

Natural Resources Policy Studies  
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## How Smart Growth Can Address Environmental Justice Issues

### Summary

Smart growth and similar growth management strategies seek to create vibrant, livable communities through intelligent planning and effective use of resources. Environmental justice seeks to ensure that everyone enjoys a thriving, healthy community, regardless of race or income level. Both share a common goal—helping local residents exert a greater degree of control over the future of their neighborhoods.

Smart growth as a strategy has distinct advantages that make it a natural way to promote environmental justice.

- **Smart growth can empower local communities.** By bringing citizens into the planning process as active partners with businesses and government, smart growth can help give a sense of control to communities that often feel excluded from decisionmaking. This partnership also gives all parties a stake in guaranteeing that the future vision for the community becomes a reality.
- **Smart growth can focus investment on areas that need it most.** This investment can revitalize a community both environmentally and economically, through new jobs and site cleanups.

The three states discussed in this report are building on the community-based planning and brownfields redevelopment elements of their smart growth efforts to take action on environmental justice concerns.

- **Massachusetts** holds community development summits that help neighborhoods create plans to preserve areas of local significance, and its brownfields program emphasizes local involvement in planning development projects.
- **Maryland's** Revitalization Center works with disadvantaged communities in the state's smart growth zones to create redevelopment plans, and its smart codes programs encourage reuse of brownfields, compact development, and rehabilitation of older structures.
- **New Jersey's** Urban Coordinating Council helps communities develop revitalization plans together with urban industries, and its Urban Environmental Inventory establishes a baseline of environmental conditions for planning and determining potential environmental justice impacts.

### **The Goal of Growth Management**

In the life of a community, growth represents the creation of opportunity—new jobs, new businesses, and new places to live. However, growth can create its own problems. Issues such as sprawl, traffic congestion, and loss of open space have led to the creation of the smart growth movement.<sup>1</sup>

Smart growth type programs enhance the quality of life in communities through well-managed land use and development. This goal is achieved through several interrelated strategies, including:

- ensuring a greater level of community involvement in determining the potential future of local growth patterns and implementing plans to make that future a reality;
- targeting state resources to support projects that help achieve a community's vision for the future;
- making more intelligent land use decisions, including the cleanup and reuse of previously developed properties and the preservation of open spaces;
- creating more cohesive communities through compact, mixed use, and mixed income development; and
- revitalizing urban areas to provide economic opportunities and dynamic, livable communities.

State governments cannot achieve their smart growth goals alone. Local governments have the primary responsibility for managing land use in their communities, and have the zoning authority to determine what facilities will be located where. The vast majority of growth in any community is done by the private sector, and is driven by economic considerations by landowners, developers, consumers, and businesses. Thus, state smart growth strategies include developing partnerships with these interests and providing incentives to encourage the type of growth they seek.

### **The Goal of Environmental Justice**

Environmental justice seeks to ensure that all persons share equally in the benefits of environmental protection, regardless of race or income level.<sup>2</sup> Environmental justice is a particular concern in areas where past industrial development caused pollution and a legacy of contaminated or abandoned sites, known as brownfields. Such areas are often the focus of smart growth efforts that direct development towards existing infrastructure.

Environmental justice has existed as a grass roots movement to improve environmental conditions in minority and low-income communities since the late 1970's.<sup>3</sup> A number of environmental justice concerns could be addressed by state smart growth programs.

**Improving the Urban Environment.** One goal of environmental justice is to revitalize older, distressed neighborhoods. Many properties available for development in these areas are contaminated, some significantly. If they pose a health hazard, these brownfields must be cleaned up before being used again. State smart growth programs can encourage developers to revitalize these properties while reducing pollution exposure in the community.

**Increasing Affordable Housing.** Environmental justice also seeks to ensure the availability of affordable housing. Low-income residents of urban areas are concerned that as their neighborhoods are rebuilt to appeal to the middle and upper class, they will be pushed into even less desirable living

spaces. This could happen directly through eminent domain and condemnation of current buildings, or indirectly through rising rents and property values—often called gentrification. Smart growth programs can include affordable housing standards that help low-income residents remain a part of the community.

**Improving Community Health.** Ensuring a healthy community is another goal of environmental justice. Minority and low-income communities already experience more health problems than other populations. In addition, higher density housing has the potential to create adverse health effects. Increased traffic and construction could increase this disparity through increases in air pollution, dust, noise, and other factors associated with health problems. Smart growth programs can encourage planning and mitigation measures to minimize these problems.

