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THE GREENING OF COMMUNITY ECONOMIC DEVELOPMENT: DISPATCHES FROM NEW YORK CITY

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INTRODUCTION

In recent years we have seen, among the groups we represent in New York City and across the communities where we work, a growing effort to bring environmental and community development

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We dedicate this article to our clients—Green Worker Cooperatives (GWC), Cypress Hills Local Development Corporation (CHLDC), and WE ACT for Environmental Justice—whose work inspires us every day. We especially thank, for their contributions to this Article, Omar Freilla, GWC; Betsy MacLean, CHLDC; and Cecil Corbin-Mark and Peggy Shepard, WE ACT. We also thank Monte Givhan for reading and providing helpful feedback on the Article at various stages of its development, and Jessica Jenkins and Melissa Lardo for expert research assistance.

concerns together in ways that can strengthen both movements and move their agendas forward together. Luke Cole's article in this symposium chronicles similar developments in California.¹ These efforts signal a growing convergence of community development and environmental justice activity across the country, in pursuit of what some call "just sustainability."² The two movements share basic goals: (1) to enhance the health, safety, and wellbeing of the residents of working-class communities and communities of color, especially the poorest and most marginalized; (2) to empower those residents to gain greater control of the use of the land and resources in their neighborhoods; and (3) to enable them to get a fair share of the thousands of new jobs and the billions of dollars in business contracts needed to clean up waste dumps and pollution sources that are disproportionately concentrated in their own neighborhoods and to respond to global warming (carbon reduction strategies, energy audits, weatherization, solar panels, wind farms, vehicle redesign, retrofitting of buildings, etc.).³

In our experience in New York City, the fusion of community economic development (CED) and environmental justice is taking three main forms. New groups are forming to create green enterprises that train and employ local residents, improve the local environment, and generate wealth that remains in the community. Established not-for-profit community-based development corporations are addressing environmental issues and introducing green elements in their affordable housing and other projects. At the same time, leading environmental justice groups are becoming increasingly involved in community development projects and struggles. To better understand this convergence—the forms it takes and issues it raises—and to assess the ways that legal and other professionals can provide useful assistance and support, we will take a brief look at examples from our respective practices.

1. See Luke W. Cole, *Environmental Justice and Entrepreneurship: Pitfalls for the Unwary*, 31 W. NEW ENG. L. REV. 601 (2009).

2. See JULIAN AGYEMAN, SUSTAINABLE COMMUNITIES AND THE CHALLENGE OF ENVIRONMENTAL JUSTICE 79-106 (2005); Brian Glick & Sheila Foster, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999, 2003-05 (2007).

3. See generally VAN JONES WITH ARIANE CONRAD, THE GREEN COLLAR ECONOMY: HOW ONE SOLUTION CAN FIX OUR TWO BIGGEST PROBLEMS (2008); ROBERT POLLIN ET AL., CTR. FOR AM. PROGRESS, GREEN RECOVERY: A PROGRAM TO CREATE GOOD JOBS AND START BUILDING A LOW-CARBON ECONOMY (2008), http://www.americanprogress.org/issues/2008/09/pdf/green_recovery.pdf; Apollo Alliance, <http://www.apolloalliance.org> (last visited May 15, 2009); Green For All, <http://www.greenforall.org> (last visited May 15, 2009) (organization founded by Van Jones).

Green Worker Cooperatives (GWC)⁴ in the South Bronx was formed in 2004 by a former staff member of Sustainable South Bronx, a nationally prominent environmental justice organization.⁵ GWC's mission is to launch and incubate new for-profit green enterprises that are worker owned and improve the local environment.⁶ As the new businesses meet specified benchmarks, they will spin off as autonomous enterprises owned and operated solely by their employees. Last year, GWC launched its first such business, ReBuilders Source (RBS).⁷ RBS collects and sells recycled construction materials and equipment.⁸

For the past twenty-five years, Cypress Hills Local Development Corporation (CHLDC)⁹ has been a leading force in its now predominantly Latino neighborhood in the East New York section of Brooklyn. It has been cited as a model community development corporation (CDC) for its women-led, multi-faceted program, internal democracy, and active staff and community participation. Like most CDCs, CHLDC devotes much of its attention and resources to renovating, building, and managing (or selling) affordable housing. Recently, it has been working hard to incorporate major green elements into its housing construction. Its goal is not only to protect resident and community health but also to reduce long term maintenance and operating costs.¹⁰

WE ACT for Environmental Justice (also known as West Harlem Environmental Action, or WE ACT) is a longtime local and national leader in organizing against environmental racism and advocating for environmental health, protection, and policy in com-

4. See Green Worker Cooperatives, http://greenworker.coop/website_j/index.php (last visited May 15, 2009).

5. See Sustainable South Bronx, <http://www.ssbx.org/> (last visited May 15, 2009).

6. See About Us, Green Worker Cooperatives, http://greenworker.coop/website_j/index.php?option=com_content&task=view&id=15&Itemid=27 (last visited May 15, 2009).

7. See ReBuilders Source, <http://www.rebuilderssource.coop/> (last visited May 15, 2009).

8. *Id.* Carmen Huertas-Noble worked with pro bono lawyers to structure GWC and RBS while she was a transactional attorney in the Urban Justice Center's community development program. Fordham Law School's Community Economic Development Clinic, with other pro bono co-counsel, negotiated the commercial lease for the facility in which RBS now operates.

9. Cypress Hills Local Development Corporation, <http://www.cypresshills.org/> (last visited May 15, 2009).

10. Jessica Rose, together with the other attorneys of the CED Unit, provided CHLDC with essential guidance through the legal and financial mazes it had to navigate to realize this objective.

munities of color.¹¹ It has been especially active in opposing governmental concentration of asthma and cancer-exacerbating diesel bus depots in the predominantly Black and Latino uptown sections of Manhattan. In recent years, it has found that pursuing its environmental goals increasingly requires its engagement in the community development process. It has catalyzed successful campaigns to block proposed harmful local land use decisions and win community-envisioned, community-serving sustainable land uses, especially on Harlem's Hudson River waterfront. It also has allied with major labor unions in efforts to build community-labor alliances and provide to young workers of color training for, and access to, decent jobs in the emerging green economy.

In this Article we look at these groups and projects as microcosms of an important new trend toward sustainable, green, community-based economic development. Our goal is to help others move down this road by sharing snapshots of our clients' experiences and our experiences as their lawyers. We hope to elicit our colleagues' suggestions and reactions, enabling us to improve our work and more effectively move forward our common agenda of community-driven, sustainable development, local wealth accumulation, and social and environmental justice.

I. GREEN WORKER COOPERATIVES

Today the South Bronx, once a national symbol of urban blight,¹² is a far more stable and vibrant community. Thanks are due, at least in part, to the hard work of many South Bronx residents who remained in the community during a time of government and private disinvestment, and who fought to restore its physical infrastructure.¹³ Despite many positive improvements, however, serious community challenges persist. Much of the South

11. See WE ACT for Environmental Justice, <http://www.weact.org/> (last visited May 15, 2009). Fordham's CED clinic serves as WE ACT's transactional counsel.

12. The Bronx has historically been associated with inner-city decline. During the 1970s, the South Bronx experienced a period of acute government and private disinvestment. According to the Northwest Bronx Community and Clergy Coalition, many businesses and landlords abandoned the neighborhoods. During that time, the Bronx lost a substantial percentage of its housing stock. Many buildings were lost to fires or abandoned and subsequently demolished by the city. Because of this, many people were forced to move, and businesses suffered. See generally David Balaban et al., Bronx CED Report (on file with the authors).

13. See *id.* (explaining that as part of this struggle, many residents came together to form community-based organizations (CBOs) to promote and preserve affordable housing and some of these CBOs became developers of affordable housing).

