jackson’s warning that without institutional changes the effort was doomed to oblivion largely came true. In McGlaughlin’s cruder terms, the effort to address national growth policy in a fundamental way was aborted. *The New York Times* labeled the report “a mausoleum of words” (Graham, 1976, p. 227). When HUD delivered it to Congress as required by the legislation, it was a “toothless” report built on a faulty foundation. Nixon played a key role in creating this situation by favoring balanced growth and by resolving the contradiction between national planning and New Federalism himself in favor of New Federalism. The report got brief mention in Nixon’s 1972 State of the Union speech, but was largely forgotten thereafter.

In the end, HUD’s only tools for national planning that resulted from their efforts were the incremental pre-existing 701 program and the experimental (and soon to be abandoned) New Communities initiative. While popular support led Nixon to encourage HUD to move forward with the New Communities initiative, by 1972 he sought to develop the program less in response to an urban crisis than as an economic development initiative which solved several of the functional “nuts and bolts” issues that cities faced. This entirely precluded the possibility of HUD thinking holistically about how New Communities and the agency’s other programs could interface with environmental policies as part of a larger land use strategy. In fact, Richard Nathan, a budget aide for Nixon, wrote to Ken Cole that with regard to funding decisions for

New Communities, “Conformance to National Urban Growth Policy objectives should not be one of the criteria. We do not have such a policy stated in operational terms, so there is no way to construct operational criterion.”<sup>68</sup> Thus, HUD proceeded to fund new development in a haphazard and much criticized manner throughout the 1970s. No vision for a national growth policy or planning strategy was successfully passed by the community development interests at this time and no substantial effort to incorporate environmental issues into their programs is evident.

#### **4.6| Conclusion: Toward a Divided Institutional Structure**

When Fred Bosselman and David Callies authored a report in 1971 on innovative state level land use regulations commissioned by the President’s Council on Environmental Quality, they entitled it *The Quiet Revolution in Land Use Control* and placed a graphic of the seven states that they highlight in the report all together within an oval shape (see Figure 4.1 below).<sup>69</sup> The graphic implied that the goal was to form a single coherent policy from these disconnected pieces, but that a national scope had not yet been achieved. The push on the part of the states toward land use controls that the graphic implied formed an inchoate undercurrent within the country but, in the end, only a few states participated and the product did not resemble a national policy on land use. Just as the image implies connectedness, but does not form a complete image of the country, so too did efforts at large-scale land use controls bring together the institutional components, but incompletely. While federal policymakers in the 1970s explored a national

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<sup>68</sup> “New Communities Selection System.” Memo from Richard P. Nathan to Ken Cole. Nixon WHCF Subject Files Local Government Folder 21.

<sup>69</sup> The seven states were California, Hawaii, Vermont, Minnesota, Massachusetts, Maine, and Wisconsin.

urban policy, a national land use policy, and a national growth policy, the only result that they achieved was an institutional structure that divided urban from environmental interests.

**Figure 4.1.** Image taken from the front of Bosselman and Callies *A Quiet Revolution in Land Use*



Initially, the source of disconnect during the 1970s was not the same as those that had undone national land use planning in the past. The proponents of Nixon's New Federalism as well as those who forced the issue of takings did not assail the proponents of land use for perverting the proper role of federal government until several years into the debate. Nixon publicly supported national land use policy until 1974 and the takings issue did not come up until late in 1973. The big disconnect in the early period of the national land use policy effort was between the institutional bases of support for community development and environmental interests. This divide is exemplified in the title changes to a HUD document entitled "A National

Community Development, Environment, and Growth Policy.”<sup>70</sup> The original version of the document dated 8 November 1970 is titled “A Proposal to Implement a National Community Development and Growth Policy.” The final version created shortly afterward shows that the environmental issues were a last minute addition. Indeed, though HUD includes environment in the title, it hardly discusses environmental issues in the pages that follow. This cursory treatment of environmental issues was typical of the discussions within HUD at the time. The environment was often listed as a concern, but never received substantive treatment. Just as McGlaughlin rightly accused the environmental community of lack of concern for social issues in its land use proposals, the environmentalists could rightly accuse the community development interests of lack of concern for environmental issues.

Both sides were developing large and growing institutional structures at the federal level in the early 1970s and the divide between them was embedded in these structures. Crucial to HUD’s approach is that it did not see planning that accounted for environmental issues as sufficient. It saw environmental land use strategies as insufficiently concerned with the communities that exist within the metropolitan regions that would be affected, and the agency’s concerns were well founded. As well, its focus on expanding urban territory as a means for dealing with urban issues through the New Communities initiative contrasted directly with the focus of environmentalists upon conservation strategies that limited growth. In turn, environmentalists argued that the results of existing planning efforts had excluded environmental goals and they developed proposals of their own.

The narrow focus on the part of both sides did not serve either well. The shift away from urban issues as the center of the national land use policy that the compromise bill between Jackson and Nixon contained was a reflection of the evolution of Nixon’s shrinking desire to

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<sup>70</sup> FOLDER: M1-16 National Growth Policy Part I 1970 (1 of 2).

address the “urban crisis.” Meanwhile, the abandonment of national land use planning even as a narrowly construed environmental issue reflected Nixon’s conservative thought about the proper role of the federal government that had doomed national land use planning in the past. HUD’s directors did not agree with Nixon’s position and they could have helped to fight off this conservative turn which led to the only defeat for a major piece of environmental legislation in the early 1970s. For their part, environmental activists could have pushed for urban issues to stay on the agenda. In the end, despite beginning from a position where nearly all observers assumed that a potentially far-reaching set of national land use policies would be enacted in the early 1970s, none came to fruition.

The incentive to close the divide between urban and environmental policy at the federal level was there for both community development and environmental interests, but neither group accomplished it. Given the social and ecological challenges faced by metropolitan areas following two decades of largely uncontrolled postwar sprawl, HUD Assistant Secretary Samuel C. Jackson was correct to argue that there was a need to alter “traditional ways of managing urban growth.” However, neither HUD nor any of the other agencies and politicians that pushed for a new federal level approach to managing urbanization processes at the time actually attempted to bring about the “changes in our institutions” that Jackson recognized was needed. Rather, they sought to further a narrow economic, environmental, or social agenda within the confines of existing institutional boundaries. While the public rhetoric around the debates over national land use policies highlighted the need for regulation of both social and natural impacts of urbanization, there was little actual concern for how these institutional structures related.

The failure to create national land use policy in the 1970s resulted from and reflected the divided institutional context which generated competing agendas. Several factors, though, have



changed since the 1970s. If Bosselman and Callies were to draw the map of state and regional land use planning initiatives today, it would much more closely resemble a complete picture of the country. Their quiet revolution died down in the 1980s, but has gained in volume lately. With the advent of smart growth initiatives and transit-oriented development, states have entered the planning arena much more so than in the past. The states and regions that seek to address the urban and environmental issues of growth, though, continue to struggle with the divided institutional context that was reinforced in the 1970s. It is to these contemporary efforts at state-level urban environmental policy that this study now turns.

## Chapter 5: Case Study 1

### California's Sustainable Communities and Climate Protection Act

#### 5.1| Introduction

This chapter presents the findings from a case study analysis of California's Sustainable Communities and Climate Protection Act passed in 2008, commonly referred to as SB 375. It examines coalition-building efforts across community development and environmental interests within the context of open negotiations amongst political interest groups. First, I provide an overview of the Act and the interests that supported it. Next, because SB 375 combined several pieces of legislation from the regional planning, housing, transportation and environmental policy sectors, I review the prior legislative context for the Act. Following the introduction of SB 375 and its legislative context, the final section of this chapter analyzes the bill formulation and early implementation of the Act.

Chapter 2 of this paper describes the methods of analysis in detail. Briefly, though, the findings are drawn from 32 semi-structured interviews with representatives of organizations involved with the formulation and early implementation of the Act.<sup>71</sup> All interview data is reported anonymously. In addition, this chapter utilizes extensive review of public documents, news media, and public meetings in order to corroborate and expand upon the data gathered through interviews.<sup>72</sup>

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<sup>71</sup> The organizations that were interviewed include community development groups; mainstream environmental organizations; environmental justice organizations; planning agencies and advocates; state and local agencies; and private developer groups. All groups that were identified by respondents as being involved in the final negotiations around the bill were interviewed. As well, groups that were not a part of the negotiations but were identified as influential to the talks and groups that were involved in the early implementation of the law were also interviewed.

<sup>72</sup> Public documents included memos; draft and final legislation; policy analyses; agency reports; and media coverage. The public meetings reviewed consist of video recorded hearings associated with the work of the Regional Targets Advisory Committee (RTAC) during the early implementation of the policy. As well, SB 375 has received extensive news coverage. News media is employed to gain a wider context of the statewide responses to the legislation.

## 5.2| The Impossible Coalition

If you ask people involved with state politics in California, they will likely tell you that Sacramento is a small world, both socially and politically. Especially for those who have worked in state politics for a long time, tales of chance meetings that had big political impact are common.<sup>73</sup> Like most state capitals, the city of a half-million residents provides ample opportunity for state and local politics to intermingle.<sup>74</sup> It is unsurprising, then, that a far-reaching statewide land use policy was initiated at a 2004 birthday party for a longtime Sacramento community development activist.

When State Senator Darrell Steinberg ran into Mike McKeever, the Director of the Sacramento Area Council of Governments, he had just been elected to the California Senate after serving as Assembly Member. Steinberg was a well-known supporter of environmental legislation. For his part, McKeever had just completed a popular regional planning process for the Sacramento area known as the “Blueprint” with a focus on environmentally sensitive growth. The setting was a perfect metaphor for the key institutional challenge faced by urban environmental planners: a representative of California’s activist environmental government met with a leader in regional planning at a local community development-oriented event. The divisions that kept these interests apart at the institutional level did not exist at the individual social level. Steinberg inquired about how he could support the implementation of the Blueprint plan with new state legislation. This conversation planted the seed in McKeever’s head about possibly connecting the Sacramento regional planning process to a statewide land use initiative.<sup>75</sup>

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<sup>73</sup> Three respondents in this research spoke of chance meetings and the cross-over of local and state politics, especially related to housing and environmental legislation.

<sup>74</sup> According to the 2010 Census results, the population of the city of Sacramento, California was 466, 488 people.

<sup>75</sup> Taken from notes of interviews with two respondents who referenced the encounter.

Taking the Blueprint statewide was an intriguing proposition. The conversation did not go much further at the time, but both men carried the idea with them after the meeting.

Such serendipity in Sacramento can have an especially big effect when it comes to environmental policy. California has an activist environmental government, often serving as the model for other state and federal governments (see Fitzgerald, 2010, p.182; see also Davoudi, Crawford & Mehmood, 2009, p. 125). The California Environmental Quality Act (CEQA) passed in 1970 contains substantive prohibitions against developments that will have a major environmental impact. In contrast, the National Environmental Policy Act (NEPA) passed in 1969, is solely procedural. NEPA requires that the environmental impacts of large developments be considered, but does not prohibit development even if mitigation cannot be performed. While NEPA has been referred to as “the natural environment’s Magna Carta” (Lindstrom and Smith, 2001, p. 4) and is an expression of the fundamental “visions and values” of the environmental policy community in the United States (*ibid.*, p.7), the strongest regulation and innovation in this area has come from the so-called “little NEPAs” passed by the states. Of these, CEQA has been the model. It has always been considered one of the strongest environmental policies in the country (Baldwin, 2009, p.788). With the status of CEQA as a standard-bearer, many legislators in California have been keenly aware of the trendsetting role they play in the environmental policy world.

In the end, the serendipitous meeting at the birthday party did lead to action and is likely to affect higher-level policy. As one respondent involved with the negotiations said, “Some version of this will be incorporated in the reauthorization of the Federal Transportation Bill.” California’s Senate Bill 375 (SB 375), entitled the *Sustainable Communities and Climate Protection Act* linked McKeever’s approach to regional planning with the environmental goals of

two additional early sponsors of the bill: The California League of Conservation Voters and the Environmental Defense Fund. The Act was signed into law by Governor Arnold Schwarzenegger on September 30, 2008 (See figure 5.1 below). The goal of SB 375, which will be implemented statewide by 2013, is to incentivize regions and localities to plan for and create more compact land use patterns that will reduce vehicle miles traveled (VMT) by bringing places of home and work closer together. In order to achieve this goal, the bill requires urban regions to create land use plans that link regional transportation and housing development to statewide greenhouse gas emission reduction targets set by the California Air Resources Board (CARB).

However, SB 375 did not come about easily. The interim period between the initial chance meeting of two of the bill's original supporters and the signing was filled with political hurdles. In order to achieve the environmental goals that the sponsors established early on, they had to align housing and transportation policy within diverse regional land use planning regimes. This brought a number of organized interests into the conversation, including private developers, local governments, affordable housing advocates, environmentalists, and numerous community development interests, among others. The final list of supporters of SB 375 was termed "The Impossible Coalition" in a report released by two environmental organizations (Adams, Eaken, & Notthoff, 2009). The report states:

SB 375 was sponsored by environmental groups and gained the support of local governments, builders, affordable housing advocates, major employers, and labor unions. This coalition was not easily assembled... It came about because parties were willing to face new realities. AB 32 had been passed and the state was poised to enact far-reaching policies to reduce greenhouse gas emissions... SB 375 enjoyed a process of principled compromise that can produce more widespread success in the legislative arena. Reaching agreement on complex, large-scale, and controversial issues is the strongest path for durable achievements. (p. 11)

One member of the core negotiating group described the alignment of interests by saying:

...this coalition of homebuilders and environmental groups and affordable housing advocates and local governments is unprecedented, even in California. I mean, these groups usually hate each other and they very seldom work together and we were able to bring them together in this bill.<sup>76</sup>

The use of the term coalition, though, is a slight misnomer. Caplow, in the *Encyclopedia of Sociology* (2001) defines a coalition as “any combination of two or more social actors formed for mutual advantage in contention with other actors in the same social system.” While this was a case of social actors coming together, they were not doing so solely “for mutual advantage in contention with other actors in the same social system.” This was part of the motivation, but they overcame the contentions amongst themselves in order to meet the complex demands of statewide land use policy. Normally, the members of the “impossible coalition” would be subdivided into various smaller coalitions fighting with one another. In this case, though, for a brief moment—and it did not last long—contention over land use goals was largely removed from the state legislative arena. This was something different than a coalition. It was a moment when the institutional norms of land use were open for discussion because the effect of new climate policies in the state created a high degree of uncertainty for all of the organizations involved.

California’s regulatory structure largely mirrors that of the federal government with regard to the institutional divide around land use. Issues of land-use regulation have long divided community development from environmental activists and have been at the center of state-level struggles to develop effective urban environmental policies. Affordable housing advocates in California have fought for decades to fund more affordable housing in the far-flung suburbs where they argue that the schools and resources are the best and the demand is the greatest. Environmentalists have countered that this strategy fuels sprawl development.<sup>77</sup> As one

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<sup>76</sup> Interview with respondent involved in the negotiations recorded on 19 August 2010.

<sup>77</sup> Several respondents in the interviews commented on this long-standing tension between the two interests. See also Landwatch (2011).

community development activist stated of the historic position of environmentalists, “You know the environmentalists are interesting because they...they have significant power and especially in terms of public opinion. And so they can and have for years sort of gone it alone. And they could continue doing that, you know, sort of with or without us.”<sup>78</sup>



*Figure 5.1. Governor Arnold Schwarzenegger signing Senate Bill 375 (SB 375), the Sustainable Communities and Climate Protection Act, into law on September 30, 2008. Pictured with Governor Schwarzenegger are several representatives of the “impossible coalition” that negotiated and supported the legislation.*

Because the historic divide between community development and environmental advocates was undone within the formation of the “impossible coalition,” the SB 375 case yields important lessons for the field of urban environmental planning. At least for a brief while, the institutional divide was removed and the potential for the two interests to be combined under a single urban environmental banner was created. The coming together of community development and environmentalists in fact was one of the key levers that forced the broader “impossible coalition” into existence. While the overall success of SB 375 remains to be seen, it has created a new institutional arena in California where urban environmental policy is more possible than

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<sup>78</sup> Interview on 26 August 2010

ever before. As several respondents remarked, this arena may be the most lasting outcome of the bill. One respondent said:

While...SB 375...is obviously a greenhouse gas reduction bill, there's so many more reasons on a local community level to support what SB 375 is doing...[it's] improving people's quality of life...saving the local governments money, looking at issues like asthma and obesity.<sup>79</sup>

Another respondent commented:

The most powerful thing [SB 375] did, and it is a very, very powerful thing, is it changed the conversation.<sup>80</sup>

### 5.3| Description of the Bill

The *Sustainable Communities and Climate Protection Act of 2008*, commonly referred to as SB 375 for its Senate Bill designation,<sup>81</sup> is part of a series of climate change prevention laws that were passed in California between 2005 and 2010. The Act requires every large urban region to develop a land use plan called a Sustainable Communities Strategy (SCS) which growth forecast models must show will reduce air emissions over the next 25 years by a given target amount. SB 375 is first and foremost a regional land use planning law that seeks to encourage higher density development with special attention to the location of employment centers relative to residential areas. For some regions, especially in the southern portion of the state, the land use strategies that are supported in the bill require a radical shift from the sprawled development patterns that have historically been preferred. For this reason, the bill has been called “the

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<sup>79</sup> Interview on 26 August 2010

<sup>80</sup> Interview on 16 August 2010

<sup>81</sup> Senate Bill 375 of 2008 was officially designated as “An act to amend Sections 65080, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587, and 65588 of, and to add Sections 14522.1, 14522.2, and 65080.01 to, the Government Code, and to amend Section 21061.3 of, to add Section 21159.28 to, and to add Chapter 4.2 (commencing with Section 21155) to Division 13 of, the Public Resources Code, relating to environmental quality.”



strongest state-level smart growth law in the country” (Snyder, 2011, paragraph 14). Indeed, the regional planning agency responsible for the Los Angeles area known as the Southern California Association of Governments (SCAG) expressed concern over the shift that SB 375 requires: “SB 375 is a high priority...because it has the potential to dramatically influence growth patterns and erode local land use authority” (GCCOG, 2009, p. 3).

Several proponents of the bill have pointed out that the shift toward more compact development which a serious reduction in vehicle miles traveled would require is actually just a reflection of changing market demand, even in southern California (see Berg, 2011; Eaken, 2011; Nelson, 2011; Bizjak, 2011). They cite recent surveys that found that the majority of Californians at all income levels stated a preference for inner-city, transit accessible options for living, and that this was the case in all regions of the state.<sup>82</sup> The argument that SB 375 simply reflects existing market trends was an important factor in the negotiation process around the bill, as discussed below. In the end, the effectiveness of the Sustainable Communities Strategies will be heavily influenced by the extent to which real estate markets support the development patterns called for, which in turn will impact the extent to which localities cooperate or push back with a strong assertion of local control over land use.

In order to develop regional plans that will reduce vehicle miles traveled by bringing places of work closer to places of residence, SB 375 employs a complex multi-stage set of requirements (see Institute for Local Government, 2011). First, the bill mandates CARB to create targets for greenhouse gas reductions for every large urban region in the state and to update the

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<sup>82</sup> See Reznick(December 20, 2011), accessed on January 5, 2012 at: <http://www.californiaprogressreport.com/site/comment/reply/9675>; and Eaken (December 12, 2011) accessed on January 5, 2012 at: [http://switchboard.nrdc.org/blogs/aeaken/new\\_study\\_confirms\\_sprawl\\_is\\_d.html](http://switchboard.nrdc.org/blogs/aeaken/new_study_confirms_sprawl_is_d.html) and Nelson (2001) available at: [http://www.uli.org/ResearchAndPublications/~/\\_media/ResearchAndPublications/Report/ULI%20Voices%20Nelson%20The%20New%20California%20Dream.ashx](http://www.uli.org/ResearchAndPublications/~/_media/ResearchAndPublications/Report/ULI%20Voices%20Nelson%20The%20New%20California%20Dream.ashx); and Bizjak (2011), available at: <http://www.sacbee.com/2011/12/13/4118522/report-sacramento-area-housing.html>

targets every four years. The first targets were set in February 2011 (see Figure 5.2 for a listing of approved target reductions by region). The target reductions that SB 375 calls for are set by the California Air Resources Board (CARB). CARB set the emission reduction targets according to what was termed “ambitious but achievable” standards (Regional Targets Advisory Committee (RTAC), 2010, p. 26; see also Cool Connections, 2010, para. 4). The targets for reduction in each region take into account local conditions, including current land use patterns, geography, and political realities.

The targets were decided with consultation from the Regional Targets Advisory Commission (RTAC), a group of diverse stakeholders comprised of representatives from local and regional governments, homebuilders, community development organizations, affordable housing groups, transportation advocates, public health specialists, and environmental justice organizations (for a complete list of members, see CARB, 2009, Appendix 7). The RTAC was mandated by SB 375 to guide CARB in the process of developing the regional greenhouse gas (GHG) reduction targets. As well, the RTAC created standards for the models that would be used to measure the amount of GHG reductions that a given plan would generate.

Once the GHG reduction targets were established, the eight largest Metropolitan Planning Organizations (MPOs), the entities responsible for regional housing and transportation planning in California, were required to create a new regional land use plan—the Sustainable Community Strategy (SCS). The new SCS regional plans can employ a number of strategies for meeting the target emission reductions, including higher efficiency standards for fuel and industry, but the essential intent of the law is to reduce vehicle miles traveled (VMT) by bringing places of work closer to places of home. They must use standardized computer-based growth forecasting models

to project the environmental impact of the proposed plan. The models must show that planned growth in the region will reduce air emissions to the target level by 2035.

MPO Region	Targets *	
	2020	2035
SCAG	-8	-13
MTC	-7	-15
SANDAG	-7	-13
SACOG	-7	-16
8 San Joaquin Valley MPOs	-5	-10
6 Other MPOs		
Tahoe	-7	-5
Shasta	0	0
Butte	+1	+1
San Luis Obispo	-8	-8
Santa Barbara	0	0
Monterey Bay	0	-5

\* Targets are expressed as percent change in per capita greenhouse gas emissions relative to 2005.

**Figure 5.2.** California Air Resources Board approved regional greenhouse gas emission reduction targets for all major Metropolitan Planning Organizations in the state.<sup>83</sup> The table demonstrates that all of the large urban regions were given reduction targets of 7 to 8 percent less emissions by 2020 and 13 to 16 percent less by 2035. Source: California Air Resources Board, available at: [http://www.arb.ca.gov/cc/SB\\_375/final\\_targets.pdf](http://www.arb.ca.gov/cc/SB_375/final_targets.pdf)

Once a region has an approved SCS, the plan must then be used as the basis for deciding how housing and transportation infrastructure will be distributed throughout the region. First, the SCS is linked to a pre-existing housing allocation process known as the Regional Housing Needs Assessment (RHNA). RHNA involves a process of distributing the “fair share” of housing units for each locality based upon projected population growth forecasts. As well, the SCS must be used as the basis for deciding how state and federal transportation money will be spent in each region. Provisions for aligning the schedules used to decide housing and transportation allocations were also built into SB 375. By linking pre-existing regional housing and transportation planning processes with the SCS, SB 375 created a standardized and unified

<sup>83</sup> SCAG=Los Angeles, MTC=San Francisco, SANDAG=San Diego, SACOG=Sacramento.

regional land use planning process in all major MPOs. As an incentive for developers to follow the provisions of these plans, the legislation also stipulates that all new developments within an SCS boundary that would normally come under California Environmental Quality Review requirements are eligible for streamlined or exempted review status as long as they meet the goals of the SCS.

As some critics have pointed out, the extent to which an SCS affects actual development in a region is still largely dependent upon the cooperation of localities (Altmaier et al., 2009, p. ii). Any MPO that cannot get all of the localities within its boundaries to agree on a regional plan may opt out of the SCS process. In such cases, the MPO must produce what is called an Alternate Planning Strategy (APS). The APS must demonstrate what changes would be necessary to meet the goal, even if such changes are deemed infeasible under current political and economic conditions. The APS does not have to guide any planning decisions in the region. If a region adopts an APS, though, it loses the right to access the streamlined environmental review for new development projects that would come with adoption of an SCS. Regardless of whether an SCS or an APS is adopted, all regions must still align their housing and transportation planning processes so that they occur at the same time and inform one another. While removal of the streamlined environmental review provides some consequence for failing to plan to reduce emissions through land use, there are widespread concerns over whether it is enough to induce regions to comply (see Urban Habitat, 2009, para. 6). This is especially the case with the southern regions which have an established sprawl development culture and contain localities that have historically been disinterested in infill development.

The southern regions were the first to complete an SCS and their results have been the first big test of the policy. San Diego submitted a draft SCS to CARB for initial review on

September 21, 2011. Los Angeles did the same on December 1, 2011. Generally, many environmental advocates were displeased with the results of San Diego's SCS plan. While the region shows a reduction in emissions that meet its target, many proponents of SB 375 have argued that they skirted the intention of the bill by over-estimating the impacts of new transportation technologies and not planning for enough high density development. The State Attorney General's office released a highly critical legal review of the San Diego SCS and is currently challenging it in court (see ClimatePlan Blog, 23 December 2011). However, Los Angeles met CARB's target reductions with a plan that seems to contain relatively robust land use alterations (see ClimatePlan, 2012). Los Angeles' draft SCS has been a cause for hope amongst proponents of the SB 375 approach to greenhouse gas reductions, as it was widely considered to be one of the regions likely to opt out of the SCS process in favor of an APS.

Some environmentalist, though, have argued that if these archetypal sprawl regions can reduce vehicle miles traveled and emissions according to the targets set by CARB, perhaps the targets themselves should be more aggressive (Newton, 2011).<sup>84</sup> This is almost certain to be an area of political contestation in the future. In all, the mixed results thus far have led to a continued political push to further strengthen the consequences for regions that do not develop an effective SCS (see Rose, Bernstein & Cohen, 2011; Michele, 2011; Center for Biological Diversity, November 28, 2011<sup>85</sup>), but have also raised hopes amongst many about the prospects for a land use approach to climate policy.

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<sup>84</sup> Available at: <http://la.streetsblog.org/2011/12/01/can-greater-l-a-ever-embrace-cleaner-transportation-regional-plan-says-yes-we-will/>

<sup>85</sup> [http://www.biologicaldiversity.org/news/press\\_releases/2011/san-diego-transportation-11-28-2011.html](http://www.biologicaldiversity.org/news/press_releases/2011/san-diego-transportation-11-28-2011.html)

#### 5.4| Prior Legislation

Between 2006 and 2007, one of the toughest strategic decisions that the early regional planning and environmental sponsors of SB 375 had to make in the bill formulation process was whether or not to engage with existing housing, transportation, and environmental review laws. There was reticence to do so, especially amongst the experienced lobbyists that initially sponsored the bill because each of these laws had well-established state lobbying organizations that supported them and would require extensive negotiation.<sup>86</sup> One of the initial sponsors of the bill summarized the scenario by saying, “We combined land use, transportation, climate and housing policy into one single bill...if you’d asked anybody to do that in a single bill before we started, you would have been laughed out of town.” He went on, “the issues with the builders, the local governments and the affordable housing advocates were each very difficult and each in different ways.”

In the end, the initial sponsors of SB 375 decided that an effective regional planning law was not possible without incorporating existing housing, transportation, and environmental review programs. This decision created potential benefits for the bill sponsors in that the established legal authority of the other laws could be leveraged to give greater power to SB 375. This was especially crucial with the housing law because existing affordable housing mandates had the power to supersede local zoning ordinances. However, the risk that came along with this potential benefit was also great. Any one of the lobbying interests that were associated with the existing laws could refuse to negotiate and greatly hinder the ability to pass any legislation. The decision to engage with prior legislation, then, was one that required a calculated risk on the part of the bill’s sponsors.

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<sup>86</sup> Three of the originators of the bill expressed separate reservations about engaging with housing and transportation lobbies.

In the process of negotiations, the bill had to incorporate major amendments to three existing pieces of legislation. Amendments included streamlining the California Environmental Quality Act (CEQA) which requires large real estate developments to show that they will not cause significant environmental harm; adjusting the timeline and allocation formula for the Regional Housing Needs Assessment (RHNA, known locally as “REE-NA”) which mandates that localities plan for a certain number of housing units based on population growth estimates and requires that local zoning reflect the mandates; and the Regional Transportation Planning (RTP) process which determines the allocation of state and federal transportation dollars across a region. The sponsors engaged these other policy areas from the position of a new regime of climate change and regional planning laws that had recently been created in the wake of a landmark greenhouse gas reduction law known as AB 32.

#### 5.4a: AB 32

At the 30 September 2008 bill signing, Governor Arnold Schwarzenegger referred to SB 375 as the sequel to California’s 2006 Assembly Bill 32 (AB 32), the *Global Warming Solutions Act*. The incentive for the bill’s sponsors to engage with the housing, transportation, and environmental review lobbies comes from the justification for a land use approach to climate policy embedded in AB 32. AB 32 created the California Air Resources Board (CARB) and empowered it to enforce regulations that reduce statewide greenhouse gas emissions to 1990 levels by 2020. This goal was later expanded to include an 80% reduction below 1990 levels in California-based emissions by 2050.<sup>87</sup> The Act amended the California Health and Safety Code (HSC) by directing CARB to reduce “greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020” (HSC, §38561). In essence, the *Global Warming Solutions*

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<sup>87</sup> See <http://www.arb.ca.gov/cc/cc.htm>, accessed 10 November 2011

*Act* empowered CARB to operate in all economic and planning sectors necessary to achieve its mandate.

AB 32 was the first bill in the United States to set an absolute limit on carbon emissions and has been a model for similar actions in other states and regions across the country (Environmental Defense Fund, 2011). As well, AB 32 established the first renewable energy goals for a state and includes a “cap-and-trade” strategy for reducing industrial emissions which will take effect on 1 January 2013. The cap-and-trade program, similar to the one that has been proposed but not passed at the federal level (see Broder, 2009; Hulse and Herszenhorn, 2010), limits the overall emissions that certain industries can release and allows low-emitters to sell emission credits to high emitters (CARB, 2008, p.30).

In order to implement the climate protection goals in AB 32, CARB has developed a number of policy strategies across multiple sectors. As outlined in their December 2008 Climate Change Scoping Plan (CARB, 2008), CARB will utilize direct regulations of certain industries, monetary and non-monetary incentives, voluntary programs, and market-based programs (such as cap-and trade) in order to meet its directive. CARB’s actions are focused on various sectors including transportation, land use, energy, agriculture, manufacturing and construction. The regulatory initiatives outlined in the Climate Change Scoping Plan, with the exception of cap-and-trade, took effect on 1 January 2012. SB 375 provides the framework for implementing CARB’s AB 32 directives for emissions reductions in the land use and personal transportation sectors.

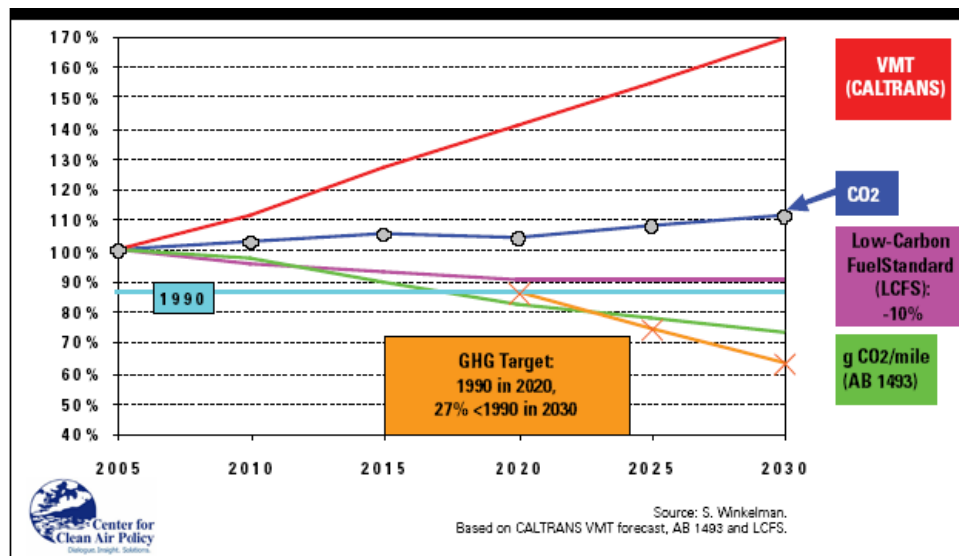
The broad regulatory authority granted to CARB within AB 32 served as a strong motivation for a separate legislative effort that addressed land use. In order to reduce personal transportation-based emissions, CARB put forth what came to be known as the “three-legged



stool” approach. The “three legs” included requirements for vehicle efficiency, cleaner fuels and reduction of VMT. More specifically, they consisted of incentivizing and requiring new high-efficiency vehicle technologies (e.g. hybrid and electric vehicles), requiring lower intensity greenhouse gas emissions from motor fuels sold in the state (e.g. requirements for cleaner fuels), and programs for creating new travel behaviors that would lead to less vehicle miles traveled (reduce VMT). California has already passed regulations and legislation addressing the first two legs of the stool. Vehicle efficiency requirements have been a part of the law in the United States since the federal Corporate Average Fuel Economy (CAFE) standards passed in 1975. California recently implemented stronger standards than the CAFE legislation requires. As well, while low carbon fuel standards are facing legal opposition, they were recently passed in the state (see Gullo, 2012 for more on the court challenge to these laws). However, legislation that effectively changes driver behavior rather than specific technology or production-based processes has been much more difficult to devise (see Malaczynski and Duane, 2009). SB 375 is the first law that specifically seeks to address this “third leg” of the personal vehicle emissions reduction stool (Hilliard, 2010, p. 6) by bringing places of work and residence closer together and thus reducing the need for car trips.

The justification for legislation that addresses travel behavior was clear from the outset of the bill’s negotiation process. Studies showed that an increase in personal vehicle miles traveled would overwhelm the gains made from any regulation of low carbon fuel standards and high efficiency vehicles. Since personal transportation was the source of 30% of all greenhouse gas emissions in California, there was no disputing the fact that unless rising VMT was addressed, it would be impossible for CARB to lower California-based emissions to 1990 levels by 2020 (Adams, Eaken & Nothoff, 2009, p. 9). The graph below (Figure 5.3), taken from a widely

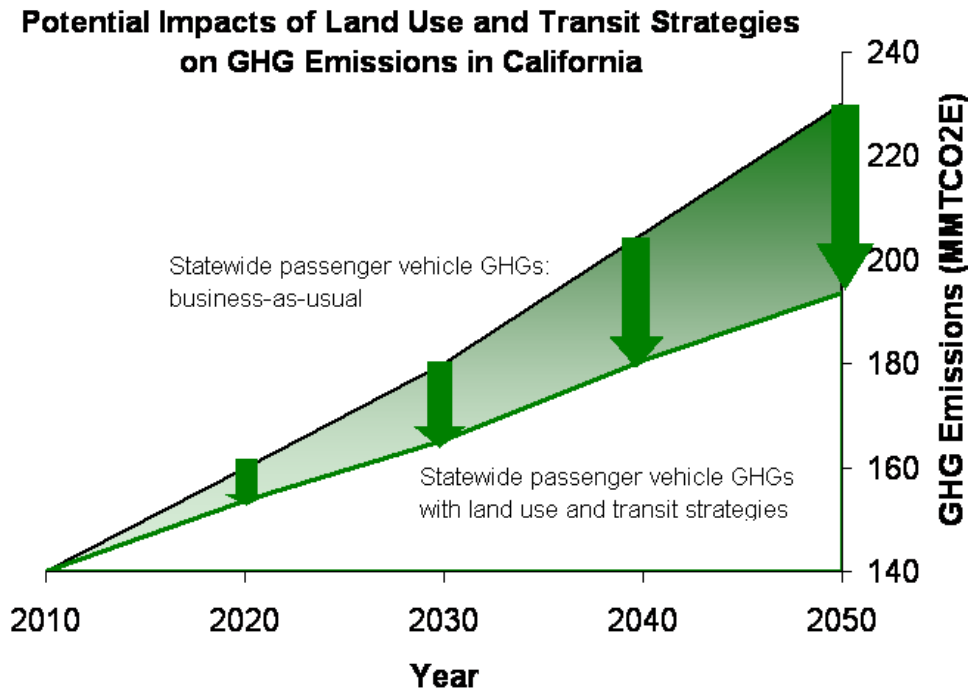
distributed report advocating for passage of SB 375, demonstrates the roughly 70% rise in personal vehicle miles traveled expected by 2030. While fuel carbon standards and vehicle efficiency measures are projected to result in a reduction of the total Carbon Dioxide output over this same time, the increase in VMT more than erases the gains. In essence, the chart below makes clear that unless travel behavior is addressed in such a way as to drastically reduce VMT, the gains from technological improvements will not have any effect on overall greenhouse gas emissions from personal transportation. Because VMT continues to rise, so will GHG.