### **Smart Growth and Title VI of the Civil Rights Act of 1964**

The Civil Rights Act of 1964 is a landmark piece of legislation that codifies the responsibility of the federal government to eliminate discrimination against minority communities in its policies and activities. One of the provisions of the Act, Title VI, sets standards for recipients of federal funds, including the right of citizens to sue to stop discriminatory activities by those recipients.

Title VI lawsuits have become a tool for environmental justice activists as they oppose projects they believe are detrimental to their communities. State environmental agencies have often been the focus of these lawsuits because they are recipients of federal funds and have jurisdiction over permits these projects need in order to operate. However, a recent Supreme Court decision (Alexander v. Sandoval) struck down the ability of private parties to sue state agencies for unintentional discrimination under Title VI.

In June 2000 the U.S. Environmental Protection Agency (U.S. EPA) issued revised guidance detailing how it will adjudicate Title VI complaints submitted to the agency. States have raised a number of issues with this guidance, including:

- a lack of clearly defined terms and requirements;
- holding states responsible for actions outside their jurisdiction;
- too little recognition of state programs to ensure equitable treatment; and
- no clear method states can use to ensure their actions do not leave them liable to Title VI complaints.

Although the Supreme Court no longer allows states to be sued directly for alleged Title VI violations, the Court did not strike down the right of federal agencies to enforce regulations on issues such as disparate environmental impact under the Civil Rights Act. U.S. EPA has such regulations, and could still take action against recipients of federal funds on behalf of communities.

Growth management programs and other redevelopment efforts are no less vulnerable to challenge under Title VI than other types of projects with environmental impacts. If the project can be shown to produce a disparate impact on a minority community, then U.S. EPA could decide to take action against that project.

## **Using Smart Growth to Address Environmental Justice Issues**

The growth management and environmental justice movements share a common vision of communities that can enhance the quality of life of their residents. Both emphasize community involvement in designing and implementing plans to achieve that vision, and promote effective cleanup and reuse of brownfield sites. These commonalities create an opportunity for states to address environmental justice concerns through their smart growth programs.

The strength of the smart growth approach is its emphasis on long-term vision. Instead of simply encouraging expansion and hoping the benefits outweigh the costs, smart growth calls on its practitioners to think first about what they want their communities to be like ten or twenty years in the future, then develop goals and plans to achieve that vision.

A carefully considered community plan can help encourage private sector investment. Developers can look to the plan and see how their project fits into the community's goals, and how the surrounding mix of housing, business, and transit can enhance the project's long-term success. Attracting and retaining this type of investment is key to the increased opportunity sought by environmental justice.

Smart growth also provides a framework in which to make choices about the use of state resources. State agencies have limited budgets and staff, so choices will always have to be made about where their activities will have the most impact. When environmental justice is included in a community's vision, smart growth can become a way to target these resources to revitalize disadvantaged neighborhoods.

States should consider using smart growth to address environmental justice concerns as revitalization efforts move forward by:

- engaging citizens, business, and government in joint planning for the future; and
- matching community needs to the reuse of brownfields.

### ***Emphasize Community-Based Planning***

Community-based planning promotes active participation by the residents of an area targeted for redevelopment in every aspect of the planning and development process. Citizens are brought in to brainstorm about what they would like to happen in their community—what mix of residential and business uses, what types of transportation infrastructure, and so on. Then citizens provide input on the plans created to achieve that vision, either through comment sessions or by actually participating in the plan development.

Rather than working for months to complete a plan and allowing the community a limited chance to comment on the finished product, community-based planning requires a proactive effort to engage the community early on. Although this requires more work by state and local government agencies up-front, it can significantly increase public support for the project and reduce the need to rework plans because of community dissent.

Involving the community in planning in a meaningful way may alter some priorities for a project. Citizens are often concerned that the project produces jobs for local residents during construction and by the businesses involved in the redevelopment project. Community based planning also tends to

emphasize mixed development, both in terms of mixed uses (residential, shopping, industry) and mixed incomes, with lower, middle, and upper classes living in the same community.