Bronx remains plagued by poverty, high rates of unemployment, and adverse environmental conditions. The South Bronx is a reluctant host to a disproportionate share of New York City's waste facilities and a high concentration of the city's transportation infrastructure, which have an adverse impact on the community's physical environment and on the health and lives of its residents.¹⁴

GWC, founded by Bronx native Omar Freilla,¹⁵ is a community-based response to decades of environmental racism and high rates of unemployment. The members of GWC believe that in order to address environmental and economic problems in the South Bronx, the community needs new forms of development—development that does not pollute the environment or exploit human labor. Thus, GWC is dedicated to incubating green, worker-owned, cooperative businesses in the South Bronx as a way of building “a movement for a different kind of economy, one built on environmental justice; empowered communities; and democratic workplaces”¹⁶ As part of GWC's goal to empower the South Bronx community, it provides community education and action on various environmental issues, including the value and need for a green economy in the South Bronx.

14. *Id.*; see also TalkBXAdmin, *NYC Store Saves Home Supplies from Trash & Resells Them*, TALK BRONX, Apr. 22, 2008, <http://www.talkbx.com/2008/04/22/nyc-store-saves-home-supplies-from-trash-resells-them/> (reporting that waste is an acute community concern in the Bronx and that a substantial amount of the waste generated by the city is handled in the South Bronx). With almost two dozen waste transfer stations that are served by fume-exhaling trucks in the community, residents are concerned about air quality and public health. *Id.* In terms of public health, for example, the South Bronx has one of the highest rates of asthma in the City. *Id.*

15. Omar Freilla grew up in the South Bronx in the 1970s and attended the Bronx High School of Math and Science. Upon graduation, he earned his undergraduate degree from Morehouse College in Atlanta and a master's degree in environmental science from Miami University in Oxford, Ohio. He returned home to work on environmental issues in the South Bronx. Before founding GWC in September of 2004, he worked for the NYC Environmental Justice Alliance and for Sustainable South Bronx (SSBX). At SSBX, Omar was part of “an ad hoc coalition that was a kind of forerunner to the local NYC version of the Apollo Alliance,” which is a national coalition whose mission is to build a clean energy economy. See Sprig, <http://www.sprig.com/experts/107> (last visited May 15, 2009). The purpose of the coalition was to strategize about creating and attracting green businesses to areas like the South Bronx. Omar Freilla's participation in this coalition helped give birth to his idea of GWC. Additionally, GWC provides democratic work places, ensures community accountability, and creates wealth that remains in the community. *Id.*; see also Green Worker Cooperatives, *supra* note 4.

16. Green Worker Cooperatives, http://greenworker.coop/website_j (last visited May 15, 2009); see also OMAR FREILLA, GREEN WORKER COOPS., GREEN DEVELOPMENT FOR ENVIRONMENTAL JUSTICE & HEALTHY COMMUNITIES (2005), http://greenworker.coop/website_j/pdf/Green_Development_for_Environmental_Justice.pdf.

One of GWC's main goals is to work with Bronx residents who are interested in becoming eco-entrepreneurs to start worker-owned cooperatives. GWC's first cooperative is RBS—a green development project that provides the community with an alternative to waste facilities and a way to create ownership, jobs, and income that stay in the community. RBS, launched in April of 2008, accomplishes this as a worker-owned business that sells new and recycled building materials and equipment.¹⁷ These building materials are typically donated by builders who have a surplus upon completion of a construction project or are recovered from demolition projects.¹⁸

GWC's role in helping to form RBS is an important one. Raising capital and developing a business plan are primary obstacles faced by entrepreneurs starting businesses.¹⁹ Community-based organizations (CBOs) like GWC can play a critical role in supporting residents to become entrepreneurs and helping them overcome these obstacles by working with them to create business plans, training them on how to operate a business, and providing equity or low-interest loans.²⁰ The new business benefits from the vision, guiding hand, and capitalization that CBOs can provide.²¹ In form-

17. ReBuilders Source, *supra* note 7.

18. For example, the *New York Times* reports that donations to RBS have included: eighty new porcelain toilets, two thousand gallons of paint from a hardware store, and two hundred doors from a contractor who had to scale back a project. Other items also include stainless steel sinks, tiles, and ceiling fans. To date, the main customers have been Bronx homeowners, renters, and building superintendents. See David Gonzalez, *Greening the Bronx, One Castoff at a Time*, N.Y. TIMES, April 21, 2008, at B1.

19. Susan R. Jones, *Promoting Social and Economic Justice Theory Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL'Y 249, 249 (2004) (explaining that "business advisors stress the importance of early legal assistance to entrepreneurs and the need for help with business planning . . . [and] financing").

20. Many CBOs, as part of their mission to advance social and economic justice, raise funds from foundations to provide equity and loans to businesses in their communities. Foundations fund them, in part, because they view stimulating development in low-income communities as a charitable purpose. See Rev. Rul. 74-587, 1974-2 C.B. 162 (granting 501(c)(3) exemption, a tax exemption for charitable organizations, to an organization that stimulated development in economically depressed, high density, urban areas). Part of the reason the organization qualified for 501(c)(3) status was because it provided relief to the poor and disadvantaged, combated community deterioration by establishing new businesses, and lessened prejudice and discrimination against minorities, who may not have otherwise been able to access traditional sources of business financing.

21. See, e.g., JAMES MEGSON & MICHAEL O'TOOLE, *EMPLOYEE OWNERSHIP: THE VEHICLE FOR COMMUNITY DEVELOPMENT AND LOCAL ECONOMIC CONTROL* § 4.2 A (1993).

ing RBS, GWC raised funds to retain the ICA Group,²² a prominent provider of technical assistance to worker cooperatives, to conduct a feasibility study and create a business plan for RBS. GWC also raised approximately \$800,000 from New York State, private foundations, other cooperatives, and local churches to launch RBS. The executive director of GWC, Omar Freilla, also donated \$100,000 that he received with the Jane Jacobs Medal from the Rockefeller Foundation.

In terms of structuring the relationship between CBOs and the businesses they help create, the ICA Group recommends that CBOs initially retain ownership and “once the business is viable, with a strong management team and trained and committed workforce, it can be transitioned to employees either through a leveraged buyout or by gradually extending ownership to the employees over time.”²³ ICA explains that the advantage of this strategy is that workers are not immediately asked to take on ownership responsibilities in a new, unproven company.²⁴ Instead, when a stable business has been built, the employees can purchase it from the CBO at a reasonable price and enjoy the benefits of ownership.²⁵

A. *Creating ReBuilders Source*

As part of its goal to grow a democratic and green economy in the South Bronx, GWC is building a membership base of local residents interested in becoming green-business owners. Through its Green Worker Co-op Academy, GWC provides several weeks of training on various skills needed to launch future green, worker-owned cooperatives.²⁶ GWC worked with four graduates of its inaugural Green Worker Co-op Academy class to become worker-owners and to structure and operate its first cooperative, RBS. The four graduates who started RBS include “a young man who work[ed] part-time silk-screening T-shirts, a grandmother on public

22. The ICA Group was created in 1978 as a not-for-profit advocacy group seeking to alleviate unemployment and community deterioration by creating cooperative businesses. ICA quickly developed into a leading provider of direct technical assistance, including conducting feasibility studies, helping its clients obtain financing, and providing advice regarding governance and financial structures. See ICA Group, <http://www.ica-group.org> (last visited May 15, 2009).

23. MEGSON & O'TOOLE, *supra* note 21.

24. *Id.*

25. *Id.*

26. See Co-op Academy 2006, http://greenworker.coop/website_j/index.php?option=com_content&task=view&id=9&Itemid=2 (last visited May 15, 2009).

assistance, a file clerk for a Manhattan law firm, and a part-time teacher's aide."²⁷

The Community Development Project of the Urban Justice Center (UJC)²⁸ worked with pro bono counsel from Simpson Thacher & Bartlett LLP to structure the relationship between GWC and RBS. This included counseling GWC on the structure of its governance, its financial role in RBS, and the nature of its ongoing relationship.²⁹ The lawyers also met with the prospective worker-owners several times to identify questions and generate proposals regarding the governance and financial structure of RBS. The group ultimately voted on these proposals and the lawyers incorporated its decisions into governance documents. Some of the questions posed to the group included what type of legal entity to form,³⁰ how to make decisions and distribute profits, and what requirements there should be to become and remain a worker-owner. These decisions were made by consensus, and all four worker-owners were engaged and actively participated in the process.

