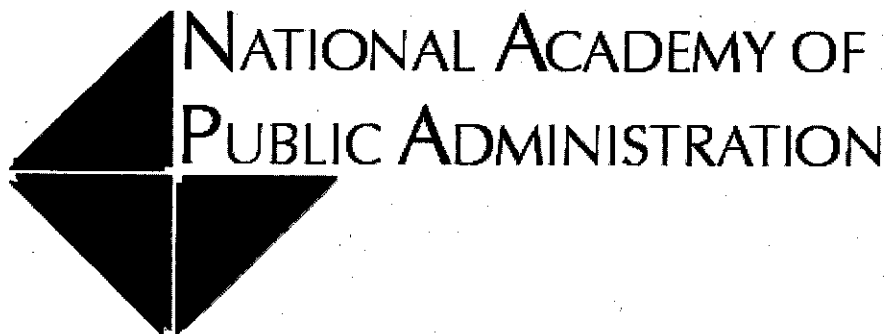


Report by a Panel of the
**NATIONAL ACADEMY OF
PUBLIC ADMINISTRATION**
For the U. S. Environmental Protection Agency

July 2003

**ADDRESSING COMMUNITY CONCERNS:
HOW ENVIRONMENTAL JUSTICE
RELATES TO LAND USE PLANNING AND ZONING**



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- State and local executive and legislative branches of government must demonstrate leadership to address environmental justice concerns. They should use their full legal authorities to enact appropriate legislation, issue policies, develop guidance, and develop accountability measures to ensure that, at both levels of government, core government functions are authorized and required to address environmental justice. They should also enhance opportunities for meaningful public participation in all government decisions that have environmental and public health impacts; and each level of government should improve public access to information about land use planning, zoning, siting, and permitting.
- All levels of government should conduct thorough examinations of their respective legal and regulatory authorities—including common law authorities for protecting the general welfare of citizens—to develop creative solutions for environmental justice problems.
- Federal, state, and local levels of government should work in concert to ensure that their actions for responding to environmental justice issues are compatible and mutually reinforcing. They should share information, coordinate programs, and develop comprehensive rules that will ensure consideration and mitigation of localized environmental and public health impacts, especially in low-income and people-of-color communities.
- National associations of local governments should disseminate information and offer training on best practices in land use planning and zoning that are currently used by cities and counties to ensure fair treatment, as well as meaningful involvement, of all people in decisions that affect public health and the environment.
- City and county governments should incorporate consideration of potential environmental and public health impacts of land use decisions into the fabric of their planning and zoning activities. They should actively explore how they can use current authorities to prevent excessive levels of pollution and mitigate environmental and other impacts like noise, odor, and traffic—especially in low-income and people-of-color communities.
- State, county, and city officials who are responsible for planning, zoning, public health, and environmental protections should take immediate action to determine whether their residents in low-income and people-of-color neighborhoods are exposed to excessive levels of environmental and health hazards. If so, they should initiate appropriate actions to reduce risks and communicate to the public when and how these risks will be reduced or eliminated.

In Chapter Two of this report, the Panel details the lessons learned from this study. It also includes the full set of findings and recommendations for making local land use planning and zoning more responsive to environmental justice concerns.

ENDNOTE

¹ U.S. Environmental Protection Agency, Office of Environmental Justice, *Guidance to Assessing and Addressing Allegations of Environmental Injustice*, Working Draft, 7 (January 10, 2001).

CHAPTER ONE

INTRODUCTION, METHODOLOGY, AND FRAMEWORK

BACKGROUND

This report is the third in a series of studies on environmental justice conducted by the National Academy for Public Administration (the Academy) for the Office of Environmental Justice (OEJ) of the U.S. Environmental Protection Agency (EPA). It builds on the Academy's two prior studies, *Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities* (December 2001) and *Models for Change: Efforts by Four States to Address Environmental Justice*, (June 2002). This study examines the land use planning and zoning laws, policies, and practices of local governments to determine how they may relate to environmental justice issues.

The first report of this Academy Panel, *Environmental Justice in EPA Permitting*, analyzed key public administration issues at EPA. It focused on how EPA could address the widely recognized fact that some low-income and people-of-color communities are exposed to disproportionate amounts of pollution and public health hazards. The Panel's recommendations for how EPA could more effectively address environmental justice concerns focused on a four part analytic framework: leadership and accountability, permitting programs, setting priorities and reducing risk, and public participation. The Panel recommendations were also designed to help community residents and other stakeholders gain a better understanding of how they can be more successful in bringing environmental justice problems to the attention of EPA's permitting and other programs.

For the first study, OEJ asked the Academy Panel to focus on EPA's permitting programs, while recognizing that most permits are prepared by state and local agencies under delegated authority. Even so, the first report was important for determining whether and to what extent EPA has integrated environmental justice into its core operations, and in helping EPA to become a model for demonstrating how these concerns can be addressed effectively by other environmental agencies.

Along with its request for the first Academy study, OEJ also commissioned a study by the Environmental Law Institute (ELI). ELI's report, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA* (November 2001), reviewed "the provisions contained in the principal federal environmental laws administered by EPA, in order to identify authorities that potentially could be used to advance a variety of environmental justice goals in the agency's programs."¹ ELI's examination of existing federal statutes provided a useful foundation for the Panel's work on environmental justice. ELI found that "all of EPA's sources of authority—environmental statutes, mission-expanding and cross-cutting laws, and general discretion—give the agency substantial and wide-ranging powers to pursue environmental justice."² ELI also found that state environmental agencies might have considerable latitude to respond to these issues as part of their delegated federal programs. These findings suggest that state and local

agencies may have environmental or administrative authorities comparable to those at the federal level that they could use to address environmental justice issues.

In the Academy's second report requested by OEJ, *Models for Change: Efforts by Four States to Address Environmental Justice*, the Panel documented the ways that Indiana, Florida, New Jersey, and California are addressing environmental justice and how these efforts relate to their permitting programs. By focusing on state programs, the Academy study expanded the prior analysis of environmental justice and recognized the key role that states play in protecting public health and the environment. The four states selected for study represent different demographics, and have programs offering different approaches in how states can initiate responses to environmental justice problems. The Panel analyzed the states' programs using the same four-part framework used in the first study: leadership and accountability, permitting programs, setting priorities and reducing risk, and public participation. The second report stressed setting goals, achieving tangible and clear results, and fully integrating environmental justice principles into core state planning and permitting programs. Environmental justice problems raise basic concerns about health, informed and meaningful public participation, the community's right-to-know, and fairness. The Panel found that performance-based administration of public programs is best suited to ensuring that these important issues are appropriately addressed by state agencies.

For this third report, OEJ asked the Academy to explore environmental justice from the local government perspective by examining its relationship to planning and zoning. As part of this effort, the Academy was asked to conduct case studies in five localities. As in the previous two reports, this report examines laws, policies, and practices as they relate to environmental justice concerns.

ROLE OF THE ACADEMY PANEL

The seven-member Panel of Academy Fellows who guided the first two studies has continued to guide the research for this third study.³ The Panel provided analysis and insights and developed recommendations based on the extensive research conducted by Academy researchers over a 12-month period. In addition to reviewing documents and written materials, the researchers also conducted in-depth interviews with many government officials, community group leaders, and business representatives.

For the purpose of this third study, as with the earlier two, the Panel relied on EPA's definition of environmental justice:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and

tribal environmental programs and policies. *Meaningful involvement* means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

FRAMEWORK

As noted, all three of the Panel's reports have used the same four-part framework to analyze all three levels of government, exploring how they play out at each level:

- Leadership and Accountability;
- Permitting and Other Authorities;
- Setting Priorities and Reducing Risks; and
- Public Participation.

Through that exploration, the Panel has been able to analyze differing roles, responsibilities, and actions of federal, state, and local agencies in responding to the challenge of achieving environmental justice.

LOCAL LAND USE PLANNING AND ZONING

In this report, the Academy Panel has examined ways that planning and zoning in five localities implicitly or explicitly address, create, resolve, or exacerbate environmental justice problems. The communities are: Huntington Park, California; Chester, Pennsylvania; Austin, Texas; Altgeld Gardens in Chicago, Illinois; and St. James Parish, Louisiana.

Through the five case studies, the Panel has identified issues and possible solutions for addressing environmental justice problems at the local level, including ways that all levels of government can work together more effectively. Local public administrators, state and federal policy-makers, business leaders, and community representatives can all use this report as a tool to understand local land use planning and zoning policies and practices, and to find practical approaches for their own communities to implement. The report also explains to state and federal officials how local governments need their help to address environmental justice problems effectively and shows how state and federal programs, like environmental permitting, can be adapted to meet the concerns of both local governments and community residents.

METHODOLOGY

The Panel and its researchers used several methods to investigate environmental justice from the local perspective. They examined the literature regarding the current status of land use planning and zoning laws; how past local planning and zoning were used to foster racial segregation and the location of undesirable facilities in low-income or people-of-color communities; and how planning and zoning tools can now be used to reduce the disproportionate health and environmental hazards these communities, as well as to prevent such impacts in the future.

The Panel's investigation for each of the five case studies included the following three components:

- Laws and Policies: Academy researchers studied the texts, actual implementation, enforcement efforts, flexibility, and adaptability of local land use plans and zoning ordinances. They examined a range of local documents including comprehensive land use plans, zoning ordinances and maps, proposed future land use plans and maps, emergency response plans, and local zoning and permitting ordinances.
- Practices/Processes: Academy researchers asked about coordination across agencies and functions within local governments, the extent to which local resources have been explicitly dedicated to addressing environmental justice issues, and collaboration between local agencies and community groups or regional and state environmental justice efforts. They also examined ways that state programs support or enforce land use or zoning practices and the effects of local and state regulations, and they explored any local environmental justice issues in the context of larger economic and community development objectives.
- People: To understand the practical impacts and effects of local policies, practices, and processes on the public, Academy researchers spoke with community leaders and explored local agencies' outreach efforts, as well as attempts, if any, to understand local citizens' concerns about environmental justice.

Academy researchers visited all five communities and interviewed a diverse set of stakeholders for each case study. They asked about:

- State authorities and practices and local responses to them;
- The organization of local government and any inter- and intra-agency coordination;
- Types and complexity of local programs for addressing environmental justice problems;
- Information about community health and environmental conditions and health services, as well as pollution monitoring and enforcement efforts;
- Public outreach and communication methods and their effectiveness;

for example, requiring compatibility with adjacent land uses. Local governments can revise their comprehensive land use plans, rezone incompatible land uses, adopt overlay ordinances, and initiate rollback zoning. They can also implement better controls on city-owned properties that pose environmental hazards or emit pollution.

Finding 6: In each of the five communities studied here, community-based organizations provided the leadership that brought attention to environmental justice problems and prodded local or state agencies to address them.

Recommendations on Leadership and Accountability

Recommendation 1: Governors and other state executive branch leaders should commit to achieving environmental justice through fair treatment and meaningful involvement of all people in decisions that affect public health and the environment. By executive order or other appropriate means, they should direct their agencies to use each state's full range of legal authorities for advancing these goals and integrate them into the core missions of state agencies through specific action plans and accountability requirements. They should also establish clear milestones to measure progress in addressing environmental justice issues for state agencies and for local governments where the state has authority to do so. Information on progress should be made easily available to the public, as well as to agency heads and local governing bodies, so that responsible parties can be held accountable for producing results.

Recommendation 2: State legislatures should adopt laws requiring state agencies to integrate into their core programs the procedures and practices necessary to address environmental justice problems. Where states already have such legal authority, the laws should also require local governments to incorporate environmental justice considerations into their operations, especially local land use planning and zoning. Such legislation should define environmental justice and link it to the primary missions of state and local agencies for preserving public welfare, reducing risk, protecting human health, and reducing pollution. State legislation should also clarify the respective roles and responsibilities of state and local agencies, and should establish appropriate ongoing accountability mechanisms.

Recommendation 3: State and local agencies should develop environmental justice policies, action plans, and accountability processes. They should ensure full public access to data that are relevant and necessary for local officials and the public to understand current environmental conditions and to determine whether progress is being made to improve conditions that raise concerns.

Recommendation 4: City and county leaders should actively work to incorporate consideration of environmental justice issues into the fabric of their land use planning and zoning authorities. Additionally, they should actively utilize existing regulatory and common law authorities to prevent or reduce pollution; mitigate environmental impacts on nearby neighborhoods; and address related issues like noise, odor, and traffic. Local agencies should also work closely with the public, environmental justice groups, and neighborhood organizations to ensure that they fully understand the environmental issues in their communities and have a voice in local officials' decisions on addressing these problems.

Recommendation 5: State and federal agencies should provide leadership, technical assistance, training, and information to help local officials develop and implement policies and procedures for ensuring that all people are fairly treated by, and can participate in, environmental decisions. They should further provide local officials with access to reliable information and sound science, and help to build their capacity for incorporating this information into appropriate local plans, ordinances, and regulations.

Recommendation 6: National associations of local governments should disseminate information on environmental justice, including model authorities and examples of best practices, that cities and counties can use to ensure fair treatment and meaningful involvement of all people in decisions that affect community health and environmental conditions. A national on-line database could be set up for local governments to adopt smart growth and sustainable development initiatives, highlighting the relationship between local land use controls and environmental justice concerns. This database could include best practices and examples of local government policies and procedures for addressing environmental justice problems, model language to incorporate into local plans and zoning ordinances, and sample checklists for local officials to use in ensuring compliance with environmental justice principles. Other topics might include coordination with EPA and state environmental agencies, effective community outreach, and mechanisms for achieving sustainable and equitable economic development.

Discussion of Leadership and Accountability

Examples of State Executive Leadership

Pennsylvania. In June 2000, the Governor of Pennsylvania signed Executive Order 1999-1 that identifies sound land use policies and objectives to guide state agencies when making decisions that can affect land use.¹ The “Growing Smarter” initiative, developed through a series of forums on land use reform held across the state and backed by a \$3.6 million budget from the Governor’s office, is a substantial investment in local state land use planning efforts.² Additionally, recent amendments to the Municipalities Planning Code direct the Pennsylvania Department of Environmental Protection (PADEP) to “consider and [possibly] rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.”³ Based on this authority, the PADEP has directed that staff must consider all local ordinances—like the ordinances adopted by the Chester local government that require no net increases in emissions for new heavy industrial facilities—as part of the state’s permitting process.⁴

Louisiana. In 1998, the Governor of Louisiana issued an Executive Order establishing the Mississippi Corridor Task Force, which was charged with making recommendations about environmental justice. The Task Force included representatives of the Governor; Secretaries of the Departments of Environmental Quality, Economic Development, Agriculture and Forestry, and Health and Hospitals; the Task Force on Environmental Protection and Preservation; the Presidents of the state and two local branches of the National Association for the Advancement of Colored People; and four residents of the Industrial Corridor. In 2000, this Task Force recommended:

- Establishing a state review process modeled on the National Environmental Policy Act and related guidance issued by the Council on Environmental Quality;
- Creating a regional organization to coordinate regional issues such as sustainability of environmental resources, quality of life, and economic self-sufficiency;
- Adopting a pre-permitting process to provide an opportunity for dialogue among industry, the community, and government on issues of siting, expansion, and other permitting requests;
- Reviewing the concepts of zoning and land use planning, possibly setting minimum state siting standards for new industrial development, and developing legislation to require buffer zones between communities and proposed industrial facilities; and
- Studying the relationship between emissions of air pollutants and discharge of waste by facilities located in or near residential areas.⁵

These Task Force recommendations provided a solid foundation for action that, if properly implemented, could help Louisiana to start addressing environmental justice issues more effectively. Unfortunately, to date, no state or local agency has taken action to implement the recommendations.

Examples of State Legislative Leadership

California. California provides an excellent example of a fully authorized and articulated program for state, county, and local agencies to work together on addressing environmental justice problems—largely because the state legislature established a framework for action and accountability. The California Assembly's six laws on environmental justice set clear performance expectations for all state agencies, and place responsibility for coordinating environmental justice efforts in the Governor's Office of Planning and Research. Under the state laws, environmental justice must be incorporated into the state's general planning guidelines for cities and counties by July 2003, so that integrating environmental justice into the fabric of local planning will help to prevent future problems. The legislation also specifically directs the California Environmental Protection Agency to consider environmental justice in all of its programs, policies, and standards.⁶

As the result of the new laws, several California agencies have established policies, programs, and tools to assist local governments in responding to environmental justice concerns. The South Coast Air Quality Management District's 1999 study on air toxic emissions in Southeast Los Angeles was the catalyst for action by the City Council in Huntington Park. In addition, the District is developing air quality guidance for its local governments to use in their current land use planning and future development initiatives.

Louisiana. In 1993, the Louisiana legislature passed an act requiring the state's Department of Environmental Quality to hold statewide hearings and solicit recommendations about how to address environmental justice issues. The resulting recommendations, formally presented to the legislature in 1994, included establishing guidelines for facility siting, strengthening

requirements for land use planning, regulating transportation of toxic materials, building emergency response capacity, improving procedures for public notices and hearings, strengthening enforcement in highly industrialized areas, and reporting annually to the legislature on progress in addressing environmental justice issues. However, despite this valuable effort to engage the public, state leaders have never implemented these recommendations.

Example of State Environmental Agency Leadership

Illinois. In Illinois, a draft Interim Environmental Justice Policy developed by the Illinois Environmental Protection Agency (IEPA) is currently under public review. It has a more limited scope than the California legislation because it does not apply to all state agencies and departments. However, under the draft policy, the IEPA would be responsible for ensuring that its decisions do not disproportionately impact local communities and that every community receives an equitable share of environmental protection and benefits. IEPA's draft policy also would strengthen public involvement in the agency's decisions.

Examples of Local Government Leadership

People-of-color or low-income communities often are concerned about pollution exposures that result from local planning or zoning decisions that allow sources of pollution to locate near residential areas. Some state environmental agencies also acknowledge that incompatible placement of facilities in proximity to residential areas is a problem. A few local officials are beginning to recognize that incompatible zoning and land use planning—or the lack of planning—often results from failing to understand the impacts of certain facilities on the citizens whom the localities are responsible for protecting. Some of the local governments analyzed in this study have taken action to correct these problems and to prevent future mistakes that expose local residents to nearby pollution sources; in other localities, however, more effective mechanisms are just starting to take hold.

- Huntington Park, California revised its zoning ordinance for commercial/office/mixed - use zones to authorize imposing conditions in building/operating permits based on proximity to residential areas and the potential for adverse environmental impacts. The city focused particular attention on reducing diesel emissions after determining that they pose the most significant health risk for its residents. The revised ordinance now enables the city to include conditions in permits requiring advance mitigation and reduction of diesel emissions that may be generated by any expanded or new buildings, operations, or facilities.
- Chester, Pennsylvania adopted an ordinance that prohibits any new heavy industrial facility from producing a net increase in environmental pollution. The city also adopted a series of performance measures to mitigate environmental impacts from new facilities, including noise, glare, and air pollution. The city's planning department also completely revised its planning code to facilitate implementation of their new comprehensive land use and development plan.
- Austin, Texas created the East Austin Overlay District in 1997. Any new facility in the District with operations more intense than a commercial use must obtain a special use permit

SETTING PRIORITIES AND REDUCING RISK

Findings on Setting Priorities and Reducing Risk

Finding 12: Local governments can play a primary role in identifying neighborhoods where residents face multiple environmental and public health risks. However, they need help from the other levels of government to develop and implement strategies for reducing risks, taking advantage of each level's unique authorities and expertise.

Finding 13: Local governments often need—but have not always received—leadership, technical expertise, resources, training, or information from state and federal agencies to help them understand and address environmental justice issues.

Recommendations on Setting Priorities and Reducing Risk

Recommendation 11: State and local planning and zoning agencies and environmental agencies should gather data to determine whether people-of-color or low-income communities are exposed to excessive environmental hazards and, if so, they should initiate appropriate actions to reduce these risks. Complete information about local risks should be communicated to the residents of these neighborhoods. Federal, state, and local agencies should develop and implement strategies for reducing pollution, with appropriate measures of progress, accountability mechanisms, and deadlines for producing results.

Recommendation 12: Federal and state agencies should provide technical assistance, resources, training, and information on sources and levels of pollution that will help local governments identify neighborhoods that face disproportionate health and environmental hazards and develop appropriate risk reduction strategies that make effective use of all available tools and legal authorities.

Discussion of Setting Priorities and Reducing Risk

Among the five localities in this report, the South Coast AQMD was the only agency that had adopted a risk reduction strategy for environmental justice. Its plan applies to all of Southeast Los Angeles and was adopted in response to a monitoring and evaluation study for implementing its 1997 commitment to examine air quality at local levels. The study showed that diesel emissions are the greatest health risks for neighborhoods in the District. The District then developed a toxics control plan for the South Coast Basin that committed “to reduce air toxics by an additional 31 percent beyond what would be expected by 2010 under existing local, state, and federal control programs.”⁸

The 1997 study also enabled Huntington Park officials to determine that the city's environmental priority should be reducing diesel emissions and that they needed to be more mindful about their local responsibilities to reduce air pollution when making land use decisions. To that end, they changed the city's zoning ordinances to include consideration of compatible land uses, passed an ordinance that limits idling of motor vehicles, made better use of their existing authorities under

the California Environment Quality Act, and required mitigation plans before approving new businesses that might produce additional diesel emissions.

PUBLIC PARTICIPATION

Findings on Public Participation

Finding 14: Local governments often have broad authorities for involving the public in land use planning and zoning decisions, but efforts to engage the public are not always effective in reaching residents of low-income and people-of-color communities.

Recommendations on Public Participation

Recommendation 13: Local officials should work to improve opportunities for meaningful, early, and effective community involvement in land use planning and zoning, siting, and permit decisions. The public should be engaged in all steps of the process, not simply invited to participate in public hearings after plans have been essentially completed.

Recommendation 14: Local governments should help residents of low-income and people-of-color communities participate in planning and zoning decisions and ensure that their concerns are integrated into planning and zoning documents. This help may include translating relevant materials into other languages, using different places and times for public meetings to facilitate public participation and enable citizens to keep their regular work-day commitments, taking extra steps for outreach to communities unaccustomed to participating in government decisions, establishing ongoing partnerships with community organizations, facilitating dialogues on a continuing basis, and placing notices in publications or other media formats that are more likely to reach residents of low-income or people-of-color communities.

Recommendation 15: Local governments should make formal commitments to engage all citizens in their planning and zoning processes and should adopt measures to ensure they are making progress in addressing community concerns about public health and the environment. As a sign of this commitment, they should be sure to appoint individuals who represent the local community to land use planning and zoning boards.

Discussion of Public Participation

Each of the communities in the five case studies here has experienced vigorous public engagement on environmental justice issues. Unfortunately, much of this citizen participation has involved protests over specific problems created by past land use decisions rather than early engagement in developing local land use plans and zoning ordinances.

The American Planning Association encourages local planning and zoning officials to adopt collaborative approaches that create citizen support and help agencies to adopt plans or ordinances that meet public expectations.⁹ Some local officials recognize they need more

effective ways to involve local citizens earlier and in more meaningful ways when developing land use plans and zoning ordinances.

- The new planning process for East Austin is organized at the neighborhood level. Neighborhood residents are working closely with city planners to determine how best to zone and plan for each neighborhood. In neighborhoods covered by the East Austin Overlay Zone, public notice requirements have been expanded to ensure broad public awareness of any changes that may affect each neighborhood.
- As part of its ongoing Neighborhood Improvement Project, Huntington Park plans to establish neighborhood commissions. Once these commissions are established, city officials believe they will be effective mechanisms for more effective civic engagement on all issues, including environmental justice.
- Citizens commenting on Chicago's current zoning reform initiative have recommended expanded public participation in zoning decisions. In particular, they have asked that written notices of proposed zoning changes be sent to anyone, including renters, who has expressed an interest in projects in particular neighborhoods or of a certain size, not just to property or home owners located within 250 feet of the proposed project. If adopted, this approach will help to ensure that citizens will have an opportunity to raise environmental and public health concerns and to advocate for appropriate mitigation measures.
- The Illinois Environmental Protection Agency (IEPA) has a long-standing, active community relations program that works with community groups and promotes public participation generally. About a year ago, an IEPA environmental justice coordinator was appointed to oversee the agency's work on environmental justice issues, and a draft environmental justice policy that will apply to the agency's permitting and other programs is currently under public review. IEPA already employs some of the public participation techniques called for in the draft policy. Of particular interest is IEPA's use of what the agency calls "living room" public hearings. These small, informal sessions have been successful in engaging citizens who might otherwise not feel comfortable participating in a regular public hearing. IEPA also sometimes holds its hearings at a location right in an affected community. For example, about 250 people attended a hearing held at Altgeld Gardens regarding renewal of waste treatment facility permits.

ENDNOTES

¹ Governor Thomas J. Ridge, *Executive Order 1999-1*, Commonwealth of Pennsylvania, (January 7, 1999).

² Pennsylvania Department of Community and Economic Development, Governor's Center for Local Government Services, *Pennsylvania Growing Smarter*, website, <<http://www.landuseinpa.com>> (visited October 2002). See also Office of the Governor, "Gov. Ridge Unveils Dramatic Environmental Budget—Implements 'Growing Greener' Call for 'Growing Smarter,'" Press Release (February 8, 2000). Available at <www.landuseinpa.org/default.asp?content=news_press_020800> (visited July 2003).

³ 53 P.S. section 10619.2 (West Supp. 2002).

⁴ Pennsylvania Department of Environmental Protection, Policy Office, *Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DPE Review of Permits for Facilities and Infrastructure*, DEP ID#012-0200-001 (June 8, 2002).

⁵ Louisiana Department of Environmental Quality, Community/Industry Relations Group, Summary and minutes of the Mississippi Corridor Task Force (undated).

⁶ National Academy of Public Administration, *Models for Change: Efforts by Four States to Address Environmental Justice*, 89-91 (June 2002).

⁷ Environmental Law Institute, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities* (November 2001).

⁸ National Academy of Public Administration, *Models for Change*, 107-108.

⁹ Stuart Meck, gen. ed., *Growing Smart Legislative Guidebook*, xlvii (American Planning Association, 2002).

CHAPTER THREE

HISTORY AND BACKGROUND: LAND USE PLANNING AND ENVIRONMENTAL JUSTICE

INTRODUCTION

Local land use planning and zoning decisions have had an important influence on environmental justice problems. Zoning and land use planning have been described by some scholars as not only “a root enabling cause of disproportionate burdens [and] environmental injustice,”¹ but also “the most fundamental and potentially most powerful of the legal weapons deployed in the cause of racism.”²

The disproportionate exposures that often trigger environmental justice concerns are many and complex. They have been described as including “racism, inadequate health care, low quality housing, high hazard workplace environments, limited access to environmental information, ... simple lack of political power,”³ and noncompliance with environmental laws, among others. There is also significant evidence showing that not only are people-of-color or low-income residents likely to live close to polluting industries with the resulting unequal distribution of environmental exposures,⁴ but also that local zoning has sometimes created these disparities, and that local decision-makers were often fully aware of the likely outcomes.⁵

The history of land use planning and zoning in this country helps to explain how this unequal distribution of environmental burdens has occurred, and why these historical patterns have been the source of many environmental justice problems that confront people-of-color or low-income communities today. The case studies that follow in Chapters Five through Nine of this report further illustrate how some localities are using planning, zoning, and improved coordination with other entities—including state and county environmental departments and communities – to implement initiatives designed to address current environmental justice concerns more effectively.

A number of scholars have written comprehensively about the relationship of planning and zoning to environmental justice. To provide a historical context for the five case studies and the Panel’s recommendations, this chapter briefly summarizes some relevant milestones in the history of planning and zoning and their intersection with environmental justice issues.

ORIGINAL GOALS OF ZONING

When first developed, zoning promised something far different than the actual result of some localities’ decisions relegating certain communities to serve as “dumping grounds.” Zoning was originally designed to improve the aesthetics of towns and cities and to:

"ensure sufficient light and air at street level so cities would not be labyrinths of dark and dreary canyons; ...prevent incompatible uses from locating cheek by jowl so residential neighborhoods would be protected from factories; ...[ensure] density controls...; guarantee congestion-free central business districts and [enable] the...municipal infrastructure to keep pace with growth."⁶

While zoning "began as a means of improving the blighted physical environment in which people lived and worked, [it] was transformed into a device for protecting property values and excluding...[segments of the population described as] undesirables."⁷ One of the earliest examples of the exclusionary use of "proto-zoning ordinances" was San Francisco's 1885 prohibition against laundries in residential areas in order to prevent Chinese immigrants from settling in white neighborhoods.⁸

FEDERAL INFLUENCE ON LOCAL PLANNING AND ZONING

Federal policies played a significant role in establishing the basic legal framework and authority for cities to zone, and have helped to shape the concept of local zoning as a tool that cities could use to exclude or segregate the poor and people-of-color from certain areas.⁹ The passage of the Standard State Zoning Enabling Act of 1922, under the sponsorship of the U.S. Department of Commerce, served as the basic model for state zoning acts from that date forward.¹⁰ Among other things, the 1922 Act granted states the power to regulate land use for the "health, safety, morals, or the general welfare of the community."¹¹ This authority included regulating and restricting "the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population and the location and use of buildings, structures and land of trade, industry, residence or other purposes."¹²

Federally-insured mortgages provided by the Federal Housing Authority (FHA) and the Veterans Administration (VA) also helped to shape exclusionary practices by subsidizing the suburbs at the expense of America's urban areas, thus propagating race-based housing policies that continued well into the 1960s.¹³ The FHA's *Underwriting Manual*, in use between 1934 and 1947, advised against "the infiltration of inharmonious racial and national groups," "a lower class of inhabitants," and "the presence of incompatible racial elements" in new housing.¹⁴ FHA also supported the use of racial covenants in real estate and prevented African-Americans from obtaining mortgage insurance in "redlined"¹⁵ black or integrated communities.¹⁶ Although equal opportunity policies began in the 1950s, FHA acquiesced in the discriminatory practices of private lending institutions until 1968 by continuing to provide mortgage insurance for segregated residential areas.¹⁷ The long-term impacts of discriminatory practices by both FHA and VA have been significant, because together they subsidize half of all home mortgages.¹⁸ Also, the U.S. Department of Housing and Urban Development did not adopt regulations to ensure that new, integrated housing was built in decent neighborhoods until 1972; and federal highway projects as well as urban renewal policies have often displaced and segregated African-Americans into limited areas.¹⁹

In many instances, local decisions that allowed for industrial and other land uses incompatible with low-income and people-of-color communities were made "not in violation of, but in compliance with, local zoning ordinances."²⁰ Thus, for many years, federal policies reinforced local practices that limited housing for African-Americans to less desirable areas adjacent to polluting facilities.