**Figure 5.3.** *Expected Greenhouse Gas Reductions: This figure shows that expected increases in personal vehicle miles traveled will overwhelm any possible gains made from low carbon fuel standards or high efficiency vehicles.* Source: Adams, Eaken & Nothoff, 2009, p.9.

The purpose of SB 375 is to slow the increase of vehicle miles traveled and, in doing so, make a reduction in carbon emissions from personal vehicles possible. In its AB 32 scoping report, CARB states that it expects at least a 4 percent reduction in VMT per capita to result from the implementation of SB 375. Overall, this should drop carbon dioxide emissions in 2050 by approximately 40 million metric tons. This reduction would reduce the slope of the expected

VMT in Figure 5.3 above and make overall carbon dioxide reductions in the personal transportation sector possible in the long run. Figure 5.4 below, taken from CARB's Scoping Plan, demonstrates the expected reductions from SB 375. It is, however, emphasized in the report that this is an estimated result not based on actual implementation models.



*Figure 5.4.* This chart demonstrates the expected effect of SB 375. CARB estimates that the total expected emissions from personal vehicle travel without SB 375 would be roughly 230 million metric tons. With SB 375 in place, it estimates that this number should reduce to roughly 190 million metric tons. Source: CARB, 2008, p. 50.

As CARB began developing its standards for reducing emissions, it became clear to many that the personal transportation sector could not be addressed without finding a way to change driver behavior. Malaczynski and Duane (2009) identified a “VMT gap” in the current regulatory structure for GHG emissions reductions envisioned under AB 32” (p.74). SB 375 was devised as a legislative fix for the “VMT gap” in climate policy. Land use planning became the preferred mechanism within the legislation for changing individual driver behavior. The starting

point for developing the model of land use planning that would effectively do so was a popular regional planning effort that Steinberg and McKeever discussed at the community development activist's birthday party and had been recently completed in the Sacramento area.

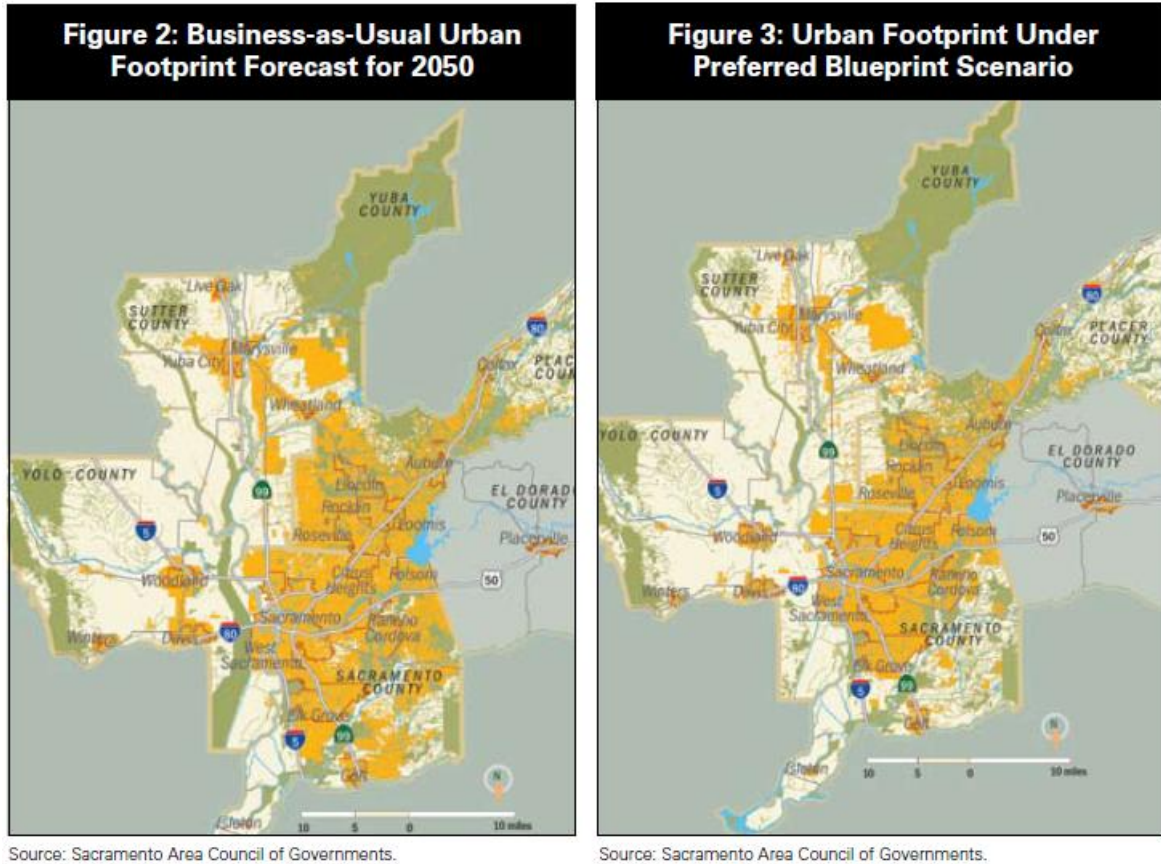
#### *5.4b: The Blueprint*

The planning strategy required in SB 375 was influenced by a regional planning model finalized in 2006 by the Sacramento Area Council of Governments (SACOG) known as the "Blueprint". SACOG is the equivalent of the Metropolitan Planning Organization for the Sacramento region and, as such, is the primary regional planning entity. The Blueprint is a popular and generally well-received regional land use strategy developed in partnership with local governments and designed to reduce the environmental impact of future development in the area. It designated ecologically sensitive and important agricultural lands for preservation, increased mixed-use development goals for existing urban centers, and increased transit option goals.

The California Department of Transportation (Caltrans) funded the Blueprint program for MPOs to engage in voluntary collaborative regional planning efforts in 2005. The SACOG Blueprint was one of many produced throughout the state. The goal was to help MPOs make more informed decisions about how to spend state and federal transportation funding based upon a collaborative planning process that widely engaged all of the localities within the region (see Caltrans, 2010). SACOG received between three and four hundred thousand dollars in funding each year between 2005 and 2009 under the Caltrans Blueprint planning program (Caltrans, 2011). While Blueprint plans were generated by all of the other major MPOs in the state as well, and by a number of smaller Regional Transportation Planning Associations, Sacramento's

Blueprint was by far the best received and most widely publicized (see *Wall Street Journal*, 2008).

One reason for Sacramento's success was that it was based upon two prior successful regional planning models. Before becoming the director of SACOG in 2004, Mike McKeever had been a planning consultant for Portland's Metro Council, the regional planning authority for the Portland, Oregon area (see SACOG Biography, 2004). Portland's Metro Council is a widely-cited success story in the effort to convince localities to give up some of their land use authority to achieve regional planning goals (see Bragdon, 2003). McKeever carried the lessons from Portland with him to his work in Sacramento, giving them a somewhat unique focus on building consensus amongst localities. As well, the SACOG staff relied heavily on technical and procedural advice from staff members at the Salt Lake City-based regional planning organization, Envision Utah (Hilliard, 2010, p. 134). Envision Utah had also just completed a well-received regional plan that relied heavily on innovative public outreach methods. Based on advice from the Utah agency, SACOG did extensive market research on households within the region to understand the preferences of Sacramento area residents and employed a new computer-based planning tool developed originally by the California Energy Commission called I-PLACE3S. This tool allowed SACOG staff to quickly run through several development scenarios with representatives from localities in order to build consensus about the most desired scenario. In the end, SACOG achieved broad consensus amongst localities and wide popular support on a regional plan that reduced the urban footprint of the region from the projected "business-as-usual" scenario by 20 percent. It did so even while providing for the same number of projected jobs and housing as the business-as-usual scenario would have. Figure 5.5 below demonstrates the smaller urban footprint that resulted from the Blueprint plan.



**Figure 5.5.** These maps demonstrate the expected effect of the Blueprint process. They show a 20% smaller urban footprint in 2050 than would occur under a business-as-usual scenario. Source: Adams, Eaken & Nothoff, 2009, p. 10

One of the guiding principles employed by the SACOG Blueprint to achieve the reduced urban footprint was the need for a jobs-housing balance based upon the jobs-housing ratio for each locality. The jobs-housing ratio is a measure of number of jobs to the number of housing units in a given area. It is assumed that areas with very high or very low ratios generate longer commutes, and thus more vehicle miles traveled. Therefore, SACOG sought to create balanced jobs-housing ratios throughout the region (SACOG, 2008, p.94). The notion later became a guiding principle in the early formulation of the SCS goals within SB 375.<sup>88</sup> However, SACOG

<sup>88</sup> Cited by respondents from the housing and community development sector as one of the key issues they were focused on. For example, one community development activist stated, “we’re very, I’m personally very concerned with what the methodology is, what gets included into, what MTC and ABAG are looking at in order to attain that

and most of the proponents of SB 375 have recently moved toward a “jobs-housing fit” model. The traditional jobs-housing ratio does not account for the number and type of workers being accommodated, the affordability of housing relative to the jobs in the area, or the need of certain businesses to agglomerate (see SACOG, 2011, Attachment 3). The jobs-housing fit model uses more subjective definitions of job centers as well as wage data on workers to try to not only align jobs and *housing* geographically, but also align jobs and *workers* geographically. This more nuanced approach has been a part of the ongoing discussion around implementation of SB 375.<sup>89</sup>

Translating the SACOG Blueprint into state law that could be applied to all regions, though, was both politically and practically complex. SACOG spent approximately two years doing market research and outreach to localities in order to build support for its plan. San Diego and Los Angeles only recently began their SCS planning in earnest. As well, Sacramento’s effort was well-funded by Caltrans. Further, the physical, demographic, and political dynamics of the regions are intensely varied, making it uncertain whether the outcomes produced in Sacramento are possible in other regions. Therefore, the focus in developing the statewide approach for SB 375 shifted away from the specifics of a new planning process and toward aligning existing statewide requirements for housing allocation, regional transportation planning, and environmental review.

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target. So one of the challenges that we’ve had with the advanced methodology up until now is they treat every house as a house no matter how big it is, no matter how expensive it is, and every job as a job no matter what it pays. So if you, you know, Marin County for example, one of the wealthiest places and one of the wealthiest counties in the country has almost all just service level jobs but they have a jobs-housing balance.” (17 August 2010).

<sup>89</sup> *Supra*

#### 5.4c: *California Housing Element Law and the Regional Housing Needs Assessment*

Since 1969, California’s housing element law has mandated that the State Department of Housing and Community Development (DHCD) ensure that local governments “adequately plan to meet the existing and projected housing needs of all economic segments of the community” (DHCD, 2011).<sup>90</sup> According to DHCD’s description, the housing element law empowers the state to decide how many housing units will be needed in each region and to require the regional Council of Governments (COG) to allocate those units across all of its localities.<sup>91</sup> Each locality must then accommodate all new units in its allocation within a new zoning resolution. DHCD calculates the number of units each region receives, or the Regional Housing Needs Assessment (RHNA), every eight years (amended in 2008 from the earlier five-year cycle by SB 375). In their calculation, DHCD uses projected population growth estimates from the State Finance Department to determine a required number of housing units that each region must accommodate and the affordability levels that the units must have. Once the RHNA determination is given to each COG, the regional council then allocates the required units to its localities. The result is a “RHNA allocation” which each locality is required to accommodate within the “housing element” of its local general plan. General plans are also required of all localities according to prior legislation. DHCD must approve the general plan amendments made by each locality in order to ensure that each region is meeting its housing goals. Once the general plan has been approved, localities must change their zoning ordinances to reflect the new housing element of their approved general plan. These zoning ordinances have typically been the target of lawsuits over whether they actually allow for the required amount of affordable units.

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<sup>90</sup> See DHCD, 2011

<sup>91</sup> A COG is a regional planning entity similar to an MPO but with responsibility only for housing plans.



Since its inception, RHNA has been an anti-exclusionary zoning law. The RHNA process does not guarantee that new and affordable housing units will be built. Rather, it ensures that localities throughout the state have zoning ordinances that accommodate new and affordable housing units. In the end, the efficacy of RHNA relies upon the actions of private developers and the cooperation of localities to accomplish the goal of affordable housing provision statewide. As a result, RHNA processes and enforcement of housing element law have long been a contentious area of politics in California (see Lewis, 2003). As one League of California Cities representative wrote, “Typically, as soon as these [RHNA] numbers are proposed, they are challenged by local governments as far exceeding local realities” (Carrig, 2002). DHCD staff members frequently declare local general plans to be in “non-compliance” with the state housing element law (see Lewis, 2003, pp. 4-5), but localities are often slow to respond or non-responsive. A declaration of non-compliance from the State makes a locality ineligible to receive state housing funds, complicates their bond-issuance process, and generally raises legal challenge from housing advocates. However, certain localities sometimes prefer these measures to DHCD required alterations of their zoning ordinance. Statewide, affordable housing advocacy groups in California spend a large portion of their time and resources trying to force localities to meet their responsibilities under the housing element law (see Shigley, 2010).

Due to the impact that the regional housing needs assessment and the local allocation of housing units have on regional planning, the RHNA process became a focus during the SB 375 negotiations. Generally, local governments that do not want more housing have argued that RHNA allocations are unreasonable and poorly reflect the reality of real estate markets. Housing advocates, in turn, argue that localities are constantly seeking to sidestep and subvert their housing element responsibilities. The local governments and the housing advocates both sought

to “gain ground” in this conflict through their support for SB 375. In the end, the localities got a longer timeline between housing element updates, which lessens their burden relative to rezoning.

In order to align the regional housing allocations with regional transportation planning processes, the requirements to update housing elements were lengthened from every five years to every eight years so that it could be matched with the four-year transportation planning process. From the localities’ perspective, this makes them less vulnerable to lawsuits. For their part, the housing advocates strengthened the RHNA process, with greater penalties for non-compliance. Within SB 375, all housing allocations must be aligned with the goals of the Sustainable Communities Strategies. As well, if a locality does not adopt an element in time (delayed submission of housing elements was a common tactic for subverting the law) then that locality is required to move to a four-year housing element cycle, removing the benefit of the longer planning cycle. As well, the law has penalties for untimely and incomplete housing element submissions.

SB 375 also gave housing advocates new tools for addressing the failure on the part of many localities to adopt new zoning ordinances that reflect the approved housing element in their general plan. Now, if a locality has not passed a new zoning ordinance within three years of an adopted housing element, a developer may as-of-right (without seeking approval from the locality) build on any site to the specifications of the general plan, regardless of local zoning laws (Housing California, 2010). In effect, for the first time, the state has given the housing element of the local general plan (which is subject to state approval) greater power than local zoning laws. As well, even if a builder does not seek to develop a site, any interested party may sue to compel a city that has missed the deadline to change their zoning laws. In essence,

housing advocates have been given recognized standing in court cases to sue not only over non-compliance with the housing element aspect of the law, but also over failure to pass a new zoning ordinance that reflects the housing element. These new remedies are considered an important gain for the housing advocacy community.

#### 5.4d: *Regional Transportation Plan*

In addition to directing the RHNA housing allocation, the SCS process requires that state and federal transportation project funding be allocated according to the plan's priorities. The regional transportation planning process (RTP) has been in place since the mid-1970s in California. The RTP is a long-range plan developed by MPOs or, in the case of smaller regions, Regional Transportation Planning Agencies (RTPAs) and revised every four years to decide which transportation projects will receive state and federal funding (including all funds from the Federal Highway Administration, the Federal Transit Administration and Caltrans). The RTP is the state version of the federally-mandated Metropolitan Transportation Plan (MTP). RTP and MTP are interchangeable in California. The RTP was added to California state law because the MPOs required by federal law only represent large urban regions. The RTPAs represent all regions not required by federal law to have an MPO (for complete description of the regional transportation planning process in California, see Caltrans, 2010).

The RTP reflects all transportation projects expected to be built in the region over the next 20 years. The plans are required to be financially realistic in the sense that they can only include projects for which funding sources can be identified (Rose, Bernstein, Cohen, 2011, p.5). If a project does not appear in an approved RTP, it cannot be funded (Caltrans, 2010, p. 3). The financially realistic requirement in the RTP process was also extended to the SCS plans under

SB 375. That is, neither an RTP nor an SCS plan can employ unrealistic methods for achieving its goals. The projects must be possible within current financial, physical, and political restraints (Housing California, 2010).

According to the 2010 California Regional Transportation Plan Guidelines produced by Caltrans, “The inclusion of the sustainable communities strategy as a part of the RTP represents a significant change to an MPO’s traditional transportation planning process by adding the strategy as a new element and requiring internal consistency among all elements of the RTP” (Caltrans, 2010, Foreword). Whereas RTPs had been developed in isolation from other land use or housing considerations, within SB 375 the transportation projects proposed must promote the housing and greenhouse gas emission reduction goals expressed in the Sustainable Communities Strategy for the region. If an RTP is found in non-compliance with an SCS, the State Department of Transportation is instructed to reject the RTP, requiring revision before any transportation projects can be funded.

Another important aspect of the RTP process that was altered by SB 375 involves the travel demand models used by the MPOs. Travel demand models employ statistical algorithms to predict human travel behavior. As a result, “model results are only as good as the data that go into them” (Caltrans, 2010, p. 35). Large MPOs that have in-house modeling offices develop their own household travel surveys in addition to employing up-to-date demographic data from the U.S. Census. Prior to SB 375, the travel assumptions built into the models were unique to each region’s process. For example, the assumed price of gas (one variable that affected assumed vehicle miles traveled per capita) was different in each region and sometimes had a large impact upon the expected emissions from the region. Under SB 375, Caltrans was directed to develop

standard variables for each model to use in calculating the assumed reduction of emissions from the new planned growth (SB 375, 2008, Chapter 728, Section 1).

In addition to standardizing the models, SB 375 required that MPOs expand the variables that they include. In its 2010 guidelines for modeling, Caltrans directed all MPOs to “quantify, to the extent possible, the co-benefits associated with the achievement of their greenhouse gas reduction targets” (Caltrans, 2010, p. 48). Co-benefits include: 1) increased mobility from greater transit options and better traffic flow management; 2) economic benefits from more efficient and cost-effective use of the transportation system; 3) conservation of open space from a reduced urban footprint; and 4) public health benefits from safer, more active transit options that result in greater transportation equity throughout the region. As of 2012, co-benefits are an optional aspect of the modeling process. However, the mandatory inclusion of co-benefits has been a component of the ongoing advocacy from social equity groups engaged with SB 375 (see Urban Habitat, 2010).

While SB 375 does have several substantial impacts upon the normal RTP process, some transit advocates have pointed out that the ultimate decision about which projects get funded still remains with the boards of the regional transportation agencies. While their decisions must reflect the priorities set forth in the SCS, these boards are largely controlled by representatives of local governments and are still likely to favor traditional transportation projects such as highway expansions that support local economic development (Fulton, 2008). Despite the considerable leverage that those seeking to challenge car-oriented RTP decisions now have, MPO boards which have traditionally favored highway construction will continue to be the primary decision-makers of transportation projects. As critics point out, this is a potentially problematic situation

that may limit the ability for any change to the typical transportation planning process in the near future (Elkind, 2010).

The SCS process links land use planning with the RHNA and RTP process in order to connect housing goals with a larger regional planning framework that reduces vehicle miles traveled. As such, SB 375 is essentially a regional planning tool that uses travel demand models to link existing housing and transportation law within a single land use plan. Because the goal of an SCS is to reduce greenhouse gas emissions by building a transportation system that requires less driving, the new planning process necessarily favors transit projects, though the push to get regional boards to accept them involves a political battle. Beyond the local zoning changes that the RHNA process involves, the building trades also have state-level incentives to construct new developments that conform with an SCS. SB 375 offers selected exemptions and streamlining of the state's environmental review process contained within the California Environmental Quality Act (CEQA). As a result, CEQA is the final major legislative foundation upon which SB 375 is built.

#### *5.4e: California Environmental Quality Act (CEQA)*

One of the major “carrots” provided by SB 375 is the potential for development projects that meet SCS goals to receive an exemption or streamlined version of environmental review as required in the California Environmental Quality Act (see Cohen, accessed 2011). CEQA was passed in 1970 and since 1976 has required that all government regulations, both state and local, affecting development be subject to environmental review and require mitigation where feasible for projects that have negative environmental impacts (Altmaier et al., 2009, p.8). This has meant that projects receiving state funds can only proceed if they are ruled to have insignificant

environmental impacts. It has also meant that all public and private projects subject to regulatory approval, as well as changes to zoning resolutions, general plans, and infrastructure improvements are subject to the environmental review process (California Resources Agency, 2005).

CEQA has been a powerful tool for protecting natural resources. It has been credited with stopping conversion of the San Joaquin Reservoir to sewage storage, which might have polluted Newport Bay (Johnson and Hanson, 2011). As well, CEQA was integral in preserving a critical habitat for the Bighorn sheep (Brechtel, 2011) and in safeguarding the tributary streams that feed Mono Lake (Roos-Collins, 2011). It has been relatively effective at preservation of natural resources and, as such, is a carefully guarded component of the environmental lobby's toolkit in California.

Developers critical of CEQA have argued first that the law is used as a "not-in-my-backyard" or NIMBY tool. That is, development interests have pointed out that environmental review is used as a cover for keeping out projects that are unwanted for social reasons, such as if it is expected to serve a low income population. Some researchers have supported this claim with the finding that ecological challenges and mitigation measures often relate more to "quality-of-life" issues than to ecological preservation (Johnston and McCartney 1991; Barbour and Teitz 2006, as cited in Altmaier et al., 2009, p.8). Second, the building trades have argued that CEQA has limited the ability to build infill development, or projects within already-developed areas that would enhance "smart growth" efforts in regions. The infill developers argue that project-by-project reviews run counter to larger-scale planning goals which might encourage infill developments in order to achieve less sprawl. They further point out that, because infill sites are located within existing communities, they often receive the highest level of scrutiny and raise

greater political opposition. The result, they claim, is that many developers shy away from infill development sites in favor of sites in undeveloped areas with more predictable review processes.

CEQA “reform” efforts since the mid-2000s have sought to remove the disincentives for infill development (Fulton, 2011). As Ziegler and Kang (2011, para. 9) put it, “The Environmental Quality Act is not very good at distinguishing big-box stores on green fields, miles from population centers, from desperately needed housing close to jobs and transit in cities and towns.” As a result, the trend since the mid-2000s amongst some planning and development interests, and increasingly amongst some environmental interests, has been to advocate for CEQA exemptions for infill projects (see Barbour and Teitz, 2005, p. 1). SB 375 took a step in this direction by offering reduced CEQA review, up to a possible exemption, for projects that are within designated transit-oriented areas and meet the goals of an approved SCS. Since SB 375’s passage, further CEQA legislation has expanded the exemptions available for infill projects.

Because CEQA has always been carefully guarded by the environmental lobby in California, the sponsors of SB 375 knew that it would be difficult to raise the prospect of including CEQA reform in the proposed bill. However, the ultimate push to do so was indicative of the overall negotiation process that developed during the bill’s formulation. Despite the desire on the part of the bill’s sponsors to stay largely out of the territory covered by other legislation, the expansive reach of issues related to land use planning that would serve climate policy goals forced an evolution of thinking that resulted in deep and ongoing engagement with the lobbying communities associated with RHNA, RTP, and CEQA. The Blueprint planning process that took place in Sacramento could not, it was realized, effectively serve as the mechanism for filling in the “VMT gap” in climate policy without incorporating and aligning the interests of state-level housing, transportation, and environmental advocates. Only in doing so did the bill gain the



momentum needed to, as one respondent put it, “change the conversation around land use regulation in California.”

### **5.5| The Early Formulation Process: Before the Bill**

Each of the pre-existing legislative programs that were combined within SB 375 had entrenched lobbying interests attached to it. This required the sponsors to engage in an intensive negotiation process over roughly a two-and-a-half year period between 2006 and 2008. The negotiations required a hands-on approach by the elected representative sponsoring the bill, State Senator Darrell Steinberg, who was elevated to a leadership position in the California State Senate halfway through the negotiations. Steinberg and his staff, by all accounts, were closely involved in sorting out the details of the bill. They served as the primary communication hub that bridged competing interests.

Before negotiations could yield an alignment across the affordable housing, transportation, home building, local government, and environmental lobbies, all of the key interests had to be convinced to start the talks in the first place. The impossible coalition that supported SB 375 took shape, in large part, because most of the interests involved realized that if they did not engage with a legislative process which decided how land use would be regulated under AB32, then they would likely be subject to regulatory mandates from CARB. The natural opponents to a climate-based land use bill came to feel that they would have much greater capacity to direct the final outcome within the legislative process than within the regulatory process. As a result of this dynamic, as well as some fundamental shifts in the focus of the bill that occurred halfway through the negotiations, what at first looked like a typical environmental lobbying process that faced heavy opposition from economic development interests became a

unique legislative process characterized by relations across organized interests that had the potential to create broad institutional change around land use.

#### *5.5a: The CEQA Reform Roots of SB 375*

When in 2004 McKeever and Steinberg discussed the possibility of legislation to support the Sacramento Blueprint, the setting portended the institutional accomplishments that would characterize SB 375. The bill ultimately used regional planning as a bridge between the institutional division that separated the environmental and community development sectors. McKeever representing the regional planning community and Steinberg the environmental community met at the birthday party of a community development activist with no notion of creating a climate bill or of taking on the political challenges involved with SB 375. AB 32 would not be signed for another 2 years. The intent during that initial conversation was largely to support implementation of McKeever's new regional plan. While the Sacramento Blueprint process was less prominent as the bill discussions jumped from regional planning to reduction of vehicle miles traveled and then to reduction of greenhouse gas emissions, the regional planning bridge remained integral. The bill became part of the AB 32 climate change legislative agenda and planning became only one aspect of the issues that had to be resolved, but it was the issue around which environmental and community development interests came together.

Shortly after his meeting with Steinberg, Mike McKeever was appointed as a member of Governor Arnold Schwarzenegger's Task Force on Smart Growth. The Task Force resulted from a March 2004 briefing report sent to the Governor by a lobbying group known as the Better California Campaign (BCC). The briefing report urged the Governor "to immediately appoint a Smarter Development Task Force composed of agency secretaries and department directors to

develop... a proposed program of specific, short and long-term actions for implementing the Governor's Smarter Development vision” (Better California Campaign Coalition, 2004, p. 6). In the briefing paper, the group framed their idea of sustainable growth around the well-known “three Es” model of economy, equity, and environment. It sought to build a legislative agenda that supported economic development, but in a socially and ecologically sustainable manner. Governor Schwarzenegger then directed Sunne Wright McPeak, his Secretary of Business, Transportation, and Housing to chair and assemble the task force in time to have recommendations ready for the 2005 State of the State address.

CEQA reform was the focus of the Smart Growth Task Force. One of the key elements in the BCC briefing report was a call for greater certainty in the development process, especially for infill development. The report stated (p.9):

A complex system of land use planning comprised of multiple laws, regulations and court decisions has led to virtual gridlock among competing interest groups, as the uncertainty of the system makes all of them reluctant to yield on any issue or position.

The authors were primarily referencing the project-by-project court battles that CEQA caused around land use decisions. The focus of BCC was upon fixing the political stalemate that they argued CEQA had created, but several members on the panel made clear that their intent was to direct CEQA reform toward exemptions for infill development. One planning advocate described the view of CEQA that BCC represented, and that a number of the task force members shared at the time:

CEQA, the California Environmental Quality Act was an impediment to smart growth, and a serious impediment to smart growth...CEQA is really a process statute. It's a – it's not a statewide land use planning law. It's an environmental process law. And I'm not saying that not a lot of good has come out of it, but it's definitely no excuse for ... a statewide land use planning system.

This perspective raised the ire of a number of environmentalists who saw the task force as threatening the integrity of the CEQA process. Echoing the “battlelines” language used during the 1970s national land use policy debates, the state legislative director for the Sierra Club wrote of the Governor’s summary of the Task Force’s results, “it immediately indicated to me that CEQA would be under attack” (Allayaud, 2004, para. 5).

In the end, disagreements over CEQA reform led the Governor’s Task Force to make few recommendations. No specific legislation grew from this effort. One member from the environmental community later characterized it as “useless”. The task force did, however, serve as a platform for connecting the regional planning strategy being developed in Sacramento with the growing community of advocates involved with the then-developing AB 32 climate policy. At the bill signing for SB 375, Mike McKeever stated, “As the SACOG board adopted the blueprint three-and-a-half years ago we knew that we needed some regulatory reform help in order to implement it. The Governor appointed a task force to look at what could be done to improve the California Environmental Quality Act...[and] I had a conversation with Senator Steinberg and I said we really need some regulatory reform to help us achieve these smart growth goals” (California Office of the Governor, 2008). McKeever directly referenced the role of the task force as a CEQA reform effort. While he glossed over the relative ineffectiveness of the task force in his public comments, he acknowledged the centrality of the connections made at the time between CEQA reform, land use planning and environmental goals. These connections, though, went beyond the one he referenced with Senator Steinberg.

*5.5b: Propping up the Three-legged Stool: The Shift toward Climate*

SB 375's legislative agenda was not always attached to climate change. The idea grew out of a small working group of environmental, local government and regional planning advocates who sought to create mandates for reduction of vehicle miles traveled, but did so before AB 32 had passed and thus before CARB existed. The working group was initiated by conversations between McKeever and Tom Adams, President of the California League of Conservation Voters and a longtime environmental lobbyist in the state during the Governor's Task Force on Smart Growth. Adams eventually became the most prominent public supporter of SB 375. He describes how he came to the idea of connecting a land use bill with VMT reduction measures:

One day we were sitting in there [the Governor's Task Force meeting] and a city council member...said, why can't the State just set one single goal for the local governments and then let us figure out how we're going to achieve it...just as he said that, VMT popped into my mind. Why not make VMT the goal? And so then that's what the first drafts of SB 375 did.

This revelation led to initial discussions between McKeever and Adams around the idea of connecting a statewide land use bill that addressed some of the implementation challenges embedded in McKeever's concerns around CEQA along with the VMT reduction mandates that the climate policy community knew were needed. Their conversation led to the creation of an informal working group to discuss the possibilities for such a bill. Of this group, one respondent that was involved commented:

We had a bunch of meetings, sort of to the side, because the [Governor's Task Force] is too big, a lot of people with other agendas and stuff, so [with representatives from the local governments, regional governments, and environmental groups]...we started having meetings on the side to talk about this kind of framework. And the meetings were good, they were constructive, but they really got bogged down.

Another member of the informal working group said:

God, we had long meetings...we were focused on vehicle miles traveled as a metric to sort of organize the world around. And we just couldn't make a deal. We just worked and worked at it. Couldn't make a deal [between the local, regional, and environmental groups].

While the initial conversations among members of the informal working group did not yield agreement, they were, by all characterizations, promising. The idea was intriguing to all members. Through a combination of McKeever's, Adams' and, more indirectly, Steinberg's influence, the land use regulatory community of California turned its attention toward CEQA reform through the creation of a statewide land use law that employed regional planning strategies in order to address what would later be called the "VMT Gap" in climate policy. However, the connection between VMT and climate policy was not immediately evident to all members of the informal working group. Both VMT and land use planning were very much on the minds of the environmental, regional planning, and local government political communities at the time. But AB 32 had not yet passed and CARB did not yet exist to argue that addressing VMT was required within climate policy.

VMT reduction as a goal unto itself simply did not have the political support to undo the traditional conflicts between local government interests, environmentalists and regional planning interests. However, these early discussions laid the foundation for what would later be a crucial shift in the environmental advocacy community toward a "pro development in the right place" position. When asked how this shift in position came about, most respondents pointed to a "learning process" within the environmental community. That learning process occurred in large part during the discussions over CEQA reform and the year of debate amongst the working group about VMT reduction policy.

The informal conversation did not shift toward climate until 2006. One participant said:

And then what happened next is it was the evolution of AB 32 implementation. Climate change was then a front page issue and inconvenient truth. And...there was a whole wave where suddenly that issue was more in the popular press and we had a governor who was unusually good at getting national and international attention for himself and for this state ... and he sort of made global warming his signature issue. And so the idea was, well instead of sort of focusing this regional planning idea on reducing VMT [vehicle miles traveled], maybe it ought to be focused on reducing greenhouse gas emissions which are very similar. I mean if you reduce VMT you reduce carbon... shifting that metric from VMT to greenhouse gas emissions was the first critical thing that allowed the bill to – you know to start to look like it might figure out how to get enough momentum to get passed.

With the shift to a climate policy frame, the two mainstream environmental organizations that had been involved with the informal conversation and had a strong interest in VMT reduction strategies—the California League of Conservation Voters and the Environmental Defense Fund—asked Senator Steinberg to sponsor a two-page bill proposal written by the environmental groups (see Appendix 8 for the proposal as introduced in the Senate).

This move coincided with the passage of AB 32. AB 32 established for the first time in the United States a government role in limiting anthropogenic sources of climate change. It created the California Air Resources Board (CARB) as a new state agency with strong connections to the environmental advocacy community to regulate all sectors of activity that generated emissions. As one respondent put it, “the environmental community has [more people that used to work at] CARB...and now work at such and such foundation as a rotating [set of positions].”

Some lobbying interests from the local governments and building industries knew that AB 32 potentially gave broad powers to the CARB to supersede local land use controls. Several organizations hired land use lawyers to analyze the powers that AB 32 granted CARB. As one respondent characterized the consensus from these analyses, CARB, in fact, could potentially use

AB 32 to create land use regulations that would override local zoning ordinances. As the legal analyses argued, the largest sector of greenhouse gas emissions in the State was transportation. Since CARB had a mandate to regulate all sectors that caused emissions it would certainly have to focus on transportation. This fact meant that CARB would soon have to turn their attention to land use as the source of vehicle miles traveled. Respondents from the building trades and local governments especially identified this as a reason to engage the bill. The following is exemplary of responses about why a group chose to engage with the SB 375 discussion:

I think there were a couple different pressures... and this was the first thing that motivated compromise. AB 32 having given CARB fairly broad regulatory authority in the direction that the various state agencies were headed gave us all a little pause to try and come up with a resolution, legislatively. Because I don't think anyone felt like we were going to be heard to the...you know in the regulatory process to the extent that we were able to shape and influence the legislative process.

As the quote above demonstrates, the perception of political crisis caused by the threat of a regulatory fix for land use by CARB changed the political dynamic. It forced interests to engage with (and in the end support) SB 375 that, under normal circumstances, would have opposed the infringement upon the right of localities to regulate land use. This was largely because they saw such engagement as the only way that their interests would be protected. The political crisis of CARB as a possible new entrant in the land use regulatory regime, then, was an essential element in the creation of conditions that allowed for compromise.

The shift to climate change policy as the framework for land use regulation attached the negotiations around VMT reduction and CEQA reform to a perception of political crisis for lobbying interests concerned with CARB's role in land use regulation. The political crisis stemmed from the perception that some interests—especially those of local governments and the building trades—would be ignored in the regulatory process defined by CARB, and thus a legislative compromise was preferable. However, even within the legislative process, there was a



great deal of uncertainty about what role CARB would actually play. As well, the public perception of a climate crisis created a strong demand for legislation. Thus, when the two-page bill proposal was announced by Steinberg, a number of potential stakeholders including community development activists entered the political conversation.

### **5.6| The Negotiation Process: A Multi-Dimensional Chess Game**

Senate Bill 375 was introduced by Senator Darrell Steinberg on 21 February 2007 as what is known within the legislature as a “spot bill” (Henderson and Cammarota, 2009, p.2). Essentially, this meant that the bill was a skeletal version of what would eventually be a much-amended final draft. The spot bill closely mirrored the two-page proposal written by the California League of Conservation Voters and the Natural Resources Defense Fund.