As of December 2008, RBS had been open for six months and was doing well. The worker-owners had filled their eighteen thousand square foot warehouse with salvaged and recycled materials.

27. Heather Millar, *Profile: Your Trash, His Inventory*, SIERRA MAG., Nov.-Dec. 2007, <http://www.sierraclub.org/sierra/200711/profile.asp>.

28. See Urban Justice Center, <http://www.urbanjustice.org> (last visited May 15, 2009) (providing information on CDP and UJC).

29. ReBuilders Source Holdings LLC (RBS Holdings) owns RBS (the business). RBS Holdings has two members: GWC and RBS Cooperative. The workers co-own the business through their membership in RBS Cooperative. Currently, GWC has three members on the Board and RBS Cooperative has two. RBS Holdings' operating agreement provides that decisions be made by consensus. In the event consensus cannot be reached, a director may propose to use a unanimous "minus one" approval standard (i.e. all but one of the directors present at a meeting must approve the decision). GWC also provides for a leveraged buyout of its interest in RBS Holdings LLC and gradually extends full ownership (profit-sharing and governance rights) to the RBS Cooperative over time. Although RBS does not have a manager, GWC employs a co-op facilitator who provides support and technical assistance to RBS.

Notably, consensus decision making by not-for-profits committed to organizing is not uncommon. While lawyers are generally concerned about its potential impact in practice, e.g., deadlocks, etc., it is important that legal advice take into account the nature of a not-for-profit committed to social justice issues. Thus, while lawyers should explain potential pitfalls, ultimately this is the client's decision.

30. Interestingly, although some of the lawyers initially believed that an LLC would work best, in part because of its pliability, the group disagreed for political reasons. While some of the lawyers felt there was no need to elevate form over substance because cooperative provisions could be included in an LLC structure, GWC and the prospective worker-owners felt strongly that the entity through which the worker-owners own RBS be an "official" cooperative formed under the New York Cooperative Law.

While they had been selling items since its opening, with a full warehouse, they were now at the stage of ramping up their marketing and sales. Their customers had mainly been Bronx homeowners, renters, and building superintendents. In fact, a surprising number of customers were renters, and RBS is now including them as part of their targeted market. With RBS off to a strong start, GWC is now starting its second round of the Green Worker Co-op Academy with the hope of identifying and creating the next cooperative. Ideas being considered include a deconstruction business, which conducts a form of demolition that salvages reusable building materials, and a nursery that would grow and maintain plants for office buildings.

RBS is a quintessential CED project. It is the result of “a community-oriented and community-controlled development strategy that utilizes the resources and implements the priorities of residents and institutions in low-income communities.”³¹ RBS also has the added value of actively promoting environmental justice. The CED movement traditionally seeks to promote a type of development that is distinctive in four main ways: (1) it provides services and benefits that are accessible to residents of the community; (2) it keeps income and profits within the community; (3) it minimizes negative environmental externalities such as pollution; and (4) it reinforces a stable, independent community structure.³²

GWC’s promotion of environmentally friendly worker cooperatives incorporates all these principles. GWC’s development of RBS enables Bronx residents to own a business and earn a living wage (seventeen dollars an hour), while at the same time generating profits that will remain in the community. GWC also goes one step further by actively ensuring that its cooperatives are not only environmentally friendly but contribute to the environmental health of the community. For instance, by reusing building materials, RBS expects to reduce waste that could otherwise end up in waste transfer stations in the South Bronx, which reduces the number of waste-hauling trucks that pass through the area daily.³³ The

31. Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105, 107 (1997) (quoting Nat’l Econ. Dev. & L. Ctr., Report 5 (Spring 1989) (on file with authors)).

32. *Id.* at 107-08; see also WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS & THE NEW SOCIAL POLICY* 69-72 (2001).

33. *Applying Environmental Principles in Real World Situations*, ENVTL. CONNECTIONS (Inst. of Env’tl. Scis., Miami Univ., Oxford, Ohio), Mar. 28, 2008, available at http://www.greenworker.coop/website_j/pdf/EnvConnections03_28_08.pdf. Omar

hope is that a reduction in truck traffic can help to bring down asthma rates. For GWC, locating this business in the South Bronx also means that there is one less location in the Bronx that a polluting company can occupy. Thus, environmental concerns are not merely incidental to the business purpose; the motivation behind RBS is not solely to make a profit but also to help contribute to the betterment of the community.

GWC also promotes community empowerment by helping to form businesses, specifically worker-owned cooperatives, which democratize the workplace and give people control over their working environment. In addition, worker-owned cooperatives commonly adhere to a principle of concern for the community.³⁴ This principle generally makes local ownership distinct from absentee ownership in that it is more likely to maximize community benefits and increase accountability to communities.³⁵ The idea is that if the owners of a business in a certain community also live in that community, the wealth generated by that business will remain in the community. For example, owners who live in the community are more likely to hire locally, purchase their goods and services locally,³⁶ and ensure that their businesses are good corporate neighbors. They are not likely to implement business practices that pollute the very environment in which they and their friends and family live. Thus, there is an element of self-interest as well as a concern for others in the community that serves as a protection against implementing business practices that have adverse environmental impacts. Concern for the community in the environmental justice context can also include participation in community cam-

Freilla sees RBS as an outgrowth of organizing efforts around environmental justice issues. He explains that while trying to stop polluters from coming into the neighborhood, they learned so much that they decided to create their own vision for sustainable development.

34. See SIMON, *supra* note 32, at 69; Jessica Gordon Nembhard, *Principles and Strategies for Reconstruction: Models of African American Community-Based Cooperative Economic Development*, 12 HARV. J. AFR. AM. PUB. POL'Y 39, 44 (2006) ("Cooperatives have operated as a form of successful business ownership for centuries, . . . following a set of principles that include one person one vote, open membership, shared profits, continuous education, and concern for community.").

35. Some believe that the combination of absentee ownership and the modern stock corporation's emphasis on maximizing returns for shareholders are two major contributing factors, among others, to corporate practices that overemphasize profit at the expense of local communities. The idea is that owners in far away boardrooms have less of a sense of loyalty to local communities that they do not belong to and indeed have a duty to maximize profits for their shareholders. SIMON, *supra* note 32, at 70-76.

36. They are also less likely to disinvest in the event of an economic downturn. See SIMON, *supra* note 32, at 70.

paigns and advocacy for sustainable development. For instance, while working on launching RBS, the worker-owners also supported a “Green Jobs, Not Jails” community campaign. The campaign called on the City of New York, which is planning to build a jail on a brownfield site³⁷ in the South Bronx, to consider an alternative community proposal for an eco-industrial park that would provide green jobs to local residents.³⁸

Creating green ownership and green jobs fits well with a CED strategy that promotes meaningful job creation for local residents. This is because “[g]reen collar jobs are high quality jobs that will naturally form out of [a growing] green economy, . . . [including] jobs installing solar panels, maintaining wind farms, [and] repurposing used construction materials . . . which by their . . . nature have to be local.”³⁹ Green-collar jobs offer an opportunity to “move people from at-risk, underserved communities that are often the victims of environmental racism into dignified, uplifting green collar work as green industries expand.”⁴⁰ Furthermore, by promoting green ownership, we can create “equal access and equal opportunities to the best of the green economy.”⁴¹ Thus, while CED lawyers could choose to support any project that generates jobs, we can maximize empowerment by collaborating with CBOs to create worker-owned cooperatives that provide living wage jobs while also retaining wealth in the communities in which they operate.⁴²

B. *Possible Critiques*

While growing a green economy provides important and needed opportunities, some low-income residents may be skeptical of certain types of green businesses and jobs, including recycling businesses. While GWC and RBS have received an overwhelming amount of community support from local residents, state officials,

37. Cole, *supra* note 1.

38. See generally SUSTAINABLE SOUTH BRONX & GREEN WORKER COOPS., THE OAK POINT ECO-INDUSTRIAL PARK: A SUSTAINABLE ECONOMIC DEVELOPMENT PROPOSAL FOR THE SOUTH BRONX (2007), http://www.greenworker.coop/website_j/pdf/Eco_Industrial_Park_Report.pdf.