THE *EUCLID* DECISION

The inauguration of zoning at the beginning of the 1900s brought changes described as a "revolution in American land use regulation and planning."²¹ Los Angeles launched this country's first "use" zoning ordinance in 1908 "to protect its expanding residential areas from industrial nuisance."²² In 1915, the U.S. Supreme Court approved the "exercise of a city's police power over land use" in *Haddacheck v. Sebastian*,²³ which upheld the Los Angeles zoning ordinance. In 1916, New York "enacted the first comprehensive zoning ordinance, separating and protecting residential uses from incompatible commercial and industrial uses."²⁴ Local police powers for zoning were then affirmed in the landmark 1926 Supreme Court decision, *Village of Euclid v. Ambler Realty Corporation*.²⁵

The implications of *Euclid* have been described as follows:

Euclid upheld the general principle of using the police power to separate incompatible uses and to protect residential uses and residential environments from the pressures of growth and industrialization. Relying on analogies to nuisance doctrine, Justice Sutherland declared, "[a] nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard." Thus, the concerns over health, safety, and the general welfare that are embodied in the police power were properly extended through the device of zoning to protect single-family residences from the encroachment of commerce and industry.²⁶

However, the racial dimensions of zoning and planning in some localities suggest that officials thought pigs were still appropriate for certain parlors, depending on who owned the parlors.

While zoning serves to regulate land uses, it can also serve exclusionary purposes. This use was reinforced by "social reformers" who viewed zoning as a tool "to [not only] exclude incompatible uses from residential areas but also to slow the spread of slums into better neighborhoods."²⁷ This could justify excluding immigrants, African-Americans, and other people-of-color or low-income groups from white residential areas.²⁸ Zoning, in the service of such policies, was well suited for promoting racial segregation because, at least until the 1950s, "the protection of property values...[and segregation] were...mutually reinforcing objectives."²⁹

ZONING'S UNFULFILLED PROMISE

Baltimore, Maryland established the first racial zoning ordinance in 1910. Within a few years, other jurisdictions throughout the south and as far west as Texas adopted similar racial zoning. While the ordinances differed in some respects, they shared the common objective of creating "separate residential areas for blacks and whites and prohibit[ing] members of either race from occupying residential property in the district set aside for the other."³⁰ When the Mayor of Baltimore signed that city's racial zoning ordinance in 1910, it isolated African-American residents in slums to reduce the "incidents of civil disturbance, to prevent the spread of communicable disease into the nearby white neighborhoods, and to protect property values among the white majority."³¹

Although the U.S. Supreme Court rejected racial zoning in 1917 in *Buchanan v. Warley*,³² its decision was based on interference with the rights of a white property owner. The Court found that Louisville, Kentucky's ordinance restricting where one could live based on race violated the rights of a white property owner to dispose of his property to a buyer of his choice, who in this case was a black man. While the Supreme Court clearly addressed the "inviolability of property rights" in this case, it did not address the "white supremacist underpinnings of racial zoning."³³

Despite invalidating racial zoning, the *Buchanan* decision did not end racially exclusionary zoning ordinances. They continued to be adopted by cities, only to be struck down by appropriate state courts.³⁴ Following the *Buchanan* decision, cities began employing professional planners to develop "racially informed zoning"³⁵ plans and utilizing land use planning as a means to create completely separate African-American communities.³⁶ This use of planning in "the service of apartheid ... helped to create the racially bifurcated social geography of most contemporary American cities."³⁷

Utilizing this tactic, Baltimore officials again were the first to adopt a comprehensive zoning ordinance in 1923, assisted by New York planning consultant Robert Whitten, who advised a number of cities on such ordinances. The previous year, Whitten had counseled Atlanta officials that "home neighborhoods had to be protected from any further damage to values resulting from inappropriate uses, including the encroachment of the colored race."³⁸ As a result, "the south and southeast of Baltimore tenement districts which housed first-generation immigrants, and the alley districts which housed poor blacks, were placed in industrial districts so as to encourage their displacement by factories."³⁹ Professor Yale Rabin, of the Massachusetts Institute of Technology, has called this phenomenon "expulsive zoning."⁴⁰ Low-income or people-of-color residents who were not displaced eventually found their homes were next to "a junk yard, an incinerator, a factory, or truck depot..., [while] white neighborhoods were consistently protected from intrusive traffic, noise, and pollution generated by such nonresidential uses."⁴¹

Professor Rabin has further described the failure of zoning to fulfill the expectations set forth in *Euclid* as "an impermissible use of police power, in violation of the rights of those who are thus adversely affected."⁴² He also found evidence that, even after the Supreme Court's 1917 rejection of racial zoning, some cities continued throughout the 1930s, and possibly much later, to zone the neighborhoods of low-income or African-American residents for industrial or commercial uses.⁴³ In addition to industrial or high-density designations, many African-

LEARNING FROM THE PAST AND PLANNING FOR THE FUTURE

The American Planning Association has acknowledged some current inadequacies of zoning for preventing these problems. They found, among other concerns, that zoning has:

- Failed to deliver on its loftier promises of producing high quality working and living environments;
- Been misused by suburban communities to exclude low-income and minority families;
- Engendered corruption, because the basic concept of uniform treatment within and among districts has been frequently undercut by issuance of variances, exceptions, and special permits; and
- Not dealt adequately with regional problems, because zoning is viewed as a strictly local power and opportunities for intelligent regional solutions to planning problems have been missed.⁷¹

Environmental justice presents many challenges and many opportunities for local planning and zoning officials. The concerns of people-of-color and low-income communities challenge local governments to find ways to prevent and solve problems that create disproportionate impacts. In a few localities, tools and techniques have emerged for reducing risk, achieving informed and effective community participation, and providing access to information. These initiatives will enable federal, state, and local authorities to provide better health and quality of life to their citizens.

Although land use planning and zoning are not the only reasons for the environmental problems that currently exist in people-of-color and low-income communities, they have, in some instances, continued to be significant barriers to addressing environmental justice concerns. Planning and zoning are also important tools for making positive local changes, and some states and local governments are trying to do just that. As one expert has noted, "the distribution of environmental benefits and burdens needs to be an explicit and well-considered element of the environmental policy debate."⁷² These issues also need to be discussed and addressed explicitly and effectively when localities undertake land use planning and zoning. In Chapter Four, this report analyzes how localities can use planning and zoning authorities to help resolve current and prevent future environmental justice problems.

ENDNOTES

- ¹ Juliana Maantay, "Zoning Law, Health, and Environmental Justice: What's the Connection?" *Journal of Law, Medicine & Ethics*, 6 (December 22, 2002).
- ² Yale Rabin, "Expulsive Zoning: The Inequitable Legacy of Euclid," in *Zoning and the American Dream: Promises Still to Keep*, eds. Charles M. Haar and Jerold S. Kayden, 107 (American Planning Association, 1989).
- ³ Richard J. Lazarus, "Pursuing 'Environmental Justice: The Distributional Effects of Environmental Protection," *Northwestern University Law Review*, 4 (Spring 1992).
- ⁴ *Ibid.*, 4.
- ⁵ Maantay, 6.
- ⁶ Haar and Kayden, eds., *Zoning and the American Dream*, ix.
- ⁷ Rabin, 105.
- ⁸ Maantay, 5.
- ⁹ Jon C. Dubin, "From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color," *Minnesota Law Review*, 4 (April 1993).
- ¹⁰ See U.S. Department of Commerce, *A Standard State Zoning Enabling Act, Under Which Municipalities May Adopt Zoning Regulations*, 1 (1926).
- ¹¹ *Ibid.*
- ¹² *Ibid.*
- ¹³ Gerald E. Frug, "Rethinking the Local," *Boston Review*, 1 (April/May 1998). Available at <<http://bostonreview.net/BR23.2/frug.ncl>> (visited July 2003).
- ¹⁴ Dubin, 3.
- ¹⁵ "Redlining" is the practice of refusing to serve a particular geographical location because of the race or income of the area's residents.
- ¹⁶ Dubin, 4.
- ¹⁷ *Ibid.*
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.*, 4-5.
- ²⁰ Yale Rabin, *Testimony*, EPA National Environmental Justice Advisory Committee, I-165 to I-168 (November 30, 1999).
- ²¹ Christopher Silver, "The Racial Origins of Zoning in American Cities," in *Urban Planning and the African American Community: In the Shadows*, eds. June Manning Thomas and Marsha Ritzdorf, 23 (Sage Publications, 1997).
- ²² *Ibid.*
- ²³ *Ibid.*
- ²⁴ Dubin, 3.
- ²⁵ *Ibid.*
- ²⁶ *Ibid.*, 1-2, quoting the *Euclid* decision.
- ²⁷ Silver, 24.
- ²⁸ *Ibid.*
- ²⁹ Rabin, "Expulsive Zoning," 106.
- ³⁰ *Ibid.*
- ³¹ Silver, 27.
- ³² *Buchanan v. Warley*, 245 U.S. 60 (1917). Available at <http://www.usembassy.de/usa/etexts/crights/scdec/buchanan.htm> (visited July 2003).
- ³³ Dubin, 3.
- ³⁴ *Ibid.*
- ³⁵ Silver, 26.
- ³⁶ *Ibid.*
- ³⁷ *Ibid.*
- ³⁸ Rabin, 107-108.
- ³⁹ *Ibid.*
- ⁴⁰ *Ibid.*, 101.
- ⁴¹ Rabin, *Testimony*, I-165 to I-168.
- ⁴² Rabin, "Expulsive Zoning," 101.

- Ongoing problems of housing affordability,
- Lack of housing diversity,
- Exposure of life and property to natural hazards, and
- The obligation to promote social equity—"the expansion of opportunities for betterment, creating more choices for those who have few"—in the face of economic and spatial separation.¹⁷

Various planning and zoning enabling statutes have had an impact on the ability of local governments to consider and address environmental justice concerns by controlling land use.¹⁸ At the start of the 21st century, there is a renewed interest in modernizing and reforming many states' outmoded planning and zoning laws. This interest presents a unique opportunity for environmental justice advocates to provide leadership by securing the passage of revised state enabling statutes that will empower local governments to address these issues more effectively through land use planning and zoning.

COMPREHENSIVE LAND USE PLANS

Although zoning is one of several legal techniques for controlling the use of land within a municipality, it is usually based on a comprehensive plan. Such a plan is generally defined as "an official public document, preferably (but often not) adopted as law by the local government, [that serves] as a policy guide to decisions about the physical development of the community."¹⁹ The process of developing a locality's comprehensive land use plan "provides a chance to look broadly at programs a local government may initiate regarding housing, economic development, provision of public infrastructure and services, environmental protection, and natural and manmade hazards and how they relate to one another."²⁰

The language of the early federal model—the Standard State Zoning Enabling Act—allowed, rather than mandated, planning. Due to its influence, some states required that local zoning be implemented in accordance with a local comprehensive plan. However, many of these state laws failed to provide specific statutory guidance to local governments about what a comprehensive land use plan is or should be. States often failed also to provide a statutorily prescribed process for adopting a local comprehensive plan.²¹ In fact, the majority of states maintain that adoption of a comprehensive plan is not necessarily a prerequisite for adopting and enforcing local zoning.²²

Although the 1928 Standard City Planning Enabling Act did set forth certain "elements" of comprehensive plans, this Act made plans optional and did not define the legal relationship between plans and zoning ordinances.²³ Yet, this first step in local control over land use is critical for achieving environmental justice. Ideally, during the initial community visioning or planning stages, citizens can come together to decide how and where they want their community to grow. Then through the goals and vision articulated in the planning process, localities can

adopt other legal requirements and zoning ordinances to implement the plan in ways that will promote environmental justice.

Beginning in the 1950s, under the auspices of the U.S. Department of Housing and Urban Development's Section 701 Program, state, regional, and local governments were influenced to craft local land use plans that met minimum considerations.²⁴ To qualify for federal funds for urban renewal and other community development initiatives over a span of almost three decades, local governments have been required to prepare and adopt comprehensive plans that contain the following elements: land use, housing, circulation, public utilities, and community facilities.²⁵

State governments typically leave the detailed contents of comprehensive plans to individual local governments. But suggestions or guidelines about the elements of a plan may be adopted by state statute. This approach, together with a requirement that localities adopt zoning districts that comply with their comprehensive plans, is finding its way into more recent state statutory reforms.²⁶

The APA's *Growing Smart Legislative Guidebook* offers model state legislation for adopting comprehensive plans, and provides for both required and optional elements of a local plan.²⁷ Some of these elements can be important for ensuring that local officials at least consider environmental justice principles when crafting the content of comprehensive land use plans.

Figure 4-1 is adapted from the *Growing Smart Guidebook's* table of proposed comprehensive plan elements.

Figure 4-1

<i>Mandatory Elements</i>	Issues and Opportunities Land Use Transportation Community Facilities Housing Program Implementation
<i>Mandatory with Opt-Out Alternative Elements</i>	Economic Development Critical and Sensitive Areas Natural Hazards
<i>Optional Elements</i>	Agriculture, Forest, and Scenic Preservation Human Services Community Design Historic Preservation Subplans (as needed)

Source: American Planning Association, *Growing Smart Legislative Guidebook* (2002).

New York recently enacted another approach by offering topical guidance to local officials in the development of comprehensive land use plans. Specifically, New York's three enabling acts provide that comprehensive plans may include the following topics, at the level of detail appropriate for the requirements of each locality:

- a) General statements of goals, objectives, principles, policies, and standards to form the basis of proposals for the immediate and long-range enhancement, growth, and development of the town;
- b) Consideration of regional needs and the official plans of other local government units and agencies within the region;
- c) The existing and proposed location and intensity of land uses;
- d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources, and sensitive environmental areas;
- e) Consideration of population, demographic, and socio-economic trends, as well as future projections;
- f) The locations and types of transportation facilities;
- g) Existing and proposed general locations of public and private utilities and infrastructure;
- h) Existing housing resources and future housing needs, including affordable housing;
- i) The present and future general locations of educational and cultural facilities, historic sites, health facilities, and facilities for emergency services;
- j) Existing and proposed recreation facilities and parkland;
- k) The present and potential future general locations of commercial and industrial facilities;
- l) Specific policies and strategies for improving the local economy in coordination with other plan topics;
- m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan;
- n) All or part of the plan of another public agency; and
- o) Any and all other items that are consistent with the orderly growth and development of the town.²⁸

In keeping with the APA's guidance, one specific goal of planning for smart growth should be to incorporate environmental justice concerns into any list of factors and/or topics that should be or may be addressed in local comprehensive plans. This goal can easily be accomplished through training, education, and technical assistance for local planners and other officials. For example, in California, recent legislation requires the Governor's Office of Planning and Research to adopt guidelines by July 1, 2003, for local agencies to follow when addressing environmental justice issues in their general plans.²⁹ At the time of this writing, draft guidelines have been distributed for public comment.³⁰ But some local governments, including the City of Los Angeles, have not waited for the state to act. The General Plan for Los Angeles already establishes "physically balanced distribution of land uses"³¹ as a goal of its land use policies, thus providing a foundation for the city to ensure that its future zoning ordinances take into account environmental justice issues.

CITIZEN PARTICIPATION CAN PLAY A MEANINGFUL ROLE IN DEVELOPING COMPREHENSIVE PLANS

One barrier to ensuring consideration of environmental justice concerns in local decisions can be removed by making certain that local officials provide traditionally under-represented populations with a meaningful role in the future development of their neighborhoods and communities through active citizen participation in the development of comprehensive land use plans. For most localities, municipal officials are already empowered to ensure that effective citizen participation can occur, because state enabling statutes usually give local officials broad authority to develop their plans. However, the laws give them little or no guidance, other than often minimal references to the process by which such plan are developed and adopted.

Traditionally, however, citizen participation in the development of comprehensive plans and in the process for adopting zoning ordinances has been limited to participation in the single public hearing that is typically required by state law prior to the local legislative body's official adoption of the plan or zoning ordinances.³² The APA's *Growing Smart Legislative Guidebook* urges local officials to do more:

The processes for engaging the public in planning are not made clear in many planning statutes. Requirements for public notice, public hearings, workshops, and distribution and publication of plans and development regulations are often improvised. Consequently, the public may find its role and the use of its input uncertain, and it may be suspicious of plans and decisions that emerge. Planning should be doing the opposite; it should be engaging citizens positively at all steps in the planning process, acknowledging and responding to their comments and concerns. Through collaborative approaches, planning should build support for outcomes that ensure that what the public wants indeed will happen.³³

While APA's observations are certainly true, environmental justice issues require an even more careful and proactive approach to ensuring effective participation by all citizen interest groups. Otherwise, "ensuring what the public wants" may not offer a level playing field for local low-

income and people-of-color communities, who are often disillusioned—and sometimes actually disenfranchised—by most local decision-making processes.

States have taken varied approaches when adopting statutes to encourage or require effective citizen participation in local land use planning. Maine and Arizona offer two examples of these laws. Maine's statute provides:³⁴

In order to ensure citizen participation in the development of a local growth management program, municipalities may adopt local growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this subsection is to provide for the broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments. (30-A Me. Rev. Stat., sec. 4324(3)(1995)).

When preparing a general land use plan, local planning agencies in Arizona are required to:

(S)eeK maximum feasible public participation from all geographic, ethnic, and economic areas of the municipality and consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens generally to the end that maximum coordination of plans may be secured and properly located sites for all public purposes may be indicated on the general plan. (Az. Rev. Stat. sec.9-461.05(e) (1996)).

Moreover, the APA's *Growing Smart* study proposed the following model state statute on public participation and public hearings for comprehensive plans.

The public participation procedures shall provide for the broad dissemination of proposals and alternatives for the local comprehensive plan or such part or other amendments in order to ensure a multidirectional flow of information among participants in advance of and during the preparation of plans. Examples of measures contained in such procedures may include, but shall not be limited to:

- a) Surveys and interviews of the local government's residents and business owners, operators, and employees;
- b) Communications programs and information services, such as public workshops and training, focus groups, newsletters a speaker's bureau, radio and television broadcasts, and use of computer-accessible information networks;
- c) Opportunity for written comments on drafts of the plan or such part or other amendment;
- d) Appointment of a person to serve as a citizen participation coordinator for the planning process; and/or

- e) The creation of advisory task forces.³⁵

Ideally, a requirement to ensure meaningful citizen participation by all cross-sections of the local population should be included in all state planning and zoning enabling statutes. Providing for active involvement by people-of-color and low-income residents in developing the goals of a locality's comprehensive plan, at least as it relates to their own neighborhoods, will help to ensure that local zoning laws or ordinances are developed and/or amended to reflect the desires of these communities. Once their concerns are part of the comprehensive plans, contrary local zoning ordinances will run the risk of being invalidated if they do not accomplish the goals of the comprehensive plans for addressing the environmental justice concerns.³⁶

ADOPTING LOCAL ZONING LAWS OR ORDINANCES

When a local government is ready to implement its plan or vision, it typically does so by enacting a zoning law or ordinance. Zoning is a process whereby land in a locality is organized into any number of districts. These districts are then labeled, and the text of the zoning law describes what uses are allowable within each district. Localities can have multiple districts with the same label, e.g., three R-1 (residential one family) districts or two M-1 (light manufacturing) districts. In these cases, the zoning requirements for districts with the same label must be uniform. However, regulations may vary from one type of district to the next, e.g., the R-1 district may differ from the R-2 (residential two-family) or R-3 (multi-family) districts.

This form of zoning—also called “Euclidean zoning” from the famous Supreme Court case upholding the constitutionality of zoning³⁷—is designed to separate different land uses that are believed to be incompatible. What has emerged, however, is a pattern of land uses that has produced neighborhoods where different groups live, often identifiable based on race or socio-economic status. Specifically, the “haves” who can afford the proverbial American Dream of owning a single-family detached home are able to live next door to others similarly situated. Likewise, those who rent, because they cannot afford to own their own homes, rarely live next door to single-family homeowners. Rather, lower income families tend to live among those of similar economic status and are concentrated together in the same areas, because Euclidean zoning has separated single-family residential use into one or more zoning districts that are separate from the multi-family or apartment housing in other districts.

To overcome these unfortunate effects of traditional approaches to zoning, state zoning reforms must include methods for environmental justice principles to be adequately addressed as part of the process for revising and adopting local zoning laws. Disparate environmental impacts often develop even in the absence of any intent to create those effects. One author explains the potential promise of effective coordination among local zoning, comprehensive land use plans, and environmental justice concerns:

First, an owner or operator of a prospective LULU [*sic* Locally Unwanted Land Use] would have much more difficulty obtaining approval for siting the LULU in a minority or low-income neighborhood, if the comprehensive plan and zoning ordinances prohibited the LULU in that neighborhood than if they allowed the

LULU, either by right or conditionally...Second, land use planning and regulation create greater certainty about what land uses will or will not be allowed in a neighborhood...Third, land use planning and [zoning] regulations improve the community's capacity to achieve its goals....³⁸

Typically, the only state statutory mandates that govern local rezoning or amendments to zoning simply require that any reforms be enacted by following the same process as adoption of the original local zoning ordinances or laws, and that any changes in the zoning be consistent with the current local comprehensive plan.

Amendment of zoning ordinances offers another significant opportunity to address environmental justice concerns.³⁹ Because planning, by definition, requires prospective thought and future vision, rezoning consistent with updating a plan is essential for a locality to achieve its articulated goals and to remedy any ongoing environmental justice problems that are allowed or were caused by current zoning.⁴⁰ As one author has recently explained:

Low-income and minority neighborhood groups will be more successful in achieving valid rezoning of neighboring properties from more intensive to less intensive uses if they follow four guiding principles: (1) seek rezoning before controversial specific land use proposals arise; (2) carefully document the incompatibility of existing high-intensity use designations and their impact or potential impact on the health and safety of local residents, as well as community character; (3) seek rezoning for all neighboring parcels with similar use designations and similar impacts (do not leave a landowner the argument that only his or her property has been downzoned while neighboring parcels remain zoned for more intensive uses); and (4) do not downzone so greatly that the landowner suffers a substantial diminution in the property's value (leave the owner some economically viable use—for example, downzone from industrial use to a commercial use, instead of all the way to a single-family use).⁴¹

ELIMINATING NONCONFORMING USES

When localities adopt zoning codes, they often "grandfather" existing uses that were allowed prior to the adoption or amendment of new zoning laws. These nonconforming uses typically include facilities that are no longer consistent with the current land use goals for the future of the community and may represent operations that pose significant environmental and health hazards.⁴² There is little statutory authority for addressing nonconforming uses; most states and local governments usually follow common law or case law on this subject. Nevertheless, unwanted nonconforming uses can often be eliminated in one of two ways: through adopting a local amortization law to eliminate the use,⁴³ or through a local finding that the use constitutes a public nuisance and obtaining a court order to cease operations. One strategy to address environmental justice issues would be for states to require that localities "survey their nonconforming uses and determine whether any of them pose such health and environmental problems that they should be targeted for closure."⁴⁴ Local governments can then effectively amortize the use, thereby beginning the process of improving conditions in people-of-color

or low-income communities and starting to create neighborhood-based solutions to environmental justice problems.

RELATIONSHIP BETWEEN ZONING AND ENVIRONMENTAL REVIEW

The APA has noted that state environmental policy acts "bring a new dimension to land use planning and regulation."⁴⁵ Its *Growing Smart Legislative Guidebook* for model statutes to reform state planning and zoning laws devoted an entire chapter to discussing the need for integrating state environmental policy acts - called "little NEPAs" after the National Environmental Policy Act (NEPA) - local planning, as well as advocating environmental reviews for key elements of proposed comprehensive plans prior to their adoption.⁴⁶ The *Guidebook* emphasizes strategies for streamlining environmental impact reviews and combining them with local land use planning and zoning decisions so these considerations are integrated and duplication of the two review processes is avoided.

Little NEPAs and Local Land Use Actions That Could Trigger Environmental Review

Only 15 states, the District of Columbia, and the Commonwealth of Puerto Rico have adopted state environmental review laws (little NEPAs) requiring advance environmental reviews of projects that may have significant environmental impacts.⁴⁷ These "state environmental policy acts bring a new dimension to land use planning and regulation" because these acts require an environmental review of certain types of proposed land uses, facilities, or developments.⁴⁸ States have adopted these policies "in part, because planning failed to consider the environmental effects of the role of planning in evaluating environmental impacts."⁴⁹

Although less than half of the states have enacted specific statewide authorities for local governments to conduct local environmental impact assessments, localities in other states may find authority under state municipal home rule laws or planning and zoning enabling acts to adopt their own locally developed environmental impact laws.⁵⁰ As one leading environmental lawyer has said: "It is unrealistic to expect many municipalities that do not now require environmental impact statements (EIS) to start doing so in order to address environmental justice concerns.... [but] where EISs are already prepared, they could be required to address demographics and other environmental justice matters in a manner similar to what is now required under NEPA."⁵¹ However, because comprehensive planning by its nature does not usually include site-specific development proposals, state-level legislation to expand the scope of planning and require effective local environmental reviews, particularly in those states that do not yet have little NEPAs, would enable community residents to have greater influence on proposed uses that may cause adverse environmental impacts.⁵²

Community Impact Statements

One variation on local environmental reviews is the community impact statement (CIS).⁵³ A CIS provides a mechanism for local officials to formulate their own statement of what they believe impacts will be if a particular use is newly approved or allowed to expand.⁵⁴ Local reliance on the CIS process could be authorized by state legislatures or, in some cases, local governments

may already possess the necessary power to adopt local laws or ordinances authorizing the CIS process. One potential benefit of preparing a CIS is that it can be a stand-alone review, totally separate from an environmental impact review, which may not always be conducted under the control of the impacted community. If conducting CIS reviews becomes a routine part of local zoning reviews, local officials could be required take the results of a community group's CIS into consideration, to hold one or more public hearings on the document, and to use the CIS as a vehicle for negotiating on behalf of residents of the impacted community with the applicant for a new or expanded facility.⁵⁵ A state requirement that CISs be prepared and used in local zoning decisions could be an important tool for protecting adversely impacted community residents who might not otherwise have access to, or influence over, local decision-makers and the results of other environmental reviews.

OTHER OPPORTUNITIES TO ADDRESS ENVIRONMENTAL JUSTICE CONCERNS

Local Level

There are numerous other opportunities to utilize existing land use planning and zoning techniques to address environmental justice concerns. Professor Craig Anthony Arnold has catalogued these options in a recent article discussing, among other things, flexible zoning techniques:⁵⁶

- **Conditional uses**—imposing certain restrictions on uses that could create environmental justice concerns.
- **Overlay zone**—imposing further requirements over an existing zoning district to ensure, for example, additional environmental protections, and could be used, for example, to impose a variety of specific requirements on industrial and commercial activities in predominantly low-income and minority neighborhoods.
- **Performance zoning**—a technique used not to regulate the land use but rather to regulate the impacts of land uses by, for example, providing standards to limit certain nuisance-like activities.
- **Buffer zone**—usually local zoning districts that buffer or serve as a transitional area between two or more uses that might be considered incompatible. Professor Arnold notes that these zones could address the principal reason industrial and commercial uses were historically located next to low-income or people-of-color communities, rather than siting of undesirable uses near moderate or middle-income single-family housing. However, he also notes that buffer zones could include physical screening, landscaping, significant setbacks, open spaces, and even other lower-intensity commercial uses that might serve as better transitions from residential neighborhoods to more industrial areas.
- **Floating zones**—these districts are often described in the text of a zoning ordinance but not specifically placed on the zoning map so they can “float” until they are placed in a specific location based on the presence of certain identified criteria and a request from a

landowner to locate that type of district at a specific site for a particular development or facility. Professor Arnold warns, however, that community advocates need to keep careful watch over these floating districts because it can be difficult to predict where they will land.

- ***Exactions and mitigation fees***—localities can assess fees on developers to reimburse the costs associated with their new developments and thus fund, subject to constitutional limitations, important public infrastructure needs in low-income or people-of-color communities.

Most of these tools are not specifically authorized by state statute, but have been recognized over the years by the courts as valid exercises of local police power, enabling these techniques to be used by localities with little statutory guidance.

In most states, many other decisions about planning and land use requirements that could address environmental justice concerns are left to the discretion of local officials. They include: membership on planning commissions, planning boards, and zoning boards; investments in training for zoning officials, planners, and other local decision-makers; and commitments to conduct more effective community outreach and information sharing.

State Level

Training for Members of Planning and Zoning Boards

Typically, members of local planning and zoning boards, as well as members of local legislative bodies, such as city councils or county commissioners, are not required to receive any specific training on planning and zoning laws. Yet, scholars have documented the fact that zoning and other land use controls—such as large lot zoning, minimum floor area requirements, large setbacks, low density zoning and restrictions on manufactured housing and multi-family housing—have been used to exclude certain populations from settling in a particular area through exclusionary zoning.⁵⁷ These uses may be purposeful or unintentional. The fact remains, however, that exclusionary zoning is illegal and a violation of civil rights, often resulting in legal judgments or costly settlements against local governments. Some of the local decisions that produced these court rulings could have been avoided by proper training for members of local land use planning and zoning boards.