A good example of how priorities can change through meaningful community involvement is the Fruitvale Transit Village Project in Oakland, California. The Bay Area Rapid Transit District had originally proposed a parking garage for the site and met with significant community opposition. Through community-based planning the project evolved into a mixed-use transit stop that includes housing, shops, offices, a library, and easy access to the local business district.<sup>4</sup>

### ***Employ Responsive Brownfields-Based Redevelopment***

States have already had a number of successes in brownfields redevelopment.<sup>5</sup> These programs tend to involve the community early and substantively, which minimizes conflict and helps ensure projects that benefit the community as a whole.

Brownfields redevelopment helps to address environmental justice issues through its site cleanup activities. This reduces the exposure of the community to contaminated areas. Redevelopment also alters sites that have fallen into disuse and disrepair, eliminating potentially dangerous situations.

In addition to the cleanup of contaminated sites, brownfields redevelopment can provide important economic benefits to disadvantaged communities. New businesses can create employment and consumer opportunities that breathe new life into these areas, and provide a tax base for improved community services and infrastructure.

Brownfields redevelopment programs face an ongoing challenge to attract development away from undeveloped areas. In some cases, environmental justice concerns about a project have led a developer to decide against building in a brownfields area and locate the facility in an undeveloped area outside of town. This not only decreases the environmental quality of the area as a whole, but it removes economic opportunities from the community. Such cases only emphasize the need for stronger communication and partnership between developers and the local community.

State growth management programs can leverage brownfields redevelopment to address environmental justice concerns by:

- *Connecting Brownfields to Overall Community Development.* Brownfields redevelopment can form one part of the broader development strategy for the community. A brownfields redevelopment project should follow the plan created by citizens, business, and government whenever possible, so that the project helps achieve the environmental justice goals embodied in the plan.
- *Encouraging Community Proposed Projects.* In many communities residents have specific suggestions for redevelopment projects that they would like to pursue. For example, using smaller brownfields for local parks after cleanup is a good way to meet a community's need for open space.

### **Innovative State Practices**

Many states have both smart growth and environmental justice programs, but these efforts have a tendency to be isolated from each other. However, Massachusetts, Maryland, and New Jersey have

smart growth programs with community-based planning and responsive brownfields redevelopment elements that can help address environmental justice.

**Massachusetts.** Environmental justice, smart growth, and brownfields activities in Massachusetts are all coordinated through the Executive Office of Environmental Affairs (EOEA), the office within the Governor's cabinet that is charged with developing broad environmental policy.

**Community Development Summits.** Environmental Affairs Secretary Bob Durand has hosted numerous community development summits during his tenure. The purpose of these summits is twofold—first, to educate the community about their opportunities to provide input in the planning process, and second, to help the community identify the resources that are most important to them and help the community to preserve those resources. These summits are also an excellent opportunity to identify community-driven redevelopment efforts that can then be promoted to developers.

**Massachusetts Brownfields Program.**<sup>6</sup> As part of its efforts to enhance community involvement in brownfields projects, EOEA has developed a community guide that explains the community benefits provisions of the state's brownfields act. The guide helps local community groups understand their rights under the law, putting them in a stronger position to partner with the state and developers in planning projects for their neighborhoods.

Massachusetts has also put a priority on projects that redevelop brownfields into greenfields—continuing cleanup operations on a site long enough to return the land to as pristine a condition as possible. Such cleanup efforts discourage new development on the little open space that still exists in these communities while providing areas that are clean enough for sensitive uses, such as schools and hospitals.

**Maryland.** Maryland has one of the most innovative smart growth programs in the nation.<sup>7</sup> Through its Smart Growth Areas Act, Maryland has been able to direct most state investment to priority funding areas, targeting resources to where the state and local governments want to encourage growth. Because of the program's strong focus on urban revitalization, the state has worked to actively pursue actions related to community-based planning and brownfields redevelopment.

**Maryland Revitalization Center.** The center is an interagency office that works with communities in the state's designated growth areas to plan projects to rebuild their neighborhoods. It then guides them through the steps necessary to receive all possible assistance from state agencies. The center is located in downtown Baltimore, which makes it more accessible to communities in the state's largest urban area.

**Smart Codes.** Construction and land development codes have traditionally been targeted towards new construction and development. Smart growth, in contrast, tends to prefer the reuse of old buildings and infill development for their more efficient use of resources. In order to minimize the barriers created by traditional codes, Maryland has adopted the very successful smart code work of New Jersey and is developing a new set of smart codes that complement its existing voluntary brownfields cleanup efforts. Smart codes can create new economic opportunities and encourage the cleanup and reuse of contaminated sites, often in areas that are predominately minority and low-income.