39. Tracy Fernandez Rysavy, *Environmental Justice for All*, CO-OP AM. Q., Fall 2007, at 19, available at <http://www.ejrc.cau.edu/CoopAmericaArticle.pdf>. Other well-known and respected organizations are also promoting green jobs. Sustainable South Bronx, founded by Majora Carter, has a green jobs training program, and the Ella Baker Center, formerly led by Van Jones, is launching a Green Jobs Corp in Oakland.

40. *Id.*

41. *Id.*

42. See Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 194 (1999).

and the cooperative and environmental justice community,⁴³ at least one community leader has questioned whether RBS itself will “increase the amount of waste and traffic in the South Bronx.”⁴⁴ While clearly an important concern, the first part of this query seems misguided. RBS is salvaging building materials that would otherwise become waste. Therefore, RBS is actually avoiding the creation of waste that would end up in a landfill, while providing jobs, ownership, and discounted goods to the community. RBS also operates on a small scale; it owns only one van that it is retrofitting to use vegetable oil instead of diesel fuel.

While some may question whether the scale of RBS is sufficient to make a major impact, it is important to note that its current size is not the only measure of its value and importance. While on the surface providing ownership and employment for four or five people may, to some, appear small, GWC’s magnitude is really in its vision, potential, and ability to be replicated. GWC’s goal is to create many worker-owned cooperatives in the South Bronx in part by helping to create new businesses one at a time and eventually a new industry that transforms waste into a resource. Creating re-use businesses presents a tremendous growth opportunity given the amount of waste generated throughout New York City that ends up in the Bronx that, instead, could be recycled and put to use for the benefit of the environment and the residents of the South Bronx.⁴⁵ As in most bottom-up organizing approaches, the movement starts small and expands with time and effort. GWC and RBS serve as an inspiration for activists across the country, demonstrating that community-oriented and community-controlled development in the form of worker ownership is viable.⁴⁶

43. See Millar, *supra* note 27; *NOW on PBS Video: Green Collar Jobs* (PBS television broadcast Nov. 11, 2008), available at <http://www.pbs.org/now/shows/445/index.html> (referring to Omar and GWC being well received in the South Bronx and EJ communities). Omar and his work have also been recognized by the Union Square Award for grassroots activism and the Jane Jacobs Medal for new ideas and activism.

44. See Millar, *supra* note 27 (quoting Marian Feinberg, environmental health coordinator at For A Better Bronx).

45. See *NOW on PBS Video: Green Collar Jobs*, *supra* note 43.

46. While cooperatives are not new, there appears to be a new surge in the national cooperative movement, signaled by an increasing number of groups becoming interested in, and coming together to focus on, creating and sustaining worker-owned cooperatives. For example, in 2007 GWC helped organize the second National Worker Co-op Conference sponsored by the United States Federation of Worker Cooperatives. The conference was attended by approximately three hundred people, and the first event was held at Colors, a worker-owned restaurant in New York City. Since then, other groups have also held local conferences in New York City focusing on how CBOs

II. CYPRESS HILLS LOCAL DEVELOPMENT CORPORATION

Since 1983, CHLDC has been a central player in the now predominantly low-income Latino immigrant slice of East New York, Brooklyn, adjoining the Queens border. It has received national attention as a leader among CDCs, cited for its strong female leadership, democratic processes, and active participation of board members and community residents.⁴⁷ CHLDC serves “8,000 residents a year through a comprehensive array of community service programs and neighborhood development projects.”⁴⁸

CHLDC has taken a holistic approach to community development and local empowerment, focusing on multiple aspects of its community’s needs. For example, it created and helps operate a unique dual language public elementary and middle school, which features ongoing parent and community participation in governance, including a community parent as co-director. After years of struggle and negotiation, CHLDC and other community activists persuaded the city government to construct a new local school building that includes an office for CHLDC, through which it hopes to provide and organize community activities and direct services during nights, weekends, and school vacations.⁴⁹ CHLDC also built and operates its own childcare center, in addition to staffing and supporting a Head Start network of home-based family daycare providers. It sponsors extensive residential and commercial revitalization, after-school and inter-generational programs, community organizing, counseling for homeowners, and employment services.⁵⁰

can support the creation of immigrant- worker-owned cooperatives that provide meaningful and safe employment.

47. See generally MARILYN GITTELL ET AL., HOWARD SAMUELS CTR., THE DIFFERENCE GENDER MAKES: WOMEN IN NEIGHBORHOOD DEVELOPMENT ORGANIZATIONS (1994); MARILYN GITTELL ET AL., HOWARD SAMUELS CTR., BUILDING CIVIC CAPACITY: THE BEST CDC PRACTICES (1997).

48. Cypress Hills Development Corporation, *supra* note 9.

49. Joan Byron et al., *Profile: The Cypress Hills Community School*, SHELTERFORCE, Jul.-Aug. 2001, available at <http://www.nhi.org/online/issues/118/CHLDC.html>. CHLDC Executive Director, Michelle Neugebauer, commented:

Our project will demonstrate the tremendous potential for CDCs to produce desperately needed educational facilities that are responsive to educational program [sic] in high need areas, and to involve teachers and parents in advocating for and designing the school . . . CBOs have demonstrated their capacity to rebuild neighborhoods. They have untapped capacity to develop school facilities in a timely, cost-effective, accountable, and sensitive fashion.

Id.; see also *Learning Curves: Chancellor Klein Breaks Ground in Brooklyn on \$40 Million Cypress Hills Community School*, BROOKLYN EAGLE, Sept. 27, 2007, available at <http://www.brooklyneagle.com/categories/category.php?categoryid=9&id=15680>.

50. Glick & Rossman, *supra* note 31, at 121 n.45.

Along with these multifaceted programs, CHLDC has also addressed the neighborhood's desperate need for good quality, affordable housing. It has developed over 237 units of affordable housing in approximately 65 buildings, with another 344 units in the pipeline (plus 7 commercial units and a 450-student capacity public school). Most of its housing stock involves gut rehabilitation of deteriorated, often abandoned, apartment buildings and small homes that have been foreclosed on by the government;⁵¹ some projects are new construction on formerly city-owned vacant land. CHLDC operates many of these buildings (with outsourced management) as rentals to low-income tenants. A large portion of its housing portfolio also includes small homes and, more recently, condominiums for sale to eligible purchasers. In its housing development, as in its other programs, CHLDC has been represented by Brooklyn Legal Services Corporation A (Brooklyn A).⁵²

Brooklyn A's CED Unit provides CHLDC with a full range of general counsel services. The CED Unit provides traditional legal services in areas including: corporate and organizational matters, taxes, contracts, real estate, employment law, and other litigation matters. The CED Unit also provides informal legal counseling, including predevelopment consultation, formation of project teams, project coordination and troubleshooting, fundraising, negotiating with regulatory agencies and funders, and networking with other community groups. Brooklyn A's CED Unit has helped CHLDC develop and operate a variety of programs, and has supported CHLDC's community campaigns for almost two decades.⁵³

Some of the most pressing issues confronting the communities in North and East Brooklyn involve environmental and health risks resulting in part from the neighborhoods' older housing and the industrial facilities located nearby.⁵⁴ Like communities of color across the country, the eastern part of Brooklyn has extraordinarily

51. CHLDC takes title to these properties usually for a nominal price and then secures grants and loans for the renovations.