The normal session of the California State Senate runs from January to September and spot bills such as these are usually introduced early in the session with the hope that they can be negotiated and signed in the same year. Generally, spot bills meet one of three fates: they are successfully negotiated and signed that year, they are killed by opposition, or they become what are known as “two-year bills.” The latter case occurred for SB 375. While the bill was not killed, during the 2007 legislative session there was sufficient opposition from the local government and building trade lobbies, as well as disagreement over the regional planning model, as to require that negotiations be slowed and occur over two legislative sessions. As it turns out, the fact that SB 375 was negotiated over two sessions is one of the keys to the formation of the “impossible coalition” that supported it.

### 5.6a: *Year One Negotiations: Typical Environmental Legislation*

The negotiation process around SB 375 was derived from the prior political relations that had developed around land use policy in California and was a departure from “politics as usual.” Certainly, as with every political process, each interest group involved in the negotiations approached the situation strategically; they carefully weighed the impact of different portions of the bill and decided what trade-offs were acceptable. The first-year negotiations when the spot bill was being transformed into a full piece of legislation were characterized by intensive and detailed discussion of every point that the bill contained:

I can’t tell you how many sessions we had with ten people sitting around the table and the bill up on the big screen literally going line by line. Ok, so is everybody ok with this clause? Ok, now we’re going to the next one. Then we’d get to one and there’d be this huge blow up and somebody would be mad.<sup>92</sup>

In order to achieve compromise Senator Steinberg and his staff were unusually engaged in these talks. Respondents including environmentalists, builders, local governments, regional agencies, affordable housing organizations, and transit advocates all highlighted the importance of the role played by Senator Steinberg. When disagreement over a specific item arose, Steinberg often stepped in to address it:

He’s a lawyer and so he devoted personal time. In a lot of the sessions he was at – and I know he wasn’t at all of them, but a lot of them were in his personal office, and he was capable of reading the technical language in the bill and as a lawyer putting ideas on the table. You know, well you’re saying this and you’re saying this, or why couldn’t we write it this way? You know if we use this word it goes back to this case log and that shouldn’t bother you. And I mean he was technically really valuable to that process. And then it turns out...he has very good mediation skills.<sup>93</sup>

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<sup>92</sup> Interview with participant in the negotiations, Recorded 13 August 2010.

<sup>93</sup> Interview with participant in the negotiations, Recorded 13 August 2010.

Generally, respondents felt that without this central organizing force played by Steinberg and his staff the complex set of issues would not have been resolved. As one respondent said, “this was a multi-dimensional chess game.” Another commented:

It’s a complicated bill. I mean, there’s a lot going on in there and so to have somebody like Steinberg... really understand the bill well enough to talk intelligently about it and to be able to identify the key issues and get them out on the table, get them negotiated and hammer out some sort of agreement is pretty unusual, very unusual.<sup>94</sup>

As might be expected, though, those who most favored the bill had the most positive account of Steinberg’s role. However, there was disagreement over how much knowledge he had about the bill. One early opponent said of the initial discussions around the bill:

It was clear to us he [Senator Steinberg] didn’t know everything that was in his bill ... He said that there’s no mandates in the bill... when he said that we both... we both pointed to the same words in the bill at the same time.<sup>95</sup>

The respondent clarified the mandate that they saw:

I think the phrase that... came to capture the essence of what the bill was doing [in its early formulation] at least among those discussing it was that it kind of forced concentric circle growth. In other words if not here then there, then there, then there kind of out and... it was making a set of decisions... It’s about power distribution, right?... And so this was telling us that we couldn’t make certain decisions.

As well, all parties were divided over the extent to which the land use planning strategy should contain certain traditional environmental goals such as habitat preservation. The environmental lobby had sponsored the initial legislation and was authoring much of the proposed text. It included a number of their prior legislative goals (e.g. patch and corridor habitat protections, natural resource protections, and growth boundaries). However, these issues were among the major points of disagreement that threatened to shut down negotiations. As one respondent close to the debate commented:

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<sup>94</sup> Interview with participant in the negotiations, Recorded 12 August 2010.

<sup>95</sup> Interview with participant in the negotiations, Recorded 16 August 2010.

They did create a statewide standard and so when they got to things like trying to define a habitat and habitat protection and open space, they started running into all sorts of battles over trying to find what does that mean that can apply in Los Angeles County and in Alpine County or Sierra County? And I think it just, the more defining they tried to do the more resistance they got, to the point where it just, it wasn't going to work, and I think that's why they ended up pulling some of that stuff out as there just was no way we were going to come up with a definition that everybody could accept of what that meant.<sup>96</sup>

Of the local governments' response to the perceived planning and environmental mandates in the early drafts of the bill, one respondent said:

...the local governments just had a shit fit...we had the bill in the Assembly but we put the bill on a slower bus and decided to bring it up the following year to finish the bill and we had a series of very long painful negotiations with local governments.<sup>97</sup>

In addition to disagreements over the extent to which the bill included mandates for a specific type of land use planning and for ecological preservation, all respondents—from environmentalists to regional governments to builders—described internal factions within their own constituency. Many of the interests that supported SB 375 in the end were in opposition at one point during the first year. This included the local government interests, the building trades, and some of the regional planning interests. Representative of the difficulties that internal divisions amongst the various interests raised, even Mike McKeever's SACOG, whose board became disillusioned over the extent to which the bill prescribed a certain type of land use planning for all localities and regions, shifted to an “oppose unless substantially amended” position. At this point in the negotiations, there was enough division within and amongst all of the interests involved to put the bill's passage in doubt.

As a result of the fundamental divide over how far-reaching the planning mandates in SB 375 should be, year one of the negotiating process looked very much like a typical environmental

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<sup>96</sup> Interview with participant in the negotiations, Recorded 16 August 2010.

<sup>97</sup> Interview with participant in the negotiations, Recorded 4 August 2009.

land use bill. The environmental groups lobbied directly to state legislators to try to achieve their traditional goals of habitat protection and resource preservation. They were blocked by local development interests including the building trades and local governments. At this point, the process was also typical in that there was an effort to position the affordable housing community against the environmental lobby. Local development interests argued to the affordable housing groups that the proposals for land use planning being made would limit the ability to build affordable housing. Far from the unique experience implied by the “impossible coalition” language that came to be used after the bill was passed, year one of the negotiations ended acrimoniously.

#### *5.6b: Year Two Negotiations: The Development of Agreement*

Year two of the negotiations began with a pivotal moment. The bill’s sponsors made two fundamental shifts that altered the way that all of the organizations involved related to each other. First, Senator Steinberg was elevated to Senate Pro Tem, making him a member of what is known as the “big five.” That is, he became one of the five representatives that approve the final state budget, one of the most powerful positions in state politics. Second, the environmental community, and especially the organizations that sponsored the bill, made a fundamental shift in their position. They moved toward a more nuanced approach to housing development that would allow for growth to occur, but in a less sprawling fashion than it had in the past. Prior to this, environmentalists acknowledged that the default position had been to oppose all developments. The shift in the environmentalist position grew out of their involvement with the CEQA reform efforts and altered their relationship with the affordable housing community.

Senator Steinberg’s elevation to Senate Pro Tem heightened the sense of political crisis perceived by the supporters of the existing land use regime. It was not just that CARB was a

potential new entrant into the land use regulatory regime, but also that the sponsor of the leading legislative option was suddenly a very powerful politician. One respondent commented:

So Darrell Steinberg is an, all of a sudden he is an exceptionally powerful...he's like a big deal guy. And he's gonna be around unless they – unless he loses the votes in his caucus. Everybody assumes he'll be the pro tem of the senate for five years. So it's a little bit harder to think if you're, you know ... one of these major lobbying organizations who has a lot of issues to deal with at the state. It's a little bit harder to think about do I want to make a five-year permanent enemy out of the pro tem of the senate over this bill. And so ... [groups] decided ok, we're actually gonna come to the table and try to make this bill work. We're not gonna try to kill it. We're gonna – you know we don't like it necessarily but we're gonna come to the table and we're gonna try to make it work. And so then a really remarkable set of negotiation sessions began.<sup>98</sup>

The elevation of Steinberg to Senate Pro Tem coincided with a shift in the environmental position relative to housing construction in the state. This shift enabled the institutional divide between environmentalists and the affordable housing community to be bridged and removed the capacity of opponents to play the two sides against one another. Of the default environmental position prior to SB 375, one observer argued:

There's a really strong no growth flavor to a lot of the local environmental politics. You know it's like neighborhood associations that form to stop something. That's how they start is to stop the development project in their neighborhood that they don't like. And getting them to transition from we're against growth to we're for good growth, that's in terms of big megatrends here, that's the battle...But the statewide and the national organizations typically are more sophisticated and sort of technocratic and rational about those kinds of things. And so it's easier for them to get to ok, what does good growth look like, and how do we support that?<sup>99</sup>

In fact that is exactly the position that the national environmental groups sponsoring SB 375 took. One member of an environmental organization described the fundamental shift within the classic environmentalist position that had to be enacted in order to allow for the alliance with affordable housing groups and infill developers. He said:

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<sup>98</sup> Interview with participant in the negotiations, Recorded 18 August 2010.

<sup>99</sup> Interview with participant in the negotiations, Recorded 10 August 2010.

There was a light bulb moment for us [some environmentalists], we said, oh my god, the default position of the environmental community cannot be to just oppose every housing project that comes along. We have to be willing to be for the projects in the good locations. And it also, it's a dangerous spot for us, because it kind of separates us from neighborhood groups who are often thought to be part of our natural base...<sup>100</sup>

This shift had an immediate effect. It brought environmentalists and affordable housing advocates closer together in the negotiating process, undoing the split that had previously been exploited by cities and sprawl developers. Of the effects this shift in position had upon the governance structure around land use issues, the same respondent continued:

...this was a paradigm shift, the environmental community got to a point where we recognized that we wanted housing to actually be built in the good locations, because if it wasn't built there, there would be pressure to build it in the bad locations. We had to figure out a way to make the good locations succeed. So we kind of became housing advocates as long as it was in the right place. And that completely shifted our relationship with the builders and the affordable housing advocates, vis-à-vis the cities. Because we now, we and the cities had been allies for years to fight these efforts to essentially jam housing approvals through, and now we shifted position in order to support housing that would be built in the good locations. And so it was kind of us, the builders and the affordable housing advocates, and that we were trying to have to work with the [cities] and the counties in order to get them to make some changes in housing policy to give greater certainty to housing policy. And that was a dramatic shift in sort of the political dynamic around those issues that existed for a long time.

Along with this shift in position, environmentalists agreed to focus on the planning goals of SB 375 rather than the ecological protection goals that they initially supported. Not all environmental groups agreed with this move. One member of the discussion described the divided position amongst environmentalists:

At one point the bill had a lot more language in it about where growth could occur and where growth could not occur, and we ended up taking that out...but by taking it out and taking out the language about ag-land preservation and habitat and wildlife corridor connectivity, that was a hard pill for some of our environmental supporters to swallow.

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<sup>100</sup> Interview with participant in the negotiations, Recorded 6 August 2010.

Another respondent highlighted how crucial this shift was:

So in terms of substance, the environmentalists had to be willing to take out – they were trying to get basically some, in my world what I would call organ style natural resource planning standards into the bill. And it was just not gonna happen. You know it just, I mean it just was not going to happen. And they needed that for some of their more hard-line members in order to get them to hold their nose and agree to the CEQA changes that we were demanding.<sup>101</sup>

Another respondent highlighted the importance of the resolution that was reached:

Part of getting the bill passed was the enviro-, the environmentalists sort of in exchange for taking the natural resource stuff out got the builders to agree to let the air resources board set the targets. And that was a big win for them because they're – the air resources board is seen as an environmental agency and world leading and so the fact that the environmentalists could take that back to their membership and say, "Ok, well we lost this, which was heartbreaking, but we got this" was important to keeping the bill going.<sup>102</sup>

Affordable housing interests also had to shift their position in order to form the coalition with environmentalists that would help to re-align relations amongst all of the organized interests. Previously, they had been at odds with the environmental position that housing should not be built in all localities, especially not in the far-flung suburbs. Now that environmentalists had backed away from that position, they had to decide if they would also compromise on the application of RHNA in order to align it with SB 375. In the end, they decided to compromise. One affordable housing advocate argued that, "the best thing that's come out of all of it from our perspective is the alliances that it's created among those of us who are working to improve the lives of the same people." She focused on the alliance with environmentalists:

In some cases I think it's really more we who have benefited from being able to ally with them and help both them and policymakers understand how the things that we've been fighting for, higher density affordable homes near jobs, advances this much larger...environmental goal which frankly has much more pull with policymakers and the public than our issue does.<sup>103</sup>

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<sup>101</sup> Interview with participant in the negotiations, Recorded 16 August 2010.

<sup>102</sup> Interview with participant in the negotiations, Recorded 6 August 2010.

<sup>103</sup> Interview with participant in the negotiations, Recorded 26 August 2010.



The respondent went on:

I think they [the environmentalists] benefit from being linked with us in two ways. One is simply that they do largely share our values I believe. But also they're susceptible and have been for years to the charges of being elitist, not caring about (poor) people basically in their overwhelming sort of rush to save the environment...And so it certainly helps them to be seen as having a social equity focus.<sup>104</sup>

The coalition between affordable housing and environmental advocates combined with the elevation of Steinberg to Senate Pro Tem created a powerful shift in the political scene that eventually led all other interests to perceive greater benefit in cooperation than in contestation.

One respondent said of the reason why local governments felt the need to compromise:

... the builders were agreeing to some of the significant changes in supporting the sustainable community strategy in exchange for some CEQA exemptions or considerations. And so that added a lot of pressure to resolve the local government differences ... It's kind of like the perfect storm, you know. You had the AB 32 pressure. You had the pro tem [Steinberg] attention on the issue. And you had regional agencies throughout the state already kind of heading in that direction.<sup>105</sup>

In the end, the coalition between community development (e.g. affordable housing) advocates and environmentalists combined with fortuitous political circumstances to create an alignment of competing interests around land use laws. This alignment arose during a time of perceived crisis when all involved saw changes to the status quo as inevitable. However, the coalition between environmental and community development interests fueled the sense of inevitability. The coalition was a key factor that motivated the building trades to make a deal and then, in turn, brought the local governments into support for the bill as well.

Even if the local governments and building associations wished to try to align against the bill in typical fashion, they no longer had the ability to play the affordable housing community against the environmental community. Regardless of Steinberg's position in the Senate, this

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<sup>104</sup> *Supra*

<sup>105</sup> Interview with participant in the negotiations, Recorded 24 August 2010.

might have remained an available tactic if the environmental community did not shift toward a more pro-development position. The historic model of organizational relations which gave local governments and developers power in the California land use regulatory regime had been fundamentally altered.

The move toward a temporary flattening of the otherwise hierarchic power structure around land use, had profound impact on the negotiation process. Of the ability to create compromise in the process, one respondent representing the community development interests said:

There was this table...with five parties around it and everybody thinking they knew where their bottom line was. But it turned out as they went on people really did want the bill. So they kept changing their bottom lines. They kept working on it...there were a ton of politics in the room. I'm not being naïve here, but it turned into the part of the dynamic that was really, you know we're kind of getting interested and sucked into this issue, and we really do want to find out how to make this work started to – that portion of the dynamic kept growing as it went on.

One respondent remarked on the evolution of the talks:

The people started to actually get along with each other more, because a lot of these people... could barely stand to be in the same room together. I mean they...battles and battles and lobbyists tend to get into this "you're the devil;" "no, you're the devil" kind of war-like mentality. And so it was fascinating to watch them...actually starting to develop some friendship and genuine mutual professional respect for each other.

In the end, the set of interests that the revolving negotiations were able to bring into alignment resulted mostly from the conditions of perceived crisis. Steinberg, though, leveraged this moment and continued his hands-on approach in order to bring the negotiations to a close.

Of the method that Steinberg used to negotiate the final text for the bill, one respondent said:

I think it was from about 1:00 p.m. to 9:00 p.m. on Friday, which is really smart of Darrel because everyone wanted to leave. Go home, go to happy hour. Where he, we basically did serial negotiation where he would literally we would, we would come into Darrel's office...and then...we'd talk through an issue for half an hour, 45 minutes. And then we would leave by this door, and the [next lobbying interest] folks would come in this door, and have the same conversation with Darrel and it was just this literally this revolving conversation. Where sometimes one of us would leave and go tell, [for example], hey

local gov, get, it's your turn you guys go in there and they'd go in. So that was the, sort of the final well I say it was the final death march...<sup>106</sup>

Eventually, all of the key interests supported SB 375. Of the role played by climate change as a rhetorical tool for enabling this alignment between environmentalists and housing groups, one member of the negotiations argued, “So climate in a sense has provided kind of a new tool to achieve a goal that had never been possible before.” The organizational dynamics that arose opened up a wider range of outcomes for land use policy than was possible in the past. Now, the typical alignment between local governments seeking to protect their control over land use decisions and the building trades seeking to protect the ability to build anywhere was disrupted. The result was that a wider set of interests were represented in the discussion about what would actually be put forth. The possible outcomes were more open to discussion and new paths for land use were made possible by the temporary re-alignment of power.

### **5.7| After The Bill: New Institutional Arenas**

The SB 375 negotiations led to an alignment of community development and environmental advocates. As a result, urban environmental interests were considered on equal footing relative to local governments and private developers when it came to the goals of land use planning. The test of this new balancing of political interests lies in the implementation of the policy. SB 375 has created new opportunities for social equity groups (e.g. community based organizations, environmental justice groups, and public health groups) that were not a part of the policy negotiations to engage with state land use policy. Their voices have been given a new institutional arena in which to be heard. For example, as a result of SB 375, local social justice

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<sup>106</sup> Interview with participant in the negotiations, Recorded 26 August 2010.

groups have entered the climate discussion because they can now tie these issues to local community impacts. One respondent from a community-based organization said:

...it became clear that in all of our existing programs most notably land use and transportation, our staff were constantly being confronted with both challenges and opportunities and how they integrated a climate justice analysis into their work... Our funders felt it was important from a movement building perspective because there were not many people of color-led and -serving organizations that were involved in the formulation of SB 375. And they wanted to make sure that as it was implemented at the regional and the local level that as it was really something that was locally owned and led and was benefiting low income communities and communities of color.<sup>107</sup>

One representative involved in the negotiations described the role for local community groups by saying:

...the statewide fight on 375 is done. It's now...region by region...And what we did is we kind of set up a framework and now we're handing it off. And now the community interests...are starting to work within that regional framework that we had the discussion about...In the end it was a very narrow group of people that cut deals...I mean, in the end, you know, twenty people had a say in what the final version of 375 was, you know, in terms of the negotiations that went on...I mean it was a narrow, even a narrow group of enviros. I mean half the environmentalists opposed it, right. So it was just enough of each group to get it over the finish line. But I wouldn't say that the local community groups had a lot to do in what it was...<sup>108</sup>

Of the opportunity and challenge presented, one community organizer stated:

I think we have some real challenges with our social movements because our social movements...are not quite fully engaged in understanding that there's this big opportunity to reframe the social issues in such a way that they actually can be more in line with the environmental issues to then exercise some leadership in that process.<sup>109</sup>

The opportunity that the community organizer referenced was seized upon by some social justice groups in the first phase of implementation of SB 375. In its process of deciding what emission reduction targets for each region should be, CARB was required to convene a "Regional Target Advisory Council" (RTAC) to instruct it on proper guidelines. The RTAC

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<sup>107</sup> Interview with participant in the negotiations, Recorded 5 August 2010.

<sup>108</sup> Interview with participant in the negotiations, Recorded 16 August 2010.

<sup>109</sup> Interview with participant in the negotiations, Recorded 6 August 2010.

process involved a number of roundtables with stakeholders from across the state. Mike McKeever, the SACOG director who had been a part of SB 375 discussions since the beginning, chaired the RTAC. During its deliberation over proper criteria for setting targets, a number of social justice groups representing public health and environmental justice perspectives inserted themselves into the conversation and had a substantial impact on the final recommendations.

The RTAC final report contained a substantial section on social equity, which reflects issues raised by a letter sent to RTAC from a statewide coalition of social equity organizations.

The letter states (Public Advocates, 2010):

A socially-equitable approach will analyze the potential beneficial and harmful impacts of targets and SCSs on lower income Californians and communities of color specifically, and select alternatives that maximize both GHG reduction and positive equity impacts while avoiding or offsetting any negative impacts... an approach that does not build social equity criterion in at the front end runs the risk of unleashing an extreme wave of gentrification and displacement in the urban core and along transit lines, excluding more lower-income families, segregating them at the geographic periphery and forcing them to commute in the cheapest and highest polluting vehicles or on unaffordable and unreliable transit systems.

Of the letter, one co-author said, it describes:

what we think CARB needs to do to ensure that SB 375 is implemented in a way that doesn't exacerbate conditions that are bad for disadvantaged communities right now, but also then, not only prevent the exacerbation, but also measure and help set a standard for how to measure the impacts of the implementation of a law like SB 375 on these communities.<sup>110</sup>

The final RTAC report reflects the assertions of the letter from social equity groups. It states (p.94):

The affordability of housing and transportation and access to employment play a critical role in determining where Californians live, how much they travel and, therefore, directly affect the level of achievable greenhouse gas reduction. Land use based greenhouse gas reduction strategies, however, could have beneficial or adverse effects on social equity concerns such as housing affordability (increased land prices), transportation access and affordability, displacement, gentrification, and a changing match between jobs, required skill levels and housing cost ("jobs-housing fit").

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<sup>110</sup> Interview with participant in the negotiations, Recorded 26 August 2010.

The expansion of the SB 375 discussion into the realm of social equity did not sit well with all involved. One member of the RTAC commented:

if you read the...RTAC report..there's this very technical side of it. I mean there's...there's kind of like you read this one part and it says this is how we're going to model. And then you get to the part where it's the kitchen sink part, right, where everybody's throwing in their own, you know, and the housing advocates want this and the public health advocates want co-benefits. And...and, you know, our position was look this is a greenhouse gas bill you know. You guys are wanting modeling less asthma. You're not going to find asthma in there.

In the end, despite the fact that some RTAC members did not see the point of going beyond the technical requirements of the law, RTAC became an effective arena for social equity interests. This is because the negotiations over the creation of SB 375 opened up the issues that would be considered with regard to land use planning in California. Prior to SB 375 there was an implicit hierarchy of issues, wherein individual property rights and economic development had supremacy. After SB 375, there was not a complete undoing of that hierarchy, but issues were open for discussion in a way that they had not been before.

The letter from social justice groups to the RTAC was drafted within a committee of a newly formed coalition of organizations known as ClimatePlan (see Appendix 9 for a full list of members). It was formed immediately following the passage of SB 375. Its stated goal is to advocate for the creation of urban environmental policies in California that “protect our climate, our health, our communities, and our environment.” Its priorities include “building and supporting diverse coalitions in key regions”, “developing a stronger, broader movement for sustainable transportation and land use in California,” and pushing for strong implementation of SB 375. Of the group, one environmentalist stated:

I was active in forming an organization called The ClimatePlan that's a coalition of now it's probably up to like thirty-five environmental, social equity, affordable housing, public health, farmland conservation kinds of organizations. And through that process I

think we worked much more closely with affordable housing folks than we ever have before.<sup>111</sup>

The alignment between environmental and affordable housing interests that formed during the negotiation process carried over to the implementation process as well. ClimatePlan serves a central coordinating function with list-serves and regular meetings to learn about the issues of importance and to garner support for new proposals. One respondent described it as, “an educational forum until you’re ready to kind of push a policy.” ClimatePlan grew directly out of the SB 375 policy formulation and implementation process. It has focused especially on the SCS planning process. The coalition leverages the opportunity created by more open discussions over what goals should be most valued in land use policy. It also represents an important means by which alternative regional planning goals can be turned into policy.

SB 375 brought several legislative processes together. It employed the regional planning strategy developed in the Sacramento Blueprint, expressed in the form of an SCS, as a framework for aligning the RHNA and RTP processes. It also offered some streamlining of the main environmental policy in California, CEQA. The CEQA changes provided incentives for builders to support the bill and are meant to encourage more infill development. As well, SB 375 fills in the VMT policy gap created by AB 32. It offers a specific set of criteria by which CARB can address the land use component of its mandate to reduce greenhouse gas emissions in the state.

SB 375 also brought together interests that normally do not work together. In a typical environmental bill that tried to affect land use, the goals would be focused on limiting development in order to achieve greater habitat and resource protections. However, in this bill, the goals were shifted to engage much more closely with urban form. The environmentalists

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<sup>111</sup> Interview with participant in the negotiations, Recorded 22 August 2010.

moved toward a “pro-development in the right place” position. This shift first allowed them to align their interests with those of the affordable housing advocacy community which added the legislative power of RHNA to their effort. Once this alignment occurred, the building trades and local governments, which would normally block land use bills proposed by either environmentalists or affordable housing advocates, were forced to reconsider their position. This was due in part to the increased political power of an affordable housing-environmental coalition and in part to the general uncertainty over the direction of land use policy in the context of the new climate change laws.



## Chapter 6: Case Study 2

### New York's Superfund and Brownfield Law

It would be a lot better to have a plan and money and power. But if you don't have money and power, it's better to at least have a plan.

-Member of the Pocantico Roundtable for Consensus on Brownfields, 2010

#### 6.1| Introduction

This chapter examines coalition-building efforts across community development and environmental interests within the context of a formal consensus-building process. It presents the findings from a case study analysis of the formulation and early implementation of the New York State Superfund and Brownfield Law passed in 2003. It provides an overview of the legislative context of the brownfield law and the three concurrent efforts to devise brownfield policy that occurred between 1998 and 2003. The focus is upon a 1998 consensus-building process known as the Pocantico Roundtable for Consensus on Brownfields (Pocantico Roundtable). This chapter concludes with a brief analysis of the early efforts to implement the Brownfield Opportunity Area (BOA) program which was developed during the Pocantico Roundtable. The data used in this case study is described in detail in Chapter Two.<sup>112</sup>

#### 6.2| The Roots of the BOA Program

In May 1998, numerous philanthropic organizations attended a conference in San Francisco, California to explore potential paths for funding in the community development

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<sup>112</sup> In short, this chapter reports the results from semi-structured interviews with organizational leaders involved with the Pocantico Roundtable and the implementation process for the BOA program. In addition, this chapter utilizes a detailed report of the proceedings of the 1998 Pocantico Roundtable created by Ilene Fiszal-Bieler, a researcher associated with New York University's Institute for Civil Infrastructure Systems, who was invited to document the process. Fiszal-Bieler's report fills in details that were omitted by interviewees, but the fundamental dynamics, especially between community and environmental interests are developed with the interview data. As well, numerous reports and articles that document the development of the Brownfield Coalition which formed after the Pocantico Roundtable are utilized to track the negotiations that led to the first brownfield cleanup bill in New York State. Finally, I employ notes and documents gathered while attending numerous conferences on the topic in New York City between 2008 and 2012.

sector. One of the invited panelists at the conference was Jody Kass, Director of Regulatory Initiatives and a registered lobbyist for the New York City Partnership and Chamber of Commerce. Kass was asked to speak about her recent work as part of the “New York City Brownfields Initiative” that had been funded in 1996 by the Environmental Protection Agency (EPA). For the EPA-funded initiative, Kass was one of the organizers of a 150 person task force that developed broad strategies for converting dormant, contaminated formerly-industrial sites throughout New York City into clean, active development sites. These sites, referred to as brownfields, were the physical remnants of the steep decline in the manufacturing economy and industrial culture that had been occurring steadily since the 1950s (Bluestone and Harrison, 1982, Chapter 2; Freeman, 2000, Chapter 6).

Formally defined as “any real property where the actual or suspected presence of contamination is an impediment to redevelopment” (Brownfields Coalition Report, 1999, p. 24), brownfields are a hindrance to economic and community development in formerly industrial cities like New York City. By the mid-1990s, as the flip side of regional efforts to control sprawl, they had become a high-profile urban environmental planning issue. If planners were going to encourage more compact development, then the contaminated sites that were lying dormant in formerly industrial inner city areas needed to be re-activated. As Aaron Mair, an environmental justice organizer with the Arbor Hill Environmental Justice Corporation pointed out, “As we talk about suburban sprawl, you cannot contain it without brownfield redevelopment strategies.”<sup>113</sup> As a result of the need to make brownfields active development sites again, the issue of how and to what level they should be cleaned took on rising urgency for the environmental advocacy community (McCarthy, 2002).

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<sup>113</sup> Transcripts of the Superfund Meeting, May 12 1999, Buffalo, NY. See Superfund Working Group (1999) *Recommendations to Reform and Refinance New York’s Remedial Programs*. Appendix C.

The wider interest in addressing brownfields amongst urban and environmental advocates made it an attractive issue at the California philanthropy conference. Kass was approached by funders from three philanthropic groups interested in sponsoring a project that addressed brownfields in New York City. The funders, Penny Fujiko Wilgerodt of the Joyce Mertz-Gilmore Foundation, Ben Rodriguez-Cubenas of the Rockefeller Brothers Fund, and Anita Nager of the New York Community Trust initially thought they would jointly sponsor a model redevelopment of one brownfield site. Instead, they were convinced by Kass and other local community development activists in New York City to provide ongoing support for efforts to design brownfield legislation in New York State. These efforts required extensive negotiation between deeply divided business, environmental, community development, and local government interests.<sup>114</sup>

Kass brought a unique perspective to the brownfields issue. In addition to helping to organize the 1996 EPA-funded task force, she had been involved since 1989 with issues related to the redevelopment of dormant sites through her work on affordable housing with the NYC Housing Partnership.<sup>115</sup> The NYC Housing Partnership was one of the first organizations to use federal subsidies to finance affordable housing on donated city land in disinvested communities. The group began in the South Bronx, but the model that it pioneered became the standard method in New York City and across the country. Kass's work with the NYC Housing Partnership provided her with in-depth knowledge of how resources from the public and private sectors could be leveraged to accomplish wide-scale redevelopment. As well, Kass's subsequent position as a representative of The New York City Partnership and Chamber of Commerce

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<sup>114</sup> Taken from personal communications with Jody Kass (2009), Ben Rodriguez Cubenas (2009), see also Fiszler-Bieler (1999), p. 32

<sup>115</sup> The NYC Housing Partnership was formed in 1982 as a non-profit intermediary organization that provided technical support for affordable housing developers.

allowed her to focus on both the economic and community development aspects of the brownfields issue.

The New York City Partnership and Chamber of Commerce formed in 1979 out of the original New York Chamber of Commerce, which was founded in 1768. Both entities represented business and economic development interests in New York City. However, when David Rockefeller founded the New York City Partnership and affiliated it with the Chamber of Commerce, he sought to move the group beyond its traditional business advocacy role. During a time of financial distress and a huge reduction in public services in New York City, he sought to create a structure which would allow the group to be more directly engaged with government agencies and civic groups that were addressing social and economic issues. Primarily, Rockefeller wanted the combined organization to step in where public money had run out to provide funding and programming support for selected initiatives. The effect of Rockefeller's efforts was to permanently append a philanthropic community development arm onto the Chamber of Commerce. Today, the organization has been renamed as the Partnership for New York City. Its mission is to "contribute directly to projects that create jobs, improve economically distressed communities and stimulate new business creation."<sup>116</sup>

The New York City Partnership and Chamber of Commerce's interest in brownfields in the mid-1990s was primarily related to the development potential of formerly industrial sites. However, Kass also approached brownfields as a community development issue. She wanted to link brownfield redevelopment with both the economic and the community development goals established by Rockefeller. Through her work with affordable housing, she had a strong sense of the negative impact that high concentrations of dormant sites had upon communities. Her perspective on the issue is well-expressed in her statement for Governor George Pataki's

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<sup>116</sup> <http://www.pfnyc.org/about.html>

Superfund Working Group Report, released on 2 June 1999. In the report, Kass wrote, “New Yorkers have a tremendous opportunity to benefit from increased private investment in vacant and abandoned properties, most of which are already well-served by infrastructure.” She went on, “Refinancing and reforming the State’s cleanup programs is critically important to the public health and environment of New York. It is also an opportunity for community development.”<sup>117</sup>

With funding from the three foundations that approached her in San Francisco, Kass led the development of a legislative program that expressed her vision of brownfields as both an economic and community issue. In order to build upon the work completed by the EPA-funded 1996 brownfields task force, she asked Alan Zerkin, the Director of the Program on Negotiation and Conflict Resolution at New York University’s Robert F. Wagner School of Public Policy to help her and the foundation representatives conceptualize an effective process for designing the legislative program for brownfields.<sup>118</sup> At this time, more foundation funding for the effort was secured from The Ford Foundation, The Robert Sterling Clark Foundation, and The Chase Manhattan Foundation (Fiszal-Bieler, 1999, p.32).

Zerkin designed a process for facilitating dialogue across a wide set of stakeholders. The goal was to ensure that public, private and non-profit resources would be leveraged for high quality remediation and timely redevelopment of sites. Zerkin suggested that rather than focus on the policymakers themselves, the effort should create a consensus position amongst various influential political constituents that could then lobby for their recommendations to be turned into legislation. Zerkin’s proposal was designed to “foster a dialogue that would address where New York State stood in terms of brownfields remediation and redevelopment, and in what

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<sup>117</sup> Superfund Working Group (1999) “Recommendations to Reform and Refinance New York’s Remedial Programs,” New York State Document Number SUP 027-4 REC RF 99-5947, p. 8.

<sup>118</sup> Personal communications with Jody Kass

direction the state needed to head in order to improve the situation” (Fizel-Bieler, 1999, p. 33). The Rockefeller Brothers Fund offered its conference center in the Pocantico Hills just north of New York City as the host site for the dialogue. With Zerkin’s strategy adopted and foundation support in place, The Pocantico Roundtable for Consensus on Brownfields (the Pocantico Roundtable) was born.

### **6.3| Prior Legislation**

Prior to the start of the 1998 Pocantico Roundtable, no statewide legislation specifically governed the cleanup of contaminated industrial sites in New York State. New York was one of only ten states at the time that did not have a so-called “mini CERCLA”<sup>119</sup> to augment the federal law governing cleanup and liability of large, heavily contaminated sites. Further, it was the only state with a significant history of manufacturing that did not have such legislation (Siska, 2004, para. 3). Since 1993, numerous proposals were put forth in the state legislature to create a brownfields law, but each was blocked either in the State Assembly or Senate. The business, environmental, community development, and local government interests were too divided in their goals to garner the necessary support for any one proposal (Galvez, 2002, p.3). Rather, until the New York State Superfund and Brownfield law was finally passed in 2003, two voluntary regulatory programs along with federal superfund law governed brownfield cleanup.

Federal law created the impetus for most states to develop their own policies on brownfield cleanup standards. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund Act, was passed by the United States Congress in 1980. The Act established a trust fund for the cleanup of environmental hazards that

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<sup>119</sup> CERCLA is the federal policy that regulates large contaminated sites that pose an immediate public health risk. CERCLA stands for the Comprehensive Environmental Response Compensation and Liability Act.

endanger public health or the environment and have no clear liable party. It also established “joint and several” liability for parties responsible for environmental contamination. This meant that both buyers and sellers could be held responsible for the cleanup, including banks that held notes on properties as a result of lending activities (US EPA, 2011). The government established its right to seek recovery of costs to respond to the cleanup and for any injury or destruction caused by the environmental hazards contained on the site. The recovery clause introduced new risk for developers and property owners as the amount of damages could rise to an unknown and unlimited expense (Segerson, 1997).

As well, CERCLA established the “Superfund” process for long- and short-term remediation of sites listed on the EPA’s National Priority List. These include large sites with extensive contamination and multiple liable parties (US EPA 2011). The superfund process and the establishment of funds for cleanup represented tremendous progress in ensuring public health and limiting environmental contamination from the remnants of the industrial urbanization process that occurred in most large cities in the U.S. The liability clauses in CERCLA, however, also created uncertainty for developers interested in redeveloping potentially contaminated properties. This uncertainty affected the ability to obtain financing for inner city sites that were suspected to be contaminated. So-called “brownlining” on the part of banks made it difficult to finance redevelopment projects in areas with a concentration of sites with real or perceived environmental contamination. Banks simply avoided lending in such areas for fear of being assigned liability for cleanup costs (see Meyer and Reaves, 1997).