Case Study **Cadillac Heights, Dallas, Texas**

Residents of the Cadillac Heights neighborhood in Dallas, Texas—a predominantly low-income African-American and Hispanic neighborhood—have sued the city alleging that its zoning laws have intentionally discriminated against them in the following ways:

- The areas immediately adjacent to their neighborhood were zoned heavy industrial, thereby subjecting Cadillac Heights to blighting influences and the noxious effects of various allowable uses, such as a meat packing plant, animal rendering plants, the city's sewage treatment plant, and a junkyard.
- The city intentionally discriminated by denying these minority and low-income residents protection from industrial nuisances such as smelting operations; the only two smelting plants in the city have been located in predominantly minority residential communities.
- The city used its zoning powers and other city laws to protect predominantly white neighborhoods from the harmful effects of these uses, causing disproportionate impacts on Cadillac Heights and other mostly minority areas.
- The city failed to enforce its zoning and land use laws, allowing an illegal landfill in Cadillac Heights to continue operating while taking enforcement action against illegal landfills in predominantly white neighborhoods.
- The city followed a pattern of classifying areas with high concentrations of African-Americans as "areas in advanced decline" or "advanced decline with abandonment."

In ruling on the history of land use planning and control in Dallas, the federal court for the Northern District of Texas noted that in 1945, the City Plan Commission recommended that a racial ownership map and a racial residence map be prepared for certain areas of the city. In 1947, the City Engineer referred to Cadillac Heights as "suitable for Negro Subdivision Development." City historical records indicated that the racial make-up of neighborhoods was a contributing factor in city decisions about how to classify land for zoning purposes. The court thus found: "The sordid history of the city's decision-making process regarding racially-segregative zoning and related policies, when viewed in conjunction with the discriminatory effects of zoning decisions, industrial nuisances, and landfill practices, offers substantial circumstantial evidence of discriminatory intent." In denying the city's request for summary judgment, the court concluded: "There is a genuine issue of material fact whether the city has discriminated against residents of Cadillac Heights on the basis of race...."

This case is still currently being litigated. See, *Miller v. City of Dallas*, 2002 U.S. Dist. LEXIS 2341 (N.D. Tx., Dallas Div. 2002).

Access to important environmental information is also key for local regulators. To address environmental justice issues effectively, local officials must have access to reliable information and sound science. They also need the capacity to incorporate this information into carefully designed land use plans, zoning ordinances, and regulations.⁵⁸ In part, this need relates to training because, in some instances, the information exists if local officials know where and how to find and use it. But in other respects, it is a separate issue that calls for state and federal agencies to provide local officials with access to meaningful data on public health and environmental impacts so they can make better-informed land use and zoning decisions. One proponent of local environmental law offers the following suggestions:

- 1) Follow the example of environmental impact assessment laws in California and New York, which "require local governments with actions subject to these review laws to obtain the necessary expertise and information and to assure that it is paid for – often by project proponents in the case of privately initiated projects,"⁵⁹
- 2) Provide special funding to local governments when they seek and use high quality environmental information;
- 3) Incentivize or require local officials to acquire good environmental information; and
- 4) Establish statewide clearinghouses of geographic information systems (GIS) that can supply local governments with significant environmental information prior to adopting local zoning laws and land use plans, thereby also enabling states to play a more meaningful role in improving the quality of local land use decisions.⁶⁰

However, because local governments are likely to vary widely in their indigenous technical capacity and access to environmental information, "the states and federal government will need to play major roles in assuring that they have the information they need to make local environmental law an effective—indeed central—partner in the effort."⁶¹

Appointment of Individual Community Representatives to Planning and Zoning Boards

In most localities, environmental justice considerations will be factored into local land use planning, zoning, and siting decisions only where the impacted communities are represented on the bodies empowered to make these critical decisions. A 1987 APA survey on the composition of planning commissions revealed that:

- Nearly eight out of 10 members of planning boards were men;
- More than nine out of 10 members were white, although in some larger cities the number was closer to seven out of ten;
- Almost eight out of ten were 40 years of age or older; and
- Most board members were professionals, such as businesspeople, lawyers, engineers, educators, and real estate agents.⁶²

This survey confirmed the findings of planning consultant Harvey S. Moskowitz, who examined the characteristics of New Jersey's planning boards between 1981 and 1982. He concluded that the members of these boards differed from the general population and were drawn from more elite groups.⁶³ Specifically, Moskowitz found that board members were predominantly white professional males whose family incomes were considerably higher than the median family income of the general population. They were also married, owned their own homes, and had dependent children at home.⁶⁴ This arguable elitism in the composition of local boards is thus a major barrier to addressing environmental justice concerns and promoting effective citizen participation for all communities in local planning and zoning decisions. These data also explain and substantiate the fact that marginalized citizens are not sufficiently empowered to impact community decisions on environmental problems or economic development.⁶⁵

To address this situation, states could advocate or require that localities appoint board members who represent the diversity of the entire community population with regard to race, gender, income, home owners, and renters, and age. There is also precedent for states to authorize, but not require, that municipalities appoint individuals to planning boards to serve in a representative capacity. For example, New York statutes authorizing the creation of planning boards provide that, in certain situations (where there is a locally established agricultural district pursuant to state law), municipalities may appoint one or more members of local planning boards who derive a certain threshold of their income from agricultural pursuits in the same municipality.⁶⁶

The APA's *Growing Smart Legislative Guidebook* also offers states an option for modernizing their planning statutes in this regard by recommending appointment of at least one member "who lives [or who will represent the viewpoint of those who live] in rental, affordable, or multi-family housing."⁶⁷ The *Guidebook* stops short, however, of identifying any other members who should be appointed to serve in other representative capacities. Examples might include specifically selecting a board member to represent any ethnic or cultural groups that comprise a certain percentage of the local population, appointing board members who could represent the interests of community residents with incomes below a certain level, or selecting a board member to represent the interests of residents in a neighborhood or area that already suffers serious environmental exposures from nearby facilities or land uses.

Because the studies documenting membership on planning boards are now 15 to 20 years old and did not include examination of membership on zoning boards of appeal or other local land use bodies, a new nationwide study is needed to determine the current extent to which low-income or people-of-color residents are under-represented among the members of local planning and zoning bodies. A new survey would not only yield updated data, but it could also include an explanation of environmental justice concerns and how they relate to the planning and zoning process, thus providing another opportunity for educating local officials about how they can address these issues.

Federal Level

Although land use planning and zoning authority and decisions rest with state and local governments, various federal agencies have had an increasing influence on land use reforms, through myriad regulations, funding incentives, and other agency-level technical assistance

programs.⁶⁸ More than 10,000 units of local government across the country have authority for planning and zoning decisions, so the challenges that confront the federal government are enormous. After all, local officials cannot begin to address their environmental justice problems unless they understand them.⁶⁹

One expert has suggested that local regulators are in great need of information regarding "best practices" by their counterparts in other jurisdictions and that "national internships, training sessions, fellowships, and awards programs should be established."⁷⁰ Furthermore, the federal government should, from agency to agency, reinforce the nation's commitment to environmental justice by requiring state and local governments to adopt policies or commitments to address environmental justice issues through local planning and zoning decisions as a pre-requisite for obtaining federal funds under any land use, transportation, or environmental grant program.

Engaging the Nonprofit Sector

It is essential to launch outreach programs and targeted policy initiatives that will sensitize local planning and zoning officials about environmental justice principles. These programs can be developed by working in partnerships and collaborations with national and statewide associations and organizations that represent or work with constituencies of local officials. The following examples are initiatives that could be undertaken by the nonprofit sector to accomplish sustained training and education of local planning, zoning, and land use officials regarding how community environmental justice concerns can be addressed.

- **Educational programs for state officials about the role, impacts, and opportunities presented through local land use planning, zoning, and other land use controls to address environmental justice concerns.** The National Governors' Association and the National Conference of State Legislatures would make ideal partners for this initiative. Presentations at national and regional meetings of these organizations, articles in their publications, sponsored research or policy guidebooks, and links from these organizations' websites to federal environmental justice resources are all possible outlets for educating state executive and legislative leaders. The existing network⁷¹ of statewide environmental justice coordinators can also serve as another point of entry to access state executive branch decision-makers.
- **Educational programs for local officials about the relationship between environmental justice problems and local land use controls and decisions.** Developing partnerships with national associations of local officials to educate their membership about these issues is important. Such organizations include the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the League of Cities, the National Conference of Black Mayors, the National Association of Towns and Townships, the International Municipal Lawyers' Association, the International City/County Management Association, and the American Planning Association. Collectively, these organizations cover a wide array of individuals at the local level who make decisions about developing and adopting comprehensive land use plans, designing

zoning laws or ordinances and other land use controls, siting new or expanded facilities, decisions, and selecting individuals to serve on local planning or zoning boards and other bodies that make land use decisions. The federal government should consider developing a training curriculum that could be offered at national and regional meetings of these organizations, as well as an on-line tutorial that individual officials could retrieve from the Internet.

- **National environmental justice awards for zoning and planning.** National and statewide associations of local governments should consider developing a recognition program for states and municipalities that amend or adopt state or local statutes, plans, ordinances, or regulations designed to address environmental justice issues. These actions could then become national models for others to emulate, and case studies of how they accomplished effective results could be posted on the Internet. Citizen activists and others could nominate their state or local governments for recognition. The formal awards could range from a simple citation and visit by an appropriate high visibility official, to small planning grants that fund targeted local efforts to implement further the plans, laws, or ordinances recognized as model approaches.
- **On-line clearinghouse for environmental justice planning and zoning.** A nationwide on-line clearinghouse could complement local smart growth, sustainable development, or livable community initiatives by specifically highlighting the interplay between local land use controls and environmental justice principles. The federal government and several states that have assumed leadership roles in addressing environmental justice concerns at state levels have already established their own valuable websites with a wealth of information on environmental justice. However, current government websites contain very few resources explaining how local governments' land use planning, zoning, and other decisions may affect environmental justice issues. Advocacy organizations should also be encouraged to provide examples of the connection between environmental justice and local land use planning and zoning on their websites, and those sites should be linked to the government sites. In addition, the clearinghouse should publish model language that can be incorporated into local plans and zoning ordinances, as well as a sample checklist of issues to be addressed at the local level, to help local officials work toward achieving environmental justice.

Passing the Community Character Act and Related Initiatives

Potential partners for more formally incorporating environmental justice considerations into land use policies are the Congressional task forces and caucuses that have been created to address smart growth, livable communities, and improved community development.⁷² Federal legislation has been recently proposed to start addressing sprawl, community development, and smart growth.⁷³ The legislation would encourage or require federal agencies' siting decisions to be consistent with local zoning and comprehensive plans, and would provide funding for state and local governments to modernize their land use plans. The Community Character Act of 2000

and 2001 is one example of proposed legislation. This Act has not yet been passed, but in 2002, it was reported out of the Senate committee. If this bill is re-introduced in this or future Congresses, it could provide an opportunity for environmental justice principles to be incorporated into state and local land use plans by offering financial incentives for planning.⁷⁴ Many national and statewide advocacy organizations have already testified at Congressional hearings on the bill and have participated in drafting legislation and lobbying Congress to support these initiatives, even though environmental justice issues have not been their main focus.

CONCLUSION

Planning experts, professors of environmental and land use law, and community advocates have only recently started to write about the critical connections between environmental justice problems and local land use planning and zoning decisions. While there are significant challenges to incorporating environmental justice principles into the nation's planning and zoning system, in large part due to the fragmented nature of local land use decisions, there are many opportunities to do so and the potential rewards are great. Given the magnitude of local land use planning and zoning efforts, environmental justice advocates should not ignore this critical step in community decision-making and economic development.

Professor Arnold argues that "land use planning and regulation foster choice, self-determination, and self-definition for local neighborhoods, not paternalism that insists that there is a single correct environmental justice goal."⁷⁵ From a timing perspective, the opportunity has never been better for obtaining changes that address environmental justice concerns, due to the currently active national movement for modernizing state planning and zoning statutes. Significant investments in training and education through a network of partnerships are necessary, but they can yield substantial returns by enabling local officials to address environmental justice problems. There is already a growing network of public, private, and nonprofit interests all committed to ensuring that environmental justice issues are taken into account through local planning and zoning. Increasing collaboration, cooperation, sharing resources, and working on joint efforts will help to remedy past environmental justice problems and prevent their repetition in the future.

ENDNOTES

¹ Patricia E. Salkin, "Land Use," in *Stumbling Towards Sustainability*, ed. John Dernbach, 374 (Environmental Law Institute 2002), citing Robert R. Kuehn, "A Taxonomy of Environmental Justice," *Environmental Law Review*, 10681 (September 2001); Robert Bullard, "Leveling the Playing Field Through Environmental Justice," *Vermont Law Review*, 453 (1999). See also, Paul M. Hendrick, "Racism in American Land Use Decisions: The Slicing of the American Pie," *Florida Coastal Law Journal*, 395 (2001); and Craig Anthony Arnold, "Land Use Regulation and Environmental Justice," *Environmental Law Review*, 10395 (June 2000).

² Michael B. Gerrard, "Environmental Justice and Local Land Use Decision-Making," in *Trends in Land Use Law from A to Z: Adult Uses to Zoning*, ed. Patricia Salkin (American Bar Association, 2001).

³ Juliana Maantay, "Zoning Law, Health, and Environmental Justice: What's The Connection?" *Journal of Law, Medicine and Ethics*, 572 (December 2002).

⁴ Clifford Rechtschaffen and Eileen Gauna, *Environmental Justice: Law, Policy & Regulation*, 297 (Carolina Academic Press 2002).

⁵ Craig Anthony Arnold, "Planning Milagros: Environmental Justice and Land Use Regulation," *Denver University Law Review*, 1 (1998).

⁶ *Village of Euclid v Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L.Ed. 303 (1926).

⁷ U.S. Department of Commerce, Advisory Committee on City Planning and Zoning, *A Standard City Planning Enabling Act* (Government Printing Office (GPO), 1928); and U.S. Department of Commerce, Advisory Committee on City Planning and Zoning, *A Standard Zoning Enabling Act* (GPO, 1926 revised edition).

⁸ Maantay, "Zoning Law," 572.

⁹ Richard F. Babcock, *The Zoning Game: Municipal Practices and Policies*, 145-6 (University of Wisconsin Press, 1966), citing Alfred Bettman, *City and Regional Planning Papers*, 55 (Harvard University Press, 1946).

¹⁰ For example, the January 2002 report of the Environmental Justice Advisory Group in New York, entitled *Recommendations for the NYS Department of Environmental Conservation's Environmental Justice Program*, ends with a strong recommendation for New York to follow the lead of California in adopting legislation and/or executive orders to get the local governments more involved with environmental justice. Available at <www.dec.state.ny.us/website/ej/ejfinalreport.pdf>.

¹¹ Salkin, "State Enabling Statutes That Move Beyond Traditional Zoning," in *New Ground: The Advent of Local Environmental Law*, 170.

¹² Glen T. Bruening, "Environmental Justice May be Coming to a Planning or Zoning Board Meeting Near You," *New York Zoning Law and Practice Report* (March/April 2002).

¹³ Advisory Committee of the U.S. Department of Commerce drafted the Standard City Planning Enabling Act. See, Rodney L. Cobb, "Toward Modern Statutes: A Survey of State Laws on Local Land use Planning," *Planning Communities for the 21st Century* (American Planning Association, December 1999).

¹⁴ *Ibid.*, 9.

¹⁵ *Ibid.*

¹⁶ Stuart Meck, gen. ed., *Growing Smart Legislative Guidebook* (American Planning Association 2002) xxviii.

¹⁷ *Ibid.*, xliii.

¹⁸ Professor Craig Anthony Arnold has extensively studied the relationship between local land use planning and zoning and environmental justice and offers details on the following five case studies of grassroots environmental justice land use strategies: (1) rezoning to limit industrial and commercial uses in neighborhoods of East Austin, Texas; (2) rewriting Denver, Colorado's industrial zoning code by a North Denver community group; (3) St. Paul, Minnesota, West Side Citizens Organization's successful efforts to pass a citywide ordinance banning metal shredders; (4) adoption of a comprehensive land use code and development code by the Confederated Tribes of the Colville Reservation in Washington; and (5) involvement of grassroots groups from San Antonio, Texas, barrios in the formulation of overlay zoning to protect the Edwards Aquifer. See, Craig Anthony Arnold, "Land Use Regulation and Environmental Justice," *Environmental Law Review*, 10395, 10408, et. seq. (June 2000).

¹⁹ Julian Jurgensmeyer and Thomas Roberts, *Land Use Planning and Control Law*, 26 (West Group 1998).

²⁰ Meck, *Smart Growth*, 7-6.

²¹ Jurgensmeyer and Roberts, *Land Use Planning*, 30.

²² Meck, "The Legislative Requirement that Zoning and Land Use Controls Be Consistent with an Independently Adopted Local Comprehensive Plan: A Model Statute," *Washington University Journal of Law and Policy*, 305 (2000).

²³ Jurgensmeyer and Roberts, *Land Use Planning*, 30.

- ²⁴ See generally, Meck, *Growing Smart*. Chapter 7 at 7-58 discussing the history of local comprehensive planning and citing for a history of the HUD 701 planning program. See also, Carl Feiss, "The Foundations of Federal Planning Assistance," *Journal of the American Planning Association* 175 (Spring 1985).
- ²⁵ *Ibid.*
- ²⁶ Meck, "The Legislative Requirement," 306. Meck reviews revised statutes in 12 states that have attempted to overcome the ambiguous language in the Model State Zoning Enabling Act that provides that zoning be adopted "in accordance with a comprehensive plan."
- ²⁷ Meck, *Growing Smart*, 7-61.
- ²⁸ N.Y. Town Law Section 272-a (3) (McKinneys 2002); N.Y. Village Law Section 7-722(3) (McKinneys 2002); and N.Y. Gen. City Law Section 28-a (4) (McKinneys 2002).
- ²⁹ Chapter 762 of the California Laws of 2001.
- ³⁰ Governor's Office of Planning and Research, *California Planning Guidelines* (2002). Available at <http://www.opr.ca.gov/planning/PDFs/GPG_2002.pdf>.
- ³¹ *Ibid.*
- ³² Meck, *Growing Smart*, 7-195.
- ³³ *Ibid.*, xlvii.
- ³⁴ Salkin, "Collaborative Processes for Preparing and Adopting a Local Comprehensive Plan," in *The Growing Smart Working Papers*, Planning Advisory Service Report No. 480/481 (American Planning Association, 1998).
- ³⁵ *Ibid.*, 151-152.
- ³⁶ Arnold, "Planning Milagros."
- ³⁷ See *Euclid*, supra, note 6.
- ³⁸ Arnold, "Land Use Regulation," 10407-8.
- ³⁹ Arnold, "Planning Milagros."
- ⁴⁰ Arnold, "Land Use Regulation," 10404.
- ⁴¹ Arnold, "Planning Milagros," reprinted in part in Rechtschaffen and Gauna, *Environmental Justice*, 299.
- ⁴² Gerrard, "Environmental Justice," 148.
- ⁴³ See, Margaret Collins, "Methods of Determining Amortization Periods for Non-Conforming Uses," *Washington University Journal of Law & Policy*, 215 (2000).
- ⁴⁴ Gerrard, "Environmental Justice," 148.
- ⁴⁵ Meck, *Growing Smart*, 12-3.
- ⁴⁶ Meck, *Growing Smart*, Chapter 12.
- ⁴⁷ See, Daniel R. Mandelker, "Melding State Environmental Policy Acts with Land use Planning and Regulations," *Modernizing State Planning Statutes: The Growing Smart Working Papers*, Planning Advisory Service Report No. 480/481 (American Planning Association 1998). Professor Mandelker identifies the following states as having little NEPA's: California, Connecticut, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New York, North Carolina, South Dakota, Virginia, Washington, and Wisconsin.
- ⁴⁸ Meck, *Growing Smart*, 12-3.
- ⁴⁹ *Ibid.*, 12-4.
- ⁵⁰ Kathryn C. Plunkett, "The Role of Local Environmental Impact Review," in *New Ground: The Advent of Local Environmental Law*, 299.
- ⁵¹ Gerrard, "Environmental Justice," 147.
- ⁵² Meck, *Growing Smart* 12-7.
- ⁵³ Sara Pirk, "Expanding Public Participation in Environmental Justice: Methods, Legislation, Litigation and Beyond," *Environmental Law and Litigation*, 207, 235 (2002).
- ⁵⁴ *Ibid.*
- ⁵⁵ *Ibid.*
- ⁵⁶ Arnold, "Land Use Regulation," 10415-10420.
- ⁵⁷ *Ibid.*
- ⁵⁸ James M. McElfish, Jr., "Learning from the Past and Looking Towards the Future," in *New Ground: The Advent of Local Environmental Law*, 404.
- ⁵⁹ *Ibid.*, 406.
- ⁶⁰ *Ibid.*, 404-406.
- ⁶¹ *Ibid.*, 406.

⁶² Meck, *Growing Smart*, Chapter 7, citing Welford Sanders and Judith Getzels, *The Planning Commission: Its Composition and Function*, Planning Advisory Service Report No. 400 (American Planning Association 1987), 4-6 (based upon 4,380 nationwide questionnaires).

⁶³ *Ibid.*, Chapter 7, citing Harvey S. Moskowitz, *Planning Boards in New Jersey: Current Realities and Historical Perspectives*, ii (unpublished. Ph.D. dissertation, Rutgers University, 1983).

⁶⁴ *Ibid.*

⁶⁵ See, for example, Ora Fred Harris, Jr., "Environmental Justice: The Path to A Remedy That Hits the Mark," *Little Rock Law Review*, 797 (University of Arkansas, Summer 1999).

⁶⁶ N.Y. Town Law Section 271(11) (McKinneys 2002); and N.Y. Village Law Section 7-718(11) (McKinneys 1996).

⁶⁷ Meck, *Growing Smart*, 7-32. The *Guidebook* notes that the bracketed language is "targeted to those small communities where the number of persons who live in rental, affordable, or multifamily housing is limited and where residents may not be willing to volunteer."

⁶⁸ Salkin, "Smart Growth and Sustainable Development: Threads of a National Land Use Policy," *Valparaiso Law Review*, 381 (Spring 2002).

⁶⁹ Gerrard, "Environmental Justice," 147.

⁷⁰ Michael Allen Wolf, "Earning Deference: Reflections on the Merger of Environmental and Land Use Law," in *New Ground: The Advent of Local Environmental Law*, 360.

⁷¹ Salkin, "Congress Misses Twice With the Community Character Act: Will Three Times Be A Charm?" *Real Estate Law Journal*, 167 (2002).

⁷² Salkin, "Smart Growth," 403, discussing the Senate Smart Growth Task Force, the House Sustainable Development Caucus and the House Livability Communities Task Force.

⁷³ *Ibid.* See also, Salkin, "State Enabling Statutes."

⁷⁴ Salkin, "Congress Misses Twice," 167.

⁷⁵ Arnold, "Land Use Regulation," 10427.

CHAPTER FIVE

HUNTINGTON PARK, CALIFORNIA

FINDINGS

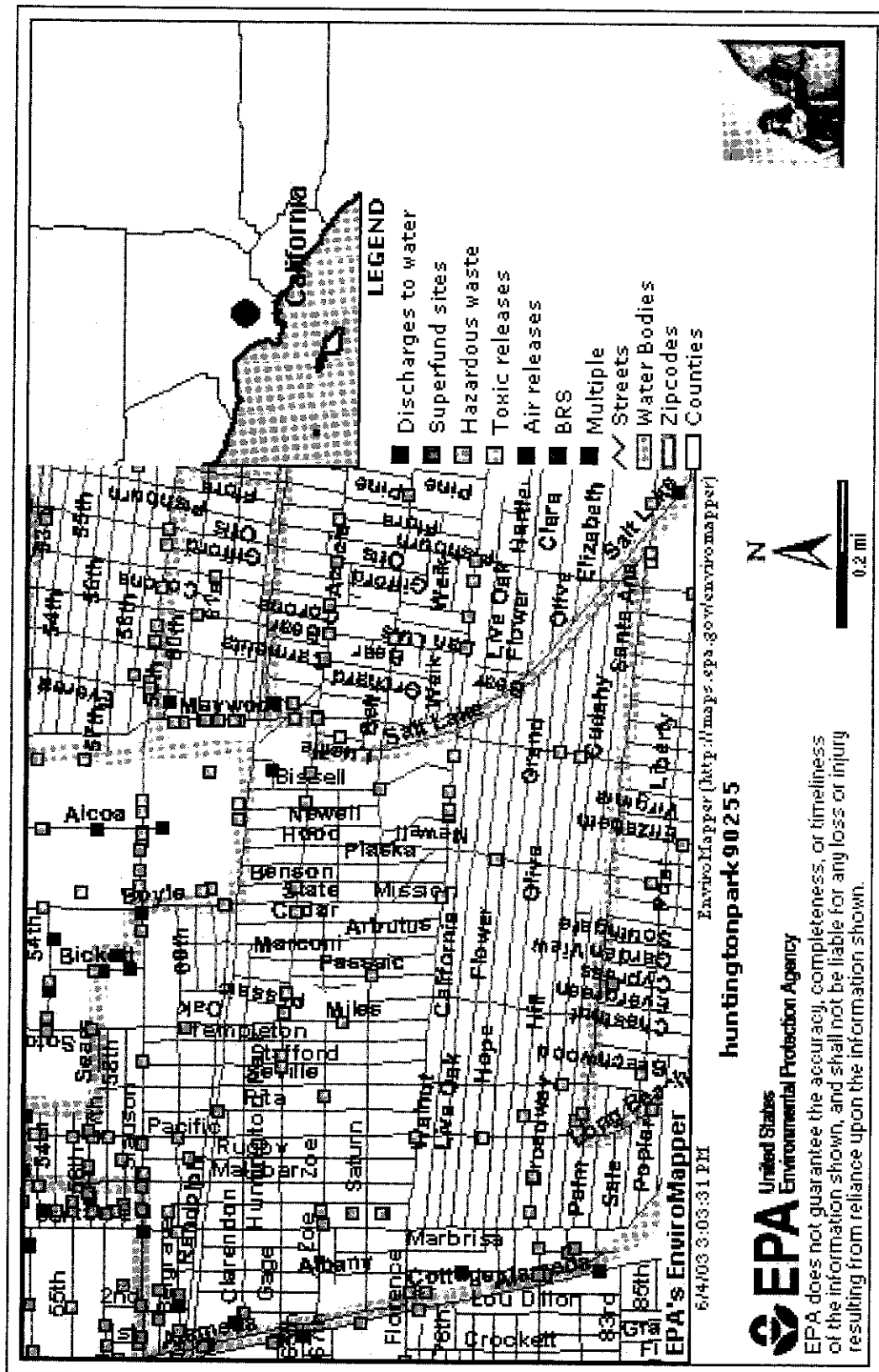
Finding 1: Past zoning decisions set the foundation for current environmental justice concerns in Huntington Park, California, because they did not prohibit residences from being built in manufacturing zones, and the city did not correct this problem until the 1960s. By that time, residences and manufacturing facilities coexisted in the areas zoned for manufacturing. Over time, the demographics of the area changed from predominately white to predominantly Hispanic; the public, state agencies, and local governments became increasingly aware of the health consequences of pollution; and by the mid-1990s, citizens in Huntington Park became organized to seek remedies for the adverse impacts of excess pollution.

Finding 2: Huntington Park has used its general zoning authority to respond to environmental justice concerns. The city revised the zoning ordinance for its commercial/office/mixed use zones to enhance the city's ability to condition environmental permits based on the proximity of a facility to residences and the level of adverse impact it presents. As part of this effort, the city has taken action to reduce risks from diesel emissions because they present the greatest health risk to residents in the area. Additionally, the city developed an air quality task force to develop strategies to reduce air toxics. The task force developed recommendations for federal, state, county, and city agencies that emphasize the need for cross-jurisdictional problem-solving to address the area's air quality issues, including establishing a stronger working relationship between the city and the South Coast Air Quality Management District (AQMD) to make better use of its technical expertise.

Finding 3: South Coast AQMD has responsibility for issuing air permits in Huntington Park. Although the District has not changed its basic permitting procedures, it has a demonstrated commitment to environmental justice, as evidenced by implementing a robust set of measures to reduce risk; improve community access to information and public participation, and develop tools to address concerns raised by people-of-color and low-income communities, as well as other communities that may have high levels of exposure to pollution.

Finding 4: Effective problem-solving to address air quality concerns in Huntington Park required integrated strategies that include cross-jurisdictional coordination and assistance from government at all levels: federal, state, county, and city.

Finding 5: Community activism by Huntington Park residents was the initial catalyst that focused the attention of local officials on the need to address environmental justice concerns.



INTRODUCTION

In the mid-1990s, environmental justice concerns came to the attention of local officials in Huntington Park in much the same way it has happened in other communities—through the repeated and persistent complaints of citizens concerned about potential health effects and the erosion of their quality of life as a result of the impacts of adjacent industrial operations. Although the initial reaction of city officials was that of discomfort when confronted with the air pollution incident that prompted citizen activism, they quickly came to understand that the concerns about impacts to their health and environment were legitimate, that they went beyond the immediate incident, and that the city had to act.