52. Through its CED Unit, Brooklyn A is one of the only nonprofit, neighborhood-based, public interest legal services offices in the country to develop a substantial practice representing CBOs and CDCs in low-income communities. See BROOKLYN LEGAL SERVS. CORP. A, COMMUNITY AND ECONOMIC DEVELOPMENT DOCKET 2008, at 4 (2008), http://www.bka.org/pdf/BKA_CED_docket_08.pdf (providing a description of the CED Unit and a description of recent CED projects).

53. Glick & Rossman, *supra* note 31, at 121-22.

54. See Jason Corburn, *Combining Community-Based Research and Local Knowledge to Confront Asthma and Subsistence-Fishing Hazards in Greenpoint/Willemshurg, Brooklyn, New York*, 110 ENV'L HEALTH PERSP. (SUPP. 2) 241, 242 (2002).

high rates of cancer, asthma, and lead-related illnesses, due in part to environmentally hazardous housing and contaminated soil and air.⁵⁵ In response to these challenges, CHLDC, like a growing number of other CBOs and CDCs, encourages and implements environmentally responsible economic development and inclusive land use planning.⁵⁶ In recognition of the importance of healthy and safe homes in its communities, as more subsidies become available for green construction, and as green building technology becomes more generally available, CHLDC is making great efforts to integrate green elements into its housing programs.⁵⁷

The group recently broke ground on its first green housing project, twelve moderate-income condominium units in four new townhouses.⁵⁸ The design features as many energy efficient and water-

55. See generally Rachel D. Godsil & James S. Freeman, *Jobs, Trees, and Autonomy: The Convergence of the Environmental Justice Movement and Community Economic Development*, 5 MD. J. CONTEMP. LEGAL ISSUES 25 (1994).

56. *Id.* at 28.

57. "Green building" creates healthy, cost-effective and environmentally sound buildings and greatly reduces greenhouse gas emissions. See Katherine Mikkelsen, *The Government, Green Building and LEED*, PUB. LAW., Summer 2007, at 3. Green building is the design, construction, and maintenance of buildings, with a focus on healthy indoor environment, maximum energy efficiency and conservative use of natural resources. It is essential to the health and environmental needs of low-income communities because buildings produce thirty-eight percent of all carbon dioxide gas emissions in the United States and over one-third of municipal solid-waste streams. Residential and commercial buildings also consume thirty-nine percent of all energy used in the United States. See U.S. Green Building Council: Green Building Research, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1718> (last visited May 15, 2009). Green buildings increase the efficient use of energy and environmental and human resources.

58. The condominium units will be resold to families that qualify as moderate-income (earning 80-110% of metropolitan Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD)). Currently the AMI for a family of four in the New York City metropolitan area is \$76,800. Memorandum from Dep't of Hous. Pres. & Dev., City of N.Y. (Feb. 27, 2009), <http://www.nyc.gov/html/hpd/downloads/pdf/HUD-Income-Limits-detailed.pdf>. The calculation for the target income for each condominium unit is based on unit size (number of bedrooms). Therefore a unit marketed to 80% AMI (\$54,605-55,296) would be priced at approximately \$171,483; a unit marketed to 100% AMI (\$68,429-69,120) would be priced at approximately \$237,312; and a unit marketed at 110% AMI (\$87,060-87,859) would be priced at approximately \$303,744.

These families will earn two-to-three times the median family income in East New York (the median household income for Brooklyn Community Board 5, which includes East New York and Cypress Hills, in 2007 inflation-adjusted dollars, was only \$31,249). U.S. CENSUS BUREAU, 2005-2007 AMERICAN COMMUNITY SURVEY, available at http://www.nyc.gov/html/dcp/pdf/census/nyc_econo_all_05_06_07_pumas.pdf. CHLDC hopes the condominiums will attract young professionals from the community who might want to make an initial home purchase but do not want to become landlords in a two-to-three unit small home, which is the bulk of the existing housing stock in the neighbor-

saving innovations as the project can afford. It will have central heat and air with individual unit controls; low, argon-filled windows; planted roof decks; bamboo floors; dual-flush toilets; permeable pavers; superefficient lighting fixtures; and Energy Star appliances. Ceramic tiles and other finish materials will be recycled and/or sustainably produced. CHLDC's second green housing project, expected to break ground in 2009, includes forty-two low- and moderate-income rental units plus a community center.⁵⁹ Seven of the units will be "supportive housing" for tenants with special needs. This project will feature most of the condo project's green elements plus a green building envelope with special roof insulation, innovative low-leak sidewall venting, and special attention to details of connections of roof, walls, foundations, etc. Taking advantage of the building's height relative to nearby properties, CHLDC hopes to install rooftop solar panels, which would vastly reduce the building's operating expenses and carbon footprint.

A third project, now on the drawing boards, promises to be even greener, including innovative "blown-in" insulation and other special features. For this project, CHLDC won an Enterprise Foundation green planning grant in a nationwide competition.⁶⁰ Project partners include the New York State Energy Resource and Development Authority (NYSERDA) and Green Communities.⁶¹ The project design consultant is accredited by the United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) program.⁶² Though CHLDC initially conceived the project as moderate-income condominiums, with the economic downturn and strains on government subsidies and construction loans, it is now considering a switch to low-income rental housing. This switch would enable it to qualify for federal low-in-

hood. The condominiums will be a welcome addition to the mixed-income community and should help to ensure its growth and economic stability.

59. The apartments will be made available to tenants earning between 30-60% AMI for the New York City metropolitan area (70-130% of East New York AMI). This project marks CHLDC's first joint venture with an experienced for-profit developer of affordable and supportive housing. The project is structured so that CHLDC can obtain ultimate ownership.

60. See Enterprise Green Communities Planning and Construction Grants, <http://www.greencommunitiesonline.org/tools/funding/grants/planning.asp> (last visited May 15, 2009).

61. See Green Communities, <http://www.greencommunitiesonline.org/about/> (last visited May 15, 2009); New York State Energy Resource and Development Authority, <http://www.nyserda.org/default.asp> (last visited May 15, 2009).

62. See U.S. Green Building Council, LEED Rating Systems, <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19> (last visited May 15, 2009).

come housing tax credits for construction financing. It would also circumvent the hesitancy of private banks to lend to for-sale projects (or to originate mortgages on the backend) especially in low-income communities and for low-income first-time home buyers during the economic crisis.

Drawing on its experience in these projects, CHLDC plans to incorporate substantial green elements in its future projects. These include ninety-six units of senior housing on two former industrial sites. To realize its goal to create high-quality and environmentally sustainable housing for low- and moderate-income community residents it must face the issues confronting community-based developers of green affordable housing across New York and the United States. These include how best to contain increases in upfront development costs due to adding green elements and how to offset those increases through green building subsidies and green-based reductions in long-term operating costs.

A. *Development Costs*

Even the most basic package of green elements can be expected to add at least two percent to development costs.⁶³ Community-based not-for-profit affordable housing developers very rarely have anywhere near that much cushion in project budgets, let alone the capital required for bolder innovation. Over time, green development costs should decrease as a result of increased green design skill and experience and increases in economies of scale and technological innovation (especially if a new federal administration allocates significant funds for green building research and development). For now, though, a group like CHLDC—unwilling to raise rents and sale prices that already exclude too many, or to build fewer units when so many more are needed—has to rely on increased investor funds or green subsidy programs.

B. *Green Subsidy Programs*

Public and foundation subsidies for green design and construction have recently begun to proliferate, and some not-for-profit affordable housing developers have begun to access these subsidies

63. GREGORY H. KATS, MASS. TECH. COLLABORATIVE, GREEN BUILDING COSTS AND FINANCIAL BENEFITS 3 (2003), <http://www.cap-e.com/ewebeditpro/items/O59F3481.pdf>.

and obtain green certification or ratings.⁶⁴ Most current subsidy programs unfortunately do not include preference, set aside, or other accommodations based on the affordability of the housing to low-income purchasers or tenants or its not-for-profit community-based auspices. Moreover, the new subsidies are emerging in an uncoordinated patchwork that poses additional problems. Each program has its own application forms and procedures, its own design and reporting requirements, and its own monitoring process. In New York, at least, there is no “one-stop shop.”⁶⁵ Even with extensive free guidance from a consultant at the Pratt Institute Center for Community and Environmental Development on one of its projects currently in predevelopment, CHLDC is still sometimes overwhelmed by the intricate maze of programs. Its lawyers are especially concerned about potential conflicts in the standards and procedures imposed by various green subsidy programs. They are gearing up for a very close reading of proposed grant and loan agreements. This will lay the basis for the often uphill process of negotiating some reconciliation of initially conflicting terms so that CHLDC can meet the requirements of each funder.