In response to the uncertainty around remediation and liability, many states passed “mini CERCLAs” in the 1980s and 1990s. These laws spelled out the cleanup standards and liability rules for all smaller brownfields that were not included on the EPA’s National Priority List, and

thus did not fall under Superfund rules. The intent of the state legislation was to ensure the extension of CERCLA-like regulations to the many smaller contaminated sites that would not be addressed by federal law. However, the state provisions were generally more circumscribed. They sought to create certainty and limited liability for banks and developers in order to ensure that development moved forward. Generally, states that passed these laws were more concerned with economic development than environmental protection, but both interests were represented.

At the time CERCLA was passed, New York was a leader in policy dealing with remediation of contaminated sites. One year before CERCLA, in 1979, the New York State legislature enacted Title 13 of the Environmental Conservation Law. Title 13 was one of the earliest laws in the country to deal with brownfield remediation. It focused on requirements for managing inactive hazardous waste facilities (New York Environmental Conservation, § 13). However, Title 13 was drafted with the expectation that it would be augmented by the pending federal law, though legislators had no knowledge of what gaps would need to be filled after the federal legislation was passed. Once CERCLA was passed, a legislative gap remained in New York State with regard to the small facilities that did not fall under federal superfund status. As such, other states that were slower to act on the remediation issue had stronger statutes once they passed follow-up legislation to CERCLA (see Galvez, 2002). The New York State legislature, as it turned out, was unable to pass amendments to Title 13 or create new brownfield legislation until 2003. Thus for 24 years the brownfields legislative gap remained.

In lieu of legislation, by the late 1990s two voluntary programs governed the cleanup of brownfields in New York State. They included the Brownfield Bond Act and the Voluntary Cleanup Program. The Brownfield Bond Act was part of Governor George Pataki's Clean Water/Clean Air Bond Act of 1996. One section of the Act was devoted to providing funds to



help municipalities that have possession of large brownfields investigate the extent of contamination and cleanup that was needed. The Environmental Restoration Program, created from the Brownfield Bond Act, funded up to 75 percent of remediation costs to return sites to pre-contamination conditions (New York Department of State, 2004, paragraph 1). While the program was popular and widely supported, it only addressed municipally owned sites with real or perceived contamination.<sup>120</sup> Many cities, especially in the upstate region outside of New York City, had taken possession of large brownfields from former manufacturing owners, but these sites still represented only a small portion of the overall stock of brownfields in the state.

To address cleanup at the numerous privately owned brownfield sites throughout the state, the New York State Department of Environmental Conservation (DEC) and Department of Health (DOH) jointly used their regulatory powers to create a voluntary cleanup program (VCP). The goal of the VCP was to incentivize private owners. The VCP did not provide funds for cleanup, nor did it establish uniform rules for all sites of a given type. Rather, the agencies negotiated acceptable cleanup standards for each site in the VCP based upon the next expected use. The program relied upon a liability release from the two departments administering the program as an incentive for owners to voluntarily become involved. Under the program, if an owner cleaned up a contaminated site as negotiated within the VCP agreement, the Department of Environmental Conservation and the Department of Health would not hold that owner and all subsequent owners of the property liable for any costs associated with prior contamination issues as long as the use of the site did not change.<sup>121</sup>

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<sup>120</sup> At several public meetings of brownfield redevelopment interests in the state that the author attended between 2009 and 2011, the Brownfield Bond Act program was often referenced favorably.

<sup>121</sup> For a full description of the VCP, see the DEC documentation at: <http://www.dec.ny.gov/chemical/8442.html>, accessed June 3, 2010

The VCP left many issues unresolved. Even with the release from liability, owners could still be sued by other private parties or other governmental agencies for costs associated with cleanup. In addition to the uncertain liability, the lack of uniform standards resulted in cleanups that many communities found to be unacceptable (Steil and Connolly, 2010). The DEC promulgated regulations saying that the goal should be to return the land to a “pristine state,” but that goal and more specific guidelines for acceptable levels of each contaminant were rarely met. Instead, state officials negotiated deals with each polluter on a case-by-case basis (McKinley 2002: B1). This let major polluters evade liability and forced community organizations to engage in long, costly battles to ensure the safe cleanup of toxic sites.

A case in point is Starlight Park, a public park along the Bronx River. In 2000, Starlight Park was found to be heavily contaminated from the remains of a coal gasification plant that had been operated on the site by a predecessor of the Con Edison utility company in the late 19<sup>th</sup> Century. A local community organization, Youth Ministries for Peace and Justice (YMPJ), mobilized residents to assure that the DEC and the New York City Parks Department (the current landowner) held Con Edison, the identified liable party, to minimal standards for remediation. The cleanup finally began in the fall of 2006, and included reparations paid by Con Edison to the Parks Department for construction of the park. This rare victory for a community group came through determined political struggle and was the exception not the rule for the cleanup program. The Voluntary Cleanup Program often let polluters avoid responsibility at minimal costs, resulted in incomplete remediation and had no mechanisms to ensure that future development in the area would not repeat the same destructive cycles. When comprehensive cleanups were conducted it was only because of the vigilance and advocacy of local organizations that were able to bring public attention and political power to bear on the landowners and polluters.

The need for a legislative answer to the issue of brownfield remediation was clear to all involved at the time that The Pocantico Roundtable was proposed. The Environmental Restoration Program created from the Brownfield Bond Act was only meant to last a limited time. It ran out of money in 2008. As well, most developers, community development interests, and environmental advocates saw the Voluntary Cleanup Program as too uncertain with regard to liability and cleanup standards. As one respondent pointed out, “there were rumblings within the environmental community that there was no statutory basis” for the program. While the fact that some developers had entered the VCP demonstrated that there was a “market for a program,”<sup>122</sup> the cleanup levels were inconsistent and the costs of participation for owners could not be calculated in advance. This meant that development financing remained difficult to obtain and environmental conditions were not necessarily safe at former brownfield sites. As Mark Izeman of the Natural Resources Defense Council pointed out, “predictability of costs and clean-up criteria (which should be designative of the most protective levels achievable), as well as up front schedules and time frames are important considerations in remediation and redevelopment” (Fizel-Bieler, 1999, p.15). In addition to the lack of predictability provided by the VCP, many community development interests such as YMPJ saw the Voluntary Cleanup Program as ill-suited for ensuring the most achievable levels of protection. These factors combined to make VCP sites increasing targets for political opposition from communities and environmentalists. The opposition created a strong demand from developers for a legislative answer that would resolve battles over cleanup and acceptable use up front. For everyone involved, there was a need for greater certainty when it came to brownfield cleanup.

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<sup>122</sup> Quoted from a respondent involved with the early discussion around legislative possibilities.

#### **6.4| The Governor's Superfund Working Group**

In response to the widespread concerns about the VCP, Governor George Pataki established his Superfund Working Group to develop a legislative answer to the uncertainty around brownfield remediation in New York State. The group began work on 7 August 1998. Formed only one month before the Pocantico Roundtable for Consensus on Brownfields, the group was charged with recommending financing and other changes to the State's Superfund law, as well as improvements for all programs which addressed contaminated sites (Superfund Working Group, 1999 , p.10). The working group met over the course of a year and was comprised of 17 members representing government agencies, environmental organizations, and business interests (see Appendix 10 for a full list of members and their affiliations). Eight of the members were from government agencies, four members were from environmental organizations, and five members represented business interests. As well, two members of the Superfund Working Group, Jody Kass and Jim Tripp of the Environmental Defense Fund, were also on the Pocantico Roundtable and 6 other members' organizations were represented in both efforts. Clearly the work of the two concurrent groups informed and affected one another.

Importantly for the Pocantico Roundtable members, community development interests were not represented in Governor Pataki's group. Jody Kass was invited at the last minute to join the Superfund Working Group, but her formal affiliation was with the New York City Partnership and Chamber of Commerce. Her identity on the Superfund Working Group was as an advocate for business interests who could also speak to the parallel Pocantico Roundtable process. Governor Pataki's administration did not regard the community development world as pertinent to superfund cleanup and brownfield redevelopment. Pataki's perspective is made clear in a 2005 public statement about one of the DEC's brownfield programs. He said, "Thanks to

strong support from municipalities, the business community, and environmental organizations, we are succeeding in cleaning up and returning an unprecedented number of brownfields to productive use in the community” (DEC, 2005, paragraph 1). Even after years of lobbying on the part of community development interests, Governor Pataki still did not include them in his description of those that had worked to make brownfield policy effective. In his estimation, communities were beneficiaries of, but not active interests in, the brownfield redevelopment process. He did not see a role for them in the policymaking process in 2005 when he made the statement and he certainly did not see a role for them in 1998 when he excluded them from membership on the Superfund Working Group.

Almost immediately, Governor Pataki’s Superfund Working Group focused on the issue of financing cleanups. As one member commented, “The big difficulty was...who’s going to pay. And you know the Business Council wasn’t... about to sign on to a proposal that it would be your chemical companies would pay an additional tax or anything like that. But there was certainly plenty of discussion about that.” In the end, the group suggested financing large-scale cleanups at state superfund sites through a “pay-as-you-go” system where a permanent account was to be funded on an annual basis from both public and private funds to ensure that money was available for ongoing cleanup of major environmental contaminants.

In terms of cleanup standards, the Superfund Working Group’s final report recommended that a risk assessment measurement be used to determine acceptable levels of cleanup dependent upon the next expected land use for the site; the report recommended that there be fewer cleanup requirements for an industrial or manufacturing reuse than there would be for a residential development (see Superfund Working Group, 1999, p. 25). This approach essentially standardized and formalized the method that had been used by DEC for site-by-site negotiations

under the Voluntary Cleanup Program. It also reflected the heavy representation of state agency officials on the working group. The agency officials from the DEC and DOH were invested in the existing Voluntary Cleanup Program.

The Working Group's proposal for liability was the same as it was for federal Superfund sites under CERCLA—both buyers and sellers of property could be held liable. The report also recommended limiting the liability attached to groundwater, especially in areas with widespread contamination. Finally, the report addressed issues of defining hazardous materials, off-site cleanup requirements, and public participation. It called for the creation of a technical assistance grant program for community groups to use for independent investigation of site conditions in their area and for community outreach.

In addition, the superfund working group included a recommendation for a “Brownfield Redevelopment Area (BRA)” program. The BRA program resembled what came to be called the Brownfield Opportunity Area program which was first proposed at the Pocantico Roundtable and is the clearest indication that ideas were traveling across the two policy arenas. The BRA program called for the designation of special areas with high concentrations of brownfields to be eligible for separate planning and assessment funds. The funds would enable municipalities to plan for redevelopment of entire disinvested and potentially contaminated areas rather than have to address the issues on a site-by-site basis. Largely because of lobbying efforts on the part of the community development interests that were on the Pocantico Roundtable, this “area-wide” approach to brownfield redevelopment would remain an essential component of the policy discussion for several years after the Superfund Working Group submitted its recommendations. As one member of the group commented, “there was recognition by most members that it [area-wide planning] made sense.”

The straight-forward list of recommendations that came out of the Superfund Working Group was in fact a veneer put over a deeply divided process. Despite its narrow membership and skew toward government and business interests, the group did not achieve consensus on any of the recommendations in its final report. It did present all of them as final, but only some were unanimously supported. The report contained substantial dissenting opinions. Importantly, the recommendation to tie cleanup standards to a risk assessment model based upon the next expected land use was opposed by State Attorney General Eliot Spitzer and Rhea Jezer of the Sierra Club. Both Spitzer and Jezer declined to sign off on the entire report, largely due to their opposition to this tiered system of cleanup standards. All of the other environmental organization representatives (besides Jezer), which included Jim Tripp of The Environmental Defense Fund (EDF), Paul Elston of the New York League of Conservation Voters (LCV), and John Adams of the Natural Resources Defense Council (NRDC) were opposed to the land use-based system for cleanup standards as it was written. In a combined dissent, the three environmental organizations wrote that they could support such a system only if properties adjacent to residential areas were always required to clean to residential standards, regardless of expected end use. They also sought to empower the Department of Environmental Conservation to require the highest level of cleanup in any case that it deemed to be a special circumstance, the interpretation of which they gave wide latitude. These extra conditions were included in the dissenting opinions section of the report, but only as a brief note that agreement could not be reached (Superfund Working Group, 1999, pp. 28-29). As a result, all of the environmental groups dissented at least partially from the report's recommendations.

For their part, the business interests also made their agenda clear through written dissent. Marke Alesse of the Federation of Independent Businesses, Diana Hinchcliff of The Alliance of

Chemical Industries of New York State, Frank McKenna of Merrill Lynch, Ken Pokalsky of the Business Council of New York State, and Robert Fischer of the State Superfund Management Board wrote an almost superfluous dissent, as none of the issues they were concerned about were in the report's proposals. They opposed any inclusion of a mandate to clean sites adjacent to residential areas to residential standards. The business interests also rejected the notion that DEC should have discretion to require the highest level of cleanup for special circumstances. Finally, the business interests opposed a provision to raise funds through new taxes and fees on certain businesses, mostly in the energy sector. The strong statement against environmental proposals made it clear that business and environmental interests on the Governor's Superfund Working Group did not find the common ground that Governor Pataki saw when he made his 2005 comment on the DEC brownfield program.

Jody Kass played an interesting bridging role in the Governor's Superfund Working Group. She opposed the imposition of new fees for the power industry, a move that coincides with her business affiliation, and called for more funding for community-based planning around brownfields in recognition of her community development connection. In her dissent which indicated her greater allegiance to the Pocantico Roundtable, she wrote, "For years, stakeholders have been talking at 'cross purposes' on the issues surrounding brownfields and Superfund and the result has been confusion, misinformation, and a framework for doing business that is enforcement-driven and is based on mistrust, that has left all sides dissatisfied."<sup>123</sup>

By the time Kass wrote her critique of the Superfund Working Group, the final report that came out of the Brownfield Coalition, a follow-up to the Pocantico Roundtable, had just been completed. However, its recommendations were also written largely without the support of any

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<sup>123</sup> See Superfund Working Group (1999) *Recommendations to Reform and Finance New York's Remedial Programs*. New York State Library; Albany, NY (p.8).



environmental groups. Kass had seen the interests of community development organizations greatly furthered in both the Superfund Working Group through the proposed BRA program and the Pocantico Roundtable. However, especially in the Pocantico process, she had also seen the mistrust that had characterized the conversation for decades lead to environmental and community development interests being pitted against one another. In the end, most mainstream environmental interests declined to sign on to any of the policy formulation efforts. Kass would, as it turned out, work for years following these processes to mend the bridges between business, community development, and environmental interests concerned with brownfield policy in New York State. That path primarily began in 1998 with the formation of the Pocantico Roundtable for Consensus on Brownfields.

#### **6.5| The Pocantico Roundtable for Consensus on Brownfields**

The Pocantico Roundtable for Consensus on Brownfields occurred over the same time period as the Governor's Superfund Working Group. It officially commenced at a three day retreat at the Pocantico Conference Center between 8 December, 1998 and 10 December, 1998. There was some overlap in membership across the two efforts and several of the Pocantico Roundtable members who were not on the Superfund Working Group attended and participated in public meetings about the recommendations developed in the working group (see Superfund Working Group, 1999, Appendix C). As one respondent familiar with both groups remarked, "there were some of the same players there [on the Pocantico Roundtable] but, you know, a lot more community groups, more environmental groups. It was sort of the constituents there were more the NGO community rather than developers...[and] banks."

The Pocantico Roundtable was hosted by the Rockefeller Brothers Fund and organized by Jody Kass and Alan Zerkin. The organizers' backgrounds shaped the way in which the Pocantico group was formed and structured. Kass's connection to both business and community development interests ensured that the two sides would be represented. While it was usual for business interests to be a part of the policy discussion around state land use policy, the Pocantico Roundtable did create a rare level of access for community development interests. As Aaron Mair, an environmental justice organizer in Albany, New York stated, "the roundtable discussions...really mark a sea change...Environmental justice communities and communities of color, in the past, have had limited access and opportunity to have substantive, and I underscore substantive, input on the process, the science, as well as the impacts of what's going on relative to these particular communities."<sup>124</sup>

Zerkin's background also had a strong impact on the Pocantico Roundtable. He was a mediation specialist and structured the Pocantico Roundtable as a formal consensus building project with ground rules for complete participation (no proxies or replacements could be sent); for communication (especially with regard to respecting others' right to speak); and for decision-making. After discussing the ground rules, all members were asked to formally ratify them. As the name implied, Zerkin imposed a full consensus rule on the proceedings. This meant that the entire program had to have unanimous consent from all members. If consensus could not be achieved on an entire program, then the group would not issue any report (see Fiszal-Bieler, 1999, p. 38).

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<sup>124</sup> see Superfund Working Group, 1999, Appendix C

### 6.5a: *Establishing the roundtable*

Just as Kass and Zerkin began formulating a strategy for developing a list of invitees, they were informed of a related effort being undertaken by Ira Rubenstein of the Environmental Business Association. After reaching out to Rubenstein, the three decided to join forces. Rubenstein emphasized that whatever recommendations were formed had to be ready in time to affect the 1999 state legislative calendar. He pushed Kass and Zerkin to structure the Pocantico Roundtable to have as much political potency as possible. They agreed. As one respondent who helped draft the legislative proposals that eventually came out of the Pocantico Roundtable discussions said, “it was intended...to create legislation because we all knew that without legislation you didn’t have the certainty needed by everybody...to get the job done.” With the Superfund Working Group already announced, it was generally believed that Governor Pataki intended to include new recommendations for state remediation policy in his next budget proposal for the 1999 session. In order to have a completed report by January 1999, the list of invitees would have to be determined quickly.

Kass, Rubenstein and Zerkin formed an unofficial steering committee to move the selection process along. Kass asked two prior acquaintances, Annette Barbaccia of the New York City Mayor’s Office of Environmental Coordination and Jim Tripp of the Environmental Defense Fund, to join the roundtable and advise on the process of deciding who should be invited. While Kass had been connected with the community development field in New York City through her affordable housing work, she did not feel qualified to select the community groups. She asked Mathy Stanislaus of the Minority Environmental Lawyers Association to join the steering committee in order to help with this process. Stanislaus suggested that a forum be convened to let the community groups decide for themselves who should represent them on the

Pocantico Roundtable. The forum was convened quickly and representatives were chosen mostly from New York City's environmental justice community. Stanislaus, however, remained a constant liaison with the wider community development world. He performed a "shuttle diplomacy" role wherein he connected conversations he had with non-represented community groups to the formal Pocantico Roundtable process.<sup>125</sup>

In the end, the Pocantico Roundtable brought together a diverse set of interests that had longstanding disagreements over the right direction for brownfield policy in New York. As one respondent described it, "what she [Kass] essentially did was bring all the enemies together on brownfields." There were four representatives of municipal interests; six environmental groups; nine business interests including developers, the power industry, bankers, lawyers, and insurance representatives; and five community development organizations, mostly with an environmental justice focus (see Appendix 11 for a full list of all Pocantico Roundtable members). One participant said of the Pocantico Roundtable:

Typically the pattern is, you know, somebody introduces a bill in the assembly, it passes unanimously because it's what all Democrats want... And someone else introduces a completely incompatible bill on the same subject in the Senate and they pass it unanimously. And the two bills can never get reconciled, so... they were trying to do something different and saying "Let's see if we can get the points of view that are the power basis of both parties on board with this and then we can somehow work this dysfunctional legislative process."

Zerkin and his mediation partner Jean-Ann McGrane, without connections to any of the major stakeholder groups, served as non-voting facilitators of the conversation. In order to provide instant feedback on the policy strategies that were proposed, three representatives of state agencies were asked to serve as non-voting ex-officio advisors. Representatives from the foundations that sponsored the groups occasionally observed.

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<sup>125</sup> Stanislaus described his role as "shuttle diplomacy" between the Pocantico Roundtable and the community development organizations in New York City. 8 August 2009.

The first meeting of the Pocantico Roundtable was held on 14 October 1998 in Albany to make introductions and establish the ground rules for the process. However, before the ground rules could be discussed, the group got caught up on the definition of brownfields. The working definition put forth was, “Any real property where the actual or suspected presence of contamination is an impediment to reuse.” While this remained as the rough working definition throughout the discussions, many argued that it was too narrow. They argued that it should include a broader set of reasons why reuse might be impeded such as disinvestment in an area.

There was also some doubt early on about the efficacy of a full consensus rule, even among the community development interests who potentially stood to benefit the most given their former exclusion. Members were concerned that the potential for it to function as a “veto” rule wherein any one party could overrule all others was problematic. As one respondent said:

You know to get absolute consensus is impossible. There was a consensus process for decision making that I absolutely oppose because it puts one entity, one person in charge...and they can kill it.

Another respondent said of the consensus rule:

I didn't think that was going to happen...sometimes with these things...all you can really hope for is that people begin to have that conversation with each other and how much can you really resolve in...a two or three-day conference? You can't. You bring a lot of people together. You air a lot of stuff for follow-up, and that's really what's key here.

While the concerns over the fact that some members might, for various reasons, have motivations to cause the process to fail were present and expressed, these concerns were put aside for the sake of letting the discussion move forward. The facilitators argued that the process should be about “leveling the playing field” and that full consensus was needed in order to make that possible. Everyone agreed with this goal and, as such, decided to continue with the consensus process despite the initial concerns.

While the full consensus rule gave each individual equal power to halt any recommendation with which they did not agree, there was concern amongst the participants over the extent to which coalitions of interest would direct the conversation. Several respondents commented that the main concern was over uneven knowledge about the current brownfield redevelopment process; those with more knowledge or experience were better positioned to direct outcomes. This resulted in an immediate push to train everyone with a full understanding of the legal and technical issues involved. The first meeting ended with uncertainty about the process but a broad desire to move forward. The goals for the group's recommendations that were agreed upon during this meeting were: 1) Maximize benefits that accrue from brownfields projects to communities, municipalities, and regions, 2) Improve competitiveness of New York State communities in attracting development, 3) Promote equity, and 4) Ensure credibility with and accountability to all stakeholders (Fizel-Bieler, 1999, pp. 42-43).

At the second planning meeting held on 28 October 1998 in Manhattan, the political dynamic between the interests became clear. The facilitators initially proposed that the group break down into three subgroups to develop approaches for maximizing “public and community benefit; viability of reuse projects and competitiveness; and credibility and accountability” (Fizel-Bieler, 1999, p. 48). However, before the subgroups were formed, Anne Rabe representing the Citizens Environmental Coalition—one of the environmental groups on the Pocantico Roundtable—argued that while the proposed subgroups were reflective of the goals that had been discussed at the first meeting, they did not represent her main goals for the Pocantico Roundtable. She and others pushed for an expanded list of goals at this point. The expanded list included the four original items listed above plus seven new goals:

1. Ensure quality cleanups that are protective of health and the environment
2. Have consistent equitable cleanups...that do not limit a community's growth
3. Ensure direct participation
4. Focus on sustainable reuses
5. Compare qualitative development versus quantitative growth
6. Establish a credible process that instills trust
7. Aim for streamlined decision-making and one-stop shopping

While the initial goals clearly represented community development, business and municipality interests, the new goals were a broader representation of the groups involved, especially environmental interests. The group now had 11 stated goals, an unwieldy list. The environmental organizations had ensured that high cleanup standards would be a strong part of what the Pocantico Roundtable was trying to create. Following the development of new goals, the group organized into subgroups according to similar interests. At this point, environmental and community development organizations had informal discussions about each other's issues.

Two more preparatory meetings were held in November 1998. During the November meetings, a discussion method known as the "Samoan Circle" was utilized to force participants to recognize their pre-existing biases. The Samoan Circle involved a small group of rotating participants sitting in the center of a circle and leading the questioning and discussion. Anyone could ask or be invited to sit in the center. While many participants observed that people became much more aware of the positions of others during these exercises, it was still the case in the eyes of at least one participant that "people really had not moved an inch from their position when they walked into the room the first day" (Fizel-Bieler, 1999, p. 55).

During the fourth preparatory meeting, five working groups were established that would be used in the formal Pocantico Roundtable process. They were: 1) Reuse and Community Development 2) Liability 3) Standards and Institutional Controls 4) Administrative Process and Expediting Reviews and 5) Financial Programs. These groups represented the issues that

organizers identified from prior discussions as in need of being addressed. Two of the working groups came to exemplify the promise and problem of Pocantico. The promise of the Pocantico Roundtable was that it would leverage a diversity of perspectives to uncover new, innovative strategies for dealing with the complex issues involved with brownfield redevelopment. Working group 1, Reuse and Community Development, realized this promise when it agreed on the first day that an “area-wide” approach to redevelopment in communities with high concentrations of brownfields would be appropriate. The area-wide approach, which would eventually become the Brownfield Opportunity Area (BOA) program, developed into a major component of New York’s remediation law. A variant of the program developed by the Reuse and Community Development group was also carried by Jody Kass to Governor Pataki’s Superfund Working Group and adopted in the form of the Brownfield Redevelopment Area (BRA).<sup>126</sup>

The Pocantico Roundtable, though, faced other intractable problems to which innovative solutions were not found. While early efforts to align the interests of environmental and community development groups held up within several of the working groups, the connection broke down over the discussion of cleanup standards that took place within the Standards and Institutional Controls group. As Fiszal-Bieler’s report (1999, p. 66) points out, “the issue of clean-up standards [was] the most difficult issue at all of the meetings leading up to the first Pocantico summit.” It remained a challenge throughout the talks. One respondent speaking from the community development perspective said:

They [environmentalists] wanted the land to be pristine, that the cleanup had to be pristine. We felt that the cleanup should be based on end use and that if the standard was so high that it would make the cost prohibitive for redevelopment that the land would just stay there neglected and toxic and our communities would still be exposed to those toxins. So we wanted a standard that made sense. And of course we were not going to

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<sup>126</sup> As well, it has served as a model for 2011 federal programming around brownfields within the Environmental Protection Agency. See EPA Brownfields Area-wide Planning Pilot Program at [http://epa.gov/brownfields/areawide\\_grants.htm](http://epa.gov/brownfields/areawide_grants.htm), accessed January 12, 2012



sacrifice a standard that would harm our community's health but it had to make sense in terms of redevelopment and had to sort of depend on end use of the land.

Environmental interests, business and development interests, state agencies, and community development representatives each had divergent positions and disagreement within their own ranks on the issue of cleanup standards. One respondent described the most extreme position of the mainstream environmental groups as:

We [some environmentalists] want it to be really clean no matter how much it costs and no matter how long it takes and if the technology's not there, of course, then that site is going to stay there until the technology and the money are there to clean it up.

#### 6.5b: *How clean is clean? The battle over cleanup standards*

Four strategies for setting soil cleanup standards were discussed during the first session of the Pocantico Roundtable. They included (1) adopting the existing criteria for cleanup at superfund sites, (2) appointing an advisory board of scientists to amend the Superfund criteria to make cleanup more achievable at smaller sites, (3) shifting to a "risk-based" standards approach that established acceptable levels of contamination that would still preserve public safety, and (4) tying cleanup levels to the expected next use for the site wherein industrial and commercial uses would require lower levels of cleanup than residential. The issue of what standards should apply for cleaning groundwater under the site was also discussed. This discussion centered on whether it was appropriate to move away from the existing requirement that all groundwater be remediated to drinking water standards, regardless of location and if liability exemptions for groundwater should be given for properties in areas with widespread contamination.

Several environmental interests initially supported adopting the existing superfund site cleanup standards for all brownfields. Essentially, this meant that site owners and responsible parties would have to return all soil and water to pre-contamination conditions before any

development could proceed. Superfund criteria include both on- and off-site contamination, meaning that if any pollutants had leached onto neighboring sites those would also have to be remediated. Other members of the Roundtable argued that these would be impossible standards to meet at a great majority of the smaller brownfield sites. Superfund criteria had been designed to address the largest sites of contamination that posed immediate public health threats and had substantial federal resources to aid in cleanup and enforcement. The concern expressed in interviews with many members at Pocantico including business, community development, and municipal interests was that this level of public resources would be unavailable for the thousands of small sites. And that the economic incentives to develop the sites would not cover the costs of such cleanups. A report from the New York chapter of the National Brownfields Association summarized this position:

While the cleanup of more heavily contaminated properties is driven by the need to abate a hazard to public health and the environment, brownfield sites will generally be cleaned up only if incentives are provided to encourage their reuse and redevelopment. Failure to provide these incentives will primarily hurt the economically disadvantaged and racial minorities who cannot afford to move to the suburbs or chase after higher-paying jobs. It will also hurt the State's older cities, towns, and villages which are already straining to maintain aging infrastructure and more costly community services in the face of a rapidly declining tax-base.

If the right incentives are not provided to stimulate the cleanup and reuse of brownfields, it will not hurt the wealthy or land developers. They will simply go to the suburbs or to "greenfield" areas not yet marred by urban decay or pollution. This will require more public resources to be spent on costly infrastructure (new roads, public water, and public sewer) and new community services—leaving even less for older urban areas.<sup>127</sup>

This argument represents the position of business, community development, and municipal interests who sought a more flexible system for the smaller brownfield sites than the Superfund program provided. However, this position ran directly counter to that of some environmentalists who sought to ensure high-level cleanup at all sites. Further, some members of the environmental

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<sup>127</sup> Accessed December 18, 2010: <http://ny-brownfields.com/index.htm>

community at Pocantico saw loopholes in the federal superfund criteria and believed that even these criteria would not be stringent enough to ensure that sites were properly remediated (see Fiszal-Bieler, 1999, p. 68).

The rift between the various interests represented at Pocantico and within the environmental community became clear once the discussion over cleanup standards focused on the details. As one environmentalist described the situation:

There was within the environmental community up until the time that the legislature...passed the 2003 Act...a divergence of view between what I call...the pragmatists and the purists. And...the purists wanted... the most stringent possible cleanup standards, everything cleaned up, the groundwater cleaned up.

The respondent went on to describe the pragmatists as more willing to discuss standards that would balance the need to redevelop brownfields in a timely manner with the need to achieve safe levels of remediation. Another respondent who was sympathetic to the “pragmatist” approach said:

I mean...the purists did not want the use of the parcel to be a factor at all in deciding how the cleanup was going to be done. So if somebody was going to come in and build a new industrial or retail site and, you know, build a parking lot and do all these kinds of things the cleanup was going to be the same as it was going to be if it was, you know a toddler’s center. So the final law that was passed was sort of a mishmash of those competing ideas.

One approach that sought to mediate between the “purist” environmentalists and the community development perspectives favored a strategy where adjustments would be made to the Superfund criteria by an expert panel of scientists for different types of sites. The panel would be tasked with closing loopholes and easing cleanup standards where appropriate. Environmentalists and private development interests argued against this approach. They pointed out that it simply moved the question of standards into another arena without specifying the goal of cleanups. There was a fear that the expert panel could be manipulated both in who was appointed and what procedures they used to determine “appropriate” cleanups. Many members

held predictability for developers as a main goal in setting the cleanup standards and, as a result, favored including a specific and unchanging strategy within the brownfields legislation.

The conversation over cleanup standards became the most contentious when it shifted toward the third and fourth strategy proposed for setting standards. These strategies involved designing a system of site-specific standards that would vary according to the parameters of a given brownfield. Two measures for relaxing the clean-up requirements were discussed in this context. First, championed by the state agency ex-officio advisors, several members favored shifting toward “risk-based” measures. This would mean that a calculation of the health risks associated with the actual contaminants present would be made for each site and a certain level of risk would be tolerated. In short, site owners would not be required to remediate their sites to pre-contamination levels, but rather to levels considered to be acceptable for preserving public health. As one member of the Brownfield Coalition observed:

There was so much misunderstanding about the risk-based standards. There was such misunderstanding about what the state would require, what the city would require...that was one of the biggest arguments in Pocantico...People didn't understand how the sites could get remediated. They didn't believe they could. I think there was no clear understanding of testing...And I don't think there was any satisfying people either.

The second approach discussed in this context was a tiered system that would establish different levels of clean-up requirements according to the next expected land use. A combined risk-based and tiered approach was essentially the strategy that the Governor's Superfund Working Group, heavily populated by state agency representatives, adopted. One community development participant described this point in the conversation by saying:

The mainstream enviros balked at the idea that those standards would vary based on the end use of the land. I mean that was the thing that the business folks really wanted and that the community development folks also really wanted. Because community development projects like affordable housing were getting hit the hardest. Like you couldn't do an affordable housing project on a Brownfield under the old system.

The risk-based and tiered strategy remained highly contentious within the Superfund Working Group and the Pocantico Roundtable.

Certain representatives of the environmental community on the Pocantico Roundtable were especially opposed to any shift away from strong absolute standards for remediation. Fiszal-Bieler (1999, p.67) observed that Anne Rabe of the Citizens Environmental Coalition strongly objected to what she saw as an affront to the priorities she had expressed during the planning sessions. She saw the discussion “leading toward a complete paradigm shift in the way New York State initiates cleanups and that the members were viewing the brownfield discussion as an economic issue and not as an environmental one.” Several members disagreed with Rabe’s assessment and identified her position as extreme. Business interests stressed that the goal must be to create a predictable and feasible system of standards in order to encourage any cleanup and reuse of sites. A rift formed at this point over the issue of linking expected reuse to cleanup standards. The community development organizations that adopted more of a local neighborhood redevelopment orientation and the environmental groups concerned with larger-scale ecological issues began to see each other’s interests as at odds. One member of the Pocantico Roundtable who wanted to balance the environmental and community issues said: “This [divide over the right level of cleanup] was really what I think caused the consensus to breakdown. And it continued to be a contentious issue until the legislature...finally voted.”

The community development groups on the Pocantico Roundtable generally viewed environmental issues through the lens of environmental justice. They were concerned with ameliorating the inequities in the distribution of ecological hazards, which meant that cleanups needed to be encouraged within communities that had high concentrations of brownfield sites. In the words of one community development representative, “There was no appreciation for this

perspective on the part of the environmentalists that were pushing for pristine cleanups.” The community development groups asserted their interest in preserving human health and safety as well as creating conditions for economic development and job growth. Over the course of the first day of discussions at the Pocantico Roundtable, this divide between community development and mainstream environmental interests grew. In the words of one Pocantico member:

The community groups and the environmental justice groups were much more sympathetic to the idea that the...the kinds of cleanups that were required should have something to do with how the site was going to be used. And they also recognized as a practical matter the challenges even with certain kinds of subsidies and so on of getting, you know, private owners of these properties where they were privately owned to step forward and do something.

Interestingly, this was precisely the position that the private development interests took as well. The business council emphasized at this point that the “goal of the program is to encourage people to clean up and reuse sites, and that if you demand pre-release cleanups, even in ubiquitously contaminated areas, you may hinder redevelopment and deter cleanups” (Fizsel-Bieler, 1999, p. 67).

At this point certain members of the environmental groups were interested in discussing alternative cleanup standard measures, but the Citizens Environmental Coalition remained obstinate. Anne Rabe “plainly stated that economic development should not take the place of environmental standards” (Fizsel-Bieler, 1999, p. 68). She and a few others refused to consider any standards that did not require sites to be returned to pre-contamination conditions. This position was identified by several respondents as among the most difficult to contend with in the effort to build consensus.

On the final day of the Pocantico Roundtable, the participants divided themselves into two working groups to discuss the biggest issues that remained: cleanup standards and linking

financial incentives to the area-wide planning strategy. At the end of the first Pocantico meeting, an accommodation was achieved on cleanup standards. There was a general agreement that for soil only (meaning groundwater remained unaddressed), a tiered approach to cleanups where developers had the option of what level of cleanup they would choose according to their desired land use would be acceptable if there was a strong incentive and enforcement structure put in place to push developers toward the highest level of cleanup. However, they were still far from a consensus on the details of such an agreement or any method for addressing groundwater contamination. As a result, it was decided that a second session would be needed. The members scheduled the second retreat for the weekend of 8-9 February 1999. This, it was suggested would still be in time to affect whatever proposals were developed in the next legislative session.

In the interim between the first Pocantico retreat and the second, several meetings were held with the members of the roundtable to work out the details of a tiered cleanup standard system with considerable incentives for high cleanup levels. Early on, this strategy seemed, for some, to have some hope of achieving consensus. As well, the meetings were meant to address the issue of regulating groundwater cleanups. While groups including the Citizens Environmental Coalition, New York Public Interest Research Group, and Environmental Advocates remained highly skeptical of including risk-based standards in the tiered system, the discussion of which owners and responsible parties would receive incentives, especially liability release, proceeded fruitfully. A strategy which created seven classes of responsible parties, each eligible for different levels of liability release was created and a decision was made to propose linking the brownfield legislation with the superfund legislation that the Governor's working group was designing. In hindsight, this seems to have been a pragmatic decision since there were several members on both committees and the Governor's Working Group was discussing general

brownfields policy in addition to the state superfund program. However, financing strategies for the “one big program” approach proved to be highly contentious.