As the city decided how it would tackle the problem of the effects of its siting decisions on its citizens, 95 percent of whom are Hispanic, it found it had a tremendous resource and partner in the regional air district. In 1999, the South Coast Air Quality Management District (AQMD) provided Huntington Park with an air quality assessment that further convinced the local City Council of the seriousness of the problems and the need to take action. The District also provided valuable technical support to the city and the community because the District had a clear environmental justice policy. The District recognized the concerns about localized impacts and understood that providing improved community access to information as integral to its job of protecting public health and the environment. Moreover, the District already had an agenda that included activities to reduce risk, improve means of interacting with the public, and provide better public access to important environmental information. The District's agenda also included developing tools to improve air quality, such as guidance for local governments on air quality that they could incorporate into their general plans to begin addressing siting concerns.

Citizens, the city, and South Coast AQMD officials all now recognize that coordinated strategies are needed to resolve the air quality issues in the area, while also enhancing economic development. This chapter examines how these roles emerged in Huntington Park and what resulted from the city's and the air district's efforts. The Academy's previous study, *Models for Change: Efforts by Four States to Address Environmental Justice*, also features California programs, including the South Coast AQMD; and Appendix C of the current report contains the California Environmental Protection Agency's (CAL/EPA) environmental justice policy.

BACKGROUND

Los Angeles County is marked by extremes in political power and wealth that are perhaps most apparent in Southeast Los Angeles (SELA).¹ The county is the largest industrial center in the nation with over 880,000 manufacturing jobs; approximately 61,000 jobs are located in SELA, employing almost 40 percent of the residents.² In addition to a significant industrial base, SELA is a densely populated area with a large Spanish-speaking immigrant population.³ SELA makes up approximately one percent of the county's area, but contains six percent of the manufacturing facilities—including many



high polluting industries, such as over 11 percent of the county's chemical producers and almost 19 percent of the primary metal industries.⁴ The concentration of these industries in SELA is 18 and 32 times more, respectively, than in the rest of the county.⁵

Incorporated as a city in 1906,⁶ Huntington Park is located in the SELA area, six and a half miles southeast of downtown Los Angeles.⁷ SELA also includes seven other cities: Bell, Bell Gardens, Commerce, Cudahy, Maywood, South Gate, and Vernon.⁸

Huntington Park is three square miles in size and has a population of slightly more than 60,000, 95.6 percent of whom are Hispanic.⁹ Huntington Park has a median household income of \$28,941, an unemployment rate of 6.5 percent, and a poverty level of 25.2 percent.¹⁰ The area is densely populated and largely residential, although it also contains a strong industrial base¹¹ that includes fabricated metal, aircraft parts, and oil field equipment manufacturers.¹² More recently, some national retail chain outlets have expressed an interest in locating in the city.¹³ The city is also currently marketing a \$259 million plan for redeveloping 90 acres of brownfields and underutilized property into a retail center to be called El Centro that will be occupied by major national tenants.¹⁴

During the early 1930s and 1940s, SELA was a predominantly white, suburban area that provided stable, unionized factory jobs for tens of thousands of workers.¹⁵ White flight from the region began in 1965, encouraged by the riots in Watts and the closure of 10 major factories, including steel, tire, and automobile manufacturers that either relocated or closed due to global competition. In total, 204,000 whites left the region between 1965 and 1990; and 50,000 well-paying factory and trucking jobs disappeared.¹⁶

By the 1990's, the region had recovered from these initial losses, regaining approximately 80 to 85 percent of its previous high employment from the 1970s. This growth was accomplished by attracting smaller industrial sources, including waste handlers that were attracted by the lower costs of leases, city tax incentives, and the growing low-wage immigrant work force, among other reasons.¹⁷

Figure 5-1

Huntington Park, California—Demographics

Size:	3.00 square miles
Total Population:	61,348
Race and Ethnicity*:	
African-American:	0.8 percent
White:	41.4 percent
Hispanic:	95.6 percent
"Some other race":	51.1 percent
Unemployment Rate:	6.5 percent
Median Household Income:	\$28,941
Individuals Below the Poverty Level:	25.2 percent
High School Graduate or Higher:	32.2 percent

*Totals do not add up to 100 percent because some individuals specified more than one race.

Source: U.S. Census Bureau, *Census 2000*

ENVIRONMENTAL SETTING

Geography

Reducing air pollution in the Los Angeles basin is a challenging process because the area is ringed by mountains and has weather conditions that concentrate air pollution in the basin, even without the millions of vehicles that clog area highways.¹⁸ Local lore is that "early inhabitants referred to the San Gabriel Valley as the 'Valley of Smokes.'" That description remains apt, even though many emission control efforts have resulted in substantial air quality improvements over the past 30 years.¹⁹

Multiple Air Toxics Exposure Study (MATES II)

Los Angeles County is not only a nonattainment area for ozone, carbon monoxide, and particulate matter, but it also has some of the worst air quality in the nation in terms of number of days it exceeds federal standards.²⁰ The area of the county where Huntington Park is located has air quality that is even worse than the county overall. These localized air problems were documented in November 1999, when South Coast AQMD released the results of the Multiple Air Toxics Exposure Study II (MATES II), which monitored more than 30 toxic air pollutants and assessed their potential risk at various locations in the SELA area.²¹ The study concluded that diesel emissions were the greatest health risk for the greater Los Angeles area, which includes Huntington Park, and that there were also significant risks attributable to benzene and 1,3 butadiene, both of which are found in gasoline.²² Although "monitoring did not identify air emissions that exceeded health standards at most of the 14 locations evaluated, [it did document] that local hot spots may exist."²³

In response to the MATES II study, the city council convened the Huntington Park Air Quality Improvement Task Force to develop a comprehensive plan to reduce air toxics.²⁴ The Task Force noted:

The average cancer risk from toxic air pollutants, when continuously exposed over a 70-year lifespan, in the entire South Coast Air Basin is approximately one (1) in 715 people. For comparison, the risk to residents specifically in the Southeast Los Angeles County area is approximately one (1) in 589.²⁵

The Task Force produced over 40 recommendations for federal, state, county, and city agencies, and they were all adopted by the Huntington Park City Council.²⁶ The recommendations to other agencies emphasized the need for greater cooperation and collaboration for regional problem solving. The recommendations included using consistent approaches, improving communication among organizations and with the public, increasing the monitoring of all existing stationary sources, implementing a variety of measures to reduce mobile emissions, targeting resources to address high risk areas, and improving data sharing.²⁷

The city recommended that South Coast AQMD "implement a more comprehensive review process with stricter regulations (i.e., a model air quality ordinance) for stationary sources emitting pollution, for all cities in the Southeast Los Angeles area ... [that would] be

implemented equally on a regional basis.”²⁸ Regional consistency is very important for the city because individual cities that may take stricter measures to address what is a regional air quality problem may lose badly needed development opportunities if potential businesses decide to shop for cities in the region that are not as strict.²⁹

The Task Force recommended that cities and South Coast AQMD consider:

- Various permit review changes.... with the assistance of South Coast AQMD, such as providing for longer public notice periods and use of additional noticing methods for projects or businesses that would emit toxics;
- Stricter zoning requirements;
- Bilingual notices of public meetings when relevant;
- More detailed environmental reviews and conditional use requirements for certain types of businesses;
- Use of the California Environmental Quality Act as a base tool for additional review procedures;
- Use of environmental checklists that include questions about emissions from diesel vehicles;
- Monetary fines for gross polluters;
- Swift and strong enforcement methods; and
- Prohibiting idling by diesel vehicles.

Additionally, South Coast AQMD should:

- Provide cities with a list of all establishments requiring South Coast AQMD permits, primarily potential toxic air emitting establishments so that cities can designate them in appropriate zones; and
- Adopt a more stringent rule to lower the threshold of air toxics risk per facility to one in a million cancer risk and a hazard index of one.³⁰

See Appendix D for complete Task Force recommendations.

Alameda Corridor Project

Both the Alameda Corridor project and the expansion of the Port of Los Angeles have significant environmental implications for Huntington Park. The \$2.4 billion Alameda Corridor project will improve rail transportation of goods to and from the area's major ports.³¹ Huntington Park is one of nine communities along the original Alameda Corridor, which contained an above-ground rail line parallel to Alameda Street, a major artery for thousands of trucks that travel daily to and from the Ports of Long Beach and Los Angeles.³² Other communities along this corridor are Los Angeles, Vernon, South Gate, Lynwood, Compton, Carson, Wilmington, and Long Beach.³³ The ports and related activities support a significant number of secondary industries and businesses along the route that also produce pollution in the region.³⁴

The ports of Los Angeles and Long Beach are not only important to the area, they are also important to the national economy. Nearly one-quarter of all products arriving in the United States moves through these ports, which are the two busiest container ports in the country.³⁵ By 2020, the cargo volume through these two ports is expected to triple, to an equivalent of 24.3 million containers a year.³⁶

To keep the region's competitive advantage, the Alameda Corridor Transportation Authority (ACTA) initiated the Alameda Corridor project to move cargo entering the United States and goods being exported to overseas markets more efficiently.³⁷ The project is the first rail link of its kind that consolidates the ports' access lines into a single, 20-mile express cargo railway.³⁸ The railway begins at street level in the southern end of the Corridor (Long Beach, Wilmington, and Carson); moves into a 33-foot deep, 50-foot wide trench through the mid-corridor section (Compton, Lynwood, South Gate, Huntington Park, and Vernon); and emerges at street level at the north end, in downtown Los Angeles.³⁹

For the ten-mile trench between Compton and the borders of Vernon and Los Angeles, the tracks are beneath the street, thus reducing congestion, emissions, and noise. The new railway also increases safety by removing rail crossings from public access and facilitates the mobility and access of emergency response vehicles. The trench accommodates two sets of railroad tracks and a service road, with the possibility of accommodating a third set of tracks in the future.⁴⁰ Bridges now carry vehicles over the mid-portion of the Corridor, resulting in a complete separation of rail and motor vehicle traffic.⁴¹ Additionally, the project widened Alameda Street to six lanes, with intersection improvements.⁴²

Environmental impact statements for the Corridor estimated that it would:

- Reduce emissions from idling automobiles, trucks, and buses by 54 percent, by eliminating over 200 train/traffic crossings;
- Reduce emissions from trains by up to 28 percent;
- Decrease noise pollution by 90 percent along the Corridor, since 10 miles of the project lies underground and trains no longer have to blow the train horns to signal their arrival; and

- Reduce traffic congestion at crossings and greatly improve public safety.⁴³

In addition, over one million tons of hazardous waste along the right-of-way was removed.⁴⁴

The project also included a job training and development element.⁴⁵ The job-training program has graduated 880 Alameda Corridor residents from the pre-apprenticeship training program and another 401 residents have graduated from the non-trade training program. ACTA also agreed to hire at least 30 percent of its new construction workers from low-income communities surrounding the Corridor.⁴⁶

Huntington Park officials acknowledge that the Corridor project has reduced traffic congestion and improved current air quality.⁴⁷ A resident from the community, who has lived there for more than 38 years within a few blocks of the Corridor, affirmed that there have also been tremendous improvements in noise reduction, such that he can no longer hear the trains.⁴⁸ Concerns remain, however, that the volume of rail traffic alone could increase by six-fold over the next ten years.⁴⁹ Further, truck traffic associated with the expanded activity generated by the Corridor and the expansion of the Port of Los Angeles could increase, which could present challenges to communities like Huntington Park that are also near major interstate highways.⁵⁰

Another concern is that the new below-grade rail lines accommodate double-decker trains carrying twice as much cargo as the former above-grade rail lines.⁵¹ Communities for a Better Environment (CBE), a California-based "environmental health and justice non-profit organization that promotes clean air, clean water, and the development of toxin-free communities,"⁵² has objected to the amounts and types of materials these trains will be carrying and what that may mean for potential risks associated with derailments, hazardous material spills, or other accidents.⁵³ CBE has also noted the increased traffic generated by the growth of the ports and related plans for expansion of nearby highways, such as Interstate 710.⁵⁴ An additional worry is that clean fuel for the diesel-operated trains will not be available until 2020. Thus, combined with the increased train traffic, the railway will subject neighboring communities to high levels of diesel emissions.⁵⁵

Los Angeles Port Expansion

In 1994, the Port of Los Angeles initiated a multi-year, multi-phased expansion project to dramatically expand its ability to handle containerized cargo, which has increased over 50 percent in recent years.⁵⁶ One phase of the project, begun in 2001, was the construction of a 174-acre container complex.⁵⁷ The Port development hit a snag in 2001, when Los Angeles was sued by environmental and community groups near the Port for "failing to assess the environmental impact of the expansion."⁵⁸ In March 2003, the parties reached a establishing "a \$50 million fund to address impacts of Port operations in the community, fully evaluate and mitigate the impacts of the proposed terminal, and commit to specific steps to address terminal pollution."⁵⁹

Impacts on the local community of Wilmington, California will be reduced by:

- Providing electric power for ships berthed at the China Shipping terminal so they do not run their diesel engines while docked;
- Requiring the use of cleaner alternative fuel heavy-duty yard trucks at the terminal; and
- Developing and implementing a traffic plan for the terminal and other Port operations.⁶⁰

Ten million dollars of the total \$50 million mitigation fund will also be used for incentives to clean up independently owned diesel trucks serving the Port.⁶¹ Court documents noted that “as many as 250 of the world’s largest container vessels would call at the terminal—with cargo to be moved by as many as one million trucks every year.”⁶² Many of those trucks may also be using highways and streets adjacent to Huntington Park, which is approximately 18 miles from Wilmington.⁶³

ENVIRONMENTAL JUSTICE CONCERNS

Health Issues

The major environmental health concerns for Huntington Park residents are associated with air pollution. Interviews with city officials, community members, and research done by an area environmental organization also confirm that air pollution is the top environmental justice concern.⁶⁴

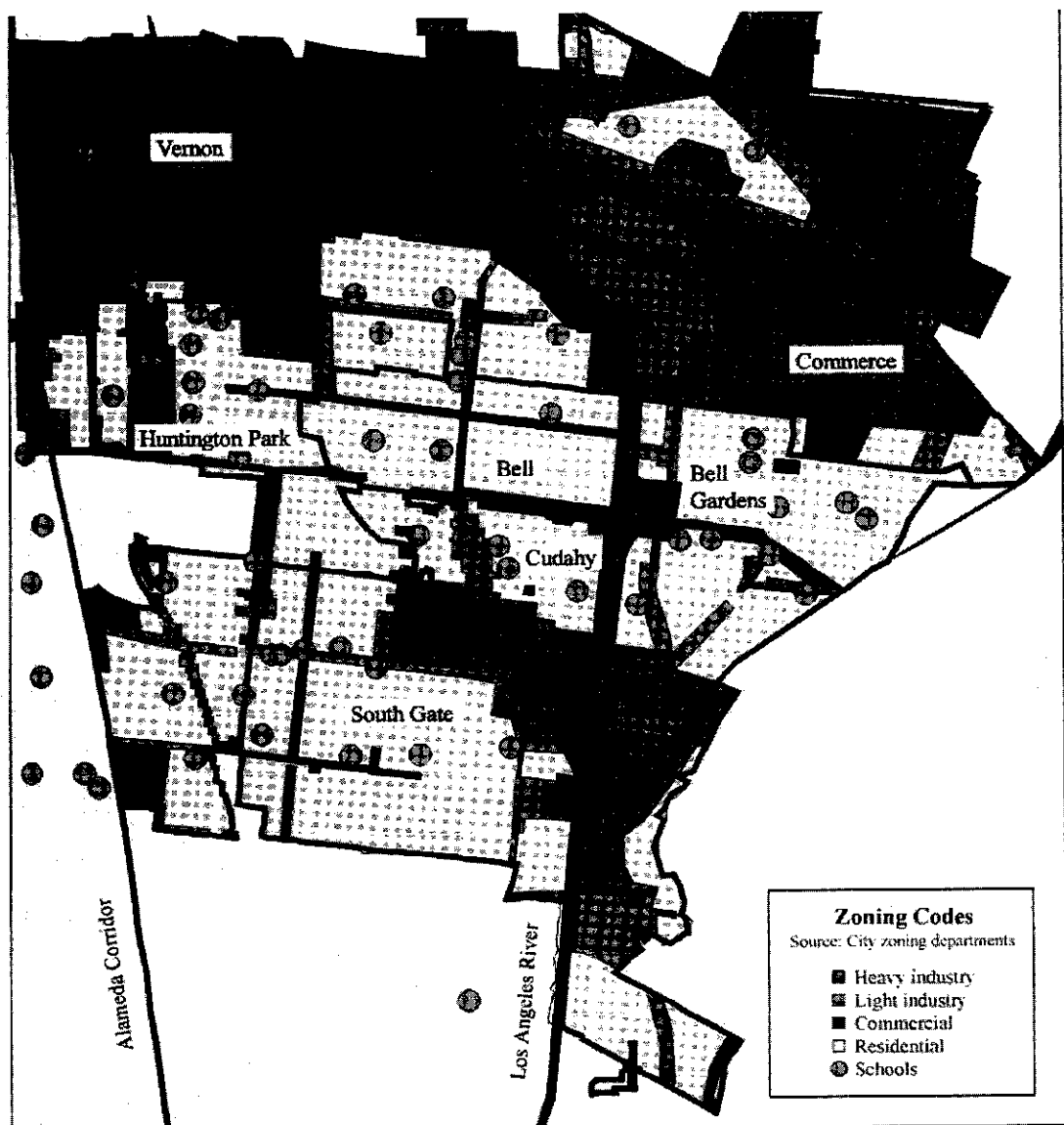
As noted earlier, the MATES II study identified diesel emissions as the major health risk for this area. According to a recent EPA health assessment on diesel emissions:

Long-term (i.e., chronic) exposure to DE [diesel exhaust] is likely to pose a lung cancer hazard as well as damage the lung in other ways depending on exposure. ...Short-term (i.e., acute) exposure can cause transient irritation and inflammatory symptoms, although the nature and extent of these symptoms are highly variable across the population. ...[E]vidence is emerging that diesel exhaust exacerbates existing allergies and asthma symptoms.⁶⁵ ... [S]hort-term exposure can cause acute irritation (e.g., eye, throat, brochial), neurophysiological symptoms (e.g., lightheadedness, nausea), and respiratory symptoms (cough, phlegm).⁶⁶

Given existing evidence, the EPA assessment notes it is a “prudent health choice [to presume] a cancer hazard for [diesel exhaust] at environmental levels of exposure.”⁶⁷ For these reasons, the South Coast AQMD took a number of actions to reduce air toxics in response to the results of MATES II, including:

- Focusing more on reducing diesel emissions;
- Adopting a new source review program for sources of air toxics;
- Developing an air toxics control plan that is likely to use existing legal authorities to adopt a series of new rules addressing dry cleaning solvents, the film cleaning industry, and methylene chloride emissions; and
- Initiating a program to assess cumulative risks at large facilities and require them to go on an "air toxic diet" if their total health risks exceed 25 in 1,000,000.⁶⁸

Figure 5-3



Source: Communities For A Better Environment

The study also prompted South Coast AQMD to develop an air toxics control plan "to reduce toxics by an additional 31 percent beyond what would be expected by 2010 under existing local, state, and federal control programs."⁶⁹ In addition to the measures noted above, the plan includes:

- Implementing the proposed new source review program for toxics and strengthening the facility-wide permitting program for toxic air contaminants;
- Developing new rules to control air toxics from chrome plating and dry cleaning, and new permitting guidelines for stationary source diesel generators;
- Increasing controls of toxic air emissions from consumer products;
- Developing a bus fleet rule that will encourage transit operations to retire dirtier buses or purchase alternative fuel buses; and
- Developing more stringent emission standards for new bus engines.⁷⁰

Because Huntington Park is in an ozone (O₃) nonattainment area, city residents are exposed to the health effects associated with ozone exposure. A recent EPA report about short-term (less than eight hours) exposures to ozone concluded:

Recent epidemiology studies addressing the effects of short-term ambient exposure to O₃ in the population have yielded significant associations with a wide range of health outcomes, including lung function decrements, aggravation of preexisting respiratory disease, increases in daily hospital admissions and emergency department visits for respiratory causes, and increased mortality.⁷¹

Additionally, "available data indicate that exposure to O₃ for months and years causes structural changes in several regions of the RT [respiratory tract];" and "the apparent lack of reversal of effects during periods of clean air exposure raises concern that seasonal exposures may have a cumulative impact over many years."⁷²

Another study on the health effects of long-term exposure to ambient air pollution found:

Areas...[where] either ozone or particulate matter levels are high...[are] associated with substantial morbidity including possible development of asthma, development of chronic bronchitis, and retardation of lung development in children. High daily ambient concentrations of ozone and/or particulate matter were associated with increased school absenteeism, acute reductions in lung function and increases in symptoms, and increased hospitalization rates.⁷³

Los Angeles County is also a nonattainment area for carbon monoxide. A recent EPA report notes more research is needed to understand more reliably chronic exposure "to low

concentrations from either ambient population-exposures studies or from occupational studies.”⁷⁴ However, health effects of exposure to carbon monoxide may include:

- Decreased exercise performance in healthy individuals;
- Increased cardiovascular hospital admissions and daily mortality, especially for individuals over 65 years of age;
- Increased cerebral blood flows in healthy subjects, even at very low exposure levels; and
- Reduction in birth weight at high levels, though pregnant women and developing fetuses have been identified as being at risk to ambient levels.⁷⁵

Although most studies show that air pollution does not appear to cause asthma directly, asthma in children is exacerbated by air pollution.⁷⁶ There is currently no tracking system for asthma in California, so the exact number of children who have the illness is unknown.⁷⁷ However, the prevalence of self-reported asthma, especially among children, has risen dramatically in the United States over the past 20 years.⁷⁸ A University of Southern California Children's Health Study showed that children with asthma develop more symptoms of bronchitis (cough and phlegm) as levels of particulate air pollution increase.⁷⁹ As a result, the National Institute of Environmental Health Sciences, the South Coast AQUM, EPA, and others are supporting research on health effects associated with air pollution for this region of the country.⁸⁰

Environmental Justice Assessment—Los Angeles County and Huntington Park

Research by Communities for a Better Environment has cited a number of studies on Los Angeles County that mirror assessments in other areas of the country documenting correlations between people-of-color communities and the location of large polluting facilities. A 1993 study “concluded that the per capita income and the percentage of people-of-color have a statistically significant relationship with the number of TRI [Toxics Release Inventory] facilities in a census tract” in Los Angeles County and that “Latinos were the group most likely to be disproportionately exposed” to these facilities.⁸¹ In that same year, researchers at the University of California at Santa Cruz came to similar conclusions when their research demonstrated that “race was statistically more important than income in relation to toxic emissions.”⁸² A 1997 study by researchers at Occidental College also demonstrated that the two most important demographic variables in the location of hazardous treatment and storage facilities in Los Angeles County were the percentage of minority residents and the percentage of land dedicated to industrial use.⁸³ The study also noted “that minorities are more than twice as likely to live in a census tract located within one mile of a [hazardous treatment and storage facility] than whites....”⁸⁴

Huntington Park drew the attention of CBE, which has studied the city as an example of environmental injustice in SELA, because of the health risks posed by polluting facilities combined with impacts from mobile sources⁸⁵ and the disproportionate impacts in many people-

of-color and low-income communities.⁸⁶ CBE's 1998 report *Holding Our Breath*, featured Huntington Park as a cumulative risk case study and found that:

- There are severe data gaps with regard to facility data;
- Despite regulation, some facilities are exposing people to unacceptable health hazards; and
- Even facilities that do not individually present high health risks collectively produce significant health hazards in the surrounding community.⁸⁷

Non-cancer risks are characterized by the hazard index, and a hazard index of 1.0 "corresponds to the maximum level determined to be safe by the state of California."⁸⁸ CBE examined the emissions from a number of permitted and non-permitted facilities emitting toxics in Huntington Park and found that hazard levels of the various facilities, combined with background levels of pollution in some areas of the city, resulted in hazard indices ranging from 1.8 to 74—with no values below 1.0.⁸⁹ They also found that none of the facilities presented a "significant health impact individually," but cumulative impacts from three facilities produced a cancer risk of ten in one million. California state law (Proposition 65) requires that the affected public be notified at these risk levels.⁹⁰ However, because the risk came from three individual facilities, rather than from a single source, the public had not been notified. The 1998 CBE study argued for a cumulative approach to risk assessment to account for impacts from multiple sources.⁹¹ South Coast AQMD has responded to these concerns about the need to do cumulative assessments and is currently investigating regulatory options for addressing cumulative impacts from air toxic emissions.⁹²

"Asthmatown"

In the 1980s, residents of Huntington Park began describing the northernmost area of the city, which is zoned industrial with scattered residential areas, as "Asthmatown" because so many of the neighborhood's children suffered from asthma.⁹³ This neighborhood also borders the adjacent jurisdiction of Vernon, which is a predominantly industrial area that includes large and highly toxic manufacturing facilities and very few residents. Vernon's city motto—"Exclusively Industrial"—emphasizes this reality.⁹⁴ Residents are often separated from industrial operations by only a chain link fence or a sheet metal divider.⁹⁵ According to Huntington Park sources, this area was zoned for manufacturing early in the city's history, but the zoning ordinances did not prohibit residential development until the 1960s. The result was housing interspersed with industry.⁹⁶

"La Montaña"

It was not until the mid-1990s that Huntington Park residents began an organized effort to address environmental justice concerns. The impetus for this organization began in 1993, when a company was granted a Conditional Use Permit by the Huntington Park City Council to operate a heavy processing recycling facility for concrete and asphalt materials in an industrially zoned area adjacent to residences.⁹⁷ The conditions of the permit included "processing of

other plans” in addition to the general plan, but these other plans must be consistent with the general plan.¹²⁴ Furthermore, although regional plans may be developed and adopted by the regional planning districts, such plans are “advisory only and shall not have any binding effect on the counties and cities located within the boundaries of the regional planning district for which the regional plan is adopted.”¹²⁵

In an effort to facilitate “effective and harmonious” planning, all city, county, and other local planning agencies are required to submit their general plans and/or master plans, zoning ordinances, and subdivision regulations to the regional planning board; a similar filing requirement, for informational purposes, exists for the state agencies with respect to the regional planning boards.¹²⁶ Cities and counties may submit local planning and zoning proposals to the regional planning board for advice; and such advice “shall consist of a report as to the conformance of such proposals to the regional plan, the possible effect of such proposals on other portions of the region, and any other matters which in the judgment of the board may be of assistance to the body requesting such advice.”¹²⁷

Public Participation Requirements for Localities

The California Assembly has specifically recognized the importance of public participation in land use planning, declaring state policy to be that “each state, regional and local agency concerned in the planning process involve the public through public hearings, informative meetings, publicity and other means available to them, and that at such hearings and other forums, the public be afforded the opportunity to respond to clearly defined alternative objectives, policies and actions.”¹²⁸ Specifically in the area of local plan development, the enabling statute requires that the planning agency provide opportunities for the involvement of citizens; public agencies; public utility companies; and civic, education, and other community groups.¹²⁹

Reporting Requirements for Localities

City and county planning agencies are required to report annually to the City Council, the state’s Office of Planning and Research, and the state’s Department of Housing and Community Development.¹³⁰ The regional planning board is also required to report annually to the legislative bodies and to the planning agencies of all of the counties, cities, and other governmental agencies within the region for the purpose of reporting on the status of the regional plan, notifying recipients of amendments and revisions within the past year, and providing a report of other major activities.¹³¹

Updates of Plans

Local planning agencies are required to “periodically review, and revise, as necessary” local general plans.¹³² There is no specified statutory timeframe for such periodic review, although the Office of Planning and Research is required to notify cities and counties that their plans have not been revised within eight years, and the Attorney General is to be notified when plans are not revised within 10 years.¹³³ The only other timeframe for plan revisions relates only to the housing element, and requires updates to that element at least every five years.¹³⁴

Coordination with Environmental Justice

The Office of Planning and Research is California's state agency responsible for coordinating environmental justice programs.¹³⁵ No later than July 1, 2003, the Office is required to incorporate environmental justice guidelines into the next edition of the general plan guidelines for cities and counties.¹³⁶ See Appendix E for the general plan guidelines. The guidelines recommend that general plans include methods for:

- Planning for the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities;
- Locating industrial facilities and uses (if any) containing or producing materials that pose a significant hazard to human health and safety (even with the best available technology) because of their quantities, concentrations, or physical or chemical characteristics in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings;
- Locating new schools and residential dwellings in a manner that seeks to avoid locating their proximity to industrial facilities and uses that containing or producing material that poses a significant hazard to human health and safety because of their quantities, concentrations, or physical or chemical characteristics; and
- Promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.¹³⁷

See Appendix F for more details on California State planning requirements.