An additional set of issues arises from the Leadership in Energy and Environmental Design certification program of the USGBC.⁶⁶ LEED is the nationally acknowledged gold standard for green construction. Some green subsidies are contingent on a project achieving a specified level of LEED certification (gold, silver,

64. See, e.g., STEVEN WINTER ASSOCS., BUILDING BETTER AFFORDABLE HOUSING IN NEW YORK CITY: GETTING TO ENERGY STAR OR EQUIVALENT RATINGS 17-23 (2004), <http://www.practitionerresources.org/cache/documents/647/64751.pdf> (describing the case study of the Melrose Commons II in the Bronx); see also Jill Brooke, *The New Environment for Housing—With a Few Crusading Advocates to Lead the Way, the Market for Green Affordable Housing Shows Promise*, AM. PROSPECT, Jan.-Feb. 2007, at A10; *Green Common Ground*, AM. PROSPECT, Jan.-Feb. 2007, at A3 (interview by Robert Kuttner with Frances Beinecke, President of NRDC, and Bart Harvey, chairman of the board of Enterprise Community Partners); Nicole Wallace, *Building Green—More Low-Cost Housing Groups Are Incorporating Environmentally Friendly Practices into Their Work*, CHRON. OF PHILANTHROPY, Oct. 26, 2006, at 60.

65. Interview with Betsy MacLean, Dir. of the Cmty. Dev. Div., CHLDC, Brooklyn, N.Y. (Oct. 7, 2008).

66. There are several ways to denote a building’s “greenness.” In the United States, green buildings can be certified by an independent third party, the USGBC, through its LEED program. Other widely recognized rating systems in the United States are the Energy Star project of the United States Environmental Protection Agency and the United States Department of Energy and Green Globes program of the not-for-profit Green Building Initiative. Mikkelson, *supra* note 57, at 3; Energy Star, <http://www.energystar.gov/> (last visited May 15, 2009); Green Globes, <http://www.greenglobes.com/existing/homeca.asp> (last visited May 15, 2009); see also Peter S. Brittell & Smita G. Korrapati, *What Does ‘Green’ Mean?*, N.Y. L.J., Jun. 11, 2007, at 1.

etc.). This poses at least two problems. First, the LEED application process is itself costly and time consuming, especially for a not-for-profit affordable housing developer operating on a shoestring budget. A special LEED-accredited design professional must be employed from early on. Some grants are available to pay the consultant, but these in turn require their own time-consuming application processes. After deciding to forgo LEED certification for its first two green housing projects, CHLDC has received special funding to explore the possibility of LEED certification in its third green project.⁶⁷

CHLDC's lawyers are also concerned that LEED certification is *post hoc*. Because LEED mandates design and performance criteria, a portion of which can be determined only post-completion, the certification is awarded on the basis of reports and assessments both during and after completion of construction. CHLDC could take all steps that its consultant says will achieve the level of LEED certification required by a funder, only to find, after construction is complete, that the USGBC disagrees and declines to award such certification. CHLDC and its lawyers at Brooklyn A hope to make subsidies dependent on CHLDC's good faith effort rather than the USGBC's ultimate finding, or to advocate for a guarantee of certification if certain criteria are met prior to completion. They hope to negotiate agreements that entitle CHLDC to promised funds if it completes construction in full compliance with design requirements certified by a LEED-accredited consultant as sufficient to meet LEED standards.

C. *Green-Based Reduction in Operating Costs*

Though the initial costs are greater, the ultimate savings of green building have been estimated at fifty to seventy dollars per

67. For example, in the green condominium project on which they recently broke ground, CHLDC decided to integrate green aspects without seeking formal rating or certification based upon a cost-benefit analysis that showed that the cost of the necessary consultants and commissioning for LEED certification would be infeasible for the project budget. Interview with Betsy MacLean, Dir. of the Cmty. Dev. Div., CHLDC, Brooklyn, N.Y. (Aug. 21, 2008); see also Rachel Nielson, *Easier on the Wallet—And the Environment*, CITY LIMITS WEEKLY, Oct. 22, 2007 (discussing the Fordham Bedford Housing Corporation's Jacob's Place affordable housing project in the Fordham section of the Bronx, a sixty-three unit apartment building that met the Green Communities Initiative criteria). According to Abby Jo Sigal, an Enterprise vice president and director of its New York metro region operations, "there's costs associated with doing that [LEED] certification, and it's sometimes challenging for affordable housing to carry those types of costs." *Id.*

square foot over a period of twenty years, which is over ten times the additional cost associated with building green.⁶⁸ According to NYSERDA, an initial investment of less than one percent of building costs can increase energy efficiency over standard building code practices by twenty to thirty percent, meaning any minimal upfront costs can be recouped in lower maintenance costs over time.⁶⁹ One question facing CHLDC and its consultants and attorneys is whether these future savings can in some way be capitalized, or borrowed against, to offset green-based increases in development costs. Or, to invert the question, to what extent can green-based increases in development costs be amortized over a building's life, so as to be offset annually by operating cost reductions?

These issues arise when the community group retains long-term ownership of rental housing. Green home ownership projects present an additional twist. Here the developer (seller) incurs the added development costs associated with green building, but the owner (buyer) gains the green-based reductions in long-term operating costs. To make green low-income home ownership development financially feasible, subsidy providers will have to factor this into their calculation of the required size of upfront construction subsidies.

D. *Looking Toward the Future*

The partnership between CED lawyers and CDCs, like the CED Unit of Brooklyn A and CHLDC, has the potential of further enabling the communities served by CDCs to benefit from the strides in environmentally sustainable building in the same manner and degree as higher-income communities throughout the country. In order to dramatically decrease the correlation of residents' class and race with extraordinarily high rates of illnesses due in part to environmentally hazardous housing and contaminated soil and air, lenders, governmental bodies, and society at large, will have to commit sufficient resources to green building and similar environmentally responsible efforts in low-income communities.

III. WE ACT FOR ENVIRONMENTAL JUSTICE

WE ACT emerged in the early 1990s from community protests against the decision to place a huge noxious sewage treatment plant

68. KATS, *supra* note 63, at 8.

69. Green Building Services, http://www.nyserda.org/programs/Green_Buildings/default.asp (last visited May 15, 2009).

on a major portion of Harlem's frontage on the Hudson River. The organization began working to build community power to stop such environmental racism and to improve environmental protection, health policy, and quality of life in Harlem and other African American and Latino communities. Its main focus for many years has been the location of environmental hazards, especially the concentration in Northern Manhattan of asthma- and cancer-inducing diesel bus depots.⁷⁰ It also led successful efforts to have New York State's Department of Conservation adopt an agency-wide environmental justice policy.⁷¹ It has played a central role in launching the national Environmental Justice Leadership Forum on Climate Change to provide a strong voice for communities of color in regional and national struggles over carbon trading and other climate justice issues.⁷²

In the process, WE ACT has grown to a full-time paid staff of fourteen with an annual operating budget of over one million. It has developed a sophisticated "inside-outside" strategy involving work with elected officials, foundations, and public health researchers as well as community residents and activists. It has gained national and even global prominence, serving as a coordinator of the Northeast Environmental Justice Network, a convener of the National People of Color Environmental Justice Summits, and an active participant in the World Social Forum.