The second interim meeting focused on the issue of groundwater remediation. It led to a proposal to create a fee system paid into by developers to enable regional groundwater remediation to be carried out by the state government. While there seemed to be agreement over soil and groundwater remediation strategies, the third interim meeting would demonstrate that the agreement was fleeting. As Fiszal-Bieler’s report states, during the third meeting, Anne Rabe renounced the notion of linking cleanup standards to expected land uses. She argued that if industrial sites were allowed to cleanup to minimal standards, contaminants on those sites could still potentially leech out to neighboring areas that might include residences. This presented an unacceptable level of risk for Rabe, who also repudiated risk-based processes altogether. She demanded that an absolute and stringent standard be placed on all sites. The possibility of consensus over cleanup standards was already in jeopardy when Rabe stated, “The reason why we have these problems is because of the current Governor. If the prior administration were still in office, we would be realizing far better cleanup levels” (Fiszal-Bieler, 1999, p. 89). In response to this statement, the ex-officio members representing the State Department of Environmental Control and the State Department of Health, both of whom had been appointed by the Governor, walked out of the meeting. Several respondents identified this as a moment when it seemed as though the consensus process would fail.

At this point, the ability of the Pocantico Roundtable to continue was threatened over disagreements about how to set cleanup standards. The group did reconvene for the second retreat at the Pocantico Conference Center, and formed two working groups: cleanup standards and “everything else” (Fiszal-Bieler, 1999, p. 96). Several respondents commented that the



stance of some environmentalists was unwavering. One respondent representing private development interests commented on the fact that several issues, including public participation requirements and cleanup standards, remained intractable at this point:

I mean we were screaming at each other until two or three o'clock in the morning...we were wrong I think. I mean having now done the additional public participation both in this process and in the Brownfield Program, I'm...I've come completely around on public participation. I completely agree with that. I think it's a big mistake when developers don't do it. I did come completely around on it. I don't know or don't think that the environmental groups have done that on the cleanup standards.

As it turned out, disagreements on both sides continued to unravel the hope for full consensus. By the end of the second Pocantico retreat, the New York Public Interest Research Group stated it would not sign the agreement and everyone agreed that the remaining issues were too unclear to be decided. Yet again, the deadline was extended to a "drop dead" date of 6 April 1999 for the final report.

The months after the second Pocantico retreat saw the political dynamic around brownfield policy "heat up" in New York State when Governor Pataki's Superfund Working Group report became public. The report was leaked before its official release. Several members of the Pocantico Roundtable were upset that it seemed as though their best ideas were being given to the Governor's working group, but not all interests were represented in that group.

The community development interests had served as key intermediaries between environmental and private business interests in the search for acceptable cleanup standards. As one representative of municipal interests commented:

I think the Environmental Justice and community based development groups were a mediator between the pure environmentalists and the development community...So while the big greens were looking for very pristine, clean sites, and the development community was looking for the cheapest way of developing the sites, the environmental justice groups were looking to move these sites towards development but at the same time realizing that they wanted them cleaned and saved. They sort of spanned the two and said we've got to do something.

Community development interests had argued for the necessity of dealing with both cleanup and redevelopment issues at the same time. However, while several business and environmental groups sat on both the Pocantico Roundtable and the Governor's Superfund Working Group, the community development interests were represented only on Pocantico. When it became clear that the Superfund Working Group intended to address general brownfield policy as well as the overhaul of the state's Superfund policies, the community development interests felt as though their good faith efforts had been co-opted by a group that did not represent them. Further, it seemed likely that the Governor would push the Superfund Working Group proposal, giving it greater political weight than Pocantico. Aaron Mair of the Arbor Hill Environmental Justice Corporation argued that "the governor's process was taking the best ideas from Pocantico and incorporating them into the Superfund Working Group report while leaving the environmental justice communities without a voice" (Fizsel-Bieler, 1999, 102).

Within the more pragmatic side of the environmental community, the concerns that were expressed in their dissents within the Governor's Superfund Working Group report were raised within the context of Pocantico as well. For the tiered cleanup system to work, the environmental groups argued that DEC needed to be empowered to require the highest level cleanup for any site it deemed to be a special circumstance. As well, it wanted residential level cleanups to be required for all sites bordering residential neighborhoods. This raised a great deal of opposition from various Pocantico members including business, municipal and community development representatives. Finally, on 18 May 1999 the Pocantico Roundtable for Consensus on Brownfields dissolved without producing a final document. In the end, an issue that had not been a focus of the discussions undid the Pocantico Roundtable. Formal opposition to the financing structure which combined brownfields and Superfund sites in "one big program" forced

dissolution, but consensus had been eroding over longstanding issues around cleanup standards for some time. The financing questions were simply the issues that pushed the talks toward a pervasive sense of hopelessness.

#### *6.5c: What role for communities? The development of BOA*

During the fourth preparatory meeting before the first Pocantico Roundtable retreat, the question addressed by the Samoan Circle exercise was: “How can communities stimulate and effectively influence brownfields reuse for maximum community benefit, and how can they effectively ensure that projects are carried out as intended?” This exercise led to nearly 40 proposals from members of the Roundtable (Fizel-Bieler, 1999, p. 56). The working group that was formed to consider these proposals identified two difficult issues: (1) the need to decide if end use should be tied to cleanup standards and (2) the need to align municipal zoning with community plans. City representatives and environmental interests were heavily impacted by the outcome of these issues. Cities had a vested interest in maintaining their control over zoning and environmentalists sought to create the most stringent cleanup standards possible.

Despite the difficult issues involved, the discussion that grew out of the Samoan Circle exercise laid the foundation for a key agreement on the first official day of the Pocantico Roundtable. With considerable guidance from Mathy Stanislaus of the Minority Environmental Lawyers Association and Ron Shiffman of the Pratt Institute Center for Community and Environmental Development, members of the Reuse and Community Development working group suggested a program for area-wide planning of brownfields in locations with high concentrations of contamination. This suggestion was meant to be in contrast to the state agencies’ site-by-site approach. Also on that first official day, West Harlem Environmental

Action Coalition (WE ACT) suggested that the end uses developed within the community-based area-wide program be tied to strong financial incentives for developers that conform to the community plans. This would give the area-wide plans implementation power. In describing the early conversation about area-wide planning, several people commented on the motivations for the strategy:

Because the experience on brownfield's around the country and state brownfield law has been relieving liability of responsible parties. Resources going to high-end projects, and really brownfield redevelopment being limited to big size, big boxes or high end users, and hot markets or emerging markets. Leaving behind the low-income communities... So [responding to] that was kind of a foundation.

A lot of it was a veto over...waste transfer facilities. I mean that was sort of the proverbial, you know...bad kind of facility. It was almost more that than really shaping...what kind of housing we were going to have and those kinds of things.

By the end of the first day of deliberations, the major issues associated with community-led area-wide planning for brownfield redevelopment had been identified. The cleanup standards issue, it was clear, spilled into the community planning arena as well.

I do remember it getting to the point where we had already sort of gotten the BOA concept, okay general agreement, but everything was beginning to hinge on this cleanup objective issue and I remember [an environmental justice representative], in particular, coming over to me and really upset saying, and it was pretty colorful language, how do we get [the environmental "purists" that were taking a hard line] to agree to something a little bit more rational so we can move the whole thing because we were still a go with that consensus and pretty similar model or proposed legislation and I remember him being pretty upset that we weren't getting past this issue and that it was jeopardizing the whole concept of the BOA program.

It was essential to decide if cleanup standards could be tied to end use in order to know what kinds of planning processes would be possible. Several respondents commented on the bridging role played by environmental justice groups in this conversation:

To some degree they [the environmental justice groups] were a counterbalance to more extreme environmental groups...[The environmental justice groups] basically said, you know, "We want a real cleanup and we want it now. We don't want a perfect cleanup twenty years from now."

Okay so the trade was...the environmental groups that were present...they still wanted the perfect cleanup at this time. You know they wanted it so that every site gets pristine cleanup standards. So the trades were we [local government and development interests] get use-based cleanup standards for industrial, commercial, residential, different kinds of residential in exchange for we would give you more public participation. That was one of the trades that brought the community groups closer. It wasn't the only one.

The issue of the role of municipalities in the planning process was another problem area for the discussions around community-based planning strategies. Cities controlled zoning and there needed to be clarity on the relationship between the area-wide plans and local land use controls. At this time, the discussion over the relationship between municipal and community interests in the area-wide planning process became an argument:

Most of the fights over BOA were between the municipal representatives and the...and the CBOs [Community Based Organizations]. And the sections that were most contentious...were you know legally you just can't take over the planning function for a municipality. That's a violation of home rule law...you might want to do that, the community based organization, and you just can't do that unless you change that law. And I don't think they'd have a snowball chance in hell of doing that, you know.

Several representatives of municipal interests were especially averse to the idea of giving community plans statutory control over land use. Their position was described as:

His perspective [a representative of a city government] on BOAs was you're just diverting resources to nonprofit groups that maybe haven't experienced anything, that they really wouldn't know what to do with this, wouldn't have the capacity to really run these projects... and not the least of which was also the concern...of how do we know that what nonprofit community groups would be doing would be consistent with our municipal comprehensive plan, objectives, and that sort of thing.

And she [a city government employee] was dead set against communities having a direct relationship with the state that was not mediated by the city. So she was not going to let that happen.

For their part, the community development interests, especially those from New York City, expressed a longstanding mistrust of municipal government. As one respondent observed, "The community groups commented frequently on running up against city policies or initiatives that were counter to what they were trying to accomplish." One respondent who was engaged in the

discussion with the municipal interests described the trade-offs that allowed the tensions between community development groups and municipalities to be eased. The final deal required municipal approval for all BOA applications:

The original proposal was CBOs can do it independent of local governments. And the local governments objected...One of the compromises was to delay designation [of a BOA] until the municipality approves. The local government and the CBO...have got to be partners...which I think is a good thing. Because even the CBO recognizes that you have to work it out through local government, you know? And if you don't do that, you're simply not going to be successful...But it does give communities a seat at the table in that process.

Finally, the issue of tying financial incentives to the area-wide plans was raised. As it was considered infeasible to simply usurp local zoning powers, it was necessary to ensure that developers would voluntarily comply with area-wide plans. On the second day of the first Pocantico Roundtable retreat, the Finance and Community Development working groups decided to join together in order to align their strategies. The joint working group developed a financing strategy for provision of technical assistance grants to communities for planning and initial environmental testing in areas with high concentrations of brownfields. Their position was described by a member of the Finance group as:

What we hoped is that a meaningful connection between landowners participating in the BOA process and, you know, buying in by whatever means to the goals of the BOA for their particular sites and then being able to access state money and also...and having, you know, kind of an express line through the state program...otherwise BOA is another sort of well-meaning exercise.

One member of the negotiations argued that, in order for the community-based planning strategy to work, the partnerships were as important as the money. The respondent stated, "It's not only allowing the CBOs to secure money, but forcing the CBOs to have partnerships that will ensure local engagement."

As well, a number of details about the role and structure of the area-wide planning program were developed in the first Pocantico Roundtable retreat. There was general consensus among all members that the conversation was headed in a good direction and should continue. However, the developers in the room remained suspicious of trying to shape a new model for development, as did the municipalities. As one proponent of the area-wide strategy remarked:

It took a lot of persuading to get people off the idea that you deal with brownfields one at a time. I mean that the only thing that would help communities in New York City is to deal with them comprehensively across a whole area.

One developer commented:

Doing the whole neighborhood was really not in our interest. We were interested in sites that we could turn around relatively quickly...and in fact, doing whole neighborhoods has proven to be extraordinarily difficult for private developers.

Despite these lingering reservations, the area-wide planning strategy was generally supported by the Pocantico Roundtable. Most of the interim meetings between the first and second Pocantico Roundtable retreats focused on other issues, including cleanup standards and political strategy. However, the joint Finance and Community Development working groups did refine their proposal during this time.

The first formal proposal for an area-wide brownfield redevelopment initiative was put forth in the interim period between the first and second Pocantico Roundtable retreat. It was entitled the “Empire State Brownfields Reclamation and Neighborhood Revitalization Program.” It quickly became clear from the discussion that followed the presentation of the program that the success or failure of the area-wide planning strategy would be tied to cleanup standards. At the same meeting where the ex-officio representatives from the state agencies walked out of the room, many questions were raised about groundwater contamination in the area-wide planning program and how the proposed system would connect with various strategies for cleanup

standards. As well, several environmental justice representatives reiterated the questions over how much financial incentive would be provided to develop sites in accordance with the plan.

Allen Zerkin and Joan Byron of the Pratt Institute Center for Community and Environmental Development wrote up the new version of the still-developing area-wide proposal after the second Pocantico Roundtable. The draft that they wrote became the foundation for the future development of the BOA program. However, that program did not get finalized in the Pocantico Roundtable. Shortly after the area-wide strategy was drafted, the roundtable dissolved.

The goal to “open thinking and even the playing field while democratizing what might otherwise be a dysfunctional process” (Fizsel-Bieler, 1999, p. 44) was not realized. As a result, consensus was not achieved. Environmentalists, for their part, were described by some community development activists as conspirators happy to leverage the position that representation in both the Pocantico and the Governor’s Superfund Working Group afforded them. Environmentalists and community development organizations had a brief moment of alignment early in the Pocantico process, but finished it pitted against one another.

The formal goal of consensus over brownfield policy in New York State failed to be achieved by the Pocantico Roundtable, but the program for area-wide planning around brownfield redevelopment that was eventually incorporated into state law was almost fully developed in the process. All along, the concept of area-wide planning for redevelopment in communities that had high concentrations of brownfields was a relatively uncontroversial innovation within the context of the Pocantico negotiations. Compared to the divisions over cleanup standards, liability, and overall financing, the opposition to area-wide planning was minor. There was some difficulty in getting the developers and state agencies to agree to a robust community participation element, but these were largely overcome. As one respondent stated:



There's no question we [the developers and state agency representatives] went kicking and screaming into the fact that the eventual Brownfield Law which did evolve from that process that happened at Pocantico, was going to involve more public participation than your average developer would like, okay. Developers want to do their project with as little public participation as possible, right. One of the big trades in this whole legislation was the public participation component.

As a result of the progress made, the environmental justice groups especially wanted to continue the conversation. The majority of the members of the Pocantico Roundtable agreed to participate in a newly formed "Brownfields Coalition" in order to continue their work, but only two environmental groups and no municipal representatives remained.

#### **6.6| The Brownfields Coalition**

The Brownfields Coalition served as the follow-up effort to the Pocantico Roundtable and included 16 of the 25 original members (see Appendix 12 for full list). The groups that chose not to participate in the continued effort mostly included environmental and municipal representatives. From the mainstream environmental advocacy community, only two groups remained: Environmental Advocates represented by Val Washington and the Environmental Defense Fund represented by Jim Tripp. Four other mainstream environmental groups dropped out of the process. All of those groups were disillusioned with the Pocantico Roundtable process and had expressed misgivings throughout. They included: Paul J. Elston of the New York League of Conservation Voters, Andrew Goldberg/Mike Livermore of New York Public Interest Research Group, Mark A. Izeman of the Natural Resources Defense Council, and Anne Rabe, Citizens' Environmental Coalition.

All of the local municipal interests declined to participate in the Brownfields Coalition effort including the New York Conference of Mayors, The New York City Mayor's Office of Environmental Coordination, and representatives from the cities of Rochester and Binghamton.

Of the reason why he did not participate, one municipal representative stated, “I did go to some of those meetings but at that point because they had lost the environmental side, the environmental group side of it and with the history of the [State] Assembly, it was sort of a how much effort do I put into this when it’s unclear whether the [State] Assembly would ever go along with this?” Only one business interest, the New York Business Council, declined to participate in the Brownfields Coalition.

The Brownfields Coalition was a very different process from the Pocantico Roundtable. The organizers decided that they would build the membership to include as many interests as possible and not impose a consensus rule on the document that the group would create. The programs and ideas developed within the Pocantico Roundtable were carried over to the Brownfields Coalition. As the report states, “This Coalition Report starts where the Pocantico Roundtable left off, and it owes all of its good ideas to the Roundtable process.”<sup>128</sup> The stated purpose of the group was, “the elimination of the barriers to the cleanup and redevelopment of brownfield sites.”

The interests that came to be represented in the Brownfield Coalition were strongly weighted toward business and community development. The strategies put forth in the report primarily represented the community development goals of balancing environmental protection with creating favorable conditions for private developers to perform cleanups. As of the publishing of the Brownfield Coalition Final Report in 1999, the group included 24 representatives of the business community, 14 representatives of the community development sector, 3 environmental groups, and 1 urban planning group. This organizational structure was a

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<sup>128</sup> Brownfields Coalition (1999) “Brownfields Coalition Final Report,” *The New York Environmental Lawyer*, 19(3): p. 24

reflection of the fact that Jody Kass had moved from the role of organizer to leader. Her background and connections were largely reflected in the Coalition's makeup.

The effect of the new membership structure was evident in the recommendations for resolving the cleanup standards issue. The Brownfields Coalition recommended that a technical advisory panel be appointed in order to establish appropriate rules and regulations governing cleanups. This same strategy had been rejected in the Pocantico Roundtable. However, the critiques offered during Pocantico were not lost on members of the Brownfield Coalition. The makeup of the proposed panel would ensure that whatever political manipulations occurred would benefit community development interests. The report states:

The panel shall be composed of a multi-disciplinary cross section of experts that [sic] are representative of the variety of viewpoints...Nominees must come from...the following constituencies: environmental groups, businesses, community-based organizations, environmental justice groups, non-profit and for-profit land developers and local government. There will be a total of 27 members of the panel.<sup>129</sup>

The community development interests essentially stacked the panel membership in their favor. In order to achieve the representation called for, there would be 4 members from each of the constituencies, plus three political appointees. This meant that mainstream environmental groups, business interests, and local government would each receive four members. Then there would be four community-based organizations, four environmental justice groups and at least one (but likely more) non-profit affordable housing developers. As a result, between nine and eleven members of the 27 seats on the advisory panel would be occupied by someone from the community development world.

The proposed structure of the panel is a reflection of the bitter feelings that the Pocantico Roundtable created between the community development and environmental interests. Many

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<sup>129</sup> Brownfields Coalition (1999) "Brownfields Coalition Final Report," *The New York Environmental Lawyer*, 19(3): p. 55

community development representatives commented on the fact that they felt as though the environmentalists acted unreasonably and refused to see their perspective on the need to enable redevelopment. One environmental justice activist involved in both efforts commented that, “These environmentalists go back to their homes in the suburbs, but we live in these communities. We have to live with these sites. They don’t see the day-to-day.”

As a result, when the Brownfields Coalition developed its response to the cleanup standards issue, it was clearly done with minimal expectation of good will on the part of environmentalists. The community development activists involved in the conversation did not trust the environmentalists. Thus, while community development interests knew that resolution of the cleanup standards issue would not be possible without including environmental interests on the advisory panel, they sought to ensure that the same impasse that had occurred at Pocantico could not re-occur.

The bulk of the Brownfields Coalition work, though, focused on creating what at the time was called the Land Reuse Opportunity Areas (LROA) program. The LROA program, which was the second iteration of what later became BOA, sought to enable communities “to identify the range of activities necessary to address the social, economic, environmental and infrastructure needs that presently inhibit private investment in brownfield impacted communities.”<sup>130</sup> It called for pre-planning grants to be provided on a competitive basis to areas that wanted to apply for formal LROA status. If designated as an LROA, the sponsoring community-based groups would work in partnership with municipalities and be eligible for funding to pay for a full planning process, site acquisition, and environmental testing. As part of LROA, a wide range of specialized loan and grant programs were designed to enhance the ability

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<sup>130</sup> Brownfields Coalition (1999) “Brownfields Coalition Final Report,” *The New York Environmental Lawyer*, 19(3): p. 30

of sponsors to direct remediation in LROA areas according to community-based plans. Finally, a series of tax incentives for developers to build according to LROA plans were devised. These included tax credits, tax increment financing, and tax exemptions.

The Brownfields Coalition Report was issued on 3 June 1999, the day after the Governor's Superfund Working Group Report was officially released. The LROA was developed in detail in the Brownfields Coalition Report and a similar BRA program was spelled out in the Superfund Working Group Report. The Superfund Working Group called for a tiered risk-based standards approach to cleanups and the Brownfield Coalition called for an advisory panel to be appointed in order to set the proper standards for cleanup. The "purist" environmental position which favored strong and absolute standards requiring pre-contamination conditions was absent. All environmental groups dissented at least in part from the Governor's Working Group and few environmental interests remained through the transition from the Pocantico Roundtable to the Brownfield Coalition. Community development and environmental interests remained divided despite extensive efforts to bridge the gap between them. This left the environmental lobby on their own to push for strong cleanup standards. Even achieving the specific modifications to the tiered system that protected residential communities near industrial areas and gave DEC discretionary control over the process would be difficult from such a position.

The community development groups, on the other hand, got their main program represented in both of the leading policy documents that would guide discussion about brownfields legislation. A draft proposal for legislation was written from each report. The Governor issued his draft based on the Superfund Working Group's report on 15 June 1999. The Brownfields Coalition released their draft bill with much more detail than the Governor's on 4 August 1999. Both bills contained specific programs for area-wide planning and community

participation. The community development aspect of both approaches was substantially the same, though the Brownfields Coalition called for much greater funding for their programs. The cleanup standards remained very different in the two bills and the environmentalists largely opposed both strategies (for more on the two bill proposals see Gerrard, 1999; Sturm, 2000; Cady Brown, 2004).

### **6.7| The Bill and Early Implementation**

The two draft proposals ensured that brownfields would be on the legislative agenda in New York State. The Governor endorsed the Superfund Working Group report and members of the Brownfields Coalition organized an active lobbying campaign. Despite these efforts, it took four more years of negotiation in the State Senate for a brownfields bill to get passed. The issue had a lot of constituencies. By 2002, there were “13 different bills related to brownfields remediation, reuse, and financing...percolating in the state legislature” (Citizens Housing and Planning Council, 2002, p.3). The Governor’s draft bill had been amended to exclude New York City from many of the financial benefits, a move which caused a number of powerful business interests to oppose his proposal. As a result of the rising protest, Governor Pataki dropped his bill from his 2002 legislative agenda. The Brownfields Coalition draft bill, though, survived as a result of continuous lobbying led by Jody Kass and Mathy Stanislaus. By 2002 it was the key proposal to which all other approaches had to respond. Due to the increased lobbying efforts that brought community development leaders to Albany on a regular basis, all the major proposals included a targeted program for area-wide planning in distressed communities (*ibid.*). The community development voice had clearly grown into an important constituent with regard to brownfield legislation.

Community development activists, though, faced competition in the effort to pass the bill. Several versions of the legislation were debated over the course of three sessions. Development interests, state agencies, and local governments all lobbied individual legislators. Members of the Brownfield Coalition made regular trips to the capital in Albany to show continued support for their bill. One respondent said of this period:

So we did regular you know, events up in Albany. We took CBOs and took it up to Albany, it was so important that the legislators saw community faces. You know, I believe that was one of the most important reasons why the Brownfield bill worked... we walked right in the Environment Committee meeting, it was exclusively representatives that were white, we brought in the black and brown faces. It had an impact.

The legislation finally passed in October 2003 and was entitled the Superfund and Brownfield Reform Act (commonly referred to as the Brownfield Law). The law represented the culmination of many years of debates about financing, cleanup standards, and planning for brownfield redevelopment. Typical of contentious legislation in New York State, the final portions of the bill were crafted at the last minute and sent out for review with barely enough time for legislators to read them before the vote. The overall bill that finally passed contained a delicate balance of agendas from competing interests. As one respondent commented:

This was truly a compromise piece of legislation created by the private and the public sector working together. It took us seven years to create this law...And there was no question that one piece, if one piece is taken away then the...then the sort of the puzzle falls apart.

#### *6.7a: The Slow Growth of BOA*

The Brownfield Law included a provision for the creation of a “Brownfield Opportunity Area” (BOA) program. BOA is an area-wide brownfield remediation strategy that builds on the ideas formed at the Pocantico Roundtable and that the Brownfields Coalition ratified. The program allows municipalities or community-based organizations located in areas with high concentrations of brownfields to apply for planning and technical assistance grants from the

State. The BOA grants are to be used for inventorying brownfields within the designated area and engaging in a participatory planning process for redevelopment that engages residents and land owners in the area.

BOA was structured in three steps. Step 1, the pre-nomination study, provides funds for accepted applicants to do preliminary analysis of the land use and environmental conditions in order to establish a BOA boundary for their area. Step 2, the nomination study, involves developing a plan based on a thorough and detailed analysis of sites, market trends and reuse potential for the BOA study area. Finally, Step 3 is the implementation phase where strategies for implementation are developed and state funds that will aid in the process are identified and allocated.<sup>131</sup> The focus by the state agencies on creating full land use plans for BOAs was not necessarily reflective of what all members of the Brownfields Coalition had in mind:

I did not think BOA as a separate plan was supposed to be this, what is equivalent in...land use law to a master plan. I thought it was supposed to be essentially a big fat report but of environmental information about the nature of those sites that make them a brownfield and a much more simplistic designation process whereby there would be this line drawn. And then the people would get the money for the investigations and get preference and priority. DOS [Department of State] has made it into a mandatory master plan.

Some respondents, in fact, expressed deep reservations about making the BOA program a typical land use planning process:

But what I've seen over the years in terms of plans, including local waterfront revitalization plans, if they're too detailed in terms of this building and this height should go here and this building and that, you know, kind of building should go there, and the developers don't like it? Nothing happens, okay. The planning process can hurt development. So it's very tricky. These things are very tricky you know.

Initially, the Department of State (DOS) and the Department of Environmental Conservation (DEC) shared responsibility for administering the BOA program. This caused

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<sup>131</sup> See the New York Department of State Brownfield Opportunity Areas Program Open Enrollment Application and Guidelines at: [http://www.nyswaterfronts.com/BOA\\_package.asp](http://www.nyswaterfronts.com/BOA_package.asp), accessed January 10, 2012



confusion and slowed down the process for BOA applicants. One very common observation was that the BOA program has moved forward very slowly as a result of the way it was initially structured. The release of money for the program and approvals of BOA plans both took several years to get started. Some representative comments were:

It's been slow. It's been a slog. I think there are a lot of well-intentioned efforts. And I think we're sort of getting there. But I, I think it could and should have been much shorter.

The disenchantment with the BOA program came in its rollout and implementation. The issues with the structure of the, between DEC and Department of State and more specifically the problem with the memorandum of agreement within the legislature on issuance of the grants. You go out and it takes a fair amount of effort with the community to create the momentum for a good application and for the commitment needed to support an application, and then to tell them two and a half years later, well we still don't have the money. Well, you know, people move on, the community changes.

As a result of such complaints, in 2005 DOS took control of the program. However, despite this change, it took seven years for the first BOA to reach Step 3 and most have not passed Step 2. Many BOA participants have complained about changing and unclear directives from the DOS. As one respondent commented, "I don't know why it's taking that long. It's, you know, a lot of people have been in step two for a very, very long time, the nomination study step. And I don't know why they're not getting out."

#### 6.7b: *The abuse of tax credits*

The implementation of the Brownfield Law was plagued almost immediately by an abuse of the tax credit incentives for redevelopment. The tax credit established in the initial legislation was a dollar-for-dollar write-down of a developer's state tax liability. As well, if a tax credit awarded to a developer for a project exceeded the developer's overall tax liability to New York State, not only would they have zero state taxes, but the State would also write them a check for

the difference.<sup>132</sup> Because the amount of tax credits that a project was eligible for depended upon the cost of the development, very expensive high rise constructions could potentially receive many millions of dollars in tax credits. As one respondent said of the initial program:

What happened is right after the bill passed, I remember reading it thinking, wow. This is really good...Can the state of New York afford this? This is really good...I mean, you know, I think I could definitely sell this program you know. But oh, yes, and at the time the state could afford it okay. And it really was intended, he thought, and we all thought, to drive policy in the state of New York away from Greenfield development...but a few not so good people who I unfortunately got to know told every developer he knew in Manhattan, you know. You find a little bit of contamination. You go into the program...Developers when they saw that tax credit program I have to admit said to me, wow. Are you kidding me? This is really good. I mean you're kidding me. I'll go out and buy ten brownfields. And that is what they did okay? You know but that's what it was supposed to do.

As a result, a number of very expensive developments, such as the New York Times office building in midtown Manhattan (completed in 2007), were the first to apply for the credits in 2004. These sites had minimal environmental contamination but very expensive project costs and qualified for tens of millions of dollars in tax credits. The intention of the bill was to provide substantial financial incentives to the smaller, difficult-to-develop sites, but the effect was to provide a huge subsidy for projects that did not need them (see Cady Brown, 2004).

Importantly, the tax credits were written during the final push to get the bill done. As one environmentalist said, "the tax credits were not vetted." According to respondents involved in the final lobbying for the bill, the initial tax credit proposal was written by a staff member at the Business Council of New York. The credits were modeled on programs that other states had constructed, but the incentives provided in New York ended up being far more favorable for developers. As one respondent involved with writing the Brownfields Coalition bill said:

The tax credit piece of the legislation none of us were qualified to write. None of us understood enough about tax law to know how to write that section. So we didn't write it. But we all agreed there should be significant, not insignificant, but significant tax

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<sup>132</sup> Presentation at Brownfield Summit sponsored by the New York City Office of Environmental Remediation

incentives. So it was written by [a staff member at the Business Council of New York]. He...looked at every...other state Brownfield Program and created the best Brownfield tax credit program in the country. And that was what I thought we all wanted.

Not all members of the Brownfield Coalition who participated in drafting the legislation agreed that the program as written into law represented the conversation about the group's intent, or even that it represented what came out of the Business Council's draft. One member present during the final discussions about the tax credits said:

When we were talking about tax credits and so on it was more the view to having...having some kind of an economic credit benefits program that could apply in the BOA areas, these lower income areas. It sort of morphed into something where everyone got a big piece of the pie.

One member of both the Pocantico Roundtable and the Brownfield Coalition pointed to a last minute behind-closed-doors deal made to sweeten the tax credit for development interests:

What I heard was effectively that it was done at four AM in the morning when our legislature does its best work. And that it was essentially the lobbyists representing [a large development firm]... nobody else did it that way. It came out of nowhere...And I think [the large developer's] effort was actually worse than cynical. Not only didn't he care, I think he actually delighted in damaging the program. I think he is an anti-environmentalist... You know when you think about the people who benefited, they must have lobbied for it.

Others shared the impression that the development lobby stepped in at the last minute to manipulate the bill:

If you really look at who testified at that point, everyone just kind of gave up ownership to some extent. And then, and that's when we saw the developers come in. That's when you saw – and the revisions to the law totally benefitted the developers. So maybe in hindsight they were waiting for the law to come together. They actually probably were a part of the written legislation.

Despite the intention on the part of some to narrowly link the tax credits with the BOA program, such a link was never established. Instead the credits covered a substantial portion of development costs for all projects built on brownfields regardless of location, levels of contamination or cost of cleanup. That is, whether a project was within a BOA or not had no

bearing on the level of available incentives. As such, the most generous credits flowed to projects outside of BOA areas where real estate values were higher (see Cady Brown, 2004). Without any direct zoning power attached to the plans and without any financial incentives linked to them, BOA faced serious implementation challenges. Developers had few reasons beyond altruistic desire to comply with community wishes to actually build projects that aligned with BOA plans. As one respondent said:

We could have BOA for the next fifty years but BOA on its own will not get brownfields redeveloped...Because as I said from the beginning there's no...there's not enough incentive in that program for an owner and/or developer to come in and do anything in that area since it is so complicated to do anything in that area.

This lack of incentive for owners to comply with BOA, the supporters of the program knew, would be problematic. However, by 2003, most interested parties were ready to get something on the books in New York State and continue the political battle after a law had been passed. As such, rather than press the issue further and possibly jeopardize the law, advocates representing the Brownfields Coalition chose to support the law and fight for improvements through the state agencies and new legislation.

As the number of projects filing for brownfield tax credits increased, it began to be clear to many that the program was unsustainable. In the first five years, the program enrolled over 200 sites eligible for hundreds of millions of dollars in tax credits. In order to rein in this expense and strengthen the incentive for developers to remediate sites to the highest level, Governor David Patterson signed an amendment to the Brownfield Law in 2008 that capped the overall subsidy for a single site, tied tax credits to cleanup costs only, and provided higher subsidies for higher levels of cleanup (Tarquinio, 2008). As well, the State Department of Environmental Conservation sought to retroactively reduce the credits that already approved projects were eligible to receive. This action on DEC's part led to a number of lawsuits wherein developers

that had built their financing on the expected level of subsidy argued that it was unfair and illegal for the state to remove it after the approvals had been given. At this point, what good will across parties had been gained in the Pocantico and Brownfields Coalition process began to erode:

No one's talking to each other anymore...Once the litigation happened and all bets were off there was no more conversation...What I found that is so sad about this thing is that...what Pocantico accomplished I'm not sure would ever happen again. And yet we need a Pocantico process again.

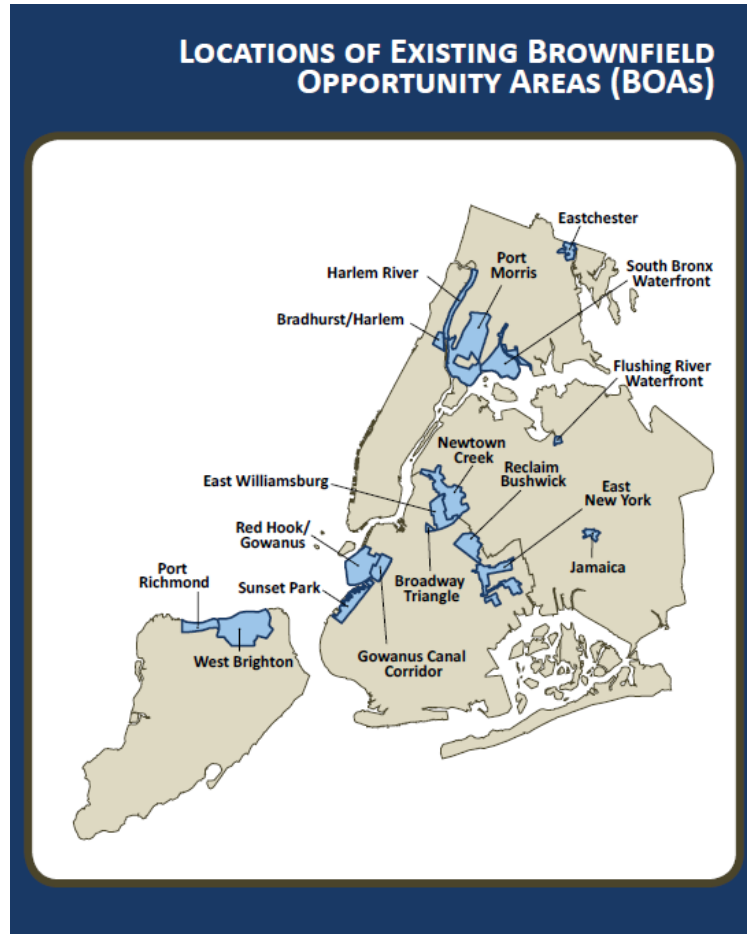
### 6.7c: *The Limited Institutional Arena for BOAs*

The BOA program requires applicants to adopt one of two basic institutional set-ups: either a community-based structure wherein the BOA is sponsored by a community organization or a city-led structure wherein the municipal government serves as the sponsor. Within New York City, where most BOAs are led by community groups, rather than the municipal government as is the case in upstate New York, three types of groups sponsor BOAs. These are: community based organizations (CBO), community development corporations (CDC), and quasi-municipal agencies such as the New York City Economic Development Corporation (EDC).

**Table 6.1:** *Characteristics of the Three Types of BOAs in New York City:* The CBO-led BOA is the only one without a direct tie to economic development strategies.