Local Governance, Planning, and Zoning in Huntington Park

Governance

Huntington Park, like most California cities, is a general law city. It is incorporated and functions under the general laws of the state, most of which are found in California's Government Code.¹³⁸ The city has a five-member City Council comprised of a Mayor, Vice Mayor, and three council members who are elected at large by registered voters of the city. Each council member serves a four-year term and the terms are staggered.¹³⁹ In the 2003 General Municipal Election, voters limited council members to three consecutive terms, with a proviso that a member could hold office again after being out of office for at least one general municipal election.¹⁴⁰ The city currently has only 12,000 registered voters.¹⁴¹

The city manager is appointed by the City Council to carry out their policies and is responsible for the overall city administration of the city.¹⁴²

Planning and Zoning

The Huntington Park planning division is responsible for implementing the city's goals and objectives, as outlined in the general plan, including reviewing development requests and their impacts on the environment and compatibility with neighboring uses.¹⁴³ The division provides information and support to the Planning Commission and the City Council.¹⁴⁴ Elements of the Huntington Park general plan include land use, housing, circulation, open space, conservation, safety, noise, public facilities, and urban design.¹⁴⁵ The Planning Commission is made up of five members from the community, who are appointed by the City Council.¹⁴⁶ The city currently has three planners and a manager for its planning and development activities, which are a high priority for the City Council.¹⁴⁷

Huntington Park's zoning codes were updated in October 2001.¹⁴⁸ The new code, which revised a code from the 1980s, includes specific changes designed to address the concerns that have led to the city's environmental justice problems. The new code now includes language in the section on commercial/office/mixed use zones to enhance the city's ability to condition permits based on a facility's proximity to residential areas and the level of adverse impacts.¹⁴⁹ The city has also adopted a limited idling ordinance for diesel vehicles, and is currently studying its primary manufacturing zone to determine what will be the best use for this area, given the city's desire for more commercial development.¹⁵⁰

When combined with the city's existing authority under the California Environmental Quality Act (CEQA) to consider environmental impacts, the city believes it has effective tools within its current authorities to address environmental justice concerns.¹⁵¹ State and local agencies have, in fact, been required to utilize CEQA since its enactment in 1970. The law was designed to improve and maintain the quality of the environment by instituting a system of "checks and balances for land use development and management decisions in California."¹⁵² It requires agencies to:

- Identify the significant environmental effects of their actions;
- Avoid those significant environmental effects where feasible; or
- Mitigate those significant environmental effects, where feasible.¹⁵³

If an action will have significant impacts, the state or local agency with the lead must revise the project to mitigate those impacts. While there is no precise definition of "significance," general guidelines are provided to assist agencies in making determinations.¹⁵⁴

In the past, Huntington Park officials would have more automatically approved a manufacturing function for a manufacturing zone, without regard for what the local impacts might be. Now they evaluate projects more closely for site-specific impacts, like diesel emissions from truck traffic, before making a determination on a siting proposal.¹⁵⁵ Also, South Coast AQMD permit approval does not automatically mean approval for siting. The city may grant approval with conditions for mitigation of impacts.¹⁵⁶ The community activism around the cement recycling

facility and the 1999 results of the MATES II study educated local government officials to the need to address more localized impacts.

Where formal means and authorities do not exist, the city has attempted to use informal avenues for resolving environmental justice problems. A case in point concerns a neighboring jurisdiction where there are plans to build a gas-fired electric power plant. The City Council authorized the planning division to recommend mitigation measures for the plant because the city is not in attainment for particulate matter, and the plant would produce particulates equivalent to 15-20 idling trucks.¹⁵⁷ The City Council further authorized a letter to the California Energy Commission requesting: 1) that there be a net overall reduction in pollution if the facility is built; 2) that the reduction be made in the local impact area; and 3) that there be no deferred acquisition of credits, although otherwise permitted by California's Regional Clean Air Incentives Market (RECLAIM) program for emissions trading.¹⁵⁸

City officials think the project will probably be approved because South Coast AQMD found the project had met all regulatory concerns, and there is no requirement for reductions in the local impact area. Huntington Park officials have informally appealed to officials in the the adjacent city who have committed to trying to reduce local impacts. A city official offered this as an example of the need for regional approaches. This example also illustrates that existing rules and programs often do not take localized impacts into consideration.¹⁵⁹

Huntington Park has not instituted any formal changes in its relationship with South Coast AQMD. The city's continuing understanding of the problems created by air pollution and their concern about improving the health of their community's air has lead them to seek the District's technical assistance more than they had in the past. According to a city official, the District has, in turn, been very responsive to city concerns.¹⁶⁰

ENVIRONMENTAL PERMITTING

California's Requirements for Environmental Justice

Between 1999 and 2001, the California Legislature passed six bills dealing with environmental justice, creating the foundation for state agency responsibility for the issue. These bills:

- Defined the term "environmental justice;"
- Authorized the state Office of Planning and Research, located in the governor's office, to coordinate environmental justice initiatives;
- Required the California EPA to consider environmental justice issues when designing and operating its own programs and those of its boards, departments, and offices;
- Required California EPA to convene an interagency working group and advisory council on environmental justice to provide information and recommendations to the working group;

- Required the South Coast AQMD, based on the results of the MATES II study, to spend not less than 50 percent of the funding appropriated through the year 2007 for three diesel mitigation programs “in a manner that directly reduces air contaminants or the public health risk associated with air contaminants, in communities with the most significant exposure to air contaminants or localized air contaminants, in communities with the most significant exposure to air contaminants or localized contaminants...including communities of minority populations or low-income populations or both;” and
- Required the Office of Planning and Research to include guidelines for addressing environmental justice matters in city and county general plans in its next edition, no later than July 1, 2003.¹⁶¹

South Coast Air Quality Management District

South Coast AQMD has responsibility for environmental permitting within its boundaries, which include Huntington Park. The District adopted environmental justice principles in 1997, two years before the legislative mandate, and adopted a set of ten initiatives to ensure environmental equity.¹⁶² They also developed a series of action items, the first set of which were accomplished. Progress on these items is routinely reported to the District’s governing board and made available to the public through their website.¹⁶³

The District provides critical technical resources for local governments because of its overall commitment to environmental justice, its concrete actions to develop and refine rules to further risk reduction, its development of tools for District staff and local officials, and its efforts to improve communication with the public. Progress on the District’s environmental justice efforts is reported in three categories: further reduced health risks; greater community access and involvement; and economic incentives for accelerated mitigation.

Figure 5-4 contains excerpts from the April 2003 update on the District’s progress and illustrates the level of thoroughness with which the agency has pursued its environmental justice mandate. The District’s performance-based approach has made it an important asset for Huntington Park and other cities in the area.

Public Participation

Huntington Park officials have made some efforts to improve public participation, like working with South Coast AQMD on their town hall meetings with the community; but they acknowledge that more could be done.¹⁶⁴ One community resident suggested that one way to improve outreach would be to conduct door-to-door distribution of information.¹⁶⁵ The city is working to develop neighborhood commissions as part of an ongoing neighborhood improvement program. The neighborhood commissions could help to engage more residents in civic issues by providing organized vehicles for them to work with the City Council. These commissions could also serve as another mechanism for raising environmental justice issues.¹⁶⁶

South Coast AQMD
Progress Update on Environmental Justice—2003 (excerpts)

Further Reduced Health Risks

- Concluded an MOU with a refinery to enhance its existing safety systems and reduce volatility and aerosol formation of hydrogen fluoride
- Continued developing an enhanced model air quality element for use by local governments in their general plans.
- Continued working on a "subregional analyses" model to address and mitigate significant air quality impacts in specific areas; Alameda Corridor is identified as the next project.
- Refined a proposal for localized significance thresholds for subregions; projects over the threshold would need to consider mitigation to reduce localized impacts.
- Approved allocation of 70 percent of air pollution penalty revenues in 2003 for the clean school bus program. For settlements greater than \$200,000, 70 percent of the penalty will go toward the purchase of clean school buses or retrofit control devices at a school district near or downwind of the facility paying the penalty. Ten percent of the penalty fees collected during the first six months of the fiscal year will go to establish the Asthma and Outdoor Air Quality Consortium and another 10 percent will go to the Brain Cancer and Air Pollution Foundation
- Reviewed low-cost, small devices for outdoor residential monitoring of air contaminants; developed recommendations to purchase commercially available monitors to pursue further research.

Greater Community Access and Involvement

- Continued evaluating a feasible least-toxic alternative for all rules that require California Environmental Quality Act alternatives.
- Continued to train staff on risk communication.
- Trained executives and managers on environmental justice and had them take a community toxics tour.
- Improved AQMD's data regarding risk assessments for "hot spots" by providing information on power plants, refineries, metal finishers, aerospace/electronic, and chemical plants to the California Air Resources Board for inclusion in the Community Health Air Pollution Information System. The data includes facility name, address, Standard Industrial Code, and the results of the approved Health Risk Assessment, such as cancer risk values.
- Launched an Internet-based system, which allows the public to find out whether specific facilities have received air pollution violation notices; the database includes a description of the violation.
- Conducted a survey of the website information needs of community-based organizations and other stakeholders for future enhancements to the website.
- Established community "clean air data depositories" (to be updated monthly) at eight locations accessible to community stakeholders, school organizations, and librarians; assessing potential for on-site computer access.
- Identified low- or no-cost media outlets to expand notice of community meetings and permitting actions, including notices of air pollution permits.
- Prepared outline for user-friendly public guidance handbook on air quality.
- Prepared summary of environmental justice accomplishments for an annual summary.
- Initiated plans to provide on-site school outreach to teachers, PTA, and students on various air issues.
- Partnered with community groups to provide air quality information.
- Routinely advised the AQMD Board of CEQA projects with possible environmental justice concerns.
- Initiated a pilot process for a "Neighborhood Environmental Justice Council" to harness the power of neighborhood cooperation.
- Translated relevant documents into Korean and Spanish.

Economic Incentives for Accelerated Mitigation

- Began developing a low-emission and clean-equipment control measure for off-road intermodal equipment.
- Established a working group to expedite CEQA analysis of any major project implementing "Super Mitigation" actions.

Source: South Coast Air Quality Management District

ANALYSIS AND RECOMMENDATIONS

Leadership and Accountability

Community organizations, city officials, and the South Coast AQMD officials have all demonstrated leadership to address environmental justice problems in Huntington Park.

Leadership began with community groups, whose persistent efforts to educate local government officials about the implications of siting decisions prompted local government to respond to some immediate concerns. The community group's actions also led government officials to understand the importance of paying attention to possible local impacts that could exacerbate the health of a community already subject to poor air quality. Concerned citizens of Huntington Park continue to work on both local and regional issues, in conjunction with Communities for a Better Environment, who provided them with initial technical support.

The Huntington Park City Council also demonstrated leadership when they received the results of the MATES II study of the potential health impacts of pollution on their community. The Council formed a Clean Air Task Force that included representatives from the community; a regional environmental organization; the district air quality organization; business, health and science, and transportation organizations; and city government, including the Mayor and City Council representatives. The Council adopted all of the task force's more than 40 recommendations affecting all responsible levels of government: federal, state, and local. These recommendations included:

- Placing greater emphasis on regional coordination for problem-solving, e.g., targeting efforts and resources of all responsible organizations to reduce toxic air emissions in SELA;
- Establishing priorities based on inventorying all toxic air emitting sources in SELA;
- Implementing stricter standards where needed;
- Increasing efforts to reduce diesel emissions;
- Improving monitoring; and
- Improving communication with the public and local government.

The city also revised its policies and processes to address environmental justice concerns by:

- Changing the zoning ordinance to enhance authority for considering environmental impacts on adjacent land, based on proximity to residential neighborhoods and level of adverse impact;
- Conditioning permits approved by South Coast AQMD with further environmental mitigation measures based on additional local emissions impacts;

- Instituting an ordinance limited diesel vehicle idling;
- Improving the city's relationship with South Coast AQMD, especially by utilizing the technical services they provide more effectively; and
- Working informally with adjacent jurisdictions to reduce emission impacts from sources outside city boundaries.

Additionally, the City Council has attempted to influence decisions by adjacent jurisdictions to prevent further local impacts. The result is an informal agreement to develop trading credits locally so they can reduce impacts on Huntington Park.

South Coast AQMD officials have demonstrated leadership by adopting a policy and implementing an agenda for environmental justice. The District's agenda includes three major categories of effort:

- Risk reduction;
- Greater community access and involvement; and
- Economic incentives for accelerated mitigation.

Moreover, the District has made itself accountable by:

- Developing quantifiable measures for progress;
- Reporting progress routinely to its governing board;
- Making information on its activities available to the public through its website and "clean air data depositories" located at eight community sites in the district; and
- Using a stakeholder advisory group and otherwise engaging the community and other stakeholders in critical projects, such as a current project on assessment of cumulative risks.

South Coast AQMD has also been a willing, effective partner for Huntington Park and has provided it with technical support. The city and the District have also conducted joint town hall meetings.

Permitting and Planning and Zoning Authorities

Nothing has changed about the permitting process as administered by South Coast AQMD. The District has, however, enhanced other activities that support this process by:

- Enhancing monitoring, including purchasing new equipment and exploring technical innovations that show promise for future application in monitoring local impacts;

- Initiating guidance for local governments on air quality to assist them in making better local decisions;
- Beginning to conduct an evaluation of a feasible least-toxic alternative for all rules that require California Environmental Quality Act (CEQA) alternatives;
- Conducting environmental justice training for staff;
- Improving the availability of data to the public on "hot spot" risk assessments, Notices to Comply, and Notices of Violation;
- Enhancing public notification procedures;
- Surveying stakeholders to identify their website information needs; and
- Improving outreach techniques, including developing new partnerships with community organizations and translating information into other languages.

Huntington Park officials have also made several notable changes in how the city approaches permitting. A South Coast AQMD approved permit is no longer automatically a "green light" that allows permit holders to locate in an appropriately zoned area. Using its authority under CEQA and its revised zoning code, the city now considers localized impacts, particularly from diesel emissions, and may require mitigation measures before it approves a permit.

Setting Priorities and Reducing Risk

Huntington Park officials now recognize the air quality risks affecting city residents and are committed to reducing these hazards with local initiatives such as:

- Revising zoning ordinances to address localized impacts;
- Instituting an ordinance limiting idling by diesel vehicles;
- Requiring mitigation measures, particularly for diesel emissions, because they represent the greatest health risk for the region; and
- Reviewing permits approved by South Coast AQMD for local impacts, and requiring mitigation before issuing final siting permits.

The city has also issued a set of recommendations to other local, regional, and federal agencies to coordinate solving air quality problems on a regional basis, so that no one jurisdiction will appear more stringent than the other and each jurisdiction will make maximum efforts to reduce risk. South Coast AQMD is now working to address the city's recommendations.

Public Participation

Public participation in Huntington Park has been critical for educating city officials about their responsibility for addressing localized impacts of polluting activities.

City officials acknowledge they need to continue improving how the city engages the public on environmental justice and other issues. While the city has participated with South Coast AQMD in town hall meetings, the city hopes to set up neighborhood commissions that will enhance opportunities for citizens to participate in local decisions.

The South Coast AQMD continues to improve its ability to engage and inform the public by conducting better community outreach, building partnerships, enhancing its website, and making information available at local information depositories.

Integration and Coordination

The Huntington Park case study highlights the importance of coordination to address localized impacts. Acting alone, the city cannot fully address the air quality issues that are the major environmental justice concern for both the city and the region. The South Coast AQMD, which develops local regulations and enforces federal requirements for the region, cannot resolve air quality problems affecting environmental justice communities without the help of local jurisdictions, because they make the siting decisions.

Thus, South Coast AQMD has begun to develop air quality guidance that will help local jurisdictions make more informed air quality decisions in their general plans. Huntington Park has begun coordinating its efforts with the South Coast AQMD more effectively. Solving the air quality problems in the region will require the coordinated efforts of other localities, state agencies, and federal authorities.

RECOMMENDATIONS

- The Huntington Park city government should continue to improve public participation and share information on environmental and health impacts. Local officials have recognized the need for additional work in this arena, and their efforts to date with the South Coast AQMD and their plans to establish neighborhood commissions could serve as a good foundation for further progress.
- South Coast AQMD should consider how the policies, implementation strategies, accountability measures, and tools the District has developed could be shared more widely with other state air planning and local government agencies. Practical tools, such as the air quality land use planning guidance that is being developed and the District's work in response to the MATES II study, could be used as models for other state, county, and local organizations to address local sources of air pollution in people-of-color or low-income neighborhoods.

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CHAPTER SIX

AUSTIN, TEXAS

FINDINGS

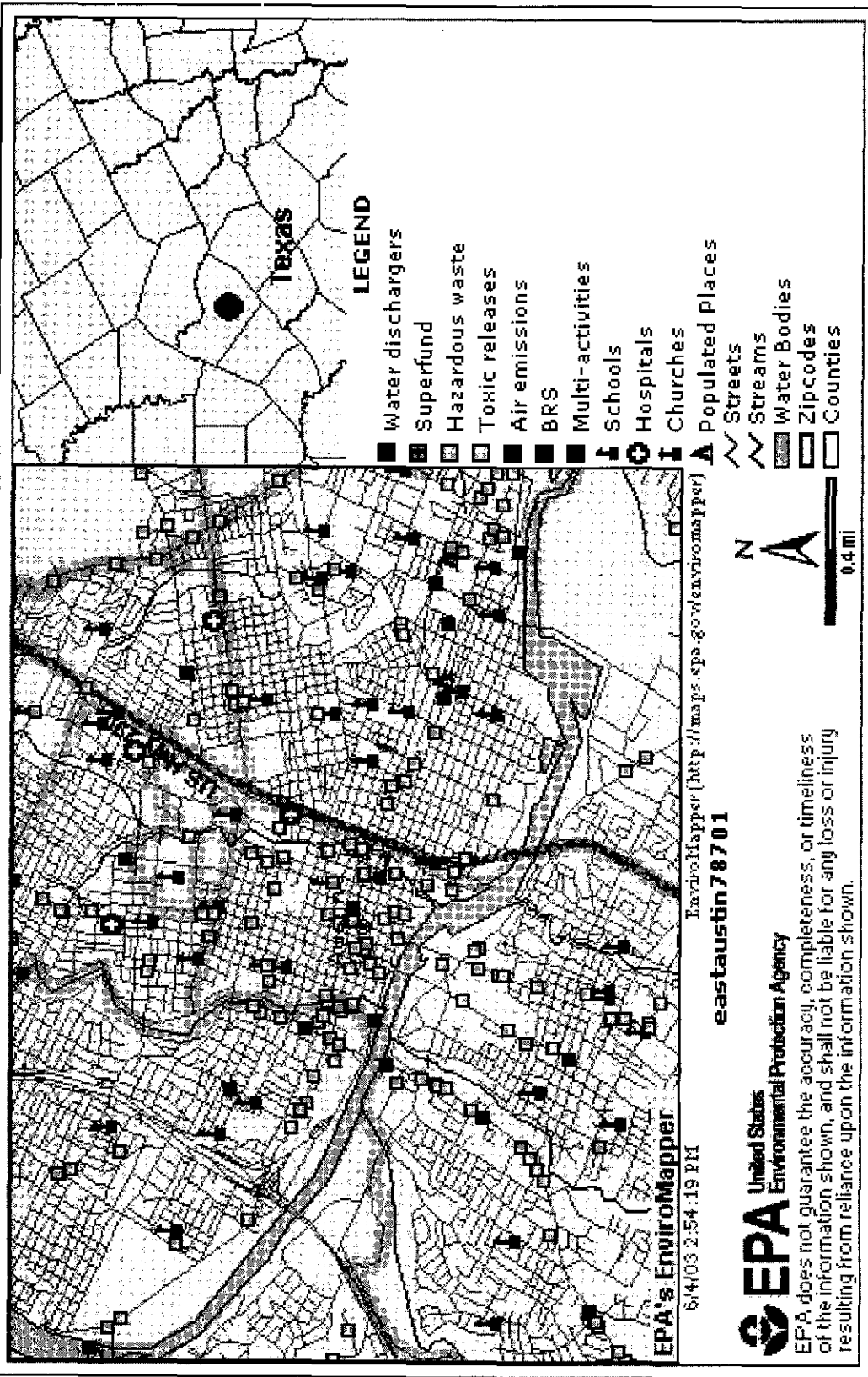
Finding 1. Mandated racial segregation, historic zoning patterns, and changing economies have created many of the environmental justice problems that East Austin faces today. In the past, segregation required non-whites to live in East Austin; and cumulative industrial zoning focused economic growth in East Austin, allowing homes to be built next to factories so that workers could walk to work. Strong community pressure in the early 1990s, spearheaded by People Organized in Defense of Earth and her Resources, motivated the city to address environmental justice.

Finding 2. Using its planning and zoning responsibilities, the city of Austin responded to environmental justice concerns of its citizenry by rezoning incompatible uses in East Austin, adopting a neighborhood approach to planning, enacting overlay ordinances, expanding public participation, and addressing environmental and public health risks at city-owned properties.

Finding 3. The Texas Commission on Environmental Quality (TCEQ) has responsibility for environmental permits for all facilities located in Austin. TCEQ does not believe it has authority to consider environmental justice concerns in the permitting process. Additionally, TCEQ and the city of Austin do not communicate regarding their separate duties (siting and pollution permitting) where they overlap, namely with regard to protection of public health and welfare.

Finding 4. Solving the problems of declining air quality as well as possible future water scarcity in Austin and the central region of Texas will require cross-jurisdictional coordination among municipalities, counties, and the state.

Finding 5. Organized and dedicated community activism, coupled with a local government that is willing to be responsive, can bring about mutually beneficial change and progress.



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INTRODUCTION

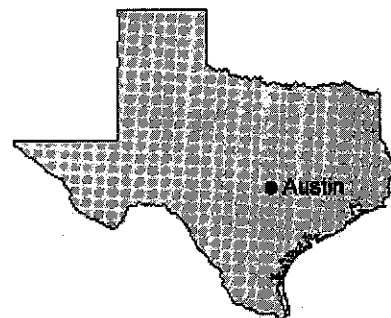
In this case study of Austin, Texas, persistent pressure by community groups—specifically People Organized in Defense of Earth and her Resources (PODER)—brought environmental justice concerns, such as proximity to hazardous land uses, unequal exposure to environmental pollution, and lack of community consultation and advice, to the attention of the local government. Faced with these concerns, the city of Austin, in time, choose action over indifference. The collaborative effort that resulted is somewhat unique, and has been beneficial to both the city and the citizenry.

Working with a local government that is willing to be responsive allows community groups to direct their energies towards creating beneficial change, rather than having that same energy used less purposefully and/or drained through constant conflicts. The collaborative relationship between citizens and Austin officials has created opportunities to mitigate or remove some locally unwanted land uses, for local community groups to be further involved in the decisions of local government, and for on-going high levels of citizen participation and local officials' awareness of environmental justice concerns.

In 1995, a committee of 22 citizens chosen by the Austin City Council presented the Council with its *Citizens Planning Committee Report*.¹ The report detailed 12 recommendations, followed by several actions for implementation that "...represent the most useful set of actions that need to be undertaken at this time in order to begin to improve the livability of [Austin]." The Committee believed Austin was on the "wrong road," and that their recommendations were crucial for Austin to "follow another way" towards growth and prosperity.²

In the context of this Academy study, two of the Committee's recommendations are especially relevant. The Committee's seventh recommendation was that "reinvestment, redevelopment, and remediation in East Austin must be encouraged and facilitated by the city's planning and development process. Austin cannot sustain growth and will become less attractive unless the total conditions are corrected and the quality of life for East Austin communities is improved."³

The eighth recommendation read: "consideration needs to be given to the disproportionate impact of negative environmental facilities on low-income neighborhoods and communities of color."⁴ The Committee then outlined four actions that Austin should take to achieve this recommendation:



- Municipal governments, in conjunction with neighborhood residents, need to conduct land use compatibility assessments, with rollback zoning as an option to address land use incompatibility.
- Cumulative impacts of emissions from pollution sources/facilities need to be considered in the siting, location, and permitting of facilities.

- The city should inventory all city-owned land, check for potential environmental pollutants, and remediate—with priority given to areas with the greatest potential for harm.
- Potentially hazardous or nuisance-generating development initiatives need to include environmental and public health provisions, such as environmental impact statements and site demographic statements, to provide the community and governmental decision-makers with a factual basis to consider the human impacts of a proposed development.⁵

The *Citizens' Planning Committee Report* proposed both the vision and action necessary to guide Austin to a strong and vibrant future. The report firmly tied the resolution of environmental justice issues to forward-looking city planning, directly linking planning and zoning with the achievement of environmental equity.

This chapter analyzes how Austin is moving toward this vision, as well as where it has failed, and vividly illustrates how addressing environmental justice is neither simple, nor insurmountable. This analysis also shows how history lives as changes in planning concepts, race relations, and economies, among other influences, continue to mold the growth or decay of modern cities in this country.

BACKGROUND

About Austin

Austin, the capital of Texas, lies just southeast of the center of the state in Travis and Williamson Counties. Austin occupies 272 square miles, but the city has extraterritorial jurisdiction for planning and zoning in unincorporated areas up to five miles outside the city borders, so the city's entire jurisdictional area covers 355 square miles.⁶

In the 1970s and 1980s, urban core population declined, but the 1990s saw that trend reversed—with growth in almost every part of the city. The U.S. Census for 2000 measured the population at 656,562. Over half are renters,⁷ due to the fact that Austin is home to the University of Texas and its many students.⁸

The U.S. Census for 2000 also reports that Austin's major industries are: education, health and social services (17.6 percent); professional, scientific, management, administrative, and waste management services (13.8 percent); manufacturing (12.6 percent); retail trade (10.9 percent); and all other categories at less than ten percent each.⁹ The top five employers are the city of Austin, the state of Texas, the University of Texas at Austin, Motorola, and Dell.¹⁰ High-technology industries are increasingly drawn to Travis County to tap into its young (average age is 30),¹¹ highly educated, non-unionized workforce.¹² Austin is very automobile-dependent; only seven percent of all workers take public transportation or walk to work regularly.¹³

The city operates several revenue-generating facilities, including water and electric utilities, a hospital, an airport, and waste hauling operations. These revenues expand the city's general fund, enhancing the city's ability to provide a high level of services through its 12,000 city employees.¹⁴

Austin is a multi-racial city. As shown in Figure 6-1, whites comprise 65 percent of the population; Hispanics (any race) 30 percent, African-Americans 10 percent, and 16 percent identify themselves as "some other race."¹⁵ One-third of Austin's residents speak a language other than English.¹⁶

Educational attainment is generally high: 40 percent of residents have earned a bachelor's degree, while 83.4 percent of the population has earned high a school diploma or higher.¹⁷ The median household income is \$42,689 per year, but pockets of poverty coexist alongside relative affluence, with approximately 20 percent of households making less than \$25,000 per year.¹⁸ Roughly 14 percent of the general population (16.5 percent of children) lives below the poverty line.¹⁹

Today, Austin is still largely segregated, with the east side home predominately to Hispanics and African-Americans, and the west side home predominantly to whites. For example, while only 16 percent of Austin's population lives in East Austin, 46 percent of the total African-American population and 29 percent of the total Hispanic population reside there.²⁰ East Austin also has a 30 percent poverty rate, more than double the city's overall rate.²¹

Economic History

Texas was annexed by the United States in 1845. In 1871, the railroad linked Austin to Houston and the Gulf of Mexico, bringing the industrial boom to Austin, and in 1872, Austin was permanently designated the capital of Texas. For many years, Austin's economy relied heavily on government, agriculture, the University of Texas (founded in 1881), and music, which made it possible for Austin "...to ride out the inconsistent economic activities, and avoid the inhuman living conditions, that the Industrial Era brought with it."²² In fact, the railroad actually brought culture and an increase in the standard living in Austin, culminating in "massive economic growth" and an "unprecedented governmental and private sector building boom" starting in the 1880s.²³

Austin's ability to attract industry was hampered by limited supplies of electricity. Although, the Colorado River was dammed in 1893 to produce electricity and industrial opportunities, the dam

Figure 6-1 Austin, Texas—Demographics

Size	272 square miles
Location:	Travis, Williamson Counties
Total Population:	21,216
Race and Ethnicity*:	
African-American:	10 percent
White:	65 percent
Hispanic*:	30 percent
"some other race":	16 percent
Unemployment Rate:	3.1 percent
Median Household Income:	\$42,689
Individuals Below the Poverty Level:	20.7 percent
High School Graduate or Higher:	83.4 percent

*Total does not add up to 100 percent because some individuals specified more than one race.

Source: U.S. Census Bureau, *Census 2000*

was swiftly destroyed by flood in 1900. Between the dam's construction and destruction, steel and iron companies opened and operated successfully. After the flood and loss of electricity, the industries left; and Austin fell back upon its strong government and education economies.²⁴

The 1920s were marked by national highway construction and an oil discovery at the University of Texas, which briefly delayed the economic impact of the Great Depression. Although delayed, the Depression did arrive in Austin. After struggling economically, not unlike most of the country, Austin's economy gained jobs and vitality with President Roosevelt's New Deal. Specifically, the New Deal and many programs such as the Public Works Administration brought funds to the University and state government.²⁵

Environmental Setting

Austin lies amidst a network of canyons that have the potential to cause localized flash floods and erosion damage even during small, two-year storms.²⁶ Whereas East Austin has many small watersheds, West Austin has few watersheds and becomes very flat and level, exacerbating runoff and its environmental impacts. West Austin is also the location of the Edwards Aquifer—a water supply source—in addition to several vulnerable species of amphibians and birds. In recent years, to protect the water supply and vulnerable species, Austin has strictly limited, through conservation plans and their supporting ordinances, commercial and industrial development in West Austin.²⁷

Air Quality

The air quality in central Texas has been declining due to the growing number of polluting activities in the area.²⁸ Higher ozone levels are driven by increases in vehicle traffic and an expanding regional population.²⁹ In 1999, the Central Texas Air Quality Region exceeded the eight-hour ozone standard for ground-level ozone. For this violation, the region was designated as a nonattainment area by the EPA.³⁰

ENVIRONMENTAL JUSTICE CONCERNS

Environmental Justice Organizations

Austin has a politically active citizenry, with many community groups and neighborhood associations. The pre-eminent citizens' group is People Organized in Defense of Earth and her Resources (PODER).³¹ The organization's mission is to "redefine environmental issues as social and economic justice issues, and collectively set their own agenda to address these concerns as basic human rights. They seek to empower their communities through education, advocacy and action."³² PODER and other community groups have forced the city to address environmental justice issues in East Austin neighborhoods. The efforts of PODER and other groups helped move the city of Austin and Travis County to address a series of environmental justice problems.