From early on, WE ACT has been active in efforts to help young people of color get training for and access to green-collar jobs. In recent years, it has further expanded its vision of environmental justice to encompass the struggle over how land should—as well as should not—be used in Harlem and other communities of color. It has galvanized community-planning processes, especially for Harlem's riverfront, and helped monitor and facilitate the resulting development of community-serving uses. It has also played an important role in recent efforts to secure substantial community benefits from Columbia University as the university expands into a

70. See Michael Specter, *Harlem Groups File Suit to Fight Sewage Odors*, N.Y. TIMES, June 22, 1992, at B3; WE ACT for Environmental Justice, <http://www.weact.org/> (last visited May 15, 2009).

71. See Commissioner Policy 29, New York Department of Environmental Conservation (Mar. 19, 2003), <http://www.dec.ny.gov/regulations/36951.html>; WE ACT-Timeline, <http://www.weact.org/AboutUs/WEACTTimeline/tabid/310/Default.aspx> (last visited May 15, 2009) (highlighting WE ACT's history, including its successful effort to draft New York City's Local Law 1 of 2004, a lead poisoning prevention bill).

72. Environmental Justice and Climate Change Initiative, <http://www.ejcc.org> (last visited May 15, 2009).

large portion of West Harlem.⁷³ Fordham's CED Clinic has assisted in many of these efforts, as has WE ACT's first full-time staff attorney.⁷⁴

A. *Green-Collar Jobs*

In the mid-1990s WE ACT helped launch the National Institute of Environmental Health Sciences' (NIEHS) "Minority Worker Training Program."⁷⁵ The program has prepared thousands of inner-city youth (ages fifteen to eighteen) for work improving the local environment and helped them find green-collar jobs. Central to the program's success was the integral involvement of WE ACT and similar community groups across the country, working together with unions, academia, and industry.

WE ACT, along with other core groups of the New York Environmental Justice Alliance, played an active role in the program's New York-New Jersey pilot project. Other key participants in that project were the New York Carpenters Union Labor Technical College and the University of Medicine and Dentistry of New Jersey. From 1995-97 the project trained seventy-five young people from inner-city communities in a pre-apprentice program leading to licenses and certificates necessary for work in environmental abatement or monitoring.⁷⁶ NIEHS has scaled up from this and other pilot projects to train thousands more "minority youth" in the intervening years. Its program serves as a prototype for similar programs now being proposed and, in some cases, implemented at various levels of government across the country.⁷⁷

73. See Glick & Foster, *supra* note 2, at 2007-18.

74. This attorney was hired initially under a grant awarded to WE ACT and Fordham in a national competition for proposed "racial justice" collaborations between lawyers and community groups conducted in 2003-04 by the Funders' Collaborative for Racial Justice Innovation, a consortium of funders including the Ford Foundation, the Rockefeller Foundation, and the Open Society Institute. The WE ACT/Fordham proposal was the only one to feature in-house counsel, rather than a CBO partnership with public interest lawyers. See *id.* at 2069.

75. Minority Worker Training Program, <http://www.niehs.nih.gov/careers/hazmat/programs/mwt/index.cfm> (last visited May 15, 2009).

76. See NAT'L INST. OF ENVTL. HEALTH SCI., NAT'L INST. OF HEALTH, FY 1996 ACCOMPLISHMENTS AND HIGHLIGHTS: NIEHS/EPA SUPERFUND WORKER TRAINING PROGRAM 17 (1996), <http://www.niehs.nih.gov/careers/hazmat/annualreports/epa96.pdf>; MINORITY WORKER TRAINING PROGRAM, NAT'L INST. OF ENVTL. HEALTH SCI., SUMMARY OF EVENTS—ENVIRONMENTAL JOB TRAINING SUMMIT: HELPING COMMUNITIES REALIZE SUSTAINABLE FUTURES 4 (1998), http://tools.niehs.nih.gov/wetp/public/hasl_get_blob.cfm?ID=568.

77. See, e.g., Jones, *supra* note 3, at 153-70.

While clearly making a positive contribution, the pilot project's effectiveness was undermined by historic racial tensions between union trainers and inner-city trainees. Understanding the need to strengthen labor-community alliances in order to advance its overall objectives, WE ACT stepped back to focus on efforts to build those relationships. In 1998 it joined with the Oil, Chemical, and Atomic Workers (since merged into the United Steelworkers of America) and other labor and environmental justice groups to form the Just Transition Alliance (JTA).⁷⁸

Today, JTA continues its efforts across the United States, Canada, and Mexico. It works to build local community-labor alliances by bringing workers and community members of all races together to identify shared interests and develop joint action for a clean environment and sustainable jobs. WE ACT's Deputy Director is active on JTA's small, multiracial board of directors. WE ACT has pursued this approach locally in collaboration with the New York City Transit Workers Union, a relatively progressive union with a large African American and Afro-Caribbean membership. They have waged a joint campaign to expose and improve environmental conditions for workers and consumers of the city's subways and buses as well as neighbors of the diesel bus depots that are concentrated in Harlem.⁷⁹

B. *Harlem's Hudson Riverfront*

In the late 1990s WE ACT embarked on a new form of community-based entrepreneurship. It began to play a major role in the struggle over a key section of Harlem's Hudson River waterfront. In the early part of the last century the area along the river between 125th Street and 133rd Street had been a vital center of Harlem life, a vibrant public space where residents gathered, fished, shopped, and boarded excursion boats or ferries across the river. With construction of bridges across the river and an elevated highway separating the riverfront from inland neighborhoods, the area along the

78. See Just Transition Alliance, <http://www.jtalliance.org> (last visited May 15, 2009).

79. Not surprisingly, the New York Metropolitan Transit Authority has resisted these efforts, citing supposed restrictions in federal labor law and its collective bargaining agreement as grounds for not discussing TWA issues in its negotiations with WE ACT. New York City Council leaders conducting a public hearing in Harlem on diesel bus depot issues similarly refused to hear testimony concerning transit workers' health.

river grew isolated and gradually deteriorated. It became a parking lot and a haven for trafficking in drugs and prostitution.⁸⁰

By the 1990s the municipal Economic Development Corporation (EDC) had taken ownership of the area and issued a Request for Proposals from private developers for high-end condominiums or a hotel. At that point it was the last undeveloped section of Manhattan's Hudson riverfront and the missing link in a greenway running along the river for the length of the island. To save the area for sustainable community use and to restore its past vitality, the community had to do more than protest; it needed a plan of its own.

To preserve community access to the river and build residents' capacity and power to shape the use of land in Harlem, WE ACT catalyzed a community "visioning" process through which local residents took on the role of riverfront entrepreneurs. An extended process of community-based planning culminated in a broadly attended, professionally resourced community design workshop and charrette. WE ACT collaborated with Manhattan Community Board 9 (CB9), the official government-appointed and government-funded advisory voice of area residents,⁸¹ to bring together in this process a broad range of activists, elected officials, businesses, institutions (including nearby Columbia University), and ordinary residents.

This planning process generated a very different proposal for the riverfront. Community "entrepreneurs" envisioned the area as open space for the recreational and educational use of neighborhood residents. They called for new piers on the river for boating, fishing, sunning, and socializing and an inland park for community events. They wanted the adjoining road closed and traffic rerouted

80. For the history of this area and the process described on the following pages, see WE ACT FOR ENVIRONMENTAL JUSTICE, *HARLEM ON THE RIVER: MAKING A COMMUNITY VISION REAL* (2004).