Organizational Type	Prior link with state	Primary Goal	Number
CDC	Federal funds>locally based private developer	Affordable Housing Development	12
CBO	Community	Local Advocacy and Service Provision	4
EDC	City>private developer	Economic Development	1

**Figure 6.1.** Locations of all Approved BOAs in New York City in 2010. Source: NYC Office of Environmental Remediation (2010), p.5.



Each of the three organizational types employ different strategies for connecting community, private development, and public interests in order to create new developments in cities that respond to community needs and ensure that contaminants are cleaned up. Each organizational type has a different primary function coming into the BOA. The CDC- and EDC-led BOAs have an embedded private development function (affordable housing and economic development respectively), while the CBO-led BOA does not. CBO-led BOAs have more direct connection to the community through the historic organizing function of the sponsors. CDCs primarily use federal subsidies to develop affordable housing. The EDC directs private

development toward the city's economic development agenda in neighborhoods. The CBO model is largely an advocacy approach which increases the political capacity of local communities, but is not necessarily based upon an established relationship with government or private development interests. Table 6.1 above shows the organizational qualities of BOAs in New York City.

The BOAs that have advanced the most in the program in New York City are those that have a business orientation. This reflects the fact that organizations most aligned with typical private development models perform the best. Business interests are essentially leading the effort and municipal interests retain a great deal of control. This difference was highlighted by a number of respondents. Some commented:

I can see, for example, [a CDC-led BOA] ... has had great, you know, significant number of housing, many of them public/private ventures, you know, has a lot of experience and judgment. ... And similarly [another CDC-led BOA] had a lot of experience with different kinds of things. They are moving along well. But some of the groups like [a CBO-led BOA] never deal with a developer. So I can see where the experience would be very, very different.

I think it's a function of scale and history. You know the smaller, newer, very close to the community ones that have not had a lot of experience. You know most of them, it's hard. They don't know developers and they're very leery of them.

BOAs with stronger prior connection to private developers are moving through the process faster and performing better. A number of respondents pointed to the necessity of forming the connections with private developers in order to implement the BOA plans. Several people commented:

From my point of view the good thing about some of these community groups were they clearly wanted to have a voice but they also tended to be rather realistic. You know I think actually the continuing challenge for the BOA program is to engage private developers. You know do they see the BOA program as being one more layer of, you know, sort of planning and bureaucratic challenges?

There's also this provision in the law that says you really have to talk to the owners, right. It's right in the law.

What are the implementation strategies to how we're actually going to get this pretty plan implemented in the real world? And I think people aren't getting there, maybe people aren't getting there because it's a really hard thing to figure out what you're going to do you know. Because now step three is really you got to talk to the owners, you got to figure out really what you're going to do, and how are you doing to do it and how are you going to get the property owners that are...that end up being uncooperative, either out of there or to cooperate...I think a lot of these projects are getting stuck in step two because the real hard part is just too hard you know.

The question for environmental justice advocates is whether BOA can be used to catalyze institutional change for those groups that do not have private development experience and do not wish to sacrifice their ability to address the social goals that connect them to their communities in order to gain it. Is this the proving ground for the creation of socio-ecologically just governance structures that include communities within the decision-making process and protect ecological functions or rather a justification for business as usual? That is, to what extent does each of these different types of organizations carve out an alternative institutional space which both empowers local communities to plan for redevelopment of their areas and to retain power over land use decisions in their areas after periods of disinvestment have subsided?

#### 6.7d: *The New Partners for Community Revitalization*

The program is faced with the challenge of bringing the sometimes divergent development agendas of CBOs, CDCs, and municipal agencies together within a single stated goal of effectively remediating brownfields. The New Partners for Community Revitalization (NPCR) is a crucial actor in this process as it connects all BOA leaders and operates across CDC, CBO and municipal BOAs. NPCR implicitly recognizes in its work that governance networks do not form out of a blank slate. Rather, these networks must operate within an existing institutional



structure characterized by an existing set of relations. NPCR seeks to shape these relations toward greater power for communities in deciding the outcomes for brownfield redevelopment.

The one constant in the implementation process has been the effort to improve the legislation and implementation that has come from the organization founded by Jody Kass and Mathy Stanislaus in 2002. The New Partners for Community Revitalization (NPCR) was initially funded by the foundations that supported the Pocantico Roundtable process and was housed at the Pratt Institute Center for Community and Environmental Development. Kass's organization connects community development groups with the other interests concerned with land use regulation in New York State. They hold annual forums and issue regular reports advocating for improvements to the Brownfield Law. Eventually, Stanislaus left the organization to work on developing an area-wide brownfield policy at the U.S. Environmental Protection Agency. Since then, Kass has led NPCR and the organization has developed a stable and independent source of funds.

The mission of NPCR is "to advance the renewal of New York's low and moderate income neighborhoods and communities of color through the redevelopment of brownfield sites."<sup>133</sup> NPCR seeks to achieve this mission by serving as an intermediary between community development, environmental, private developer, state government and local government interests. The organization's staff has technical engineering, planning and legal backgrounds, and advocates for better brownfield policies at the state capital. The group has a long-established relationship with local community organizations especially New York City, allowing them to communicate well with interests involved with brownfield redevelopment from all sides of the issue.

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<sup>133</sup> See NPCR Mission Statement at: [http://www.npcr.net/about\\_us/mission.html](http://www.npcr.net/about_us/mission.html), accessed 10 January 2012.

NPCR has been important in providing community development organizations with new institutional arenas in which to operate. The staff members were described by a current BOA sponsor organization representative as “political buffers” who can “go out on a limb on an issue without any one entity having to take the risk of being attached to it [referring to making critical statements about how the city government was handling brownfield policy].” As another respondent stated:

So even though the community groups came to NPCR and said, "Hey, we want to do this." NPCR actually put in the man-hours and they sent out the invitations as, you know, "Well, this is what we do statewide. We are a technical assistance to both groups. We support this work, you know, all, you know, all the way to the north down through Long Island. So we can convene." And it just looks like this is what we always do. And it didn't look specifically like any one group was targeting the city and trying to wring its neck.

In essence, NPCR ensures that community development interests remain a part of the conversation around brownfield redevelopment. One important victory that NPCR has had was to convince the state legislature to pass a linkage requirement between the revised tax credit program and the BOA program in 2008. Now, developers that conform to BOA plans are eligible for a 2% of project cost bonus above what they would be eligible for outside of BOAs. While NPCR continues to fight for an increased percentage, this was a crucial step forward for the group and exemplary of the “long-run” effort with which Kass and her organization has been engaged.

## **6.8| Summary**

In all, both environmentalists and community development interests were heavily limited in the extent to which they could affect brownfield policy due to the actions of private developer and local government representatives during the final negotiations around the 2003 bill. BOA passed, but as one respondent commented, “We’re not even close to being done in this state.”

Rather, BOAs have been in an ongoing struggle to get not only the funding that was allocated to them within the law to do planning, but also the funding incentives for developers to follow BOA plans. Without such incentives, the innovative area-wide planning program that was developed in New York will likely have little effect upon what is actually built in cities.

The environmental and community development interests never found common ground in the New York case. The institutional divide between the two sides could not be bridged because the pragmatic shift that took place within the community development organizations aligned them with economic development interests. Environmentalists saw this as an affront to their interests and the “purist” position refused to participate. The two sides never effectively discussed how cleanup standards might be incorporated into the BOA planning process. As such, the platform for political mediation that arose around regional planning in California never occurred in New York.

## Chapter 7: Synthesis

### Institutional Change in Urban Environmentalism

#### 7.1| Comparison of Cases

The observable differences in the legislative processes of each case can be understood through the lens of heterarchic governance. In California, for a brief moment—and it did not last long—there was a temporary alignment amongst interests competing over land use goals. New climate change policies in the state, coupled with the specific political circumstances around SB 375, created a high degree of uncertainty for all of the organizations involved. In response, they formed a heterarchic governance structure that was labeled “the impossible coalition.” This structure, though, was different than a coalition. It was a moment when the normal power hierarchy around land use flattened and institutional norms were open for discussion.

In the New York case, a heterarchic governance moment did not arise. A comparable level of uncertainty was present due to the demand for brownfield policy in the state. However, the stakeholders splintered within the various policy formulation efforts. Despite the uncertainty created by the demand for new legislation, economic development interests saw no reason to sacrifice their traditional power within urban land use decision-making processes. Ultimately, as was the norm, they made the new legislation work primarily for their interests. While most BOAs are still in the planning phase, and thus development outcomes cannot be measured, a new pattern of growth which combines social and environmental goals is unlikely.

Despite the different outcomes, the basic conditions for heterarchic governance were present in both cases. These conditions include organizational diversity, rivalry amongst interests, the presence of “tags” (i.e. sustainability and smart growth) that enable cross-cutting projects, and a general context of uncertainty over established institutional norms. This chapter

asks, given the presence of all of these conditions, why heterarchic governance emerged in California but not in New York. As well, it examines how the heterarchic governance moment that formed in California relates to larger processes of institutional change.

In the sections that follow, I first examine each of the four basic conditions for heterarchy within the cases. Second, I describe the different political motivations for heterarchy with a focus on the role played by community development and environmental interests. Next, I discuss what this analysis demonstrates about the role of consensus as it relates to heterarchic governance. In any policy area with an entrenched hierarchical power structure, such as land use, there can be no consensus without a heterarchic governance moment. I use the case findings to develop this point. Finally, I contextualize the heterarchic governance moment that occurred in California within larger processes of institutional change, by which I mean transformation of the norms associated with, in this case, land use.

## **7.2| The Basic Conditions of Heterarchy**

The heterarchic governance literature argues that moments of “crisis” wherein established norms are threatened create uncertainty, which can encourage private market actors to give up autonomy in decision-making and state actors to give up top-down authority (see Powell, 1990; Stark, 1996). In doing so, organizations within a heterarchic governance moment have “more than one way of evaluating worth” which provides an increased capacity to solve complex problems (Stark 2000, p. 13). There are, though, a number of conditions that are needed to create heterarchy.

Organizational diversity is an essential characteristic identified within the heterarchic governance literature because it provides multiple perspectives on which possible solutions can

be based (see Stark 2000, p. 13). A wider set of perspectives than are normally represented create the possibility for different, and potentially better, answers to emerge. This is also the stated motivation for bringing a diversity of interests into any participatory governance process. In both cases, the originators of the policy formulation processes engaged a diversity of organized interests because the problems that had to be resolved were too complex for them to handle on their own. The expertise needed was too great for any single interest to possess.

In the political negotiations around SB 375, the bill sponsors had to align housing and transportation policy within diverse regional land use planning regimes. The complexity of the legislative challenge forced the sponsors to bring a number of lobbying groups into the conversation including private developers, local governments, affordable housing advocates, environmentalists, and numerous community development groups. Transportation advocates, public health advocates and regional planning agencies also played a role in the discussions. The stakeholders that were a part of the Pocantico Roundtable in New York were essentially the same as in the California case. They were identified by the organizers of the roundtable as private developers, businesses, local governments, environmentalists, and community development interests. Foundations were also important supporters of the consensus process. The organizations involved in both policy discussions represented a wide set of perspectives on the proper role for land use regulation and thus met the diversity criterion for heterarchic governance.

Rivalry amongst organizations is a likely outcome of organizational diversity. Rivalry leads each of the groups to hold the others accountable according to multiple logics and values and to reflexive questioning of “the assumptions of one’s own organizational behavior” (Grabher 2001, p. 354). As such, rivalry is an important quality which allows inter-organizational problem

solving to achieve better solutions than would a hierarchic bureaucratic or individual market process.

Similar conditions of rivalry were present in both cases. For example, affordable housing and environmental interests in the California case had been at odds for decades over the proper location for new affordable housing construction. Local governments and builders generally sought to play these interests against one another in state-level land use politics. In the New York case, decades of impasse between local government, development, and environmental interests over the best way to regulate brownfields made New York among the last highly industrialized states to pass such legislation. In both cases, the wide range of perspectives amongst organized interests over the proper role of land use clearly related in a rivalrous fashion.

In addition to organizational diversity and rivalry, Grabher (2001) argues that “tags” such as “smart growth” and “sustainable development” are needed to generate discrete projects that cut across institutional boundaries. Tags are discursive mechanisms of integration necessary to create the intellectual justification for diverse groups within a heterarchic governance assemblage to pursue a common goal. They are often characterized by common understandings of broad goals incorporated into simple ideas and phrases, communicated because they seemingly resolve differences of opinion and interests, at least on the surface (see also McGlennan, 2004 for a related concept which he labels “vehicular ideas”). Of the role played by climate change as a rhetorical tool for enabling the creation of the impossible coalition in California, one member of the negotiations argued, “So climate in a sense has provided kind of a new tool to achieve a goal that had never been possible before.” Climate change served as the intellectual justification for the need to change existing land use outcomes. Strong public support for climate change policy led all interests to want to be perceived as supporting such efforts. This

intellectual justification with wide public support reduced the force with which local governments and the building trades supported a status quo model of growth.

Smart Growth served as the “tag” in the New York case. The Brownfield Coalition report stated that one goal was, “Preserving the maximum number of greenfield sites in New York State, preventing continued sprawl and environmental degradation and supporting sustainable development and smart growth for the state’s cities, suburbs and rural areas” (1999, pp. 24-25). Smart growth was a new concept at the time and the tag was used by all interests including those represented on the Superfund Working Group, the Pocantico Roundtable and the Brownfield Coalition. It served as a conceptual frame for a disparate set of goals. Of course the real differences between interests had to be sorted out in the political process, but smart growth, like climate change, performed the role that Grabher points to in providing a tag that justified projects which cut across institutional boundaries.

The literature argues that the primary precondition for heterarchic governance is the uncertainty that arises from a crisis within the established institutional structure. Pervasive uncertainty leads all interests involved to perceive greater benefit in cooperation than in contestation (Stark, 1996; Jessop, 1997). This is the case because groups realize that it is in their own self-interest to negotiate terms rather than risk losing out altogether. For example, Stark and Bruszt (1998) demonstrate that property regimes in postsocialist Hungary were transformed, establishing rights for the property-less, because the interests formerly in power saw greater benefit in giving up some of their centralized control rather than potentially losing it all.

In the California case, the shift to climate change policy as the framework for land use regulation attached the negotiations around VMT reduction and CEQA reform to a perception of political crisis for lobbying interests concerned with CARB’s role in land use regulation. The



political crisis stemmed from the perception on the part of some interests—especially those of local governments and the building trades—that they would be ignored in the regulatory process defined by CARB, and thus a legislative compromise was preferable. However, even within the legislation, there was a great deal of uncertainty about what role CARB would actually play. As well, the public perception of a climate crisis created a strong political demand for legislation. As a result of these dynamics and the fundamental shift in the focus of the bill that occurred halfway through the negotiations, what at first looked like a typical environmental lobbying process that faced heavy opposition from economic development interests became a legislative program with broad support.

In several respects, the level of uncertainty around brownfield legislation in New York was comparable to the dynamics associated with SB 375. The need for a legislative answer to the issue of brownfield remediation was clear to all involved at the time that the Pocantico Roundtable was proposed. The existing Environmental Restoration Program created from the Brownfield Bond Act was only meant to last for a limited time. It ran out of money in 2008. As well, most developers, community development interests, and environmental advocates alike saw the Voluntary Cleanup Program as too uncertain with regard to liability and remediation standards. As one respondent pointed out, “there were rumblings within the environmental community that there was no statutory basis” for the program, meaning its existence could be challenged at any time. As well, when Governor Pataki created the Superfund Working Group, he signaled that environmental remediation policy would be at the top of his legislative agenda. It was generally believed that Governor Pataki intended to include new recommendations for state remediation policy in his next budget proposal for the 1999 session. Despite the uncertainty

about what the new bill would look like and concerted efforts to build consensus, no real alterations to the typical political process around land use occurred.

The cases demonstrate that uncertainty is a necessary but not sufficient condition for explaining the emergence of heterarchic governance in the context of urban environmental planning. There must also be a political motivation for those in power to address the uncertainty. In the California case, the motivations for local government and the building trades to cooperate did not arise until the community development and environmental interests bridged the institutional divide between them. At this point, those actors that are typically at the top of the power hierarchy began to feel uncertain about whether their interests would be represented in the legislation that was created. This motivated the building trades and local governments to compromise and support SB 375. A similar political motivation did not arise in the New York case. The explanation for this difference is explored in detail in the section that follows.

### **7.3| Heterarchic Governance in Urban Environmental Planning**

Efforts to bridge the institutional divide between community development and environmental policy were *not* present at the outset of the policy initiatives, but they became a central dynamic in both cases. California's regulatory structure largely mirrors that of the federal government with regard to the institutional divide around land use. Issues of land use regulation have pitted community development and environmental activists against one another for decades (see Chapter 5) and have been at the center of state-level struggles to develop effective urban environmental policies. Affordable housing advocates in California have fought since the creation of the state housing law in the 1960s to fund more affordable housing in the distant

suburbs where they argue demand is the greatest because the schools and resources are the best. Environmentalists have opposed this strategy because it fuels sprawl development.<sup>134</sup>

As a result of disagreements over how far-reaching the planning mandates in SB 375 should be, the first year of the negotiating process looked very much like a typical environmental land use bill. The environmental groups directly lobbied state legislators to achieve their traditional goals of habitat protection and resource preservation. They were blocked by local development interests including the building trades and local governments. The process was also typical in that there was an effort to position the affordable housing community against the environmental lobby. Local development interests argued to the affordable housing groups that the proposals for land use planning coming from the environmental community would limit the ability to build affordable housing. Far from the unique experience implied by the “impossible coalition” language that came to be used after the bill was passed, year one of the negotiations ended acrimoniously.

During the second year of negotiations over SB 375, though, a “paradigm shift” occurred within the environmental community which bridged the institutional divide with community development activists. At this point, the affordable housing interests were wary of the effects that the initial environmentalist proposal for regional planning would have upon the ability to build affordable housing. However, as a result of the ongoing discussion with regional planning interests and recognition of the political opportunity presented by Senator Steinberg’s elevation to a leadership position, a shift occurred within the environmental lobby’s view on housing construction in the state. Whereas the former position of most environmental interests “had a strong no-growth flavor” in the words of one observer, the environmental groups that supported

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<sup>134</sup> Several respondents in the interviews commented on this long-standing tension between the two interests. See also Landwatch (2011).

the bill pushed for a strategy that favored growth “in the right place.” This was a move toward the regional planning strategy that the Blueprint process in Sacramento exemplified.

Planning played an important political role at this point. The environmental interests that were interviewed cited a “continuous learning process” with regard to regional planning as a major cause for the paradigm shift in their position on development. This learning process, coupled with the political opportunity presented by the elevation of Steinberg to Senate Pro Tem, was the initial move toward heterarchic alignment of competing interests. The influence of the Sacramento Blueprint process infused a more nuanced vision of regional growth and planning than in the early drafts of the legislation. This newly-embraced regional growth model became fertile ground for environmentalists and community development activists to formulate a common picture of what goals would best serve both sides within the proposed planning strategy. In doing so, regional planning served as the political bridge between community development and environmental interests.

The “pro-development in the right place” shift on the part of environmentalists created an opening for affordable housing interests to shift their position. Now that environmentalists had backed away from their “no development” position, the affordable housing interests had to decide if they would also compromise on their push to put housing in all localities, especially in far-flung suburbs. This discussion focused on changes to the application of the Regional Housing Needs Assessment (RHNA) in order to align it with SB 375’s regional planning goals. The affordable housing interests recognized the political opportunity that SB 375 represented and decided to compromise on the application of RHNA. The pragmatic shift on both sides enabled the institutional divide between environmentalists and the community development advocates to be bridged and removed the capacity of opponents to play the two sides against one another. This

was the spark which created the political motivation for a heterarchic alignment powers in the normally entrenched hierarchy around land use.

The shift toward alignment of community development and environmental interests which created the political motivation for the creation of heterarchy in the California case resulted from a pragmatic move on the part of community development and environmental activists. At least for a brief while, the institutional divide between them was removed and the potential for the two interests to be combined within a single urban environmental banner was present. The coming together of community development and environmentalism was one of the key levers that forced the broader “impossible coalition” into existence. Even if the local governments and building associations wished—in typical fashion—to align against the bill, they no longer had the ability to play the affordable housing interests against the environmental interests. Regardless of Steinberg’s position in the Senate, this might have remained an available tactic if the environmental community did not shift their position on regional planning. The historic model of organizational relations which gave local governments and private developers greater power in the land use regulatory regime in California was fundamentally altered.

In the New York case, a similar shift in position within the environmental community did not occur. The facilitators of the Pocantico Roundtable for Consensus on Brownfields argued that the process should be about “leveling the playing field” and that full consensus was needed in order to make that possible. However, the process faced intractable problems to which innovative solutions did not arise. A similar learning process as the one that occurred within discussions about regional planning models never took place. Planning in the New York case was confined to discussions over area-wide development.

While early efforts to align the interests of environmental and community development groups held up within several of the working groups, the connection broke down over the discussion of cleanup standards that took place within the Standards and Institutional Controls group. In the debate over cleanup standards, community development interests were largely aligned with the position of business and municipal interests who sought a more flexible system for the smaller brownfield sites than the stringent Superfund criteria provided. This meant that the “paradigm shift” for environmental advocates that participated in the Pocantico Roundtable would have to be toward an alignment with the needs of economic development goals rather than toward a wider planning framework as was the case in California.

As a result of the inability of community development and environmental interests to bridge the divide between them, the alignment of interests in the New York case was one-sided. Community development interests favored a system for cleanup and redevelopment that responded to the concerns of developers and local governments. In doing so, they radicalized the environmental position. Certain representatives of the environmental community on the Pocantico Roundtable were especially opposed to any shift away from strong absolute cleanup standards. Fiszal-Bieler (1999, p.67) observed that Anne Rabe of the Citizens Environmental Coalition strongly objected to what she saw as an affront to the priorities the group had expressed early on. She saw the discussion “leading toward a complete paradigm shift in the way New York State initiates cleanups and that the members were viewing the brownfield discussion as an economic issue and not as an environmental one.” As such, Rabe opposed such a shift. While several members disagreed with Rabe’s assessment and identified her position as extreme, the planning model which resolved environmental and community development concerns did not

arise in New York. The initial steps toward heterarchy that took place in California did not occur in New York.

In California, the hard line no-growth position was altered via the development of land use planning strategies that took advantage of the political opportunity that SB 375 represented. This opportunity both emerged and was created. It emerged from the fortuitous elevation of the bill's sponsor to a leadership position in the State Senate and the overall uncertainty over climate change policy. It was created by the pragmatic shift toward a negotiated vision of regional planning on the part of environmental and affordable housing interests. Given the institutional history and entrenched hierarchy of interests, heterarchic governance in land use will always require that the uncertainty over future directions of policy be augmented with the creation of political opportunities via the formation of bridges across the divide between environmental and community development interests.

In New York, the political opportunity was not created at Pocantico or afterward. While the BOA program was an innovative land use planning approach to brownfield redevelopment, it was never seen as a possible solution to the cleanup standards issue. Rather, cleanup standards served as an effective wedge between community development and environmental interests such that the question of a common planning approach to the problem was never possible. As a result, mainstream environmental and community development interests remained at odds and the institutional divide between them was not crossed.

In his assessment of the underlying tension that existed in the Pocantico Roundtable process, Jim Tripp of the Environmental Defense Fund argued that the real divide was between those interested in cleanup and those interested in redevelopment. He argued that an urban brownfield program should seek redevelopment while a Superfund program focused on the

largest and worst offenders should focus on cleanup (Fizel-Bieler, 1999, p. 91). In reality, what the participants in the Pocantico Roundtable were learning is that these two issues were much easier to resolve when they were kept in separate regulatory silos. However, as was evident in the tensions that built throughout, this meant that community and environmental interests could be easily played against one another in order to further economic development goals. Once planning strategies began to be made concrete, consensus broke down.

Tripp was incorrect in his assertion that cleanup associated with the Superfund sites and redevelopment associated with brownfields are separate processes. In fact, many Superfund sites, such as the Gowanus Canal and the Hudson River in New York City, are linked to long-term redevelopment and many brownfields have serious questions about the right type of cleanup. The community development and environmental aspects of the issues simply could not be easily separated within urban areas, and this was the real conflict. Tripp was observing that the working groups at Pocantico *wanted* to separate the issues; they *wanted* to consider them in isolation. But when they did so, the overall strategy was incommensurable with either enabling redevelopment or ensuring high quality cleanups.

Community development and environmental groups both suffered in the New York case as a result of the failure to find a planning solution that would bridge the institutional divide between them. The environmental position on cleanup was largely absent from the legislative proposals that were developed. As well, while community development interests did win passage of the BOA program, they did not get enough resources to fully develop or implement their plans. Not only were incentives not tied to BOAs, BOA lobbying was used to legitimate a clearly illegitimate structure of tax credits which developers rapidly abused until the state was forced to remove all financial incentives. This left BOAs with few resources for implementation. The



person accused of creating this situation by lobbying behind the scenes to inflate the tax credits was described as an anti-environmentalist developer. Clearly, community development activists and environmentalists face common challenges in the process of creating urban environmental policy and both sides suffer when they do not bridge the institutional divide between them, eliminating the possibility for a heterarchic governance moment.

#### **7.4| Heterarchic Governance and the Role of Consensus**

The relationship between heterarchy and consensus was inverted in each case. In New York, the organizers of the Pocantico Roundtable employed consensus building processes in the beginning before the questions of power within the political arena were addressed. In California, the sponsors of SB 375 employed consensus building only after the open political negotiations over the right direction for the bill were complete. While it is possible to flatten power hierarchies within formal consensus processes, this study demonstrates that organized efforts at consensus building are not necessarily better at creating the heterarchic governance conditions necessary for effective urban environmental policy than open political negotiations. At the Pocantico Roundtable, the confines of the formal consensus process limited community development groups from going outside of the discussions in order to address their concerns. As such, open political negotiations would have been a better format for community development interests wherein they might have resolved their concerns before they escalated to full conflict. This, in fact, was the structure that the Brownfield Coalition adopted.

The consensus-building process that Pocantico employed brought everyone to the table, but it could not make them leave behind the wider institutional context of land use regulation in New York and it could not affect external processes. The flattening of the traditional power

structure associated with heterarchic governance did not happen prior to negotiations in Pocantico. Rather, the traditional business and government alignments were strengthened by the creation of the Governor's group. As a result, the dynamics that pit environmentalists against community development activists remained. This was evident especially in the moves by CEC and NYPIRG to undo any hope of consensus toward the end of the second Pocantico retreat. The Brownfield Coalition which ultimately shaped the BOA program and carried it forth in legislation was representative rather than transcendent of the pre-existing institutional divide between environmentalists and community developers. As well, the implementation process for BOA remains challenging as a result because the groups are still dealing with this issue; BOAs that do not have strong development capacity are doing worse than those that do.

The Pocantico Process at the beginning of the brownfield legislation negotiations can be compared with the marathon consensus-building sessions held to decide the final language of SB 375. Before Senator Steinberg made his final push to create a document that would express a compromise position from all interests, the political negotiations around SB 375 had been going on for a year-and-a-half. The various interests had all agreed to support the concept behind SB 375. Only at this point did Steinberg engage in a serial negotiation process where he called each set of interests into his office to discuss terms and then called the next until he spoke with everyone. He did several rounds like this until some form of agreement was reached. He then sat everyone down together and explained the points of agreement. This led to a draft bill that all of the competing interests supported.

Heterarchic governance is a pre-condition for successful consensus over land use policy. In certain circumstances, formal consensus building processes can create these conditions. They can temporarily flatten power hierarchies by seeking accommodation of all interests through the

process of building mutual understanding. But they cannot pretend that hierarchies are not present. What the formal consensus building process could not do in the New York case is control circumstances outside of the Pocantico Roundtable. For this reason, most practitioners of consensus building recognize that the process is not useful in all circumstances (see Innes and Booher, 2003). This is especially the case where power hierarchies are deeply entrenched. Unless some political motivation for those at the top to give up their authority is devised, the consensus process cannot be effective. Open political negotiations do not have any guarantees of being able to reduce hierarchies, but they are sometimes more appropriate for doing so.

### **7.5| Heterarchy and Institutional Change in Urban Environmental Planning**

In both of the cases analyzed, community development and environmental interests were comprised of “purist” and “pragmatist” views. One environmentalist described the positions within the discussion of cleanup standards in the New York case:

There was within the environmental community...a divergence of view between what I call...the pragmatists and the purists. And...the purists wanted... the most stringent possible cleanup standards, everything cleaned up, the groundwater cleaned up.

The respondent went on to describe the pragmatists as more willing to discuss standards that would balance the need to redevelop brownfields in a timely manner with the need to achieve safe levels of remediation.

Likely, all of the interests involved with the policy discussions analyzed here had a “pragmatist” and “purist” camp. Community development activists in both cases described divides amongst their constituencies over whether or not they should engage with the proposed pieces of legislation. Regional planning interests in California described a similar internal division. The California case, though, provides an example of how relations across these two

camps shape processes of institutional change. Heterarchic governance in the California case was essentially an alignment of the pragmatist positions, but it opened up new opportunities for the “purists” to affect regional planning. A close examination of the early implementation phase in California demonstrates how urban environmental activists are both supporting certain aspects of existing institutional norms and creating new opportunities for progressive interests to change existing norms.

The move to form a regional planning bridge between the institutionally divided community development and environmental activists in the California case was driven by the pragmatic camp of the California environmental advocacy community. The shift from a “no growth” to “growth in the right place” position on the part of the pragmatists was an essential pre-condition for the creation of a heterarchic governance moment. It led to urban environmental interests being considered on equal footing relative to local governments and private developers when it came to the goals of land use planning. As a result of this activity, SB 375 has created new opportunities for grassroots social equity groups that represent the “purist” side of the environmental and community development worlds (e.g. community based organizations, environmental justice groups, and local public health groups). These groups were not a part of the policy negotiations around state land use policy but have been given a new institutional arena in which to be heard.

For example, the call for inclusion of social equity as a criterion in developing regional greenhouse gas reduction targets came from the newly-formed ClimatePlan. The ClimatePlan coalition is comprised of groups from various interests across the state (see Appendix 9 for a full list). It was formed immediately following the passage of SB 375. Its stated goal is to advocate for the creation of urban environmental policies in California that “protect our climate, our

health, our communities, and our environment.” Its priorities include “building and supporting diverse coalitions in key regions”, “developing a stronger, broader movement for sustainable transportation and land use in California,” and pushing for strong implementation of SB 375.

The ClimatePlan coalition was active in advocating for a strong directive from the Regional Targets Advisory Committee (RTAC) for high targets to be set. It also sought to ensure that the regional models being developed to measure the expected greenhouse gas reductions were robust and reflected considerations such as the social equity impacts of land use interventions. As well, ClimatePlan and other grassroots groups have been active in the new land use planning efforts around the creation of regional Sustainable Communities Strategies. In all, the RTAC, the regional modeling process, and the SCS have been new institutional arenas for “purist” voices to shape urban environmental planning efforts across the state.

“Purist” demands within the new institutional arenas are setting the conditions for future pragmatic shifts. In this way, land use institutions are changed. The pragmatic shift which enabled heterarchic governance to form represents the immediate move toward a new set of institutional norms. It was not a revolution, but a re-alignment of powers within existing institutions that created opportunities for a new set of institutional norms to be supported. The “purist” actions in the new institutional arenas that were created by the pragmatists’ newly aligned agendas offer a future trajectory for change. Thus institutional change understood as the combination of heterarchic governance moments and the new institutional arenas that those moments open up contain a mechanism for immediate changes to the institutional norms and a future path for new directions of institutional change. As such, heterarchic assemblages support the view that institutions tend toward change because “any society that is organized along one order of worth is inherently fragile” (Velthuis, 2009, p. 1010).

Of course, the types of changes which this process creates can be either progressive or conservative. Urban environmentalists must engage this meso-level force for institutional change that combines pragmatic and purist tendencies through the creation of heterarchic alignments that open up new institutional arenas for action. If they do not, the more conservative forces that seek to shape land use policy certainly will. Urban environmental planners must carve out their own space between dominant institutions and contentious political movements. They do so by combining organizational infrastructures across multiple movements and institutions. The actions of urban environmental planners, then, work at the boundaries of the existing institutions associated with land use. Urban environmental planners need to embrace this liminal institutional space in order open up new arenas for progressive voices.

## **Chapter 8: Conclusion Findings, Limitations, and Future Research**

### **8.1| Summary of Findings**

This study was organized around three questions: (1) What is the extent of the institutional divide between community development and environmentalism? (2) Why do alliances form across community development and environmental interests in land use policymaking and what are the barriers to such alliances? (3) How do these alliances alter land use institutions? It focused on how contemporary organizations form bridges across the institutional divide between community development and environmental interests. These bridges, it is argued, have the potential to affect the structure of the organizational fields that normally direct land use regulation. As a result, they can create longterm institutional changes that reflect the goals of urban environmental planners.

The purpose of the case study analysis was to understand better how community development and environmental groups dealt with the institutional divide between them. The political dynamics observed in these cases are reflective of a decades-old effort on the part of planning interests to leverage the capacity of states to regulate land use in a more comprehensive manner. Throughout the postwar growth period this focus has not been prominent for state governments, which have sought instead to increase economic development. The emerging intellectual frame for urban environmental planning, though, is creating an opportunity to compel legislators to rein in the expansion of ecologically and socially destructive land use patterns. In the sections that follow, I review the results for each question, outline some of the limitations of this study, and offer some directions for future research. As well, I contextualize the findings within a larger set of research interests.

### 8.1a: *The Institutional Divide*

*What is the extent of the institutional divide between community development and environmentalism?*

In order to discern the extent of the institutional divide between community development and environmentalism, this study utilized archival analysis of documents related to the 1970s debate over national land use policy. The proposed National Land Use Policy Act and competing bills put forth in various forms between 1970 and 1975 would have required that states take an active role in limiting the negative social and environmental impacts of suburban sprawl. As well, the land use regulatory directives of the federal agencies involved with community development and environmental policy would have been clarified. In the end, though, an effective model for bringing these two issues together within a single land use planning program was not forthcoming.

Weir (2000) argued that urban interests viewed environmental interests as potential competitors for federal resources and largely saw the National Land Use Planning Act as an environmental bill which might usurp HUD's regional planning capacity (pp. 203-204). This study largely supports Weir's assertions about the dynamics behind the National Land Use Policy Act, but adds archival details that describe the internal position of HUD and the Nixon administration. As well, this study expands upon Weir's argument. It finds that the failure to pass legislation was representative of a more fundamental quality of land use institutions. It solidified a divided institutional structure for urban and environmental policymaking that became entrenched at all levels of government. This division remains a major challenge for state-level efforts to create urban environmental planning initiatives.

The analyses of HUD and Nixon administration documents demonstrate the extent to which community development and environmental agencies and legislators that were shaping



federal policy in the 1970s had little interest in combining the two issues. As a result, the old divide between urban and environmental issues got solidified at the federal level and replicated at the state and local levels. This outcome has meant that state and local governments have had to devise their own strategies for developing effective urban environmental policy. While lower level governments do have autonomy in the land use policies that they create, the existence of an institutional divide between community development and environmental interests has been a difficult challenge to overcome.

#### 8.1b: *Heterarchic Governance*

*Why do alliances form across community development and environmental interests in land use policymaking and what are the barriers to such alliances?*

The heterarchic governance literature finds that competing organizations align their activities in response to conditions of uncertainty. This study supports this finding, but also finds that, in the context of land use policymaking, uncertainty is not enough. Community development and environmental interests must bridge across the institutional divide between them in order to create the political motivation necessary for those at the top of the entrenched power hierarchy around land use to collaborate. Therefore, this study adds to the heterarchic governance literature a focus on the specific reasons for the initial flattening of hierarchy beyond general conditions of uncertainty.

In both cases, there were conditions of organizational diversity, rivalry, and uncertainty within the context of cross-cutting projects. There were also boundary-crossing “tags” that created an intellectual justification for collaborative action. Additionally, there was a general sense of institutional crisis around regional planning and brownfield redevelopment. The ideological tension between “pragmatists” and “purists” was also present in both cases. These

conditions, though, were necessary but not sufficient to create heterarchy. The first year of negotiations around SB 375 and the entire process of negotiating the New York brownfield law demonstrated this fact.