Health Concerns

Two investigations regarding the possible exposure of Austin residents to toxics have been conducted over the last several years. In 1993, the county probed contamination from the local tank farm; and in 1999, Austin's Health and Human Services Department (HHS) worked with the Texas Department of Health (TDH) to study impacts of the Holly Street Power Plant. Tests at the tank farm found evidence of contamination, while no urgent hazards at the power plant were found.³³

The state health department has also collaborated with the Community Action Network (CAN)³⁴ on a recent health assessment looking at gaps in services and the present state of health in Travis County and Austin.³⁵ In April 2001, CAN released *Prescription for Wellness: Physical, Mental Health, and Substance Abuse* to provide "credible data on the community's physical health, mental health, and substance abuse status for the purpose of future planning, policy recommendations, issue solutions, and resource allocations."³⁶ That study found:

The health of most Austin and Travis County residents is good; however this good health is not shared equally by all citizens...the leading causes of death vary among age groups and by race/ethnicity. In fact, significant disparities exist between racial/ethnic populations, with minorities having higher rates of disease incidence for many physical health problems in comparison to whites. For example, the Travis County ten-year average (1989-1998) age-adjusted mortality rates for stroke in Blacks is 65.3 percent higher than that of white non-Hispanic and that of Hispanics is 19.4 percent higher than that of whites.³⁷

The report also considered health effects related to water quality, solid waste, sewage/wastewater disposal, and air quality. The report did not find significant problems with regard to water quality, solid waste, or sewage/wastewater disposal; but the report did raise several questions about air quality.³⁸

The Austin/Travis County Health Department³⁹ operates health clinics throughout low-income and minority neighborhoods. Austin and Travis County fund medical assistance programs to give underserved populations access to regular, preventative, and urgent health care services. The health department is also working with the Community Action Network to address gaps in services for different communities.

The Health Department is further collaborating with the Centers for Disease Control and Prevention (CDC) on a local version of CDC's program, Healthy People 2010.⁴⁰ The Department is working with the private sector, planners, and hospital administrators to promote the program. All concerns and complaints about industrial issues are funneled through the Health Department, which determines the most appropriate follow-up measures, including contacting appropriate state authorities. As part of this project, the Department is also undertaking a health study on the impacts of various industrial exposures.⁴¹

Impacts of Zoning

Segregation Through Zoning Laws

When the city's first comprehensive plan and zoning laws were passed in 1928 and 1931, respectively, segregation in Austin was mandatory.⁴² Public services were set up for non-white residents in East Austin, thus reducing the need to duplicate structures and services—one for whites and one for non-whites—such as schools, libraries, and parks.⁴³ The public housing authority segregated Anglos, African-Americans, and Mexican-Americans into different housing projects.⁴⁴ Additionally, restrictive covenants were placed on the deeds for many parcels of land in the white areas, prohibiting people-of-color (predominantly African-Americans and Mexican-Americans) from buying there.⁴⁵ These actions directed African-Americans and Mexican-Americans to settle in East Austin.

In 1931, the zoning regulations required industrial uses to be placed in East Austin, where the workers lived. Placing residents near employment was a common planning principle of the time. Residents in these non-white communities could either walk to their industrial jobs, or take a bus to domestic jobs in West Austin.⁴⁶ This racial, ethnic, and industrial segregation was physically reinforced when Austin was bisected by the construction of Interstate 35 in the 1950s, creating both a physical and visual barrier between East and West Austin.

The Civil Rights Act of 1964 made such zoning and segregationist policies unenforceable. Nevertheless, many of the same racial patterns that existed prior to 1964 remain in Austin today.⁴⁷ It is this history of racial segregation and past planning techniques that gave rise to today's environmental justice issues in Austin. People-of-color neighborhoods continue to host contaminated sites and sources of industrial pollution, just as they did prior to 1964.

Cumulative Zoning

While historic zoning practices created the base for many other environmental justice problems, such as unwanted land uses and disproportionate pollution, Austin's move from cumulative zoning to restrictive zoning was problematic.

Prior to 1986, the Austin planning ordinance called for cumulative zoning. Cumulative zoning allows any use "lower" than that defined in the category to be built; the basic zoning categories, ranked from highest to lowest use, are industrial, commercial, and residential. Under cumulative zoning, residential homes could be built on land zoned industrial, but an industrial facility could not be built on land zoned residential.

Figure 6-2

Land Use Patterns Resulting From Cumulative Zoning Ordinance in East Austin, Texas (1996)

Zoned Commercial:

20 percent used for commercial
15 percent used as single-family
18 percent vacant

Zoned Industrial:

32 percent used for industrial
12 percent as single-family
29 percent vacant

**Source: East Austin Land Use/Zoning Report.
February 20, 1997*

In 1997, the *East Austin Land Use/Zoning Report* found:

The cumulative nature of the old zoning ordinance allowed residential development in areas zoned for commercial and industrial uses. In some cases street layout and orientation of lots also encouraged the confusion between residential and non-residential uses. These and other factors led to a deterioration of neighborhoods, which abutted the commercial and industrial districts. Residential areas in the eastern portion [of East Austin] of the study are freely mixed with large scale and industrial uses.⁴⁸

Over the years, many homes were built in East Austin on property zoned commercial or industrial (see Figure 6-2). After 1986, the city abandoned the cumulative zoning ordinance for a restrictive zoning ordinance. Restrictive zoning allows for only the use as defined (*i.e.*, only industrial uses can be built on property zoned industrial, only commercial uses can be built on property zoned commercial, etc.). When the zoning ordinance was changed, the cumulative designations became restrictive designations, resulting in many properties where the current use and the zoning designation were no longer compatible.

Changing the zoning ordinance from cumulative to restrictive negatively impacted some residents of East Austin by restricting their access to home improvement equity loans. Some homeowners in East Austin were unable to obtain these loans because their current, existing use of the property (residential) was not consistent with the new local zoning ordinance (restrictive industrial). Likewise, homeowners whose houses burned down could not rebuild because their properties were now excluded from residential use. To resolve these problems, two local community groups, PODER⁴⁹ and El Pueblo,⁵⁰ worked together to encourage the first "Green" City Council, headed by Mayor Kirk Watson, to establish an East Austin Overlay area allowing the land to be rezoned consistent with its existing use and to minimize incompatible uses.⁵¹

The East Austin overlay ordinance, approved in July 1997, requires LI [light industrial], CS (commercial) and CS-1 (...liquor stores...) property owners to get a conditional-use permit before they can develop or redevelop any of 14 different types of uses, even though the zoning normally permits all. (A conditional-use permit is generally required to do something that is not allowed by the zoning....)⁵²

However, some members of the East Austin community did not want to see their properties down-zoned for a lower use. The city's legal department has received petitions from property owners and community organizations to keep the current zoning status of specific properties.⁵³ Some residents want to keep their industrial status because they may have an existing, small industrial use on the property, and others may believe that at a future date their property would be more valued if zoned as industrial. In at least one instance, PODER researched comparative values and found that, on a per square foot basis, a residential family unit was worth more than an industrial unit.⁵⁴ On a broader level, any new future industrial use would have to achieve specified setback limits, and achieving such limits in a pre-existing, mixed-use neighborhood would be very difficult.⁵⁵

Addressing Unwanted Land Uses

Strong community pressure and a responsive city government have worked together to address many of the existing unwanted land uses in East Austin, although some solutions have not been completely successful. Some recent examples follow.

- A fuel tank farm was closed. In 1993, community groups led by PODER and Travis County successfully closed a 52-acre fuel storage tank area that encroached on East Austin.⁵⁶ The farm contained large above-ground tanks used by six oil companies, with some of the pipes running under nearby houses.⁵⁷ Local residents believed they were experiencing chronic illnesses due to toxics being emitted from the tank farm. In 1992, the Travis Central Appraisal District reduced the value of about 600 adjacent homes by 50 percent or more, citing fears of pollution.⁵⁸ In 1993, environmental tests showed that the farm left contaminated groundwater on the site.⁵⁹ Since the tank farm closed, the property has been downzoned from light industrial to community commercial-mixed-use-conditional⁶⁰ while the city and residents consider future uses and zoning patterns for the property.⁶¹
- Pollution from a power plant was mitigated, and the plant is slated to close. The Holly Street Power Plant, a natural gas-fired plant built in East Austin in the 1950s, is owned and operated by the city. In 1994, the Texas Department of Health (TDH) was contacted by East Austin residents concerned about possible adverse health effects from living in close proximity to the plant.⁶² TDH investigated the concerns and determined that there was no public health hazard; but when evidence of noise pollution, short-term sulfur dioxide exposure, and polychlorinated biphenyls was found, mitigation measures were instituted to reduce or eliminate them.⁶³ Recently, the City Council adopted an ordinance to close the Holly Street facility by 2009.⁶⁴
- The municipal airport was moved, but noise still affects many residents. The Robert Mueller Municipal Airport in East Austin brought noise and pollution from cargo planes and other aircraft into East Austin. The city closed Mueller Airport and moved it to the former Bergstrom Air Force Base south of town, reopening it as the Austin-Bergstrom International Airport. This relocation has reduced the number of residents who live in the airport's noise area from over 30,000 to approximately 1,500.⁶⁵ However, the flight paths to the new airport are substantially similar to those for the old Mueller Airport.⁶⁶ Additionally, East Austin roads are being used as a cut-through for vehicular traffic, despite the city's efforts to re-route traffic for Austin-Bergstrom International Airport.⁶⁷

Three years before the new airport opened for air cargo operations in 1997,⁶⁸ the city enacted compatibility zoning ordinances requiring that *new* noise sensitive land uses cannot be established within the airport's noise impact area.⁶⁹ Homeowners whose homes lie within the "noise impact area" are now considered a non-compatible use and are restricted from building new or expanding current "noise sensitive" land uses by the city's compatibility zoning ordinance.⁷⁰ These non-compatible land uses include residences and churches north of the east and west runways. To PODER, the relocation of the Mueller Airport did not solve the environmental justice problem: "it just moved it from a poor African-American community to a poor Hispanic community."⁷¹

- The city purchased and moved a recycling center. The city of Austin bought and moved Browning Ferris Industries' recycling center to a location close to the Austin-Bergstrom International Airport. The recycling center had been bringing extensive truck traffic, refuse, and rats into East Austin.
- The city bought a distribution center for city functions and eliminated truck traffic. Austin purchased a beer distribution center that brought heavy truck traffic into East Austin and replaced the business with city functions for which it had been leasing space elsewhere. The facility now houses a uniform shop for parks and recreation staff, storage for police evidence, maintenance and repair equipment, a utility bill drop-off center, and community meeting rooms.
- A highway will be lowered to remove a barrier between East and West Austin. Austin's transportation department is planning to drop Interstate 35 below grade over the next ten years to remove that physical barrier between East Austin and West Austin.

Unequal Protection of Communities

Most of Austin's environmental protection resources have been devoted to improvements on the west side of the city, and have primarily been designed to protect the Edwards aquifer and vulnerable wildlife species in the area. Protecting the Edwards aquifer is a high priority because it is a source of drinking water for all of Austin. Thus, on the west side, the city government bought large tracts of land, put easements on deeds, and re-sold the parcels to the original owners or to land trusts in order to protect the aquifer and wildlife. Consequently, fewer funds were available to reduce the pollution affecting people in East Austin.⁷²

City Intervention in Longhorn Pipeline Case

On April 22, 1998, property owners joined the Barton Springs-Edwards Aquifer Conservation District in filing suit under the National Environmental Policy Act of 1969⁷³ (NEPA), seeking injunctive relief requiring the federal government to perform a full review of the environmental consequences of the Longhorn Pipeline project.⁷⁴ The City of Austin and the Lower Colorado River Authority were allowed to intervene as plaintiffs.

The pipeline was constructed in 1950s, running through East and West Austin shipping crude oil until around 1995. The pipeline was purchased and extended in 1997 by a partnership of pipeline and energy companies (Longhorn Partners L.P.) to ship gasoline from Houston to El Paso. The reactivation of this pipeline was a concern for East Austin residents because proposed investments in improvements and safety measures on the pipeline to protect of water resources and vulnerable species in West Austin were not going to be mirrored with similar protections for the health and safety of residents in East Austin.⁷⁵

The court found that the defendants—U.S. Department of Transportation (DOT), EPA, and U.S. Department of the Army—had not fulfilled their obligations under NEPA. On March 1, 1999, the parties entered into a stipulated settlement, in which EPA and DOT agreed to prepare an environmental assessment of the pipeline. The environmental assessment was conducted,

contested, and made final. The court then upheld the "Finding of No Significant Impact," relying on certain mitigation measures to reduce environmental impacts. However, the portions of the pipeline in West Austin are now receiving more upgrades, replacements, and security mitigation measures than pipeline sections that run through East Austin.⁷⁶

New Pipeline Ordinance

In a broader effort to ensure public safety, on April 10, 2003, Austin's City Council adopted an ordinance to limit new development around pipelines transporting hazardous materials, such as the Longhorn Pipeline.⁷⁷ Highlights of the ordinance include the following:

- A use requiring evacuation assistance [i.e. convalescent services, hospital, education facilities, etc.] is prohibited within 500 feet of a hazardous pipeline.
- No one may build new construction within 200 feet of a hazardous pipeline.
- No structure can be built and no excavation can occur within a restricted pipeline area (25 feet from a hazardous pipeline plus any area within a hazardous pipeline easement).
- Proximity to a hazardous pipeline does not cause a structure or area to be non-complying.

This city ordinance reflects a commitment to minimize future conflicts between incompatible uses while protecting citizens from possible environmental hazards.

Concerns About High Technology Industry

Austin is fast becoming the second Silicon Valley, with many high technology firms firmly established in Austin.⁷⁸ While the city is concentrating on bringing less heavy industry into the area by recruiting high technology firms, PODER is concerned about locating them in East Austin. PODER contends that the limited number of jobs created by high technology companies predominantly utilize highly skilled and well-educated employees, and do not provide opportunities for those under-skilled East Austin residents who need employment.⁷⁹ Also, they argue that these industries are not really as low polluting as they claim to be, as evidenced by Toxics Release Inventory statistics.⁸⁰

While there is less concern about emissions from high technology industries as compared to traditional heavy industries, there are strong concerns about high technology's use of water resources:

By the time the high tech industry migrated to Austin.... the risks associated with contamination of groundwater were already well known. Mechanisms to mitigate this were put into place, though groundwater contamination is still occurring. The greatest form of cost externalization related to water in these newer areas are much more complex.... They come in the form of water price subsidies, water delivery

and treatment infrastructure subsidies, and restricted access to traditional and low-income water uses caused by the massive water use by this industry.⁸¹

In this case, it is clear that PODER's concerns over high technology in Austin have broad environmental justice implications that affect local employment, local toxic pollution, and local water availability.

Concerns About Gentrification

Gentrification in East Austin is being fueled by rising property taxes. Property values, as well as property taxes, are being driven skyward by a very competitive housing market, limited availability of land for development, and "historic" home tax exemptions. The demand for housing continues to grow, as does the value of real estate in Austin. Smart growth planning in Austin has restricted development in West Austin, while encouraging development in East Austin. Finally, historic designations for homes entitle the owner to a lifetime exemption from property taxes.⁸² The direct result of these economic forces is rising real estate values and rising property taxes.⁸³

Rising property taxes are a substantial burden for the low-income and people-of-color communities in East Austin. Texas has no personal income tax. "State revenues come largely from sales, excise, and property taxes—all of which weigh heavily on low-income people."⁸⁴ Additionally, as a means to provide some economic relief, Austin cannot limit the upward value or taxing of properties, as such actions are prohibited by Texas law.⁸⁵ The result is East Austin residents with low or fixed incomes, and an increasing number of people-of-color, are being priced out of their neighborhoods.⁸⁶

Community groups, such as PODER, have asked the city to impose a moratorium on new historic designations pending further exploration of the unintended consequence. Meanwhile, the city has convened a task force from the Community Development and Housing Department to investigate gentrification issues in Austin.⁸⁷

PLANNING, ZONING, AND GOVERNANCE IN TEXAS

Texas Planning and Zoning Laws

State Planning Laws

Although Texas did not adopt comprehensive planning regulations until 1997, the state has had subdivision laws since the late 1920s.⁸⁸ Municipal governing bodies may adopt comprehensive plans for long-range development,⁸⁹ define the relationship between comprehensive plans and development regulations, and provide standards for consistency.⁹⁰ If a comprehensive plan is adopted, however, then municipal zoning regulations must be adopted in accordance with it.⁹¹

Local comprehensive plans may include, but are not limited to, the following elements:

- Land use, transportation, and public facilities;
- Plan(s) organized by subject and geographic area; and
- Coordinate and guide the establishment of development regulations (concurrency).

Municipal plans do not require state approval and may be adopted or amended by ordinance, following a public hearing and review by the local planning commission, if one exists.⁹² Thus, the at-large Austin City Council has full responsibility for adopting and/or modifying Austin's plan.

While they are not required to create them, counties have authority to adopt comprehensive plans for certain areas.⁹³ As with municipalities, county-zoning regulations must be adopted in accordance with the county comprehensive plan. Authority to create county comprehensive plans and zoning ordinances rests with the County Commissioner's Court.⁹⁴ The County Commissioner's Court is comprised of four commissioners and one county judge. "In addition to assuring that county roads are maintained, commissioners vote with the county judge to set the budget for all county departments and adopt a tax rate."⁹⁵

- State Guidelines and Incentives for Planning

Texas' Local Government Code addresses several aspects of planning. It authorizes planning for housing and other structures, including authority to secure substandard buildings, preserve historic buildings, adopt energy conservation measures, control rent, and adopt fair housing ordinances.⁹⁶ Municipal Urban Renewal provides for the improvement of slum or blighted areas.⁹⁷ Neighborhood Empowerment Zones may be created by municipal governing bodies to serve the following purposes: create and rehabilitate affordable housing; increase economic development; improve the quality of social services and education; or provide public safety to residents.⁹⁸ In addition, the North American Free Trade Agreement (NAFTA) Impact Zone promotes opportunities for developers, local businesses, and residents of the zone and requires certain businesses to hire NAFTA displaced workers.⁹⁹ Austin has taken advantage of Municipal Urban Renewal, but not of Neighborhood Empowerment Zones or NAFTA Impact Zones.¹⁰⁰

Various state agencies and departments offer incentives for local planning. Through local enterprise zones, the Texas Department of Economic Development offers incentives for capital improvement and job creation.¹⁰¹ The Office of Community and Rural Development offers grant programs, such as the *Colonia* Planning Fund,¹⁰² to promote the development of viable communities thorough affordable housing and increased economic opportunities for persons of low to moderate income.¹⁰³ Also, the Texas Historical Commission provides technical assistance and preservation grant priority for localities participating in Commission programs,¹⁰⁴ and Austin has obtained technical assistance from the Texas Historical Commission.¹⁰⁵

State Zoning Laws

Under state law, the governing body of a Texas municipality must establish procedures for adopting, amending, and enforcing zoning regulations, after holding public hearings and providing public notice in a local newspaper.¹⁰⁶ Municipalities without a zoning commission must provide notice to appropriate property owners. The municipal board of adjustment hears zoning appeals.¹⁰⁷ County zoning procedures are similar to those set forth for municipalities, although counties may zone only in specific areas as allowed by the Local Government Code.¹⁰⁸

- Municipal Management Districts

In Texas, municipal management districts are created to supplement the services provided by a municipality.¹⁰⁹ They provide funding for metropolitan areas to preserve, maintain, and enhance economic health and vitality; assistance for public transport and pedestrian facilities; and help in restoration, preservation and enhancement of scenic and aesthetic beauty.¹¹⁰ Provisions for “disadvantaged businesses” are also included.¹¹¹ Municipal management districts may be created only in areas devoted to commercial development and business activity.¹¹²

Before municipal governments create such a district, they must petition the Texas Natural Resource Conservation Commission,¹¹³ and must also give public notice and hold a public hearing.¹¹⁴ The Commission or municipal governing body then chooses a board of directors to govern the district.¹¹⁵ Board members must have experience in one or more of the following areas: energy matters, commercial banking, real estate development, finance and insurance matters, retail services, and utilities.¹¹⁶

- Regional Planning Commissions

Any combination of counties and/or municipalities may agree to establish a regional planning commission. The planning commission may develop regional planning recommendations, which participating local governing bodies may adopt by ordinance.¹¹⁷ Where there is a regional planning commission, it must advise the local governing body if a proposed project is regionally significant¹¹⁸ and, if so, the commission will review the proposed project and determine if the project conflicts with the regional plan or policy.¹¹⁹

Municipalities, counties, and other local governments in Texas may impose impact fees to finance new capital improvements or public facility expansions.¹²⁰ Within the North American Free Trade Impact Zone or a Neighborhood Empowerment Zone, a municipality may waive or adopt fees (including impact fees) related to the construction of buildings.¹²¹ No impact fees are collected in Austin, because Austin does not currently participate in either program.¹²²

See Appendix G for more details on planning requirements under Texas statutes.

Local Governance in Austin

Structure

Austin has a council-manager form of government, with a mayor and six council members elected at large. The City Council appoints the city manager and two assistant city managers, whose responsibilities are divided according to departments.¹²³

One distinguishing feature of Austin's government is its success in retaining management personnel. Many department heads have worked in Austin's government for many years, serving in various departments. This results in tremendous institutional knowledge in the city government, and its managers have a broad cross-functional understanding of the city government.

At-Large Election System

Austin is one of only a few large cities that still uses an at-large election system.¹²⁴ PODER is campaigning to remove the system and to replace it with one based on geographic representation. They believe that the at-large elections make it very difficult for citizens to be fairly represented on the City Council.¹²⁵ This difficulty is well known:

The major characteristic of multi-member at-large elections, in contrast to single member district elections, is that a spatially concentrated group of voters—economic groups, party supporters, racial and ethnic groups—may not be able to elect candidates of their choice because their votes are “swamped,” “absorbed,” “submerged,” or “diluted”...by votes cast outside their area for competing candidates. This major feature of at-large elections has long been recognized.¹²⁶

Vision of Environmental Justice

The city of Austin has articulated a vision of environmental justice and is working toward equitable service delivery. Each fiscal year, the City Council adopts a theme. Three years ago, the city council adopted “Social Fabric” for its budget process, to focus the city government on social equity and environmental justice. The theme for the 2002-2003 fiscal year is “Bridging the Gap,” addressing the city's budget deficit as well as the gap in the provision of services and resource allocation among different socio-economic groups and neighborhoods.¹²⁷

Austin Planning and Zoning

Austin Planning Commission

The Austin Planning Commission is composed of nine members appointed by the Austin City Council, each serving two-year staggered terms. The Commission exists to:

...make and amend a master plan, recommend approval or disapproval of proposed zoning changes and control land subdivision within neighborhood planning areas and submit, annually, a list of recommended capital improvements.¹²⁸

Environmental Board

Austin's Environmental Board was established by city ordinance to promote close cooperation between the city, its citizens, and institutions and agencies interested in or conducting environmental activities. The board advises the City Council, city manager, and planning and watershed departments on all policies, projects, and programs affecting quality of life.

The City Council appoints the nine-member Board. Four members with expertise in geology, hydrology, civil engineering, land planning, or ecology serve two-year staggered terms. The Board reviews policy and decisions as they pertain to the environment and makes recommendations to the Council. The Board appoints an environmental officer to investigate citizen complaints and to report to the city manager and Council. Although the Board can make recommendations to the Council, it does not have any implementation authority.¹²⁹

Austin Plans

- Comprehensive Plans

Austin developed a comprehensive plan in 1982, which tended to be very general and concentrated heavily on watershed conservation and historic preservation.¹³⁰ City staff now recognizes the need for more specific planning goals and standards. The plan did not include zoning changes or recommendations for development.¹³¹ As a result, planning has been decentralized over several departments, and each produces its own plan. They include the Watershed Protection and Development Review Department's Watershed Protection Master Plan plus the Transportation, Planning and Sustainability Department's Transportation Plan, Pedestrian Plan, and Bicycle Plan. The Neighborhood Planning and Zoning Department also develops separate neighborhood plans for each of the 54 neighborhoods in East and West Austin. These plans are described in more detail below.

- Neighborhood Plans

To remedy existing zoning problems and to improve community outreach and communication, Austin embarked on a program to develop neighborhood plans. The Neighborhood Planning and Zoning Department identified 54 urban core neighborhoods, and the Department works with residents on a zoning and development plan for each one. Plan development takes about a year, with several plans underway at the same time. As of August 2002, the Department had finished 12 of 54 plans and was currently working on eight more. Each neighborhood plan represents about 10,000 citizens. Of these, between 30 and 100 citizens are actively engaged in the planning process. Transportation and design guidelines, future land use maps for planned growth, and appropriate zoning are developed concurrently with neighborhood plans.¹³²

Additionally, local neighborhoods can organize and form neighborhood associations, which can then register with the city. Registered associations within a specified radius of a property to be rezoned must be notified by the city of the proposed change. Austin boasts over 300 such organizations, and the number is expanding as PODER works to organize neighborhood associations where none existed previously.

- Smart Growth

Austin's Smart Growth Initiative encourages downtown development and discourages recruitment of more polluting industry.¹³³ Its goals are to:

- Determine how and where to grow by identifying a desired development zone and drinking water protection zone;
- Improve quality of life by preserving and enhancing neighborhoods, protecting environmental quality, improving accessibility and mobility, and strengthening our economy; and
- Enhance the city's tax base through strategic investments, efficient use of public funds, and regional partnerships.

The Smart Growth Matrix is a tool to assist the City Council in analyzing development proposals within a particular development zone. The matrix measures how well a development project meets Austin's smart growth goals regarding:

- Location of development;
- Proximity to mass transit;
- Urban design characteristics
- Compliance with nearby neighborhood plans;
- Increases in tax base; and
- Other policy priorities.¹³⁴

Austin also uses several incentives—such as road construction and improvement and extension of utilities—to attract business, as do many other cities. However, unlike most cities, Austin is adamant about not offering tax abatements.¹³⁵

Zoning Changes in Austin

Austin originally developed zoning regulations in 1936, revised them in 1953, and removed gender-specific references in 1985. In 1986, Austin amended its zoning laws to eliminate cumulative zoning. All of the municipal laws pertaining to comprehensive planning and the land development process, including zoning regulations, were rearranged and re-numbered to create the Land Development Code of the City of Austin of 1994. The Land Development Code purports to achieve “reverence to the dignity and enrichment of all people . . . [and] to assure economic, environmental, and cultural prosperity throughout our community.”¹³⁶

- Impetus for Zoning Reforms

In 1995, Austin officials received the *Citizen's Planning Committee Report*.¹³⁷ The report explained how *status quo* planning would affect the long-term growth of Austin. The Committee rejected existing planning efforts, and offered 12 recommendations, along with multiple implementation actions, as essential parts of a comprehensive strategy "to introduce a different way of looking at the city, its form, and the forces that shape it." In April 1996, the Committee issued a second report, *From Chaos to Common Ground: A Blueprint for Austin*. The report reiterated the previous 12 recommendations and proposed "dozens of detailed actions for re-engineering the city's development and planning process to inject more predictability, accountability, and local responsibility for future projects."¹³⁸

In 1996, the City Council directed planners to conduct a study of land use patterns in East Austin, "noting the present zoning of all land parcels within the area and the location, size, and ownership of the property zoned."¹³⁹ The study revealed that:

Over-zoning affects a majority of the East Austin community, but each area has been affected in different ways....¹⁴⁰ Significant portions of the study area can be characterized as industrial and residential decline. Little new construction has occurred for any major land use category over the last five years. Earlier efforts attempted to eliminate perceived conflicts in land use by promoting industrial activity along the Southern Pacific Railroad at the expense of adjacent neighborhoods.¹⁴¹

Many changes in the industrial zoning of East Austin have resulted from that study. Instead of changing all of the zoning at one time, however, the city has tried to rezone and implement land use plans on a neighborhood-by-neighborhood basis. Current industrial uses are grandfathered in with limits on expansion, and zoning is changed with plan approval. When new plans are made, zoning is adopted at the same time, because the plan is not enforceable without a corresponding zoning ordinance.¹⁴²

- East Austin Overlay District

In 1997, the city created the East Austin Overlay District. In the overlay district, a new use that is more intense than commercial use requires a special use permit and extensive notification of local residents. When current industrial owners leave, the zoning is changed to a less intense use through a City Council ordinance. Additionally, the City Council placed a temporary moratorium on permitting in the overlay area. As each neighborhood plan is approved by the City Council, that neighborhood is removed from the overlay area because the requisite zoning changes have been made. PODER argues that certain aspects of the overlay requirements should stay in place, even after the neighborhood plan is finished—such the requirement that city planners must notify residents of any proposed new use—to keep the community informed about local development.¹⁴³

Sustainable Communities Initiative

Austin's Sustainable Communities Initiative was created in 1996 to achieve economic prosperity, social justice, and ecological health. Programs and policies are designed to make the city more sustainable and livable over the long term. Activities have included conducting sustainability workshops for city staff, sponsoring community workshops and seminars, initiating a pilot sustainability assessment of city departments, and participating in green economic development efforts.¹⁴⁴

Smart Housing

Austin's Neighborhood Housing and Community Development Office and the Austin Housing Finance Corporation oversees the "Safe, Mixed-income, Accessible, Reasonably-priced, Transit-oriented" (SMART) housing program to develop better housing for Austin's low and moderate income population. The program assists developers who include subsidized housing in their developments by offering fee waivers, expedited permitting, and zoning changes where needed. According to city staff, developers have been willing to comply with SMART housing standards to take advantage of these incentives. When the program began, the city had hoped to add 600 new affordable housing units per year; but the program has been so successful that, in the first year, 6,000 new units were in the review or inspection process.¹⁴⁵

Recently, the City Council allocated an additional \$3 million for acquiring property to be set aside for future SMART housing construction.¹⁴⁶ This allows the city to acquire land before developers are ready to begin building housing, whereas housing construction must begin immediately with any land purchased using U.S. Housing and Urban Development funds. The city is also aggressively working to develop affordable housing with several nonprofit organizations. Some of these partners include the Community Development Corporation, Habitat for Humanity, American Youth Works, Community Partners, Volunteers for America, and Foundations Communities. Since April 2000, the Austin Neighborhood Housing and Community Development Office has offered a \$1 million annual Housing Trust Fund to provide gap financing for developers who construct new multi-family housing that serves families at or below 50 percent of the median family income. The Department also completes impact statements assessing any new regulation's impact on affordable housing so they can stop any provision that will have a negative impact.¹⁴⁷

ENVIRONMENTAL PERMITTING

Local Permitting Agencies

The city of Austin does not have authority to issue pollution control permits; that authority rests with the Texas Commission on Environmental Quality. However, Austin does have authority over local land use decisions and building permits.