81. New York City established community boards as part of liberal efforts to address the upheavals of the 1960s through decentralization and opportunity for grass-roots participation in municipal decision making. The City is divided into fifty-nine districts, each with a population of roughly one hundred thousand residents. For each district, a community board is appointed by the Borough President in consultation with local City Council members, and provided with modest city-funded staff and office space. These fifty-member boards serve as the official voices of their communities. They have a formal advisory and public hearing role in the city's land use regulatory process and the right to propose a local master plan with official advisory status if adopted by the City Planning Commission and City Council. See New York City Charter ch. 8, § 197-a, ch. 70, § 2800 (2004), available at <http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf>.

from and into the adjoining raised highway in order to double the area of the new park and protect the safety of children and families who use it. WE ACT and CB9 coordinated a successful campaign to gain political support for this proposal and to persuade EDC to accept its main points.⁸² In the aftermath, WE ACT worked with local elected officials to help arrange construction funding required by EDC. WE ACT staff and lawyers helped EDC obtain the permits from the United States Army Corps of Engineers that are required to build piers into a major river like the Hudson. One of the piers will accommodate vessels that ply the river for transport, recreation, or entertainment. Programs under discussion for the other pier and the on-land park area include horticulture, yoga, kayaking, and other community recreational and educational activities.

WE ACT also helped secure a commitment from the city's parks department to take responsibility for maintenance of the piers and park. Staff and lawyers tried hard, but so far without success, to convince the city and state to close the adjacent street and spend the funds required to reroute highway traffic. As of November 2008, construction was nearly complete, with one small step remaining before the park could open, culminating nearly ten years of community struggle.

With construction underway, WE ACT—at the suggestion of EDC—brought local activists, agencies, and businesses together in a new Harlem Waterfront Council (HWC) initially staffed by WE ACT.⁸³ HWC is designed to promote community stewardship over the park. Its mission is to inform local residents about the riverfront park, involve them in its programs, and provide a community voice in development and operation of the park. Once the park opens, HWC hopes to contract with EDC to plan and present programs in the park. The Fordham CED clinic helped to form HWC and to design an innovative structure that encourages genuine par-

82. See *Master Plan Toward a New Waterfront—125th St. to 137th St., Broadway to the River*, W. HARLEM (N.Y. City Econ. Dev. Corp.), Summer 2002, available at http://neighbors.columbia.edu/pages/manplanning/pdf-files/Harlem_Piers.pdf; WE ACT, *Harlem on the River Planning Document* (2000), <http://www.weact.org/Portals/7/HOTR%20Planning%20Document.pdf>.

83. See *West Harlem Waterfront Park*, <http://www.weact.org/Programs/SustainableDevelopment/WestHarlemWaterfrontParkProject/tabid/211/Default.aspx> (last visited May 15, 2009).

ticipation by community groups while empowering WE ACT to guarantee that HWC stays true to its mission.⁸⁴

As the waterfront park moved toward completion, the city announced plans to reopen a municipal garbage transfer station (MTS) located on the Hudson River at 135th Street in the small space between the new park and the huge sewage treatment plant that had provoked the protests that gave rise to WE ACT. The city proposed to fill Harlem streets twenty-four hours a day, seven days a week, with diesel trucks hauling garbage for deposit onto barges for transport to incineration facilities across the river. WE ACT initiated a forty-group Northern Manhattan Environmental Justice Coalition, which pressed local elected officials to oppose this plan and ultimately succeeded in blocking it.⁸⁵

The Coalition's victory left vacant a prime site jutting into the river just north of the waterfront park. This offered a major opportunity for developing and housing valuable community facilities and services. If the community failed to move into this vacuum, the city might attempt to revert to noxious use of the site or transfer it to private developers for high-end uses like those initially proposed for the waterfront park area.

To prevent this, WE ACT and CB9 have pressed for community control of the site, and the city government seems to have acceded if community leaders can agree on a common plan.⁸⁶ The Fordham CED clinic and WE ACT attorney will research zoning and other restrictions. They will serve as counsel to community planners and help review proposed development documents. The 135th Street MTS site is 27,000 square feet, roughly a square block. It is thought to be structurally strong enough to support multiple uses in buildings several stories high. One major use under discussion is an environmental education center that would feature classes, interactive exhibits, and scientific research that address the ecology of both the Hudson River and the inner city. The community had proposed such a center for the waterfront park, and the Fordham CED clinic had worked extensively with WE ACT to

84. HWC bylaws specify important decisions that require a sufficient majority so that WE ACT's board representatives can block such decisions. WE ACT controls the brakes, but a broad consensus is required to accelerate or steer.

85. See Ian Urbina, *City Trash Plan Forgoes Trucks, Favoring Barges*, N.Y. TIMES Oct. 7, 2004, at A1.

86. WE ACT for Environmental Justice, *From Trash to Treasure Campaign: Developing the 135th Street MTS as a Community Facility*, <http://www.weact.org/Programs/SustainableDevelopment/WestHarlemWaterfrontParkProject/MTSFromTrashToTreasure/tabid/265/Default.aspx> (last visited May 15, 2009).

identify a site and develop a structure in partnership with Columbia University. WE ACT chose to defer the project when the university moved to annex a several square block area of West Harlem just east of the waterfront park. At this point, WE ACT became deeply engaged in a community struggle for a community benefits agreement through which the university would agree to provide at least some compensation by way of enhanced services and facilities for neighborhood residents.⁸⁷ As of October 2008, WE ACT was heavily involved in efforts with CB9 to launch a community-visioning process for the MTS site similar to its successful effort around the waterfront park.

C. *Community Tensions Over WE ACT's Expanded Role*

This riverfront work marked a major expansion of WE ACT's role in West Harlem. On the one hand, conserving and expanding open space and public access to "nature" have long been within the ambit of environmental activism. Still, the waterfront projects mark a significant departure, positioning WE ACT for the first time as a central player in helping the community affirmatively shape how its land should be used, how public funds should be spent, and how public accountability to the community should be structured.

This new role has given rise to new tensions and contradictions. Some local activists, including the chair of CB9's waterfront committee, resent WE ACT's expanded role. They want to push WE ACT back into a narrower mission so that they can exercise more power over community planning and development. Some compete with WE ACT for limited funding. Others resent its prominence and resources.⁸⁸

Despite the active participation in CB9 of WE ACT's deputy director and a number of long-time WE ACT allies, these tensions and rivalries have undermined the WE ACT-CB9 coalition that previously proved so effective. As a result, although WE ACT has invited CB9 to play an active role in HWC and place two representatives on its board, CB9 has held back, and its waterfront committee is threatening to compete for control of programming in the riverfront park. Now, under new leadership, CB9 is moving toward

87. See Glick & Foster, *supra* note 2, at 2048-53.

88. This is based on the experience of coauthor Brian Glick and his clinic students. WE ACT is the only local advocacy and organizing group with full-time staff and an even modestly equipped office.

joining WE ACT in initiating a community-planning process to determine the best use of the 135th Street MTS site.⁸⁹

CONCLUSION

These dispatches from recent efforts in three communities of color in New York City highlight the increasing focus on “greening” in community economic development. They show community groups merging economic and environmental activism to create green-collar jobs for local residents, build affordable housing that is environmentally friendly, and use local land for sustainable projects that serve and improve the community. In the Cypress Hills section of Brooklyn, an established community development corporation works creatively to amass the financing required to make its buildings increasingly green. In West Harlem, a prominent environmental justice organization fights for community-serving sustainable land use and for programs to prepare people of color to get their fair share of jobs and contracts in the emerging green economy. In the South Bronx, a new organization forms worker-owned enterprises that train and employ local residents, protect the environment, and offer the potential for residents to accumulate a modicum of local wealth. Other articles in this symposium report a similar convergence of CED and environmental justice efforts in other parts of the country.⁹⁰

This is a promising trend. It offers real possibilities for low-income people of color to live healthier, safer, better lives. It moves forward their efforts to gain greater control over local land and resources. It supports their struggle to survive the deepening economic crisis and offers them the potential to influence and benefit from a more supportive new administration in Washington.

Our snapshots show lawyers, as well as law students and faculty, making small but important contributions. They help design, maintain, and adapt legal entities and governance structures, negotiate contracts and leases, research and help navigate regulatory and subsidy systems, advise and assist in project development, coordination, and financing. We are committed to doing more of this work and learning how to do it better. We hope you will join us.

89. Interview with Peggy Shepard, WE ACT Executive Dir. (Nov. 2008).

90. See, e.g., Cole, *supra* note 1.