In the SB 375 negotiations, the coalition between community development (e.g. affordable housing) advocates and environmentalists combined with fortuitous political circumstances to create an alignment of competing interests around land use laws. The shift toward climate change policy as a means for addressing VMT reduction in the state attached the environmental planning effort that came to be expressed in SB 375 to the prior legislative mandates of AB 32. AB 32 empowered the California Air Resources Board (CARB) to regulate all sectors of activity that generated emissions. The potential entrance of CARB created a crisis for all stakeholders in the land use regulatory community who began to see changes to the status quo as inevitable.

However, it was not until the coalition between environmental and community development interests fueled the sense of inevitability that local governments and developers actually altered their normal position with regard to land use policy. During the first year of negotiations, despite the connection with AB 32, local governments and developers effectively opposed SB 375 and forced it to become a two-year bill. At the start of the second year, though, community development and environmental interests shifted their positions in order to align their interests. The coalition was a key factor that motivated the building trades to make a deal which then forced the local governments into support for the bill. The organizational dynamics that arose opened up a wider range of possible outcomes for land use policy than in the past.

In removing the normal hierarchical dynamic wherein the community development and environmental interests could be played against one another, the connection across the two sides

changed the relationship among all other stakeholders. The “impossible coalition” that resulted was comprised of private developers, local governments, affordable housing advocates, environmentalists, and numerous community development interests, among others. In the end, it was both the general sense of uncertainty created by the entrance of CARB in the land use regulatory community and the specific political motivation created by the bridge that formed across the institutional divide between community development and environmental interests that allowed the “impossible coalition” to take shape. The California case, then, represents a heterarchic governance moment, and demonstrates the specific conditions under which such moments are created within the context of urban environmental policy.

In the New York case, the Pocantico Roundtable for Consensus on Brownfields dissolved without producing a final document because of the inability to find common ground over the issue of cleanup standards. In the end the only alignment that occurred was between private development and community development interests. This alignment was reflected in the one-sided membership and recommendations of the Brownfield Coalition. Because the institutional divide between community development and environmental interests was not bridged, heterarchy was not possible.

There were conditions of uncertainty in both cases but heterarchic governance is a specific political moment that also requires concerted political action. For urban environmentalism, heterarchy is contingent upon community development and environmental coalitions in order to re-align land use governance networks toward a flattening of the traditional power hierarchy. In such a circumstance, judgments over the values that should be expressed in urban development are open for discussion.

### *8.1c: Institutional Change*

#### *How do these alliances alter land use institutions?*

Heterarchic governance describes how organizations manage processes of institutional change. It is not in itself the mechanism that makes change happen. In order to create institutional change which alters the building culture of cities toward a more sustainable form, the heterarchic governance process must be combined with new institutional arenas for action.

In the California case, social equity-oriented coalitions such as ClimatePlan were empowered to affect land use planning through the SCS and RTAC processes. As well, numerous social equity groups have begun to advocate for and negotiate around the creation of new variables for the regional travel demand models used to estimate greenhouse gas emissions. Additionally, the use of CARB as a final arbiter for whether the SCS mandates enough greenhouse gas reductions creates a new mechanism for environmental interests to affect land use. Taken as a whole, the heterarchic governance moment and the new institutional arenas that it opened up formed a force for institutional change in California.

In the New York case, the shift toward heterarchy never occurred. The “pragmatists” within the environmental and community development advocates did not find common ground. As a result, they were played against one another and no political motivation for developers or local governments to flatten the existing power hierarchy arose. The new institutional arenas that were created within the BOA process did not reflect the same wide set of interests that the flattened power structure enabled in California. They provided little opportunity for progressive interests to enact new programs that went outside of established norms. Rather, the BOAs still reflected the focus on economic development that local governments and developers sought to maintain. In short, no counter-institutional force arose.

This study argues that urban environmental planners must embrace a counter-institutional position which ensures the continued operation of certain aspects of existing institutions and forms the basis for larger processes of institutional change. What results from this research, then, is a model of institutional change wherein the “pragmatists” create the shifts toward heterarchy that then open up new opportunities for the “purists” to change practice. This more specific model of institutional change and the actions that will lead urban environmental planners toward it is the primary addition to the urban environmental planning literature that this study provides.

### **8.3| Limitations of the Study**

This study examines policymaking processes in two states with highly urbanized populations that favor environmental regulations more so than most areas of the country. As such, support for statewide urban environmental policy is likely higher in these states than elsewhere. While this perhaps limits the generalizability of the findings, the case studies do establish the minimum necessary conditions for successful state-level urban environmental policymaking. If a policy approach is unsuccessful in these cases it is unlikely to be successful anywhere.

As well, the analysis of the cases is limited in its theoretical scope. My focus is upon the role of heterarchic governance and the importance of bridging institutional divides within specific organizational fields defined by the stakeholders. There are several limitations and challenges to this analytic frame. First, the role of race and class in structuring the social relations that are embedded in the institutions that I analyze is peripheral to my analysis. Certainly, the middle-class and mostly white status of the environmental movement as opposed to the more non-white community development field has long-represented deeply embedded

tensions over these issues. The goal of this study, though, was to outline the extent of the divide between community development and environmental institutions in terms of the formal governmental apparatus that represents them. As any good history of these movements explains, race and class dynamics are inherent to the creation of the governmental agencies in the 1970s. However, this study sought to focus on the final expression of these dynamics within the formal policymaking process.

The heterarchic governance frame is also largely removed from the role of leadership. There were important figures leading each of the policy efforts. These figures had prior positions relative to the stakeholders involved that shaped the possibilities for action. The role that these leaders played in creating the alliances that led to heterarchy is an important issue to consider, though outside of the scope of this analysis.

As well, the use of the organizational field as a unit of analysis has limitations in terms of the knowledge of social processes that can be derived. Bruno Latour (2005) has argued that rather than classifying actors as part of a pre-given class—i.e. as operating within a certain predefined set of norms, or within a given structure such as capitalist society, or a given analytic classification such as a field—that analysts should simply observe the associations of actors and, from the empirical reality of these associations, derive the social dynamics at work. For Latour, use of the organizational field— and of any unit of analysis other than the individual actor— limits the types of associations that can be observed.

Because the cases presented here are defined by a specific policy formulation and implementation cycle, the organizations that are a part of these cycles are specified in advance. Their associations, as Latour asserts, comprise the most important variable to understand in analyzing processes of institutional change. However, for the sake of delimiting an analytic focus

that will be of use to urban environmental policymakers, the organizational field of actors was specified. The associations, though, between actors are not the only relevant factor. It is also important to understand how existing land use institutions have encouraged and discouraged associations in the past, and the extent to which that has changed.

Latour's critique relates to the method of analysis used to understand the existing structure of community development and environmental institutions. Throughout the national land use debates that occurred between 1970 and 1975, there were a number of interests beyond those of the federal agencies and President Nixon's administration. This study does not closely analyze the role played by advocates, lobbyists, local organizations, and campaign donors in shaping the national land use policy debates. These interests clearly were a part of the discussion and inclusion of their perspective would likely make the motivations of the agency staff appear less uni-dimensional. However, the goal of the historical review in this study was to delineate the extent to which the community development and environmental institutions were divided in the wake of the 1970s birth of this regulatory structure. As such, the agency perspective is the most relevant with regard to the formal policy structure that took shape at the time, regardless of the motivations for the priorities that were decided.

A more complete analysis of the historical period would include a wider set of actors and would avoid the a priori designation of agency staff as representing a certain position. That this study does not follow this path is a symptom of time, resources, and limited space, but also of its narrow purpose. I sought to use the history only to set the institutional context for the case studies that follow. In all, the limitations of the theoretical and historical analysis point to the need for future research to account more specifically for the role of actors beyond the formal policymaking process.

In addition, this study does not account for the role of local and municipal policies in urban environmental planning. The focus within this study has been on the state as an important, but neglected level for creating land use policies. However, numerous cities have developed urban environmental policies in recent years. The aggregate effect of such policies is likely to have a noticeable impact on the way cities are built.

#### **8.4| Directions for Future Research**

Overall, this study informs several new directions for research. First, the findings presented here would benefit greatly from comparison with a wider set of cases. There is a need for comparison with other state policies in less supportive political environments and across a wider set of urban environmental planning issues. Second, there are a number of additional theoretical frames that could be used to analyze these cases. For example, the role of charismatic leaders could be analyzed. As well, the established frames of urban political science including the “growth machine” and pluralism perspectives could also be useful. Additionally, it would be possible to view these cases as instances of “civic innovation” as outlined in recent literature on governance.

As well, within the cases there are a number of issues that remain unexplored. In the California case, the Sustainable Communities Strategies that are being developed as part of the mandate from SB 375 contain several processes that are important for urban environmental planners to understand better. First, the use of travel demand models in the process of estimating greenhouse gas emissions from each region presents a number of issues. A common adage for such models is that they are only as good as the data that is put into them. Regions throughout the state are currently standardizing the methods that they use for estimating the travel and land



use demands. As well, a number of planners are interested in using the models to increase public participation in regional planning processes. They hope to make the models more than just sophisticated tools for developing estimates of regional growth, but also a means for visualizing and sharing various scenarios for growth with the public to help them make informed decisions about desired regional planning regulations. Related to this effort, a number of social equity advocacy groups are learning about the regional modeling process and are seeking to affect the types of variables that are included. They are asking how these models might reflect social equity goals and what kinds of variables are needed to do so. All of these efforts are important for the planning field to understand better and all are worthy of further analysis.

Also in the California case, the SCS process itself is in need of closer scrutiny. This study focused on the policy formulation process, but the outcomes of the policy are only briefly touched upon. The process around the regional SCS plans needs to be analyzed with regard to what interests are involved in the process and how they reflect the dynamic established in the formulation phase. It is also important to analyze how public participation, which was not specifically outlined in the law, is used within each region. The differences in terms of planning outcomes and processes across the regions needs to be explained in order to understand better how the legislation operates within the various political contexts throughout the state.

Additionally, the role of co-optation in social movements (see Piven and Cloward 1977 as a key example) must be resolved for the California case. As one interviewee noted, this is related to the question of whether “real change” has occurred. It is difficult to know how effective the policies will be with regard to changing the building culture of cities in California. The policy is still in the early implementation phase and it remains to be seen whose interests will be the most served in the end. Selznick (1949) argued that co-optation generally occurs

within the context of larger institutional processes, but that is not the only result. Rather, it is a part of the institutional changes created. It is likely that this mixed result will also occur here. At least in California, it seems most likely that there will be a shift in the way that land use is decided, but the climate change program will also be co-opted by pro-growth interests to serve their ends. It remains for future research to decide which side benefits the most.

In the New York case, the networks of organizations that each BOA utilizes need to be better understood. This study analyzed the organizational networks of the earliest BOAs designated in New York City. Since the research was completed, 12 more BOAs have been designated in New York City and many more have been designated throughout the state. Further analysis of the changes in organizational networks for BOA groups would allow for a better understanding of the long-term effects that the policy will have on the ability of local community based organizations to affect brownfield redevelopment. The New York Case also raises issues for public participation. How each of the BOAs engaged differently with processes of public participation needs to be better understood.

Both case studies are in the early implementation phase. As such, they provide opportunities to follow the actual development effects that are seen as a result of the planning processes. Future analysis of the actual development that occurs in both cases would allow the overall impact of each policy to be concretely understood. Ideally, knowledge of observed results for development in the two states would be coupled with the understanding of the institutional arrangements that led to each program on which this study focuses.

The historical analysis of the 1970s debate over national land use policy also presents several opportunities for further research. The role of the interests beyond those represented in the federal archives need to be better understood. The question of how specific actors from the

advocacy and lobbying world impacted the legislative process would fill out the storyline presented here. As well, the role of community development and environmental groups in other federal policies with a land use component would complement the study presented here. Policies including NEPA and the FWPCA contain substantial land use regulatory roles for federal agencies. It would be useful to understand if community development and environmental interests positioned themselves differently in these policy debates.

### **8.5| Recommendations for Policy**

This study demonstrates that state-level urban environmental policymakers need to shape their policies in two ways: (1) they need to empower “new entrants” in the land use regulatory arena and (2) they need to create incentives for the institutional divide between urban and environmental interests to be bridged. The first goal requires that urban environmental policy be thought of in a wider frame than is typical for land use planning. The second strategy requires that urban planning be used as a tool for political mediation and that the federal roots of the institutional divide between urban and environmental interests be addressed.

In order to create “new entrants” in local land use regulatory structures, urban environmental planners need to work in arenas outside of land use planning that have implicit land use goals. For example, in the California case, SB 375 was built upon a greenhouse gas reduction policy that had no specific requirements for altering land use. State-level urban environmental policymakers in California began from a much wider base of justification for their policy actions than narrow land use goals such as transit-oriented development or brownfield redevelopment permit. The potential threat that this agency represented was the single most powerful policy tool that urban environmental planners had in the process of formulating SB

375. The tool was created through a policymaking process around greenhouse gas reductions that made no mention of land use, but implicitly contained land use goals.

Urban environmental policymakers must primarily work to create the types of foundations for action within the land use regulatory structure that AB 32 enabled. Of course, AB 32 is not possible in all states. California is a unique policy environment and is the only state with such a forceful set of laws focused on addressing climate change. However, there are numerous climate change laws being created in other states and localities. Policymakers creating these laws, even if they are not as robust as California's, could build the "new entrant" strategy into their formulation. That is, beyond the typical list of greenhouse gas reduction goals, good climate change policies should seek to create regulatory powers for new or existing agencies that would allow them to cross over into the land use arena. This would help to create the conditions of uncertainty that drive land use regulatory interests toward heterarchic governance moments.

However, heterarchic governance is about more than uncertainty. The specific political motivation for urban and environmental institutions to be bridged must also be present. The presence of a motivation for community development (i.e. urban) and environmental interests to combine their goals rather than compete hinges on the type of land use model proposed. In the end, any urban planning model must simultaneously embrace the pragmatic and progressive aspects of land use goals. The land use model must appeal to the "pragmatists" on both sides. This allows for a pragmatic shift which, if linked with a heterarchic governance moment, can create new institutional arenas for the "purists" to push for more progressive changes to the institutions that guide land use. Thus, the planning model employed during the policymaking process should be focused on finding pragmatic connections between community development and environmental interests. The urban planning model that follows once the new institutional

arenas are created from this pragmatic shift must be focused on pushing the pragmatists further so that the next alignment of interests moves toward more progressive planning goals. In doing so, policymakers can direct processes of institutional change around land use.

If either the pragmatic or progressive model for planning is missing in the policy conversation, then the results will be either institutional growth or stasis. Institutional growth may serve the interests of community development *or* environmental advocates, but it will not lead to new norms for city building that reflect both social and ecological goals. Thus, policymakers working toward state-level urban environmental policy need to use planning as a political tool which balances the pragmatic and purist perspectives on both sides. In the regional planning model that was employed in the California case, this occurred because the shift toward development “in the right place” on the part of the environmentalists allowed the pragmatic representatives of community development to align with them. It also helped to create a policy that opened up new institutional arenas within the SCS planning process for “purist” interests to be heard.

Ultimately, it is necessary for urban environmental policymakers to sort out the institutional divide that separates community development and environmental interests at the federal level. Currently, transportation policy is the main driver of regional planning in the country. The Department of Transportation (DOT) requires that regional planning agencies create transportation plans in order to receive funding. However, there are very loose requirements on the powers that these agencies must have. Housing and community development policy is controlled by HUD. Environmental policy is controlled mostly by the EPA. Recently, DOT, HUD and the EPA have begun to align their work within the Partnership for Sustainable Communities program. This effort, though, has been given limited funding and remains a very

small portion of the agencies' activities. As well, the staff that work on the Partnership for Sustainable Communities remain in each of the separate agencies. There is no joint infrastructure for dealing with the combined issues of transportation, housing, community development, and the environment within a single regional planning framework at the federal level. The Partnership for Sustainable Communities is a small step in that direction. In order for the states to create urban environmental policies that truly combine social and environmental goals, support for such policies must come from the federal government. This infrastructure must be made more robust.

In the end, state-level urban environmental policy can either be a new title for existing development patterns or a new strategy for building cities that incorporates both social and environmental interests. The former approach uses the rising popularity of urban environmental planning and the "tags" associated with it as justification for "re-branding" the current model of growth; the latter changes the current model of growth. Marcuse supports this argument in his critique of sustainability. He argues that the promotion of "sustainability" may simply encourage the sustaining of the unjust status quo" (1998, p.103). He presents several examples from housing and urban development where policies labeled "sustainable" furthered inequitable treatment of residents. If urban environmental policymakers do not find ways of creating institutional change which reflects both social and environmental goals, then all that will result is a hollow form of sustainability.

## **8.6| Concluding Remarks**

For some, urban environmentalism is an oxymoron. This is because urbanization and environmentalism are difficult forces to reconcile in the context of American industrialization.

Urbanization has provided many benefits for people that live within cities, but it has also been a physical expression of social inequities. It potentially enables large populations to live with a minimal impact on the environment, but also fuels mass production systems that simultaneously foul countless acres of raw nature and support expansive development into sensitive habitat areas. Community development and environmentalism were founded as social movements that sought to minimize the negative aspects of urbanization, realizing its positive potential. In the minds of many working to develop land use policy today, the dialectical relationship between “urban” and “environment” is leading to a synthetic position. This position seeks to enhance the sustainable aspects of city life and respect natural processes. Within it, force and counterforce are part of the same effort.

Urban environmental planners have developed numerous technological solutions for reducing the ecological impact of cities, but the ability to implement these solutions on a wide scale remains limited. This has been the case because the urban environmental challenge is not about changing one aspect of the quality of life within cities, as with a typical reform effort, but about changing the whole of the U.S. building culture in the name of ensuring a quality of life for all. In its ideal form, urban environmental planning alters the “the coordinated system of knowledge, rules, procedures, and habits that surrounds the building process in a given place and time” (Davis, 2000, p. 5). Its paradigms for action are meant to create more compact growth patterns that restore urban ecosystem services (e.g. water filtration and microclimate regulation) and are supported by transit, low impact building technologies, and renewable energy infrastructure. This new framework for urban development would produce a new building culture that leads to “buildings, millions of them, that are...understood and predictable” within the context of urban environmental planning goals (ibid.).

Increasingly grassroots activists and planning scholars recognize that one difficulty faced by urban environmental planning is the divided institutional structure of land use regulation which repeatedly pits community development and environmental interests against one another. The “policy silos” that have kept these two sides in distinct institutional arenas block efforts to create ecologically sound and socially just cities. Too often, activists seeking greater social equity and community empowerment are played against activists seeking to protect the natural environment. Increasingly, though, planners have sought to create strategies that allow them to leverage the power of coalitions in order to strengthen the position of both groups within governance processes.<sup>135</sup> The broad goal is to develop a coordinating framework for land use decisions that accounts for social and natural impacts of urbanization (see Miller and de Roo, 2004, Chapter 1).

However, there is no way to talk about changing the relation between cities and natural resources without talking about changing the system which drives urbanization. The city-specific nature of most urban reform efforts and the non-urban focus of conservation-oriented environmental groups allows the veil between cities and wider systems of resource extraction to be maintained. To leave the gap between community development and environmentalism unaddressed serves a pragmatic purpose for these groups in that it does not force either side into the politically difficult position of questioning the basic values and practices embedded in the “progress” and economic growth of cities. While many urban reform organizations may not find such questioning to be problematic on a moral or philosophic level, it creates difficulties in the political context of competitive resource dependence, as exemplified in the 1970s battle over control of national land use policy. As such, advocates must find ways of minimizing the

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<sup>135</sup> For example, in New York community based organizations have sought to direct environmental regulation related to brownfield redevelopment and in California environmentalists have sought to connect their interests with community development advocates in order to link land use planning with air emission controls.



political risk of such a position by creating heterarchic governance moments around urban environmental policy initiatives. In doing so, they spread the burden of reshaping the building culture of cities across a wider set of interests and increase their ability to create institutional change.

With so much at stake, planners cannot rely on the hope that more environmentally conscious cities will effortlessly arise from new ideas (or repackaging of old ones), or worse, that maintenance of the existing norms of the built environment is acceptable. It is clear that a new building culture is required. Planners need a specific idea of how their work connects to processes of institutional change in order to bring that about.

The 1960s and 1970s saw a push toward realizing the goal of using land use planning as a means for answering both social and environmental problems in cities. However, the series of federal and regional agencies created at the time are in need of updating. HUD, the EPA, and regional Councils of Governments (COG) all have the potential to increase the role of metropolitan planning. This study demonstrates that there is room for urban environmental planning research to analyze the shortcomings of these agencies and devise the next generation of institutional structure that is required to create a more sustainable building culture in American cities.

By arguing for an institutional focus in research on urban environmentalism I am not discounting the utility or correctness of the other existing perspectives on urban environmental practice. Rather, especially when it comes to the issue of market-based technological innovations versus larger structural changes, I am trying to carve out a synthetic position between these perspectives. The goal is to direct the focus of the field toward the meso-level of social practice that allows us to understand precisely how new innovations are translated into institutional

structures. In doing so, the field of urban environmentalism can move forward with a dual agenda of improving the technologies used to build cities and improving the capacity to incorporate those technologies on a wide scale.

This goal has application beyond urban environmentalism. The model of institutional change offered here which links heterarchic governance processes with the creation of new institutional arenas for action is useful for analysis of any area that must work across policy silos. Urban environmentalism is a prominent and clear example of such a case.

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## **APPENDIX 1.** Interview schedule for semi-structured interviews for the two case studies.

### **Interview Schedule**

These questions are meant to draw out the general context of the discussions around the policy and the position each organization took. They are semi-structured prompts for the main issues of concern. Respondents will be asked to elaborate on points that they raise as being of concern or important to the context. This first part of the interview is expected to last roughly 45 minutes. The first part will be followed with a request that each respondent fill out a structured survey (attached). The survey is meant to provide standardized formal data on who each organization worked with and how that changed within the policy formulation process. The survey portion of the interview is expected to last 10 to 15 minutes. The survey data is suitable for formal network analysis while the semi-structured interview data provides the essential context for the dynamics observed within the networks.

- 1) How did you first come to be involved with this legislation?
- 2) What were you hoping to accomplish through your involvement?
- 3) How does this legislation affect your organization's broader goals?
  
- 4) Can you tell me about the strategy used to formulate this bill?
- 5) Who took the lead in the policy formulation process? Did you work much with them?
- 6) Were there specific concerns from community organizations? Can you offer an example?
- 7) Were there specific concerns from environmental groups? Can you offer an example?
- 8) What was the role of government agencies? Can you offer an example?
- 9) What was the role of private developers? Can you offer an example?
  
- 10) Who had the strongest disagreements about what the bill should contain? How were they resolved?
- 11) Did you have any conflicts with specific groups in the process of formulating this policy? How were they resolved?
  
- 12) Once the bill was formulated, what was the general strategy used to get the legislation passed? Can you offer an example?

#### **ADMINISTER SURVEY**

- 13) Is there anything I am missing? Additional issues of importance?

**APPENDIX 2.** List of public meetings attended for the New York state case study.

**April 27 & 28, 2009:** NPCR held its Brownfield Summit III in Albany on April 27 & 28, 2009.

**December 1, 2010:** NPCR held its 3rd Annual Brownfields Forum entitled: *Evolution of Brownfields: From Policies to Partnerships*.

**June 6 & 7, 2011:** Over 120 participants and representatives of 50 BOA communities from around the state participated in the 5th Annual Albany Summit

**2009-2011:** New York City Office of Environmental Remediation Brownfields Workshops, 2 per year

APPENDIX 3. Fred McGlaughlin Draft Comments on Henry Jackson's S. 3352 (1970)

HUD-28 Rev. 2-67

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
**ROUTING SLIP**

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ACTION  
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 AS REQUESTED  
 CONCURRENCE  
 CORRECTION  
 ANSWER OR ACKNOWLEDGE ON OR BEFORE \_\_\_\_\_  
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FILING  
 FULL REPORT  
 HANDLE DIRECT  
 INITIALS  
 NOTE AND RETURN

PER CONVERSATION  
 RECOMMENDATIONS  
 SEE ME  
 SIGNATURE  
 YOUR COMMENT  
 YOUR INFORMATION

REMARKS:

*Jackson will be reversing this today.*

FROM	CO	OS	ADM	DIR	FHA	FNMA	MD	RHA	R1	R2	R3	R4	R5	R6	R7
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LAUGHLIN:4/24/70  
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such a policy, including:

- The passage of the Environmental Policy Act of 1969 and the appointment of an Environmental Quality Council.



*Levy*  
DRAFT:McLAUGHLIN:4/24/70

Mr. Chairman and members of the Committee, I appreciate this opportunity to present the views of the Department of Housing and Urban Development on S. 3354.

Certainly, we fully support the principal objective of the bill: to formulate and implement a "national land-use policy." This national land-use policy is properly presented as an essential tool to guide Federal-State efforts to plan and use our land resources more wisely. The bill identifies a number of ecological and environmental land-use problems that need a more unified or coordinated treatment if they are to be effectively resolved.

Indeed, the land resource problems that are the central concern of this bill, and the social and economic problems stemming from an increasingly urban population, led to President Nixon's proposal in his State of the Union Message:

"I propose that before these problems become insoluble, the nation develop a national growth policy. Our purpose will be to find those means by which federal, state and local government can influence the course of urban settlement and growth so as positively to effect the quality of American life."

Several actions have been taken leading toward the development of such a policy, including:

- The passage of the Environmental Policy Act of 1969 and the appointment of an Environmental Quality Council.

- Enactment of the statute creating a Commission on Population Growth and the American Future.
- A proposal before the Congress to establish a Domestic Council.
- The appointment, by the President, of a small staff in the White House to develop the scale of the nation's needs and resources in order to establish goals for national policy.

One of the basic functions of the Domestic Council will be to assure the coordination of domestic programs as they affect the States and their subdivisions, a need that is emphasized in S. 3354. I should point out that considerable confusion would obviously be created if the responsibility for coordinating Federal and State actions affecting land uses were to be assigned to the Land and Water Resources Planning Council, as required by this bill. These "land-use" actions are inseparable from much broader coordinating issues.

Indeed, it is the bill's narrow emphasis on land-use planning, especially in the proposed planning grant program to the States, and the apparent failure to place this type of planning within the context of the human, social and economic needs of all people that we believe constitutes one of its major deficiencies. It can best be described as a problem of focus and approach.

The bill, as we read it, approaches land-use planning primarily from the standpoint of physical planning, with emphasis on environmental protection, recreation and industrial land-use. It does not appear

to give attention to the broader issues of national urbanization patterns nor the impact of emerging land-use patterns in urban areas on housing choices and job opportunities, indeed, on the social fabric of urban America. Certainly, it has been our experience that land-use planning--essential as we know it is--cannot be separated from these other, broader considerations.

There is an often quoted saying that goes: "Planning is for people." Although the statement would be more meaningful if it said for, by, as well as for people, it does illustrate the nature of the concern that we have in the bill's emphasis on "land-use planning." Land-use planning, in fact, establishes the framework for the way we live--where our homes are, how we relate to our neighbors, and who they are, the length of our journey to work, and our access to healthful outlets for leisure time. In the priority of things, we believe that a "people policy" is a prerequisite to a land-use policy. Too often in the past we have undertaken land-use planning as though it was an art unto itself, unrelated to the lives of people and the needs of our society. This has made some unfortunate contribution to the separation <sup>in</sup> that society.

My reference to "our experience" indicates another major concern of the Department about this bill. The bill's proposed program of land-use planning grants to the States would duplicate the land-use planning grants already being made to State planning agencies as part of HUD's Comprehensive Planning Assistance program. In fact, this program, established by Sec. 701 of the Housing Act

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of 1954 and with an appropriation of \$50 million for this fiscal year,  
provides assistance--already extended to all 50 States--that would  
cover every work item listed in Section 403 of S. 3354.

In addition to the 701 program there are, we believe, significant areas of potential overlap between the assistance program proposed in this bill and a number of the other 35 Federal programs providing planning grants for various governmental functions.

The past proliferation of planning grant programs has caused the President to initiate a thorough review of the whole range of Federal planning assistance with a view to eliminating unnecessary duplication and simplifying administration. A new program of this *etc* kind proposed in S. 3354 would unnecessarily complicate it.

In identifying the duplication between this bill and our Comprehensive Planning program, I want to quickly make it known that our program, while encouraging and supporting land-use planning, clearly envisions that such planning should be carried out within the context of the total resources and developmental needs of the State, that these needs include consideration of the desires and concerns of people, and that the planning must be a part of the governmental decision-making process. This is implied in the following excerpt from the 701 statute's definition of comprehensive planning.

"The term 'comprehensive planning' includes the following:  
(A) preparation, as a guide for governmental policies and action, of general plans with respect to (i) the pattern and intensity of land use, (ii) the provision of public facilities (including transportation facilities) and other government services, and (iii) the effective development and utilization of human and natural resources;"

Thus, "the pattern and intensity of land use"--the focus of S. 3354-- is related in the 701 program to other broader aspects of State planning and development.

In brief, then, we believe that the planning grant program proposed in this bill, not only duplicates the existing Comprehensive Planning program, but that it will foster an isolated, State land-use planning operation that may well be unrelated to the relative priority in the needs of people, especially in heavily urbanizing regions of the nation.

I believe this is essentially one of the points that was made by Governor Sargent of Massachusetts in his testimony on this bill, though he supported it. You may recall that he said:

"Conservationists, and I have been one for more than 20 years, have worried about the wilderness too long. We've concentrated on the mountains, the forest, the seashore--and properly we should, for these are the bedrock of our natural heritage.

"But we must now broaden our view and shift the emphasis, for more than 90 percent (sic) of our people live in major metropolitan areas."

Before I leave the problem of duplication among Federal programs, I should also note that the training provisions in S. 3354 would substantially duplicate the authority of Title VIII of the Housing Act of 1964. Under this program, HUD has provided grants to States for training in skills needed by all State and municipal employees, including those needed in the development of State land-use plans.

Fellowships for city planning and other urban studies are also provided under Title VIII. We have awarded \$6 million in training grants to 41 States, and granted over \$1.4 million for 303 fellowships in city planning and related fields.

Governor Sargent's reference to our burgeoning metropolitan population identifies one of the reasons why the Federal government's existing grant program for broad land use and comprehensive planning is administered by HUD. Clearly urban growth--its magnitude, pattern, and location--is a central concern in the land-use planning process. And fostering effective land-use planning--in rural as well as urban areas--in communities and metropolitan areas, as well as in the States--is essential to our Department if we are to carry out our responsibilities in accomplishing the goal of the Congress "of a decent home and a suitable living environment for every American family." The 701 program is important to us in helping the States and localities develop the comprehensive plans--in many cases required by Federal statute--that are necessary to assure that other HUD investments in housing, supporting public facilities, and new communities, are wisely spent.

Although there are advantages to HUD in having the program of planning assistance and many of the "follow-up" aids for development, the more important point is that this creates a more useful "delivery service" to the States.

Before leaving this point of the logic of HUD's administering a comprehensive planning assistance program, I should call your

attention to the fact that H.R. 16647, the bill introduced by Congressman Thomas L. Ashley, increases Federal assistance for State planning by amending our Comprehensive Planning statute rather than by creating a separate program in a separate agency.

I've alluded to the fact that many of HUD's present assistance programs--and other programs administered by other Federal agencies--are presently governed by statutory comprehensive planning requirements, requirements that often involve land-use planning. Our Open-Space Land program, for example, requires a finding that any grant assistance "is needed for carrying out a unified or officially coordinated program. . . . for the provision and development of open-space land as part of the comprehensively planned development of the urban area."

Section 407 of this bill would superimpose on all of these other planning requirements a new, and overlapping, requirement for State land-use plans under which Federal agencies would be required to deny assistance to all State and local projects inconsistent with those plans. It also provides that if a State has no acceptable land-use plan, "entitlement" to Federal assistance under various programs which are unspecified but could be designated by the President would be reduced by 20 percent a year, beginning with the fourth fiscal year after enactment.

It seems to us that there would be, to say the least, a considerable problem in relating this kind of broad new requirement to the existing pattern of planning requirements, which is already



excessively complex. In fact, as with planning assistance programs, these Federal planning requirements are also being re-examined at the direction of the President with improved coordination and consistency as objectives--objectives which would not be promoted, in our opinion, by enactment of this bill.

We react <sup>also</sup> to the bill's planning requirement provisions in a way similar to our concern with its planning assistance program: its scope is too narrow.

The intent of the rather stringent requirement--a coordinated land development program--has merit. But the severity of the penalties could lead to distortions if based only on the acceptability of land-use plans rather than on broader plans to achieve national goals. It could, for example, penalize a State that lagged behind in its land-use planning because, under its priorities, it was developing programs to reduce racial, social, and economic polarization in our society.

This, of course, points to the need to formulate our overall national growth policy before enacting a new requirement for Statewide land-use plans as a means of implementing it. Otherwise the national policy may become predetermined by only one aspect of our needs--planned land development.

I do not intend to discuss technical aspects of the bill since I know, Mr. Chairman, that when you introduced it you announced that it was in the nature of a discussion draft. However, one technical provision in the bill, though unclear, appears potentially

destructive of present efforts to achieve coordinated metropolitan development. Under Section 406 all lands in a State would be subject to its Statewide Land Use Plan, except "any incorporated city which has exercised land-use planning and authority." Counties, towns, and unincorporated areas, even though covered by their own land-use plans and those developed by their metropolitan planning agencies, however, would<sup>be</sup> subject to the State plan. This would create multiple and probably conflicting responsibilities in metropolitan areas: the cities would be responsible for a portion of the area, the States the remainder, and yet, the metropolitan planning agency would continue to have some areawide responsibilities.

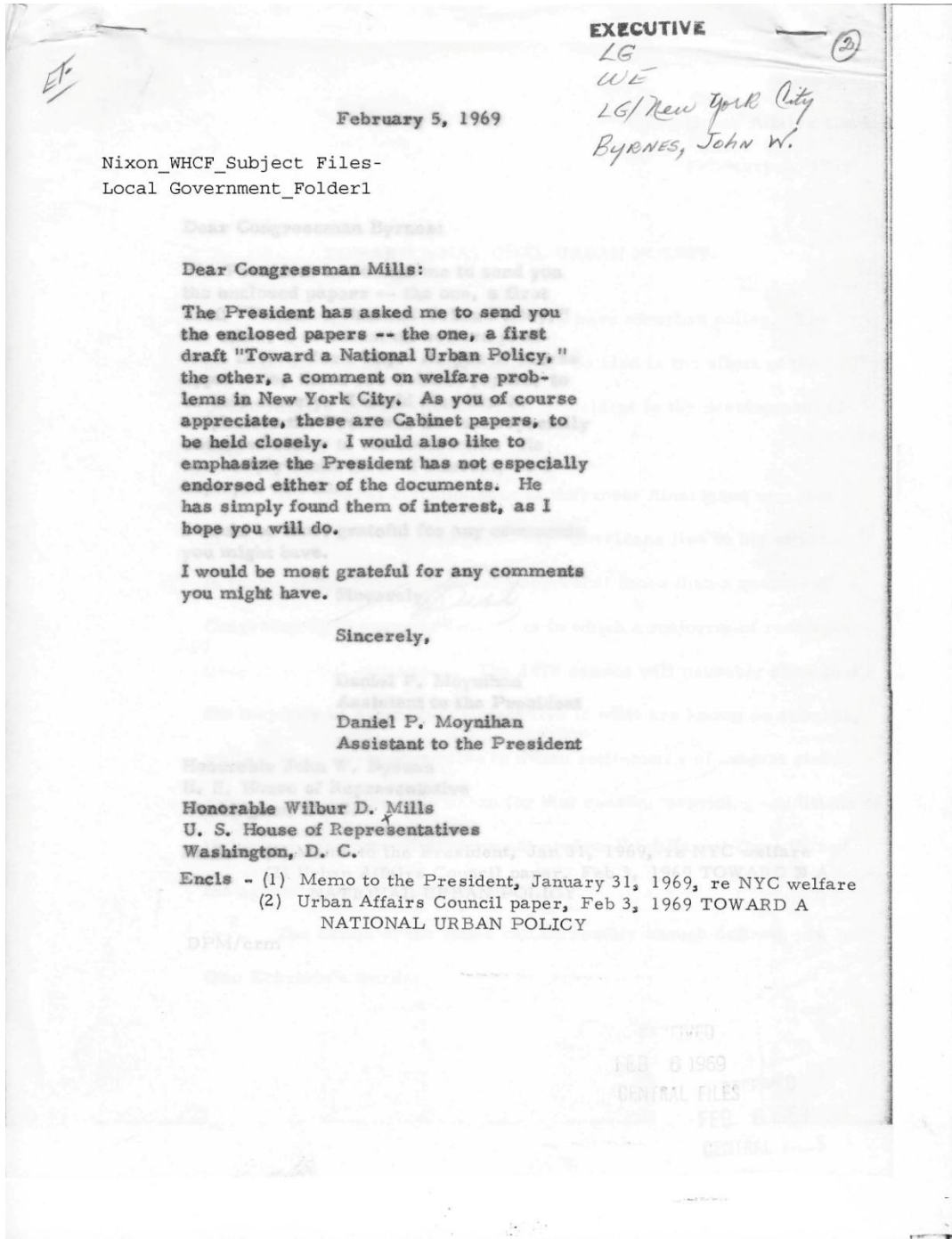
I would like to conclude by emphasizing our awareness and complete support of the value of, indeed the urgency of, developing a national policy affecting the nation's land resources and for encouraging consistent land-use planning by the States. However, to the extent that the kinds of land-use planning stressed in the bill are viewed against a background of overall State development, urbanization trends and policies, and human and social problems, issues of program and governmental relationships become increasingly important. In fact, we think that many of the difficulties currently associated with the multiplicity of planning assistance programs and planning requirements, and a good many of the problems associated

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with their administration at the Federal, State and local levels, are attributable to the fact that for too long insufficient attention has been given to the necessity for relating different kinds of planning to one another within some acceptable overall or general framework.