The *Maryland Building Rehabilitation Code Program* is working to integrate the ten current codes that regulate construction in the state into a single document. In addition to reducing the confusion

generated by the multiple codes, the new code will clearly separate rehabilitation operations from new construction, establishing requirements that make sense for this type of work. Code requirements applying to rehabilitation projects will phase in as the size of the project increases, making it much easier to engage in small-scale programs that, when taken together, can drastically change the nature of a disenfranchised community.

The *Models and Guidelines Program for Infill and Smart Neighborhood Development* will provide tools that emphasize compact, multi-use development in existing and new communities. The codes will promote flexibility in development in areas such as lot size, building setbacks, and density. This makes it much easier for developers to use vacant and cleaned-up land in populated areas instead of seeking out undeveloped areas for their projects. The end result of the code should be to encourage high quality of life communities and direct more development into the areas that need it most.

**New Jersey.** The New Jersey State Development and Redevelopment Plan (SDRP) manages growth in a densely populated state that is still growing. The plan stresses the importance of conserving the state's natural resources and protecting the environment, focusing its first goal on the revitalization of the state's urban centers. The plan also recognizes the importance of equity concerns to protect the health and well being of all residents.

**Urban Coordinating Council.** In 1992, then-Governor Christine Todd Whitman established New Jersey's Urban Coordinating Council (UCC). The council includes representatives from all departments of state government, who work with economically distressed neighborhoods to implement community based revitalization plans. In this initiative, the New Jersey Department of Environmental Protection (NJDEP) ensures a high quality of environmental infrastructure, preserves urban open space, redevelops brownfield sites and promotes environmental equity through the development of 'good neighbor' strategies between urban industries and the communities that host their facilities. To date, sixteen neighborhoods have approved plans and work with the UCC to implement those plans.

**Urban Environmental Inventories.** NJDEP recently established a process to promote better understanding by community officials and residents of the key role the environment plays in the quality of their lives. The Urban Environmental Inventory (UEI) Program encourages citizens to work with local planners and NJDEP staff to develop a local base of information, including land uses, natural resources, permitted facilities, and other attributes to create a base of quality measures to use in establishing environmental improvement goals.

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<sup>1</sup> For more information on smart growth and Governors' efforts to implement it see *Growing Pains: Quality of Life in the New Economy*, Joel S. Hirschhorn, National Governors' Association Center for Best Practices, May 2000. Available online at <[http://www.nga.org/center/divisions/1,1188,C\\_ISSUE\\_BRIEF^D\\_609,00.html](http://www.nga.org/center/divisions/1,1188,C_ISSUE_BRIEF^D_609,00.html)>.

<sup>2</sup> For a good background discussion of environmental justice issues, see the *Issue Brief* "Environmental Justice", Ann Beauchesne and Paul Thompson, National Governors' Association Center for Best Practices, May 5, 1995.

<sup>3</sup> A discussion of the history and concerns of the environmental justice movement is available in *Race and the Incidence of Environmental Hazard: A Time for Discourse*, by Paul Mohai, Westview Press, 1992.

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<sup>4</sup> A detailed case study of the Fruitvale project, *Partnerships, Enhancements, and Public Involvement*, has been prepared by the Federal Highway Administration and is available at <<http://www.fhwa.dot.gov/environment/ejustice/case/index.htm>>. The site includes a number of other transit-related environmental justice case studies.

<sup>5</sup> The NGA Center maintains a website with information on successful state brownfields redevelopment programs at <[http://www.nga.org/center/topics/1,1188,D\\_374,00.html](http://www.nga.org/center/topics/1,1188,D_374,00.html)>. In addition, the NGA Center has released a paper on brownfields redevelopment and smart growth in October 2000 entitled *New Mission for Brownfields: Attacking Sprawl by Revitalizing Older Communities*. The paper is available online at <[http://www.nga.org/center/divisions/1,1188,C\\_ISSUE\\_BRIEF^D\\_306,00.html](http://www.nga.org/center/divisions/1,1188,C_ISSUE_BRIEF^D_306,00.html)>.

<sup>6</sup> A profile of the Massachusetts program is available online at <<http://www.nga.org/cda/files/MABFIELDPROFILE.pdf>>.

<sup>7</sup> Maryland's smart growth program is discussed in detail in the NGA report *Growing Pains*, cited above.