Approval of building permits in Austin requires, among other things, compliance with zoning and neighborhood plans as well as compliance with utility and site plans. The application must:

- Demonstrate compliance with zoning requirements;
- Contain a utility plan review to assure appropriate access to utilities, etc.; and
- Contain a site plan for any building or improvement greater than 999 square feet, including impervious surfaces, which is checked against neighborhood plans for compliance.

State Permitting Agencies

The Texas Commission on Environmental Quality (TCEQ) administers pollution control programs and issues pollution control permits in the State of Texas.¹⁴⁸ TCEQ officials do not believe the agency has the legal authority to consider environmental justice when reviewing permit applications.¹⁴⁹ Additionally, TCEQ is not involved in environmental justice issues related to planning and zoning at the local level. Within TCEQ, the Environmental Equity Program and the Office of the Public Interest Counsel offer the best opportunities to vet claims of environmental inequity.

Environmental Equity Program

In 1993, TCEQ's Office of Public Assistance established the Environmental Equity Program for the purpose of helping to avoid the development of hostilities between industry and/or facilities and people in "low-income and minority communities [who] often believe that they are burdened with a disproportionate share of environmental risks."¹⁵⁰ The program concentrates on fostering communication and effective dialogue between industry, a specific facility, TCEQ, and the affected community.

Office of the Public Interest Counsel

The Office of the Public Interest Counsel is an independent program within the TCEQ; the Counsel does not report directly to TCEQ's Executive Director. The Texas Legislature created this Office to "...ensure that the Commission promotes the public's interests and is responsive to citizens' concerns regarding environmental quality and consumer protection."¹⁵¹

The Public Interest Counsel has a full-time, permanent staff that is hired by TCEQ. The Office assists citizens by providing technical and legal explanations covering the TCEQ's procedures, state law, and public participation procedures. The Counsel cannot provide legal representation to individuals but is party to, and may comment on, all TCEQ proceedings, including rulemaking and permitting. Given the breadth of its responsibilities, the Counsel sets priorities for its caseload, giving particular priority to protection of public participation procedures.¹⁵²

ANALYSIS AND RECOMMENDATIONS

Leadership and Accountability

Action by the city of Austin is still driven by community pressure. The presence of organized community pressure, exemplified by PODER, has been a key factor in getting some environmental justice problems in Austin resolved, such as the tank farm, the power plant, and the recycling center.

The city has shown leadership on environmental justice with regard to some of its planning processes. Over the last ten years, Austin has actively investigated and reviewed its planning goals and initiatives.¹⁵³ The city has pressed ahead to prepare neighborhood plans with active community involvement and is investigating gentrification in East Austin. Most importantly, the city agrees there are valid environmental justice concerns that need to be addressed. However, there appears to be no mechanisms for holding city planning or zoning officials accountable for progress.

Permitting and Zoning

Austin's permitting process and development fees can be simplified and reduced by participating in a city-sponsored program that supports environmental justice, such as the SMART housing program.

However, the success of many of the city's planning programs will be constrained by Austin's ability to enforce existing regulations. Due to the cumbersome and expensive nature of permit applications, citizens often choose not to apply for the proper permits.¹⁵⁴

Lastly, officials in TCEQ and Austin apparently do not communicate effectively regarding their separate duties (siting, pollution permitting) where they overlap, namely with regard to the protection of public health and welfare.

Setting Priorities and Reducing Risk

Austin does not appear to have a priority list for reducing risks to public health or the environment. The city has set a strong priority for protecting the drinking water supply, but this commitment does not seem to extend to issues beyond drinking water. Overall, risk reductions have occurred throughout East Austin, as evidenced by the relocation of the airport and recycling station and closing of the tank farm. However, the city took these actions in response to community pressure; they were not initiated on the basis of an overall plan to reduce risks, starting with the most serious risks first. Finally, the city's lack of an active relationship with the Texas Commission on Environmental Quality means there may be lost opportunities for cooperating to control future pollution sources.

Public Participation

The citizenry of Austin is very active and drives change in the city's operations. The East Austin Overlay District requires more extensive neighborhood notice of proposed zoning changes than are required in other areas of the city. Additionally, registering neighborhood associations empowers local neighborhoods in the planning and zoning process.

The city offered a program, the Neighborhood Academy, "to provide education to citizens and neighborhood groups that they can be more knowledgeable of city services and other factors affecting the quality of life in their neighborhoods."¹⁵⁵ A sample of the free courses included "Zoning 101," "How to Get Complaints Resolved;" "Effectively Representing Your Neighborhood before [City] Council and [Texas] Commission [on Environmental Quality]." Unfortunately, this innovative program has recently been cancelled due to budget constraints.¹⁵⁶

Austin also has an extensive website where meetings are announced; meeting agendas and minutes are posted; and city publications, city ordinances, and other information is readily available. This is a great source for citizens who have Internet access. Nevertheless, regular City Council meetings last an entire day. Although the long sessions may allow more time for discussion of issues, it can be difficult for working people to attend the meetings.

RECOMMENDATIONS

- Austin has made commendable progress in addressing some environmental justice issues. However, the city needs a clearly articulated policy, program, and priorities for addressing environmental justice problems to ensure that, in the future, no group of citizens has to bear a disproportionate share of environmental burdens and that all citizens will have opportunities to be meaningfully involved in decisions that affect their environment and health.
- TCEQ should look broadly at its existing legal authorities for addressing environmental justice concerns, including those related to environmental permitting. TCEQ's environmental justice program should include commitments to reduce risk, improve communication, and provide greater public access to information. TCEQ should consider working with other state environmental agencies that have developed environmental justice programs and tools so it can benefit from their successful experiences.
- TCEQ should also provide guidance and other assistance to local Texas governments to help them understand and address the potential public health and environmental implications of their land use decisions.

ENDNOTES

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- ⁸⁹ *Local Government Code* (LGC), Title 7, Chapter 213.002.
- ⁹⁰ The "Home Rule Provision" of the *Texas Constitution*, Article 11, Section 5, allows cities to enact and amend ordinances as long as they do not conflict with the state constitution or other state laws.
- ⁹¹ LGC, Title 7, Chapter 211.004, and Title 12, Chapter 371.042-.043. If adjacent municipalities have zoning commissions and exercise zoning authority, these municipalities may form a joint planning commission, adopted by participating local governments. The commission would have representatives from each municipality and must complete a master plan with stipulated elements.
- ⁹² Title 7, Chapter 213.003. A municipality may also enact by charter or ordinance a procedure for adopting and amending a comprehensive plan.
- ⁹³ Title 7, Chapter 231. See Also, Chapters 232 and 242 on the subdivision powers of a county.
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- ⁹⁵ "Among other responsibilities, the commissioners court: sets the yearly property tax rate and approves the budget and employment level for the county; establishes long-range thoroughfare, open space, land use, financial and law enforcement/jail needs plans; acquires property for rights-of-way or other uses determined to be in the public's best interest; reviews and approve subdivision platting and wastewater treatment for rural areas; and fills vacancies in

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¹¹² Title 12, Chapter 375.021.

¹¹³ Title 12, Chapter 375.003 (3) and 375.002. On September 1, 2002, the Texas Natural Resource Commission or Texas Natural Resource Conservation Commission was renamed the Texas Commission on Environmental Quality (TCEQ) (see <http://www.tceq.state.tx.us/name_change.html>). TCEQ provides technical assistance to local governments related to permits and environmental issues.

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¹¹⁵ Title 12, Chapter 375.375.064 (f).

¹¹⁶ Title 12, Chapter 375.064 (f).

¹¹⁷ Title 12, Chapter 391.004.

¹¹⁸ Title 12, Chapter 391.008 (c).

¹¹⁹ Title 12, Chapter 391.008 (d).

¹²⁰ Title 12, Chapter 395.

¹²¹ Title 12, Chapter 379.004 and 378.004, respectively.

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CHAPTER SEVEN

CHESTER, PENNSYLVANIA

FINDINGS

Finding 1: Chester is attempting to prevent future environmental justice situations through more effective land use planning. The city has enacted new zoning ordinances and land use performance standards designed to ensure that new development does not exacerbate existing environmental problems; has adopted a comprehensive land use plan with a positive vision of future economic development; and is courting new, less polluting, economic development consistent with the plan.

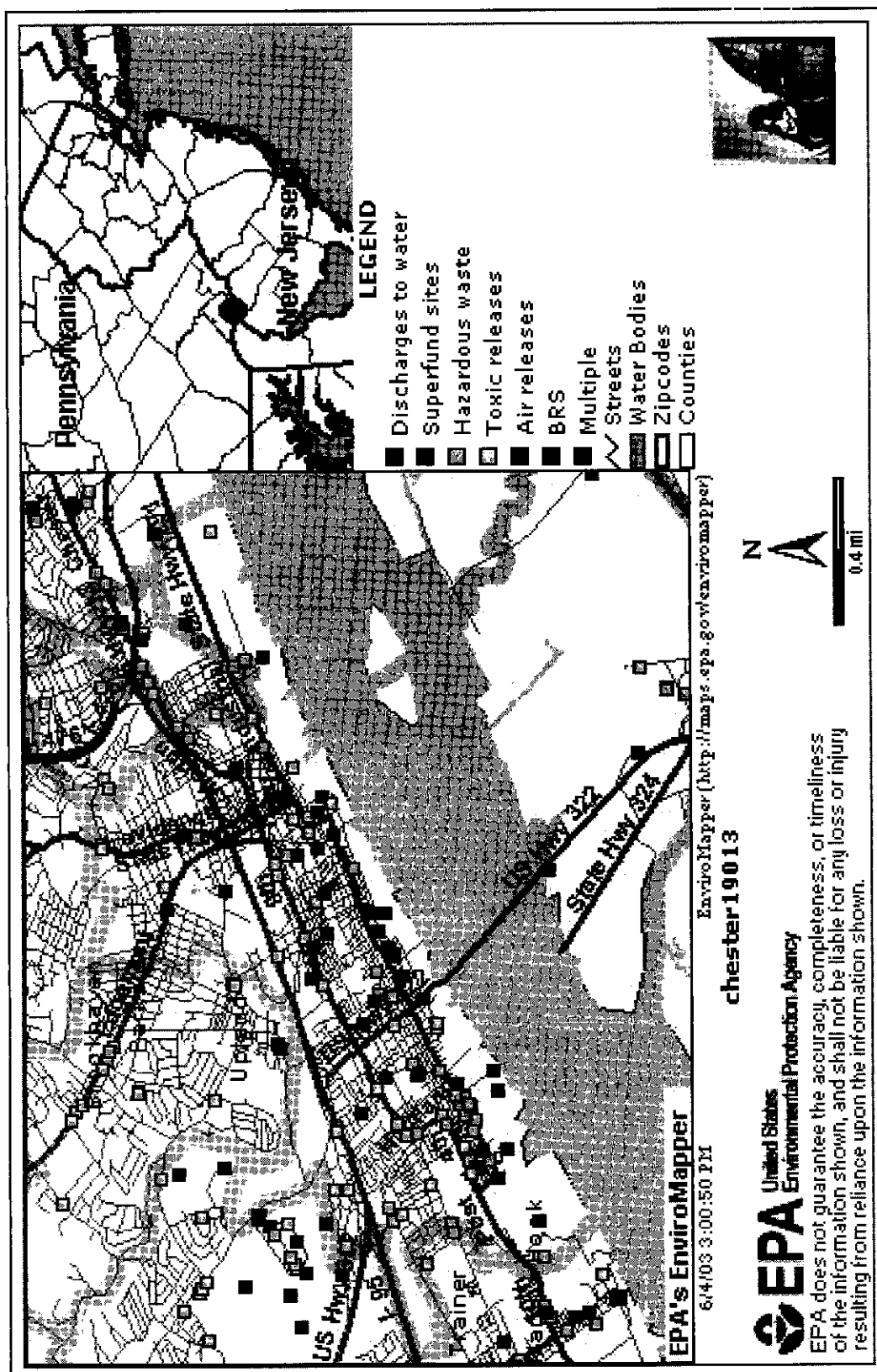
Finding 2: Chester has not yet tackled the environmental justice issues associated with existing land uses, including inhabited but depressed housing stock located in close proximity to older industrial facilities that have toxic emissions.

Finding 3: In response to community pressure, Chester has adopted city ordinances limiting development of new heavy industrial facilities and performance standards designed to minimize environmental impacts; but the city's attempt to control where certain types of facilities are sited is severely limited by lack of enforcement.

Finding 4: Chester's plan for economic development, including desired land uses, does not articulate goals for reducing pollution, achieving environmental justice, or reducing risks, except for lead exposures.

Finding 5: The 2000 amendments to Pennsylvania's Municipalities Planning Code direct state agencies to consider local land use plans or ordinances when reviewing applications for permits or funding and are potentially important mechanisms for addressing environmental justice issues.

Finding 6: Chester lacks a formal process for addressing or tracking citizen concerns about environmental or public health hazards, and has no staff specifically assigned to oversee the environmental health of the community or pollution control efforts. Lack of staffing in these areas limits Chester's ability to respond to residents' complaints about environmental justice problems.



EnviroMapper (<http://maps.epa.gov/enviromapper/>)

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INTRODUCTION

The city of Chester occupies 4.7 square miles of Delaware County in southeastern Pennsylvania. Once a booming industrial center, Chester has experienced strong shifts in its economy and its population over the past 40 years.

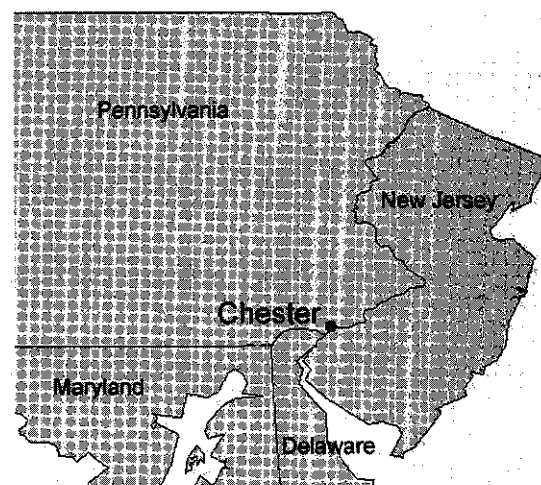
In the late 1980s and early 1990s, several waste treatment facilities were located in the city; and Chester's economy continued to falter. Over a period of ten years, the Pennsylvania Department of Environmental Protection (PADEP) approved permits for five facilities in a single census tract of Chester where the population was 73.9 percent African American and 22.8 percent white.¹ During that period, African-American residents of Chester began organizing to fight the increasing number of waste facilities being permitted in their neighborhood. They filed a racial discrimination case under Title VI of the Civil Rights Act of 1964, bringing national attention to environmental problems in Chester.

Today, Chester is a city on the rebound, with a new strategic development plan, *Vision 2000*, and over \$500 million in new investments. The city is moving forward to revive its economy and to make Chester a desirable place to live and work. When considering possible new development, city planners are aware that once a facility or land use is located in a community, it is hard to remove it. Therefore, the intent of Chester's plan is to prevent environmental justice problems in the future; and the city is trying not to exacerbate existing problems. Yet, it is unclear how Chester will be held accountable for this goal. Further, in Chester neighborhoods still close to heavy industrial uses, citizens wonder when and how they might obtain relief from pollution, noise, traffic, and odor problems.

BACKGROUND

About Chester

Chester is located on the Delaware River, across from New Jersey and near the Delaware border. It sits eight miles from Wilmington, 16 miles from Philadelphia, and within 120 miles of both New York City and Washington D.C.² Chester is accessible to multiple major transportation arteries, including I-95, I-476, and linkages to the New Jersey and Pennsylvania Turnpikes.³ The city also has three active rail lines—CSX/Conrail for freight and Amtrak and SEPTA for passengers⁴—and has access to international airports and shipping.⁵ In short, Chester is ideally located to be a major East Coast transportation hub.



History

Chester first developed as a major industrial center, producing ships, engines, tools, textiles, paper, steel, and petroleum products among others.⁶ Chester's industrial/manufacturing economy is historical; the city hosted five shipyards as early as 1886. This industrial tradition and Chester's growth continued through the twentieth century, as the city experienced a strong in-migration to support the production needs of World War I and World War II. Manufacturing became so vital to Chester that it is reflected in its city motto: "What Chester Makes Makes Chester."⁷

The city's population peaked in the 1950s at 66,039 people.⁸ With changes in production technology and strong international competition, many of Chester's major industrial facilities were too old to compete, so they closed or the companies moved elsewhere. Since then, the out-migration of industry, jobs, and residents has been constant, as major employers—like Ford Motor Company and Pennsylvania Shipbuilding—permanently closed their plants. The local economy collapsed when 32 percent of the jobs in Chester disappeared between 1950 and 1980.⁹ The loss of industry and jobs resulted in a population decline from 66,000 to 42,000 people between 1950 and 1990.¹⁰

Moreover, the ethnic composition of Chester's population has changed substantially since the 1950s. From 1960 to 1990, the city lost 69 percent of its white population, while people-of-color residents increased by 26 percent, resulting in a net population loss.¹¹ The extensive population flight depressed retail trade, so downtown stores and shops closed,¹² compounding the already poor job market in the city.¹³ Additionally, this "demographic shift is indicative of massive white flight in the face of racial blockbusting by real estate speculators—a practice banned in 1968, days after the assassination of Martin Luther King, Jr."¹⁴ There were few job opportunities and fewer people to support the city's already weakened economy.

The economic and social health of Chester has suffered over the last four decades. Based on the 2000 Census, the current population is 36,854 residents. They are 75.7 percent African-American, 18.9 percent white, and 5.4 percent Hispanic. The median family income is \$25,703, and the city has a 9.9 percent unemployment rate.¹⁵

Figure 7-1 Chester, Pennsylvania—Demographics

Size:	4.77 square miles
Location:	Delaware County, PA
Total Population:	36,854
Race and Ethnicity*:	
African-American:	75.7 percent
White:	18.9 percent
Hispanic:	5.4 percent
"some other race":	3.0 percent
Unemployment Rate:	9.9 percent
Median Household Income:	\$25,703
Individuals Below the Poverty Level:	27.2 percent
High School Graduate or Higher:	68.7 percent

*Total does not add up to 100 percent because some individuals specified more than one race.

Source: U.S. Census Bureau, Census 2000

The largest private sectors in Chester, by U.S. Census class, include: education, health and social services (33 percent);¹⁶ manufacturing (12 percent), retail trade (10 percent); and arts,

entertainment, recreation, accommodation and food services (10 percent).¹⁷ Of Chester residents over the age of 25, 31 percent did not complete high school; and 69 percent have a high school diploma or equivalent. While about 29 percent of adults over 25 have attended at least some college, only 12 percent have earned associate, bachelors, or advanced degrees.¹⁸

ENVIRONMENTAL JUSTICE CONCERNS

Siting of Waste Treatment Facilities

On the heels of the massive out-migration of residents and industries, Chester became the location for waste disposal facilities. Between 1986 and 1997, the city of Chester approved four of these facilities; and the Pennsylvania Department of Environmental Protection permitted all five of the commercial waste handling facilities in a single census tract inside the city limits (see Figure 6-2). The facilities included a waste transfer station, a waste incinerator, a concrete and construction waste recycling business, and an infectious wastes autoclave.¹⁹

The impact on Chester neighborhoods was significant. The waste treatment facilities were located as close as 100 feet from more than 200 residential properties,²⁰ and the majority of the wastes were trucked into Chester from elsewhere.²¹ Residents complained that the transportation of waste for the incinerators and sewage treatment plants subjected Chester's neighborhoods to litter, rats, odors, and prostitutes—who serviced the truck drivers.²²

Chester Residents Concerned for Quality Living

In 1993, residents of Chester organized Chester Residents Concerned for Quality Living (CRCQL, pronounced "circle") to stop waste facilities from being sited and approved in Chester. Working with the Public Interest Law Center of Philadelphia and others, CRCQL has brought lawsuits against several facilities. As a result of the lawsuits, some facilities have closed, some

Figure 6-2.

Chester Waste Treatment Facilities

From 1987 to 1996, the Pennsylvania Department of Environmental Protection granted seven waste-facility permits. Five permits were issued in Chester allowing for over two million tons per year of wastes to be processed, while only two waste permits were issued in Delaware County, allowing for a total of 1,400 tons per year. *

1987	<i>LCA Leasing</i> transfer station — permitted by PADEP, sited by Chester
1988	<i>Westinghouse</i> incinerator — permitted by PADEP, sited by Chester
1989	<i>Abbonizio Recycling</i> — permitted by PADEP, sited by Chester
1993	<i>Thermal Pure Systems</i> infectious wastes autoclave — permitted by PADEP, sited by Chester
1995	<i>Soil Remediation Systems</i> — permitted by PADEP (permit expired in 1996)
	<i>Cherokee Inc.</i> — neither permitted nor sited

* Jerome Balter, "The EPA Needs a Workable Environmental Justice Protocol." *Tulane Environmental Law Journal*, (Vol. 12, 357, Spring 1999).

decided not to locate in the area, and some had their permits denied. CRCQL and its allies successfully promoted a city ordinance that does not allow a new industrial facility to produce a net increase in pollution. They also successfully pressured EPA and PADEP to conduct a health risk assessment. Several key actions are summarized below.

- Thermal Pure Case. In 1993, CRCQL and the Public Interest Law Center of Philadelphia took the medical autoclave company, Thermal Pure Systems, to court. They claimed the facility was in violation of the state law that requires the route for transporting waste between the waste generator and the disinfecting facility to be as short as possible and to present the least amount of risk.²³ The local court found in favor of Chester residents, but the Pennsylvania Supreme Court overturned that decision on appeal, allowing the facility to continue operating.²⁴ Following a series of organizational and physical problems at the facility,²⁵ Thermal Pure closed in 1996.²⁶
- No Net Increase in Pollution Ordinance. In 1994, CRCQL and the Public Interest Law Center of Philadelphia drafted a proposed ordinance requiring any new industrial facility that intends to operate in one of Chester's M-3 Industrial Districts to cause no net increase in pollution. The City Council approved the ordinance, and the municipal planning and zoning code was amended on June 23, 1994. It reads as follows:

Authorization as special exception shall require approval by the Zoning Hearing Board in strict compliance with Section 1327.035(a)(2) and after applicant presents convincing evidence to the Board that the construction or operation of a special exception facility covered by this subsection *will not produce a net increase in environmental pollution* as compared to environmental pollution at the time construction of the facility commences [emphasis added].²⁷

- Health Risk Assessment. In the same year, CRCQL pressured EPA's Region III and PADEP²⁸ to initiate a 180-day risk study in Chester City and the nearby borough of Marcus Hook. The June 1995 report found that "both cancer and non-cancer risks from the pollution sources at locations in the city of Chester exceed levels which EPA believes are acceptable."²⁹ Results of this study are described below in more detail in the section on Health Concerns.
- Soil Remediation Services Case. In 1996, CRCQL and the Public Interest Law Center of Philadelphia sued PADEP opposing a permit for Soil Remediation Services (SRS) to operate a soil combustion facility in Chester.³⁰ The permit was issued on June 28, 1995, only one month after EPA's risk study found that both cancer and non-cancer risks for Chester residents exceeded acceptable levels.³¹

The SRS suit alleged violations of Title VI of the Civil Rights Act of 1964. One of the main allegations was that "the total permit waste tonnage capacity of facilities in census tracts where African-Americans comprise more than 50 percent of the population is 2.3 times the total permit tonnage capacity of waste facilities in census tracts where white persons comprise more than 50 percent of the population." The suit also alleged that PADEP did not

consider the effects of this disparity when issuing the permit to SRS.³² The district court found in favor of the defendants.³³ On appeal, the 3rd Circuit Court of Appeals ruled in favor of the Chester residents.³⁴ PADEP petitioned for a *writ certiorari*, and the U.S. Supreme Court agreed to hear the case. At this point, SRS decided to abandon the project and withdrew its permit application. In response, the Supreme Court dismissed the case as moot and vacated the 3rd Circuit's decision.³⁵

- Delaware County Wastewater Treatment Plant and Sludge Incinerator. In 1997, Chester residents alleged that the Delaware County Regional Water Quality Control Authority's wastewater treatment and sludge incineration plant was not meeting state air quality regulations and violated the state implementation plan. The case was settled by consent decree, resulting in construction and operational changes at the plant, a \$120,000 penalty, and an additional \$200,000 supplemental amount earmarked for funding a program to prevent lead poisoning.³⁶
- Kimberly Clark. In 1999, after completing a three-day test burn, Kimberly Clark applied to PADEP for a six-month permit to test the combustion of used tires as fuel at its plant in Chester.³⁷ Community residents opposed the test because they worried about increased pollution. This concern stemmed, in part, from the knowledge that "from 1991 to 1996, total production-related waste increased at the [Kimberly Clark] facility by 297 percent. The paper plant was the second largest emitter of environmental releases in 1996 and the third largest in 1995."³⁸ In 2002, the permit for a six-month test was finally denied, in part because of Kimberly Clark's refusal to install, as PADEP had insisted, a pollution control device that would limit any possible increase in toxic emissions.³⁹

After these important successes, CRCQL dissolved, in part because its leaders were exhausted and its resources depleted.⁴⁰ Currently, local government officials point to a few small groups that are concerned about community issues; but they are not activist organizations.⁴¹

Health Concerns

Environmental Risk Study

The health concerns of the Chester community have changed little since the environmental justice fights of the 1990s. In June 1995, EPA Region III's risk study documented what many in the community had alleged; their health was at risk due to so much exposure to environmental hazards.

EPA's 1995 Environmental Risk Study contained five major conclusions that linked increased health risks with environmental exposures in Chester:

- Blood lead levels in the children of Chester are unacceptably high, with over 60 percent of the children's blood samples above the Centers for Disease Control and Prevention's recommended maximum level of ten micrograms per deciliter.

- Both cancer and non-cancer risks (e.g., kidney disease, liver disease, and respiratory problems) from pollution sources in Chester exceed levels that EPA believes are acceptable.
- Air emissions from facilities in and around Chester constitute a large component of the cancer and non-cancer risk to the city's citizens.
- The health risks from eating contaminated fish from streams in Chester and from the Delaware River are unacceptably high.
- Drinking water quality throughout Chester is typical of supplies in other cities throughout the country.⁴²

Since completion of EPA's study, no further risk assessments have been conducted in Chester. The city's Health Department is currently undertaking a health profile of the city, fashioned after the National Health and Nutrition Examination Survey (NHANES).⁴³ The study will be done entirely through interviews and without assessments or screenings.⁴⁴ The Health Department expected to begin the survey in November of 2002,⁴⁵ but the survey is not designed to determine the health impacts of industrial pollution on Chester residents.⁴⁶

Implementation of Risk Study Recommendations

EPA's 1995 risk study included a series of recommended actions, directed at PADEP, for reducing health risks in Chester. Implementation of these recommendations has produced mixed results:

- Recommendation: "Sources of air emissions which impact the areas of the city with unacceptably high risk should be targeted for compliance inspections and any necessary enforcement action."⁴⁷

Response: All major air pollution sources in Chester have Continuous Emissions Monitors, which measure and record real-time pollution emissions from facilities. PADEP receives the data quarterly and reviews it for permit violations. Facilities are assessed fines almost automatically when violations are found. Currently, PADEP reports that facilities within Chester are nearly in 100 percent compliance with their permit limits.⁴⁸

PADEP, with support from EPA, has been conducting an air monitoring project in Chester. The project placed four air monitors in and around Chester to measure ambient air quality and to determine relative exposure risks among local area populations—in Chester, Marcus Hook, and Swarthmore. Over the last six years, the study has shown that air quality is improving, and that relative exposure risks among the local area populations studied are roughly equivalent.⁴⁹ The study is also finding that the majority of air pollution exposures are from mobile sources, not from stationary facilities.⁵⁰

- Recommendation: "A voluntary emission reduction program should be instituted to obtain additional emissions reductions from facilities which provide the most emissions in the areas of highest risk."⁵¹

Response: A voluntary emissions reduction program has not been instituted.⁵²

- Recommendation: "The lead paint education and abatement program in the city of Chester should be aggressively enhanced."⁵³

Response: In 1997, PADEP, EPA, CRCQL, and the DELCORA water treatment and sludge incineration plant reached a settlement agreement over alleged violations at the DELCORA facility. As part of the settlement, DELCORA provided \$200,000 for a lead poisoning prevention program. The parties agreed to appoint a trustee who oversees the allocation of the funds. The program successfully cleaned up some properties, targeting new mothers and babies who live in rental housing with known lead paint. Some properties were thoroughly cleaned and the lead dust removed but, overall, the program did not prove to be very successful.⁵⁴

Health Study of Minorities in Pennsylvania

In 2002, the Pennsylvania Department of Health completed its *Special Report on The Health Status of Minorities in Pennsylvania*. It analyzed at the health status of "racial, cultural, and linguistic minorities" in the state, based on the principles and objectives from the U.S. Department of Health and Human Services' *Healthy People 2010* initiative.⁵⁵

The Environmental Health section of the report details how minority communities in Pennsylvania are disproportionately exposed to environmental hazards. The report specifically highlights Chester:

The City of Chester...has: the fourth largest garbage-burning incinerator in the nation, burning wastes from New York, New Jersey, Maryland, and Delaware as well as from all over Pennsylvania...and a sewage treatment facility for 90 percent of Delaware County sewage waste and highly toxic industrial sludge from local industries. Sixty-five percent of the city residents are African-American and the poverty rate is 25 percent, more than three times the overall rate in Delaware County.⁵⁶

Looking at Pennsylvania as a whole, the report found minority communities carry more environmental burdens:

- "Communities of minority population are at higher risk to be exposed to environmental hazards."⁵⁷
- "A higher percentage of minority populations are exposed to poor indoor air quality."⁵⁸

- "Death rates from asthma are higher in the minority population; higher percentages of the minority population experience asthma."⁵⁹
- "A higher percentage of minority children are at risk of having a high blood lead level; the cultural background of recent immigrants could play a role in lead exposure."⁶⁰

Other Issues in Chester

Housing

Housing is a crucial issue facing Chester. Many of the city's social service dollars are being directed toward developing new and better housing options. The city is endeavoring to demolish and replace much of its old, poor-quality housing stock and is even assembling lots for developers to build new homes. To keep these new housing options affordable and to move moderate and low-income residents from rental properties to home ownership, the city offers residents five-year deferred loans for down payments and closing costs. If residents stay in their homes for five years, the loans dissolve. Potential homeowners in this program must attend homebuyer classes sponsored by a local financial institution.⁶¹

To improve existing housing stock, the city has established an early warning system. This hotline enables residents to call and request the city to investigate serious deterioration or dangerous conditions or to assist residents (*e.g.*, elderly or disabled citizens) who are unable to make major repairs.⁶²

However, Chester is not relocating residents or buying out any distressed housing.⁶³ Consequently, the city has not moved people out of the housing that was the focus of environmental justice concerns, and many people still live very close to industrial facilities.