Because we do not believe that S. 3354 provides such a framework, but rather feel that its principal effect would be to add an extensive new set of program authorities and requirements substantially duplicating many which already exist, we do not believe its enactment is desirable. This does not mean that major new legislation is necessarily inappropriate, or that S. 3354 does not contain many features that could well be included in such legislation.

APPENDIX 4. Daniel Patrick Moynihan' Toward a National Urban Policy Draft



Urban Affairs Council

February 3, 1969

### TOWARD A NATIONAL URBAN POLICY

The United States does not now have an urban policy. The idea that there might be such is new. So also is the effort of the Urban Affairs Council to assist the President in the development of one.

The central circumstance is that most Americans now live in "urban areas." This is not to say Americans live in big cities. In terms of the 1960 census only somewhat more than a quarter of Congressmen represented districts in which a majority of residents lived in central city areas. The 1970 census will probably show that the majority of Americans in fact live in what are known as suburbs, while a great many more live in urban settlements of modest size. But they are not the less urban for that reason, providing conditions of living and problems of government profoundly different from that of the agricultural, small-town past.

The crisis of the cities can be readily enough defined. In Otto Eckstein's words:

"Until World War II the growth of the city was a logical, economic development. The growth of industry and of business and personal services led to a great expansion of urban job opportunities. As population grew, the boundaries of the city moved outward through annexation of surrounding areas. Efficient public transportation systems carried the workers from their apartments to their jobs. The city public schools, which were partly financed by taxes on commercial and industrial property, provided the children of the workers with the human capital to equip them for skilled and white collar jobs. The city was an efficient socialization process which absorbed the newcomer, gave him work, educated his children, and provided sufficient avenues of economic and social advancement to make the city the very embodiment of the American dream.

"In the last thirty years this process has stopped working. The Courts put a stop to the annexation process everywhere by 1920. Since World War II the growth of industry is almost entirely outside the cities. The growth of suburbs, stimulated by the subsidies of the FHA and VA mortgage guarantees, distorted by zoning restrictions and by housing segregation has led to the balkanization of the metropolitan area. At first the upper income families fled the cities; the middle income groups followed, leaving behind only the poor, the black, the childless, and the very rich who can afford to insulate themselves from their environment."

Two special circumstances compounded this problem. First, the extraordinary migration of the rural Southern Negro to the Northern City. Second, a post-war population explosion which placed immense pressures on municipal services, and drove many whites to the suburbs seeking relief. (Both these influences are now somewhat attenuating,

but their effects will be present for at least several decades.) As a result the problems of economic stagnation of the central city became desperately exacerbated by those of racial tension. In the course of the 1960's tension turned into open racial strife.

City governments began to respond to the onset of economic obsolescence and social rigidity a generation or more ago, but quickly found their fiscal resources strained near to the limit. State governments became involved, and much the same process ensued. Starting in the post war period, the Federal government itself became increasingly caught up with urban problems. In recent years resources on a fairly considerable scale have flowed from Washington to the cities of the land. Yet many of the hoped for results seem not to have come to pass. It is by now clear enough that something more than resources is involved. The question of method has become as salient as that of goals themselves. As yet the Federal government, no more than state or local government, has not found an effective incentive system -- comparable to profit in private enterprise, prestige in intellectual activity, rank in military organization -- whereby to shape the forces at work in urban areas in such a way that urban goals -- whatever they may be -- are in fact attained. This search for incentives, and the realization that present procedures such as categorical grant-in-aid programs do not seem to provide sufficiently powerful ones, must accompany and suffuse the effort to establish goals as such.

\* \* \* \*

1. THE POVERTY AND ISOLATION OF MINORITY GROUPS IN CENTRAL CITIES IS THE SINGLE MOST SERIOUS PROBLEM OF THE AMERICAN CITY TODAY. IT MUST BE ATTACKED WITH URGENCY, WITH A GREATER COMMITMENT OF RESOURCES THAN HAS HERETOFORE BEEN THE CASE, AND WITH PROGRAMS ESPECIALLY DESIGNED FOR THIS PURPOSE.

Comment. The 1960's has seen enormous economic advances among minority groups, especially Negroes. Outside the South, 37 percent of Negro families earn \$8,000 per year or more, that being approximately the nation median income. Nonetheless certain forms of social disorganization and dependency appear to be increasing among the least well off urban Negroes. This has led to violence, and this violence has in turn been increasingly politicized by black militants seeking a "confrontation" with whites. Urban policy must have as its first goal the transformation of the urban lower class into a stable community based on dependable and adequate income



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flows, social equality, and social mobility.

Efforts to improve the conditions of life in the present caste-created slums must never take precedence over efforts to enable the slum population to disperse throughout the metropolitan areas involved. Urban policy accepts the reality of ethnic neighborhoods based on choice, but asserts that the active intervention of government is called for to enable free choice to include integrated living, which will be the normal option.

2. ECONOMIC AND SOCIAL FORCES IN URBAN AREAS ARE NOT SELF-EQUILIBRATING. IMBALANCES IN INDUSTRY, TRANSPORTATION, HOUSING, SOCIAL SERVICES AND SIMILAR ELEMENTS OF URBAN LIFE FREQUENTLY TEND TO BECOME MORE RATHER THAN LESS PRONOUNCED, AND THIS TENDENCY IS OFTEN ABETTED BY PUBLIC POLICIES. THE CONCEPT OF URBAN BALANCE MAY BE TENTATIVELY SET FORTH: A SOCIAL CONDITION IN WHICH FORCES

TENDING TO PRODUCE IMBALANCE INDUCE COUNTERFORCES  
THAT SIMULTANEOUSLY ADMIT CHANGE BUT MAINTAIN  
EQUILIBRIUM. IT MUST BE THE CONSTANT OBJECT OF FEDERAL  
OFFICIALS WHOSE PROGRAMS AFFECT URBAN AREAS --AND  
THERE ARE FEW WHOSE DO NOT -- TO SEEK SUCH EQUILIBRIUM.

Comment. Evidence is fairly considerable that many Federal programs have induced sharp imbalances in the "ecology" of urban areas -- the highway program, for example, is frequently charged with this, and there is wide agreement that other, specifically city-oriented programs such as urban renewal, have frequently accomplished just the opposite of their nominal objectives. The reasons are increasingly evident. Cities are complex social systems. Interventions that, intentionally or not, affect one component of the system almost invariably affect second, third, and fourth components as well, and these

in turn affect the first component, often in ways quite opposite to the direction of the initial intervention. Most Federal urban programs have assumed fairly simple cause and effect relationships which do not exist in the complex real world. Typically, moreover, they have been based on "common sense" rather than research in an area where common sense can be notoriously misleading. In the words of Jay W. Forrester, "With a high degree of confidence we can say that the intuitive solutions to the problems of complex social systems will be wrong most of the time."

3. PART AT LEAST OF THE REALTIVE INEFFECTIVENESS OF THE EFFORTS OF URBAN GOVERNMENT TO RESPOND TO URBAN PROBLEMS DERIVES FROM THE FRAGMENTED AND OBSOLESCENT STRUCTURE OF URBAN GOVERNMENT ITSELF. THE FEDERAL GOVERNMENT SHOULD CONSTANTLY ENCOURAGE AND PROVIDE INCENTIVES FOR THE REORGANIZATION OF LOCAL GOVERNMENT IN RESPONSE TO

THE REALITY OF METROPOLITAN CONDITIONS. THE OBJECTIVE OF THE FEDERAL GOVERNMENT SHOULD BE THAT LOCAL GOVERNMENT BE STRONGER AND MORE EFFECTIVE, MORE VISIBLE, ACCESSIBLE, AND MEANINGFUL TO LOCAL INHABITANTS. TO THIS END THE FEDERAL GOVERNMENT SHOULD DISCOURAGE THE CREATION OF PARAGOVERNMENT DESIGNED TO DEAL WITH SPECIAL PROBLEMS BY EVADING OR AVOIDING THE JURISDICTION OF ESTABLISHED LOCAL AUTHORITIES, AND TO ENCOURAGE EFFECTIVE DECENTRALIZATION.

Comment. Although the "quality" of local government, especially in large cities, has been seen to improve of late, there appears to have been a decline in the vitality of local political systems, and an almost total disappearance of serious effort to reorganize metropolitan areas into new and more rational governmental jurisdictions. Federal efforts to recreate ethnic-neighborhood based community organizations, as in the poverty program, or to induce metropolitan area planning as in various urban development programs, appear to have been equally unavailing. Yet somehow vitality and self-direction must be restored.

Concern to do so must suffice federal efforts,  
and this must be an informed rather than merely  
sentimental or ideological concern.

4. A PRIMARY OBJECT OF FEDERAL URBAN POLICY MUST  
BE TO RESTORE THE FISCAL STABILITY OF URBAN GOVERNMENT,  
WITH THE PARTICULAR OBJECT THAT LOCAL GOVERNMENTS  
NORMALLY HAVE ENOUGH RESOURCES ON HAND OR AVAILABLE  
TO MAKE LOCAL INITIATIVE IN PUBLIC AFFAIRS MEANINGFUL.

Comment. For all the rise in actual amounts,  
Federal aid to State and local government has  
increased only from 12% of State-local revenue  
in 1958 to 17% in 1967. Increasingly State and  
local governments that try to meet their responsi-  
bilities lurch from one fiscal crisis to another.  
In such circumstances, the opportunity for  
creative local government becomes least in  
precisely those jurisdictions where it might  
most be expected. As much as any other single  
factor, this condition may be judged to account  
for the malaise of city government, and especially  
of the reluctance of the more self sufficient suburbs  
to associate themselves with the near to bankrupt  
central cities. Surviving from one fiscal deadline

to another, the central cities adopt policies which only compound their ultimate difficulties.

A clear opportunity exists for the Federal government to adopt as a deliberate policy an increase in its aid to State and local governments in aftermath of the Vietnam war. Much analysis is in order, but in approximate terms it may be argued that the present proportion of aid should be doubled, with the object that the Federal government contribution constitute one third of State-local revenue on a permanent basis. This would represent about \$40 billion for FY 1969, and could be had by allocating the first "peace and growth dividend" to this purpose, although obviously it could be phased over two, three, or more years.

5. FEDERAL URBAN POLICY SHOULD SEEK TO EQUALIZE THE PROVISION OF PUBLIC SERVICES AS BETWEEN DIFFERENT JURISDICTIONS OF METROPOLITAN AREAS.

Comment. Although the standard depiction of the (black) residents of central cities as grossly deprived with respect to schools and other social services, when compared with their suburban

(white) neighbors requires endless qualification,

the essential truth is that life for the well to do is better than life for the poor, and that these populations tend to be separated by artificial government boundaries within metropolitan areas (The people in between may live on either side of the boundaries, and are typically overlooked altogether.)

As a minimum, Federal policy should seek a dollar-for-dollar equivalence in the provision of social services having most to do with economic and social opportunity. This includes first of all public education and public safety. (Obviously there will always be some relatively small jurisdictions -- "the Scarsdale school system" -- that spend a great deal more than others, but there can be national or regional norms and no central city should be required to operate below them.)

Beyond the provision of equal resources lies the troubled and elusive question of equal results.

Should equality of educational opportunity extend to equality of educational achievement (as between one group of children and another?) Should equality of police protection extend to equality of criminal victimization? The Federal establishment must begin to face this issue.

6. THE FEDERAL GOVERNMENT MUST ASSERT A SPECIFIC INTEREST IN THE MOVEMENT OF POPULATION, DISPLACED BY TECHNOLOGY OR DRIVEN BY POVERTY, FROM RURAL TO URBAN AREAS, AND ALSO THAT FROM DENSELY POPULATED CENTRAL CITIES TO SUBURBAN AREAS.

Comment. Much of the present urban crisis derives from the almost total absence of any provision for an orderly movement of persons off the countryside, into the city. The Federal government made extraordinary, and extraordinarily successful, efforts to provide for the resettlement of Hungarian refugees in



the 1950's and Cuban refugees in the 1960's. But almost nothing has been done for Americans driven from their homes by forces not less imperious.

In 1968 testing of mechanical tobacco harvesting began on the East Coast and the first mechanical grape pickers were used on the West Coast. Rural to urban migration has not stopped, and will not for some time. Increasingly it is possible to predict where it will occur, and in what time sequences. Hence it is possible to prepare for it, both in terms of the training of those who leave, and the provisions for them where they arrive. Doubtless the United States will remain a nation of exceptionally mobile persons, but the completely unassisted processes of the past need not continue with respect to the migration of impoverished rural populations. There are increasing indications that the dramatic

movement of Negro Americans to central city areas may be slackening off, and that a counter movement to surrounding and suburban areas may have begun. This process is to be encouraged in every way, especially by the maintenance of a flexible and open housing market.

7. STATE GOVERNMENT HAS AN INDISPENSIBLE ROLE IN THE MANAGEMENT OF URBAN AFFAIRS, AND MUST BE SUPPORTED AND ENCOURAGED BY THE FEDERAL GOVERNMENT IN THE PERFORMANCE OF THIS ROLE.

Comment. This fact, being all but self-evident, tends to be overlooked. The trend of recent legislative measures, almost invariably prompted by executive initiatives, has been to establish a direct Federal-City relationship. States have been bypassed, and doubtless some have used this as an excuse to avoid their responsibilities to provide the legal

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and governmental conditions under which urban problems can be effectively confronted.

8. THE FEDERAL GOVERNMENT MUST DEVELOP AND PUT IN PRACTICE FAR MORE EFFECTIVE INCENTIVE SYSTEMS THAN NOW EXIST WHEREBY STATE AND LOCAL GOVERNMENTS, AND PRIVATE INTERESTS CAN BE LED TO ACHIEVE THE GOALS OF FEDERAL PROGRAMS.

Comment. The typical Federal grant-in-aid program provides its recipients with an immediate reward for promising to work toward some specified goal -- raising the educational achievement of minority children, providing medical care for the poor, cleaning up the air, reviving the downtown business district -- but almost no reward for actually achieving such goals, and rarely any punishment for failing to do so.

It is by now widely agreed that what Federal grant-in-aid programs mostly reward is dissimulation.

By and large the approach of the Federal government to most urban problems is to provide local institutions with money in the hopes they will perform, but with no very powerful incentives to do so.

There is a growing consensus that the Federal government should provide market competition for public programs, or devise ways to imitate market conditions. In particular, it is increasingly agreed that Federal aid should be given directly to the consumers of the programs concerned -- individuals included -- allowing them to choose among competing suppliers of the goods or services that the program is designed to provide.

Probably no single development would more enliven and energize the role of government in urban affairs than a move from the monopoly-strategy of the

grant-in-aid programs to a market-strategy of providing the most rewards to those suppliers that survive competition.

9. THE FEDERAL GOVERNMENT MUST PROVIDE MORE AND BETTER INFORMATION CONCERNING URBAN AFFAIRS, AND SHOULD SPONSOR EXTENSIVE AND SUSTAINED RESEARCH INTO URBAN PROBLEMS.

Comment. Much of the social progress of recent years derives from the increasing quality and quantity of government generated statistics and government supported research. However, there is general agreement that a time is at hand when a general consolidation is in order, bringing a measure of symmetry to the now widely dispersed ( and somewhat uneven) data collection and research supporting activities of the Federal government. This should not be done with specific reference to urban affairs, but should be undertaken

with a direct concern for urban questions.

The Federal government should in particular recognized that most of the issues that appear most critical at the present time do so not least because they are so little understood. This is perhaps especially so with respect to issues of minority group education, but can generally be said to be the case about all the truly difficult and elusive issues of the moment. More and better enquiry is called for. In particular, the Federal government must begin to sponsor longitudinal research designed to follow individual and communal development over long periods of time.

10. THE FEDERAL GOVERNMENT, BY ITS OWN EXAMPLE AND BY INCENTIVES, SHOULD SEEK TO ADD TO THE AMENITIES OF THE URBAN ENVIRONMENT.

Comment. Although there is little that can be stated with confidence in this area, it is hardly to be disputed that most American cities are far uglier

THE WHITE HOUSE  
WASHINGTON

January 31, 1969

FOR THE PRESIDENT

Like the girl and the book about crocodiles, I fear that I may end up telling you more about welfare in New York City than you want to know. The situation in New York City has been developing for quite some time. Three years ago, John Lindsay asked me to serve on a poverty task force which he had assembled just prior to his inauguration. At that time indications of trouble were sufficiently clear that I said to him and the group, that it seemed to me that there was a serious and inexplicable problem of family structure growing up in New York City, as well as in some of the other northern cities, and that this could become a major problem for him. I must report that he and the rest of the group dismissed the idea as ridiculous, charging that the 400,000 plus number of welfare recipients then on the rolls was simply a mark of the incompetence of the Wagner administration, all of which will soon be a thing of the past. As you know, there are now a million persons on welfare and the current budget estimates provide for 1.3 million by June 30, 1970. Estimates are that one out of every eight New Yorkers,

APPENDIX 5. Fred McLaughlin Memo From Motherhood to Abortion

HUD-28  
Rev. 2-67

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
**ROUTING SLIP**

TO	CO	OS	ADM	DIR	FHA	FNMA	MD	RHA	R1	R2	R3	R4	R5	R6	R7
Name and/or Symbol										Room		Building			
1. <u>Mr. Jackson</u>										7100					
2.															
3. cc: Markham															
4.															
5.															
6.															

Action  
 Approval  
 As Requested  
 Concurrence  
 Correction  
 Answer or Acknowledge On or Before \_\_\_\_\_  
 Prepare Reply for Signature of \_\_\_\_\_

Filing  
 Full Report  
 Handle Direct  
 Initials  
 Note and Return

Per Conversation  
 Recommendations  
 See Me  
 Signature  
 Your Comment  
 Your Information

Remarks:

A "spare" timepiece that I prepared for those people who ask me for a copy of our urban growth policy.

*I had this is very useful. Allow me the opportunity of plagiarism. Also a copy will be sent to Policy Committee. (SS) Robbi - hold a copy for me. (SS)*

FROM	CO	OS	ADM	DIR	FHA	FNMA	MD	RHA	R1	R2	R3	R4	R5	R6	R7
Name and/or Symbol										Room		Building			
Fred McLaughlin										7210					
										Telephone		Date			
												11/12/71			

U. S. GOVERNMENT PRINTING OFFICE : 1969 O-364-356

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Folder: Urban Growth Policy Division

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 ss way. You've got to  
 definition of the policy:

Policy: it shall be the policy of this Nation to encourage  
 balanced growth by supporting efforts to increase opportunities  
 to live and work in nonmetropolitan areas.



AN URBAN GROWTH POLICY:  
From Motherhood to Abortion

There's an old story about a bureaucrat whose response to a request to solve a particularly difficult problem said: "That's administration; I'm in policy." The moral of the story is that creating policy is easy; following it is tough.

And this is the way it is with urban growth policy. Getting consensus on a broad policy statement is as easy as getting agreement on the proverbial virtues of motherhood (before ZPG). But as one goes through the various stages of defining the specific nature of the policy and articulating the means for implementing it, one rapidly loses friends--until the whole thing aborts.

Let's make up a policy and see what happens as we begin refining it into specifics:

Policy: it shall be the policy of this Nation to encourage balanced growth.

Now, that's a reasonable policy. The President and the Congress have come out strongly for it, and some Federal activities are actually seeking to carry it out--in a harmless way. You've got to be for balanced growth.

Let's take a first cut at sharpening the definition of the policy:

Policy: it shall be the policy of this Nation to encourage balanced growth by supporting efforts to increase opportunities to live and work in nonmetropolitan areas.

Some economists might jump ship at this point, but most people would still embrace this more sharply defined policy of balanced growth. After all, some 70 percent of us say we want to live somewhere else than the metropolis.

Another step in more precisely stating the policy might be this:

Policy: it shall be the policy of this Nation to encourage balanced growth by: (1) supporting efforts to increase the opportunities to live and work in nonmetropolitan areas; and (2) decreasing support of activities that stimulate the growth of metropolitan areas.

This is merely telling it like it is. If you are going to create balance by increasing growth at the rural end of the stick then it follows that you can do even better by concurrently decreasing the growth at the urban end. That's logical; in essence, the British and French are doing it. But now you are really beginning to lose your American friends--including all the city mayors and some 250 or so urban congressmen. They are for balanced growth, but this is ridiculous! To even suggest less Federal water and sewer money to open more land for suburban development (sprawl) is antihome rule, antiprivate enterprise, anti-American, and sounds like National planning!

Need we go further? We could, for example, suggest a policy of absolutely no Federal infrastructure aid that would expand the development of metropolitan areas of three million or more population.

(These places would get more urban center renewal money.) This is really quantifying a growth policy and making it "administrable." But try selling this in the halls of Congress!

Every other attempt--from tax incentives to population disincentives--to put flesh on the policy bones would risk a similar, controversial abortion. What State, for example, would concur in a regional growth policy giving priority for economic development to another State?\* Or to shifting some Federal contracts, facilities, and other plums to another State? What Real Estate Board would fail to stir up political wrath at any attempt to create public land banks and public new towns?

Policy is easy; administration is tough!

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\* To show how the temper of the country is continuously changing, the answer to this question is not as obvious as it may seem. Several States (Delaware, Oregon, etc.) and communities seem ready to let economic development--and people--go elsewhere.

## APPENDIX 6. List of Regional Targets Advisory Committee Members

### Regional Targets Advisory Committee Members

#### CHAIR

**Mike McKeever**, Executive Director, Sacramento Area Council of Governments

**Andrew Chesley**, Executive Director, San Joaquin Council of Governments

**Stuart Cohen**, Executive Director, TransForm

**Greg Devereaux**, City Manager, City of Ontario

**Roger Dickinson**, Supervisor, County of Sacramento

**Stephen Doyle**, President, Brookfield San Diego Builders, Inc.

**Amanda Eaken**, Policy Analyst, Natural Resources Defense Council

**Gary Gallegos**, Executive Director, San Diego Association of Governments

**Steve Heminger**, Executive Director, Bay Area Metropolitan Transportation  
Commission

**Richard Katz**, Board Member, Los Angeles County Metropolitan Transportation  
Authority

**Arthur Leahy**, former OCTA; current Chief Executive Officer, Los Angeles County Metropolita  
Transportation Authority

**Shari Libicki**, Principal, Environ Environmental Consultants

**Pete Parkinson**, Vice President of Policy and Legislation, American Planning  
Association, California Chapter

**Linda Parks**, Supervisor, County of Ventura and SCAG Regional Council Member

**Manuel Pastor Jr.**, Professor of Geography and American Studies and Ethnicity,  
University of Southern California

**Michael Rawson**, Co-Director, Public Interest Law Project

**Barry Wallerstein**, Executive Officer, South Coast Air Quality Management District & Board  
Member, California Air Pollution Control Officers Association

**Jerry Walters**, Principal, Fehr & Peers Transportation Consultants

**Carol Whiteside**, Founder and President Emeritus, Great Valley Center

**Michael Woo**, Los Angeles City Planning Commissioner

**Jim Wunderman**, President and Chief Executive Officer, Bay Area Council

**APPENDIX 7. SB 375 as introduced****SENATE BILL****No. 375****Introduced by Senator Steinberg**

February 21, 2007

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An act to amend Section 21159.24 of the Public Resources Code, relating to environmental quality.

## LEGISLATIVE COUNSEL'S DIGEST

SB 375, as introduced, Steinberg. CEQA: urban infill projects.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA exempts specified activities from its provisions, including a project that is a residential project on an infill site within an urbanized area, and that meets other specified criteria, including that the project is within ½ mile of a major transit stop.

This bill would provide that the project may be with ½ mile of a major transit stop or result in a reduction of vehicle miles traveled by residents of the project by 10% or more when compared to the average vehicle miles traveled within the county or major metropolitan area. By requiring a local government to determine whether a project meets this new alternative or the original requirement, or neither requirement, the bill would impose a state-mandated local program.

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(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21159.24 of the Public Resources Code  
2 is amended to read:  
3 21159.24. (a) Except as provided in subdivision (b), this  
4 division does not apply to a project if all of the following criteria  
5 are met:  
6 (1) The project is a residential project on an infill site.  
7 (2) The project is located within an urbanized area.  
8 (3) The project satisfies the criteria of Section 21159.21.  
9 (4) Within five years of the date that the application for the  
10 project is deemed complete pursuant to Section 65943 of the  
11 Government Code, community-level environmental review was  
12 certified or adopted.  
13 (5) The site of the project is not more than four acres in total  
14 area.  
15 (6) The project does not contain more than 100 residential units.  
16 (7) Either of the following criteria are met:  
17 (A) (i) At least 10 percent of the housing is sold to families of  
18 moderate income, or not less than 10 percent of the housing is  
19 rented to families of low income, or not less than 5 percent of the  
20 housing is rented to families of very low income.  
21 (ii) The project developer provides sufficient legal commitments  
22 to the appropriate local agency to ensure the continued availability  
23 and use of the housing units for very low, low-, and  
24 moderate-income households at monthly housing costs determined  
25 pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of  
26 the Government Code.  
27 (B) The project developer has paid or will pay in-lieu fees  
28 pursuant to a local ordinance in an amount sufficient to result in  
29 the development of an equivalent number of units that would  
30 otherwise be required pursuant to subparagraph (A).

- 1 (8) The project is within one-half mile of a major transit stop,  
2 *or the project results in a reduction of vehicle miles traveled by*  
3 *residents of the project by 10 percent or more when compared to*  
4 *the average vehicle miles traveled within the county or major*  
5 *metropolitan area.*
- 6 (9) The project does not include ~~any~~ a single level building that  
7 exceeds 100,000 square feet.
- 8 (10) The project promotes higher density infill housing. A  
9 project with a density of at least 20 units per acre shall be  
10 conclusively presumed to promote higher density infill housing.  
11 A project with a density of at least 10 units per acre and a density  
12 greater than the average density of the residential properties within  
13 1,500 feet shall be presumed to promote higher density housing  
14 unless the preponderance of the evidence demonstrates otherwise.
- 15 (b) Notwithstanding subdivision (a), this division shall apply  
16 to a development project that meets the criteria described in  
17 subdivision (a), if any of the following occur:
- 18 (1) There is a reasonable possibility that the project will have  
19 a project-specific, significant effect on the environment due to  
20 unusual circumstances.
- 21 (2) Substantial changes with respect to the circumstances under  
22 which the project is being undertaken that are related to the project  
23 have occurred since community-level environmental review was  
24 certified or adopted.
- 25 (3) New information becomes available regarding the  
26 circumstances under which the project is being undertaken and  
27 that is related to the project, that was not known, and could not  
28 have been known, at the time that community-level environmental  
29 review was certified or adopted.
- 30 (c) If a project satisfies the criteria described in subdivision (a),  
31 but is not exempt from this division as a result of satisfying the  
32 criteria described in subdivision (b), the analysis of the  
33 environmental effects of the project in the environmental impact  
34 report or the negative declaration shall be limited to an analysis  
35 of the project-specific effect of the projects and any effects  
36 identified pursuant to paragraph (2) or (3) of subdivision (b).
- 37 (d) For the purposes of this section, “residential” means a use  
38 consisting of either of the following:
- 39 (1) Residential units only.

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1 (2) Residential units and primarily neighborhood-serving goods,  
2 services, or retail uses that do not exceed 15 percent of the total  
3 floor area of the project.  
4 SEC. 2. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 a local agency or school district has the authority to levy service  
7 charges, fees, or assessments sufficient to pay for the program or  
8 level of service mandated by this act, within the meaning of Section  
9 17556 of the Government Code.

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## APPENDIX 8. ClimatePlan Membership as of 2010

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## **APPENDIX 9. Membership of Governor’s Superfund Working Group**

### **State Agency Interests (7 Members):**

John P. Cahill, Commissioner, State Department of Environmental Conservation (Chairman of the Working Group)\*

H. Carl McCall, State Comptroller

Eliot Spitzer, State Attorney General

Dennis Whalen, Executive Deputy Commissioner, State Department of Health\*

Charles Gargano, Chairman, Empire State Development Corporation\*

David Bradley, Acting Director, Governor’s Office of Regulatory Reform

Robert Fischer, Member, New York State Superfund Management Board

### **Local Government Interests (1 Member):**

Robert R. Gregory, Executive Director, New York State Association of Counties

### **Environmental Interests (4 Members):**

John H. Adams, President, Natural Resources Defense Council\*

Paul J. Elston, Chair, New York League of Conservation Voters\*

James Tripp, General Counsel, Environmental Defense Fund\*\*\*

Rhea Jezer, Chair, Sierra Club—Atlantic Chapter

### **Business Interests (5 Members):**

Mark Alesse, State Director, National Federation of Independent Businesses

Francis B. McKenna, Managing Director, Merrill Lynch

Kenneth Pokalsky, Director of Environmental and Regulatory Programs, The Business Council of New York State, Inc.\*

Diana Hinchcliff, Executive Director, Alliance of Chemical Industries of New York State

Jody Kass, New York City Partnership and Chamber of Commerce, Inc.\*\*\*

\* Organization was represented on the Pocantico Roundtable

\*\* Organization was represented on the Brownfield Coalition

\*\*\* Organization was represented on both the Pocantico Roundtable and the Brownfield Coalition

## **APPENDIX 10. Membership of Pocantico Roundtable for Consensus on Brownfields**

### **Business Interests (9 Members):**

Steven Ancona, Aqua Terra\*  
 Joan Bartolomeo, Brooklyn Economic Development Corporation\*  
 Barry Hersh, Dames & Moore/Brookhill Development Corporation\*  
 David King, Niagara Mohawk Power Corp.\*  
 Ken Pokalsky, Business Council of New York State, Inc.\*\*\*  
 Ira Rubenstein, Environmental Business Association of NYS, Inc.\*  
 Carol Trezza, Real Estate Board of New York\*  
 Linda Shaw, Esq., Knauf, Craig, Koegel & Shaw, LLP\*  
 Elizabeth Gunther Sanderson, New York Bankers Association\*

### **Municipal Interests (4 Members):**

Annette Barbaccia, New York City Mayor's Office  
 Donna Giliberto, New York Conference of Mayors  
 Mark Gregor, City of Rochester  
 Robert Murphy, Esq., O'Connor, Gacioch, Pope & Tate, LLP (Binghamton Corporate Counsel)

### **Community Development Interests (5 Members):**

Yolanda Garcia, Nos Quedamos\*  
 Aaron Mair, Arbor Hill Environmental Justice Corporation\*  
 Peggy Shepard, West Harlem Environmental Action\*  
 Ron Shiffman/Joan Byron, Pratt Institute Center for Community and Environmental Development\*  
 Mathy Stanislaus, Minority Environmental Lawyers Association\*

### **Environmental Interests (6 Members):**

Paul J. Elston, New York League of Conservation Voters\*\*  
 Andrew Goldberg/Mike Livermore, New York Public Interest Research Group  
 Mark A. Izeman, Natural Resources Defense Council\*\*  
 Anne Rabe, Citizens' Environmental Coalition  
 Jim Tripp, Esq., Environmental Defense Fund\*\*\*  
 Val Washington, Environmental Advocates

### **Organizer (1 Member):**

Jody Kass, New York City Partnership\*\*\*

### **Non-Voting Ex-Officio Advisors:**

Erin Crotty, New York State Department of Environmental Conservation\*\*  
 Ronald Tramontano, New York State Department of Health\*\*  
 Tria Goodman Case, Empire State Development Corporation\*\*  
 Marjorie Buckholtz, U.S. Environmental Protection Agency

### **Non-Voting Facilitators:**

Allen Zerkin, Program on Negotiation and Conflict Resolution at New York University

Jean-Ann McGrane, Program on Negotiation and Conflict Resolution at New York University

\*Organization was represented on the Brownfield Coalition

\*\* Organization was represented on the Governor's Superfund Working Group

\*\*\* Organization was represented on both the Brownfield Coalition and the Governor's Superfund Working Group

## **APPENDIX 11. Membership of Brownfield Coalition**

### **Business Interests (24 Members):**

Steven Ancona, Aqua Terra Holdings/Aqua Terra Assessment Services Corp.\*  
 Leslie Lerner, Beechwood Organization  
 Barry Hersh, Brookhill Redevelopment LLC\*  
 R. Randy Lee, Building Industry Association of NYC  
 Jon Salony, Chase Manhattan Bank  
 Ira Rubenstein, Environmental Business Association of NYS, Inc.\*  
 Peter Hornick, Environmental Property Group LLC  
 Carlton Brown, Full Spectrum Building and Development  
 Lisa Sotto, Hunton & Williams  
 Linda Shaw, Esq.Knauf, Craig, Koegel & Shaw, LLP\*  
 Bruce-Sean, Reshen MGP Environmental Partners, LLC  
 Elizabeth Gunther Sanderson, New York Bankers Association\*  
 David King, Niagara Mohawk Power Corp.\*  
 Robert Barclay, North American Realty Advisory Services  
 Carol Trezza, Real Estate Board of New York\*  
 Irving Cohen, OENJ Cherokee Corp.  
 Mike Rooney, Novalex Contracting  
 Vincent Riso, Queens County Builders and Contractors Association, Inc.  
 Larry Schnapf , Schnapf Environmental Law Center  
 Les Bluestone, Seavey Organization  
 Stuart Suna, Silvercup Studios  
 Livio Sanchez, Stow Contracting Corp.  
 Henry Wan, Tri-Plus Construction  
 Jody Kass, New York City Partnership\*

### **Planning and Economic Development Interests (2 Members):**

Joan Bartolomeo Brooklyn Economic Development Corp.\*  
 Ann M. Davlin, Regional Plan Association

### **Community Development Interests (13 Members):**

Aaron Mair, Arbor Hill Environmental Justice Corp.\*  
 Walther Delgado, Audobon Partnership for Economic Development LDC  
 John Fleming, El Puente  
 Aaron Shiffman, Fifth Avenue Committee, Inc.  
 John Steinberg, Greater Jamaica Development Corporation  
 Mathy Stanislaus, Minority Environmental Lawyers Association\*  
 Gail Suchman/Eddie Bautista, New York Lawyers for the Public Interest  
 Yolanda Garcia, Nos Quedamos\*  
 Ron Shiffman/Joan Byron, Pratt Institute Center for Community and Environmental Dev.\*  
 Paul Lipson, The Point Community Development Corporation  
 Elizabeth C. Yeampierre, Esq., United Puerto Rican Organization of Sunset Park  
 Peggy Shepard, West Harlem Environmental Action\*  
 Jeffrey Dunston, Central Brooklyn Neighborhood Employment Center

Environmental Interests (3 Members):

Jim Tripp, Esq., Environmental Defense Fund\*\*\*

Theodore W. Kheel, Earth Pledge Foundation

Val Washington, Environmental Advocates\*

\* Organization was represented on the Pocantico Roundtable

\*\* Organization was represented on the Governor's Superfund Working Group

\*\*\* Organization was represented on both the Pocantico Roundtable and the Governor's Superfund Working Group