Economic Development

The city's economic development staff consider Chester's greatest asset to be its ideal location at the center of major transportation routes, with proximity to three states and access to air, land, and water transportation. The city is also capitalizing on the growing national appreciation for waterfront property by converting its industrial waterfront to a mix of commercial and recreational uses.⁶⁴ Chester has applied and has received support from several state and federal agencies for its community and economic development programs.⁶⁵ The volume of funding they have received indicates that the city has an articulate and well-organized plan, because many state and federal grant programs require applicants to demonstrate how work to be undertaken with grant funding fits into larger, comprehensive programs.

To attract development, Chester uses selective tax abatements of up to 100 percent for 12 years on land designated for high impact development, but Chester has not applied for federal brownfield funds to clean up exiting contaminated properties for their redevelopment and reuse. However, some private investors are working with the state voluntary cleanup program—the Pennsylvania Land Recycling Program—that promotes private cleanups of contaminated

property.⁶⁶ The city also has not used its authority under state law to impose development fees for transportation improvements.⁶⁷

Chester's efforts to resuscitate its economy appear to be working. Public and private investments in Chester from 1996 to 2002 have exceeded \$500 million, and several developers are now working with the city on preliminary proposals for new projects. The biggest project involves a former power plant, which a private developer is converting to office and commercial space. The power plant and related redevelopment (infrastructure) alone represent a \$50 million investment in Chester's future.⁶⁸ The city's efforts to convert industrial properties into commercial and other less intense uses should result in reduced pollution exposures for Chester residents.

Although the city encourages new businesses to hire staff locally, it does not require local hiring; and Chester residents may not have the appropriate work skills and knowledge to fill all of the incoming jobs. The city does not conduct job training, but provides funding for and works with local nonprofit organizations that do, such as the Chester Microenterprise Partnership.⁶⁹

PLANNING, ZONING, AND GOVERNANCE IN CHESTER

The following sections describe the relationships among municipal, county, and state planning and zoning requirements in Pennsylvania, and how these requirements relate to the environmental permitting authorities exercised by PADEP.

Pennsylvania Planning and Zoning

Planning in Pennsylvania

Pennsylvania does not have a state land use plan, although Executive Order 1999-1 sets forth requirements for state agencies to:

- Conduct soundly planned growth;
- Promote development in previously developed or locally designated growth areas;
- Understand how land use planning impacts environmental, economic, and social factors;
- Participate in regional cooperation;
- Preserve farmland and open space;
- Preserve property rights and the economic and social vitality of Pennsylvania's communities; and
- Maintain and improve infrastructure consistent with sound land use.⁷⁰

Executive Order 1999-1 also makes the Governor's Center for Local Government Services in the Pennsylvania Department of Community and Economic Development responsible for land use planning assistance. These land use planning programs promote the state's Growing Smarter Initiative and provide resources for communities. There are three primary programs to help communities with planning:⁷¹

- Land Use Planning and Technical Assistance Program;⁷²
- Shared Municipal Services Program, for joint projects between and among municipalities;⁷³ and
- Community Development Block Grants.⁷⁴

Municipalities are eligible for state funding from the Governor's Center for Local Government Services. However, the state makes a specific effort to work with the 67 counties, and encourages multi-municipality collaboration. If a municipality comes to the state for assistance, state officials generally ask and encourage the entity to work with its county.

Delaware County has taken advantage of state programs for funding the county's comprehensive plan. So has Chester, which recently received two Growing Greener grants.⁷⁵ One state official suggested that Chester might benefit from seeking funding for developing programs with other nearby municipalities, especially municipalities facing too much population growth, to cooperate on directing some of that growth into Chester.⁷⁶

Pennsylvania laws delegate state planning authority to local governments through the Municipalities Planning Code (MPC).⁷⁷ Adopted in 1968, the MPC has been amended several times, with significant changes in 2000. The MPC requires Pennsylvania's counties to develop comprehensive plans,⁷⁸ but local plans are optional.⁷⁹ If a municipality does develop a plan, it must be consistent with both the MPC and the county plan.⁸⁰ State approval is not required for any plans, but the law provides an opportunity for review and comment among municipalities and counties in order to achieve general consistency among overlapping plans.⁸¹

Current MPC provisions require all county or local comprehensive plans to contain (although they are not limited to) the following elements:

- Objectives for future development;
- Land use;
- Housing needs;
- Transportation;
- Community facilities and utilities;
- Protection of natural and historic resources;

- Water supply;
- Consistency with county and contiguous municipality plans;
- Short and long range implementation strategies; and
- A statement of relationships among various plan components, such as environmental, economic development and social consequences on the municipality.⁸²

Plans may also include an energy conservation element⁸³ and may identify areas for new growth and development.⁸⁴ See Appendix H for more details on Pennsylvania's state planning requirements.

Implementation of the MPC is left primarily to local governments. The state does not review county or local comprehensive plans, nor does it monitor compliance with the MPC. The Governor's Center for Local Services does, however, provide incentives in the form of grants, technical assistance, and education and training to encourage local governments to undertake comprehensive planning.⁸⁵ The Department of Community and Economic Development also provides grants and financial assistance for municipalities to support community development, community services, housing assistance, infrastructure, municipal services, and neighborhood improvements.⁸⁶

The MPC requires that the Governor's Center for Local Government Services prepare an informational Land Use and Growth Management Report every five years.⁸⁷ The first report is due in 2005. It must "contain information, data and conclusions regarding growth and development patterns in this commonwealth [Pennsylvania] and...will offer recommendations to commonwealth agencies for coordination of executive action, regulation and programs."⁸⁸

The Chester Economic Development Authority (CEAC) has taken advantage of many public investment programs, including programs from both federal⁸⁹ and state⁹⁰ agencies for improvements in transportation, housing, economic development, and infrastructure.⁹¹ *Chester Vision 2000* further outlines many of the federal, state, and city programs that Chester may potentially tap for funding.⁹²

In June 2000, then-Governor Tom Ridge signed Pennsylvania's Growing Smarter Initiative into law.⁹³ This initiative, developed through a series of land use forums held across the state and backed by a \$3.6 million budget from the Governor's Office, was intended to support and empower local government planning while respecting private property rights, as well as to update the MPC.⁹⁴

The Growing Smarter amendments to the MPC are potentially important tools for Chester and other Pennsylvania localities to use in addressing environmental justice concerns. Acts 67 and 69 direct that "Commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities."⁹⁵ The actions taken by PADEP to comply with these amendments have environmental justice implications, as discussed below.

State Zoning

Pennsylvania law authorizes municipalities to adopt zoning ordinances that implement comprehensive plans;⁹⁶ protect public health, safety, and the environment;⁹⁷ address socioeconomic concerns; and provide for affordable housing and transportation for low to moderate income persons.⁹⁸ Zoning ordinances must reflect the community's policy goals and consider the character of the municipality, the needs of citizens, and the special nature of particular parts of the community.⁹⁹

The state does not review local zoning laws or monitor compliance with the state code, except through the five-year Land Use and Growth Management Report. But, as with planning, state statutes contemplate some coordination of planning and zoning among local entities. For example, a county must hold a mediation session with municipalities that believe the county's ordinances will have negative local impacts.

State law does not specifically require public participation in the development of local plans or zoning ordinances, other than traditional due process public notice and hearing requirements prior to their adoption. However, state law limits the ability of municipalities to collect development fees on new development. A municipality may enact development fees, but *solely* for transportation purposes associated with new development [emphasis added].¹⁰⁰

Delaware County's Planning and Zoning

County Planning

Pennsylvania counties are granted planning functions in the absence of municipal authority. Counties can adopt zoning or subdivision regulations for the entire county if there are no municipal ordinances, or for as much of the land within the county that is unregulated.¹⁰¹ Each county has an appointed planning commission,¹⁰² and municipalities wishing to engage in certain planning activities are required to submit their proposed actions to the county planning commission for review.¹⁰³

Although the MPC requires counties to develop a comprehensive plan,¹⁰⁴ municipalities are not required to develop and adopt their own plans.¹⁰⁵ However, if a municipality develops its own comprehensive plan, it must do so in accordance with the MPC, and its plan must be generally consistent with the county comprehensive plan.¹⁰⁶ Delaware County currently operates under a land use plan and is actively developing a comprehensive plan.¹⁰⁷ Chester has a comprehensive plan and is working with Delaware County to revise its plan and make it final.¹⁰⁸

State law gives the governing body of a county the power to adopt and amend the county comprehensive plan, as a whole or in parts.¹⁰⁹ In reviewing the proposed comprehensive plan, county officials must consider the comments of municipalities and school districts within the county, as well as comments from contiguous school districts, municipalities, and counties. They must also consider comments from the required public meeting and recommendations of the county planning agency.¹¹⁰

Municipal comprehensive plans must be generally consistent with the adopted county comprehensive plan.¹¹¹ A municipality may amend its comprehensive plan at any time, provided that the local plan remains generally consistent with the county plan and compatible with the comprehensive plans of abutting municipalities.¹¹² However, final land use authority resides with the municipality and, although municipal plans should be "generally consistent" with the county plan, they are not required to be.¹¹³

In accordance with MPC Section 10302 (a.1), counties must consider amendments to their comprehensive plans proposed by municipalities that are considering adoption or revision of their municipal comprehensive plans, in order to achieve general consistency between the respective plans.¹¹⁴ When two or more contiguous municipalities request amendments to a county comprehensive plan, for purposes of achieving general consistency between the municipal plans or a multi-municipal plan and the county plan, the county must accept the amendments unless it can establish good cause for refusal to do so.¹¹⁵

County Zoning

The power of a county to enact, amend, or repeal zoning ordinances is limited to land in municipalities that is located wholly or partly within the county and that has no local zoning ordinance in effect at the time the county zoning is introduced. The county's power ends when a municipal zoning ordinance is adopted. When a municipality adopts a zoning ordinance, the county zoning ordinance is repealed.¹¹⁶ Delaware County does not have any county zoning ordinances, but the city of Chester does.¹¹⁷

Local Governance in Chester

The Chester City Council is elected at large and is composed of a Mayor and four Council members.¹¹⁸ All members serve four-year terms, during which each Council member serves as a department head for one of the five municipal departments: Public Safety, Parks and Public Property, Streets and Public Improvements, Accounts and Finance, and Public Affairs (Mayor's Office).¹¹⁹

Chester is classified as a Third Class City. On April 20, 1980, the residents approved Chester as a Home Rule Charter Community. As a Pennsylvania home rule community, the city can act anywhere except where state law limits them, whereas municipalities without home rule can only act where authorized by state law.¹²⁰ Therefore, the Chester City Council is "given all the legislative power to create ordinances, rules, and regulations so the city can provide for the health, safety, and well-being of its citizens."¹²¹

Chester's Planning and Zoning

Planning Commission. The Planning Commission has five members who are appointed by the City Council and serve four-year terms.¹²² Members of the Commission cannot hold any other office in the municipality, and the Commission elects its own chairman and vice-chairman.¹²³

Zoning Hearing Board. Chester's Zoning Hearing Board has three members who are appointed by the City Council; each member serves a five-year staggered term.¹²⁴ Members of the Board cannot hold any other office in the municipality, and the board elects its own officers from its membership.¹²⁵

Environmental Advisory Council. Chester's Environmental Advisory Council (CEAC) is an advisory group authorized by PADEP. Members of the seven-member Council represent a range of interests and skills—from technical experts to local citizens. They are selected by the City Council and approved by PADEP. CEAC elects its own officers, and any vacant positions are filled by PADEP. CEAC also receives and investigates citizen complaints about industries in Chester. CEAC offers advice to the City Council, but has no authority to implement its own recommendations.¹²⁶

Bureau of Health. Chester's Bureau of Health reviews and comments on pending PADEP permits, concurrently with review by the City Council and PADEP. Although the Bureau can comment on pending permits, it has no regulatory or enforcement abilities. The Bureau has over 30 full-time staff, including two medical doctors, who oversee four local health programs: childhood lead prevention, injury and violence protection, sexual abstinence education, and dog/animal control. The Bureau offers no clinical services, but has worked hard to develop preventative health programs as well to increase citizens' health literacy.¹²⁷ The Bureau does not track citizens' health complaints, but is currently working on a citywide survey to profile the state of health of the city.

City Plan—VISION 2000

On March 14, 1994, the Chester City Council adopted its *Vision 2000: Comprehensive Plan and Economic Development Strategy*. The Chester Planning Commission, the Delaware County Planning Commission, and the public (by means of one public meeting and one public hearing) reviewed this comprehensive plan, which reaffirmed that poor land use was a problem for Chester:

Chester City presents a mixture of dysfunctional land uses in many areas of the city. The major land uses including residential, commercial, industrial, institutional, and recreation are not working together as they should...in some areas, residential is intermingled with industry and in these cases we often find conflict and deterioration...Other land uses that have created conflict are the numerous auto repairs shops located in residential areas where personal service shops, laundromats or food stores would be more appropriate.¹²⁸

Waterfront Overlay District. Also in 1994, Chester launched its waterfront overlay district.¹²⁹ The waterfront overlay district, a "floating zone," was created to move waterfront land use away from heavy industry towards mixed use. City planners envision the waterfront will have mixed uses, including offices, retail buildings, recreation, high density residential, and other uses. To accomplish this change, the floating zone specifies conditional uses adopted by the City Council. The zone allows existing property owners to down-zone their properties from heavy industrial to a less intensive use, in exchange for a conditional zoning approval. This win-win situation gives

property owners the chance to have their properties rezoned quickly so they can reinvest and reuse them, while the city is able to make zoning changes on existing properties without the complication of takings allegations or having to purchase properties in order to redevelop them.¹³⁰

Other Implementation. Since *Vision 2000* was adopted, the city has moved to make implementation of the plan a reality. City planners began by updating Chester's administrative code. No changes will be made in the city zoning patterns—with the exception of the waterfront overlay—until the code has been updated and the text has been revised. City and county officials are now reviewing the new code, and once it has been approved, Chester will adopt it as a city ordinance.¹³¹

ENVIRONMENTAL PERMITTING

Chester's Requirements for Industrial Facilities

Chester does not have authority to issue pollution control permits; only PADEP can do so. However, permits for building new facilities must be obtained from the city. Both Chester's Planning Commission and Zoning Hearing Board must approve any construction permits and site plans. Either of these bodies may require further action before making a decision.¹³²

In 1994, with the support of the CRCQL and the Public Interest Law Center of Philadelphia, the City Council adopted a zoning ordinance for heavy industry, called M-3 Industrial Districts.¹³³ The M-3 Industrial District ordinance makes it difficult for polluting industries to open additional facilities in the city. It requires such facilities to obtain a special zoning exception, which will only be granted when the:

“applicant presents convincing evidence to the Board that the construction or operation of a special exception facility...will not produce a net increase in environmental pollution as compared to environmental pollution at the time construction of the facility commences.”¹³⁴

If the applicant does provide the required convincing evidence, the applicant must then also meet the following requirements before opening a new facility in Chester:

- The new facility must be consistent with the comprehensive plan and comply with subdivision, Board of Health, building codes, performance standards, and any other applicable city regulations; and the applicant must also demonstrate that neither the facility nor the traffic it generates will adversely impact adjoining properties.¹³⁵
- As a part of the M-3 special exception, the Zoning Hearing Board has authority to stipulate the volume of hazardous materials used or to require special handling at waste facilities; to approve the design, layout and/or operation of proposed facilities; and to impose additional “reasonable conditions and safeguards” for protecting health, safety and welfare in the community.¹³⁶

- Buffers and landscaping must be provided in M-3 zones between unsightly uses and adjacent properties.¹³⁷
- Finally, the new facility may not locate within 900 feet of commercial, residential, institutional, or recreational areas or within one mile of a facility with the same function or characteristics.¹³⁸

Presumably, this ordinance will now prevent similar facilities from locating close to each other, as happened with Chester's waste processing facilities in the early 1990s.

In 1998, Chester also enacted a Performance Standards ordinance under authority of the MPC. The performance standards apply to all lands within the city for activities that will potentially impact public health, comfort, convenience, and welfare. These minimum standards apply to all uses, unless the activity is subject to more stringent PADEP or EPA standards:

- **Air quality:** There can be "no emission of smoke, ash, dust, fumes, vapors, gases or other matter [that is] toxic [or] noxious to the air which violates the rules set forth by the Environmental Protection Agency and the Pennsylvania Air Pollution Control Laws."¹³⁹
- **Liquid and solid waste:** "No discharge [may occur] at any public or private sewerage system, or watercourses, or into the ground of any materials in such a way or such a nature as will contaminate or otherwise cause the emission of hazardous materials."¹⁴⁰
- **Odors:** "No uses shall emit odorous gases or other odorous matter in such quantities to be offensive at any point on or beyond its lot lines."¹⁴¹

There are additional standards for fire and explosive hazards, glare and heat, noise, vibration, radioactivity or electrical disturbances, and public health and safety. An engineer registered in Pennsylvania must certify in the application that a proposed new industrial use can meet these performance standards; and the city engineer must review the engineer's certification.¹⁴²

These performance standards only apply to existing facilities if they expand, rehabilitate, or redevelop. For facilities already operating, there is no retroactive enforcement of the standards, although the zoning officer, city engineer, building official, health officer or fire commissioner may investigate complaints.¹⁴³ This inability to enforce is further compounded by the city's lack of staff.¹⁴⁴

Although Chester has no authority to control permits for pollution, the city now plays an active role in reviewing permits that are received by the PADEP, as provided for in Acts 67 and 68 and in the 2000 amendments to the MPC. The city's role in reviewing permits is discussed below.

State Environmental Permitting

PADEP receives funding from EPA to operate Pennsylvania's waste programs, and has authority to issue or deny applications for permits to operate waste processing facilities¹⁴⁵ pursuant to the federal Resource Conservation and Recovery Act.¹⁴⁶ PADEP applies federal regulations to

determine whether an applicant meets the requirements for a specific permit. PADEP is also responsible for issuing air, water, and other environmental permits throughout Pennsylvania.

Under recently enacted Pennsylvania law, PADEP “shall consider and *may rely upon* comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities [emphasis added].”¹⁴⁷ Thus, PADEP clearly is required to consider local comprehensive plans and zoning ordinances in its permitting process. But, under the law, PADEP can only base a permit decision on local land use information in a municipality where:

- The local government has adopted a joint zoning ordinance or has adopted zoning ordinances as part of the implementation of a cooperative agreement (Section 1105 of the MPC); or
- Both a county and a municipal or multi-municipal plan exist, the county or municipality has enacted zoning ordinances; and all three of these elements are generally consistent with each other.

If a county or municipality does not meet these requirements, PADEP cannot rely upon land use plans or zoning information nor on local governments’ comments received on a land use conflict when making a permit decision.¹⁴⁸

Effective June 8, 2002, PADEP officially issued its “Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure.”¹⁴⁹ The policy outlines PADEP’s position on how the undefined “may rely upon” language will be interpreted by the agency:

State agencies under the Governor’s jurisdiction, including DEP, interpret the “may rely upon” statutory language to grant DEP discretion as to how to rely upon planning and zoning in its permit decision making. When DEP’s authority exists to rely upon planning and zoning information and conflicts have been identified, DEP has chosen to rely upon this information in several ways. DEP can deny an application, approve the application or put a special condition on a permit.¹⁵⁰

Therefore, although PADEP is required to consider local comprehensive plans and zoning ordinances in relation to a pending permit application, PADEP has discretionary authority as to how—and if—the agency will use local planning information in its final decisions on permit applications.

Depending on how much PADEP chooses to rely upon local comprehensive plans and zoning ordinances, the MPC amendments could be used to support the goals of environmental justice communities. For example, the amendments may allow PADEP to rely on Chester’s 1994 ordinance, which requires new industrial facilities to prove that their operations would not cause a net increase in pollution, when the agency is considering permit applications in Chester.¹⁵¹

Another element of the Growing Smarter amendments is the requirement that state agencies reach out to county and municipal planners for comment on pending state permits regarding local land uses. The amendments changed the way the state communicates information regarding permit applications to localities. For PADEP, the revised permit process is as follows:

1. A proposed facility submits a completed permit application to PADEP for review.
2. PADEP sends the land use portion of the permit to the county and local governments for their review for potential conflicts with zoning ordinances or comprehensive plans.
3. The county and local governments submit their comments within 30 days to PADEP.
4. PADEP considers the local comments and may then deny the application, approve it, or attach special conditions to the permit.¹⁵²
5. If the permit is approved, PADEP then completes the public notice and comment period as required by statute.

This new process offers the opportunity for both PADEP and municipalities to be better informed of each other's actions.

State Environmental Justice Efforts

In the spring of 1999, PADEP formed the Environmental Justice Work Group, with members representing a range of interests. In June 2001, the Work Group recommended to PADEP that the agency "lead in the coordination of local, state and federal governmental agencies that can play a role in improving the conditions of environmentally burdened minority and low-income communities," and "act swiftly and decisively to make the improvement of conditions in environmentally burdened minority and low-income communities one of the Commonwealth's top priorities."¹⁵³ The report focused on strategies to address environmental justice in permitting, but there are also opportunities for PADEP to play a leadership role in the context of local land use planning.¹⁵⁴

The Work Group specifically recommended that PADEP:

- Take actions to reduce or eliminate the existing environmental burdens in minority and low-income communities;
- Ensure that minority and low-income communities have opportunities to become full and active participants in permit review processes;
- Enforce regulations and statutes and apply internal guidance and policies in minority and low-income communities to increase monitoring in these communities; and

- Provide organizational structures that foster a productive exchange of information with minority and low-income communities and ensure a proactive approach to environmental justice issues.¹⁵⁵

Office of Environmental Advocacy for the Southeast Region

As a result of these recommendations, PADEP's Office of Environmental Advocacy for the Southeast Region was established in 2001—mostly for Chester's benefit. The Office works to coordinate state, local, and federal resources for protecting the environment and addressing environmental justice issues. The Office has identified key cities and neighborhoods in Southeast Pennsylvania that may have environmental justice problems, and becomes involved in the permitting process any time an application is submitted for those areas. The Office has a corridor inspector who works with the City Council and Chester industries. The inspector reports on any unusual emissions and other concerns. The inspector meets with the City Council and CEAC at least once each quarter, or more frequently, depending on current issues and concerns.¹⁵⁶

In addition, the Office requires that facilities make extra efforts to notify the public when they apply for permits in low-income, minority communities where there is a risk of over-exposure to industrial pollution.¹⁵⁷ This means that, in addition to publishing the usual public notices in newspapers, applicants must distribute fliers in the neighborhood and also post notices at libraries, in community centers, and in City Hall. The Office ensures that the expanded notice process happens, provides information, and helps facilitate discussions between community residents and businesses. For example, the Office recently helped facilitate information sessions regarding a facility in Chester that has applied for a permit to expand and modify some of its industrial processes.¹⁵⁸

ANALYSIS AND RECOMMENDATIONS

Leadership and Accountability

The city of Chester has shown leadership by pursuing policies that will help to prevent new environmental justice problems, but it is still grappling with how to address the effects of poor land use decisions in the past. Chester has adopted a comprehensive plan and development strategy, conditions for the M-3 industrial zoning district that reduce pollution, performance standards for all new facilities, and a waterfront overlay district that encourages the voluntary down-zoning of existing heavy industrial properties. Chester is moving forward with its future vision, while being careful not to create future environmental justice problems or to exacerbate existing problems.

Nevertheless, Chester's attempts not to repeat history do not address the issues associated with some existing land uses, including inhabited but depressed housing stock still located close to industrial facilities. While Chester officials believe the city's environmental justice problems are in the past,¹⁵⁹ because a sizeable number of residents still regard environmental justice issues as unresolved because many of them continue to live near heavy industrial facilities. Although some citizens want houses in these locations purchased at fair market value and the residents

relocated, the city has no intention to do this.¹⁶⁰ Thus, there is a fundamental conflict between residents who are calling on the city to be more active in addressing existing hazards,¹⁶¹ and city officials who are firmly focused on future development and investment.

Moreover, there are no accountability mechanisms to ensure that the city's comprehensive plan and zoning ordinances will improve growth and reduce pollution—and thereby reduce environmental hazards for Chester's low-income and people-of-color community. Currently, Chester has no city staff dedicated to environmental protection, monitoring, or enforcement.¹⁶² The 1994 city ordinance requiring no net increase in pollution from proposed new heavy industrial facilities is unique, but it has been ineffective due to the lack of enforcement.¹⁶³ While the city's new environmental performance standards could have a positive effect, they too remain unenforced, largely due to staff shortages.¹⁶⁴

A lack of accountability and oversight hampers Pennsylvania's attempts to institute comprehensive and consistent land use planning. Under state law, counties are required to complete comprehensive plans; but plans for municipalities are optional. If a municipality chooses to prepare a plan, however, state law requires it to be consistent with the county plan. Yet, municipalities are not required to adopt county plans in part or whole, and counties have no mechanism to ensure that municipalities prepare plans that are consistent with county plans. Pennsylvania's overarching difficulty is the lack of a mechanism to ensure that local and county plans agree. This lack of clear accountability allows county and municipal plans to conflict and highlights a substantial flaw in Pennsylvania's planning laws. Without meaningful ways to resolve conflicts when municipal plans are inconsistent with county plans, or vice-versa, Pennsylvania will continue to lack consistency in land use planning.

Permitting and Other Authorities

Chester's efforts to update and re-write its zoning code, coupled with a new, detailed comprehensive plan, have already produced more investment and redevelopment. The City Council's adoption of limits on pollution for new heavy industry, as well as detailed performance standards for new facilities, are significant steps toward building a cleaner and healthier future for Chester.

The Growing Smarter initiative further institutionalizes a new relationship between PADEP and the state's county and municipal planning and zoning entities. By requiring PADEP to consider local zoning ordinances and comprehensive plans, the state has created a new avenue for strengthening communication and building awareness of county and municipal land use plans in the permitting process. The strongest element of this initiative is that PADEP now has the authority to deny a permit application on grounds that the proposed facility conflicts with local land use requirements.

Setting Priorities and Reducing Risk

Chester has articulated a vision for its economic development, including desired land uses, but the city has not adopted goals for reducing pollution, achieving environmental justice, or reducing environmental and health risks for its citizens. Coupled with the fact that the city's

environmental justice stance is based on preventing future problems, Chester's officials have not explicitly focused on how they can reduce existing risks.

Chester has no staff specifically assigned to oversee the health of city residents, to implement its pollution control efforts, nor to address environmental justice problems.¹⁶⁵ Several departments have partial responsibility for these issues, but none has overall authority or any particular leadership role to work on progress for these matters. As noted earlier, Chester also has limited public health data and no method for monitoring pollution exposures. Without these measures, it is difficult for the city to make any progress in addressing residents' environmental justice concerns.

Public Participation

There is no sustained community-based organizing now that CRCQL has dissolved. Its leaders are exhausted, and their resources depleted after the environmental justice battles of the 1990s.¹⁶⁶ Local government officials point to a few small groups that are concerned about community issues but, in general, they are not community-based activist organizations.¹⁶⁷ Despite the current absence of citizen involvement, Chester has not launched any specific outreach to increase public participation in local decisions.

The only community organization still active on environmental issues, Chester Environmental Action Council (CEAC), was created as the result of a recommendation from PADEP, and did not grow out of the community itself. Since CEAC's creation, the city and its planning commission have never taken any action that CEAC could not approve.¹⁶⁸ To local government officials, this indicates a changed government and a good working relationship.¹⁶⁹ But to community residents, this indicates that the functions of a community group have been co-opted.¹⁷⁰

In general, Chester's public notices are fairly minimal. The planning department posts notices of new projects in local newspapers, conducts some outreach through regular mailings, and periodically sends information home with schoolchildren. Despite dwindling citizen involvement, city staff does not seek out citizen leaders, hold training, or conduct other programs to engage residents. Yet, the city relies on these individuals to bring problems to the government's attention.

Lastly, Chester lacks a formal process for addressing or tracking citizen concerns about environmental or public health hazards. When asked how a complaint would be handled, each of several city professionals offered different answers. Some thought the Mayor's office would handle citizen concerns; others said citizens would be referred to PADEP. The local (citizen volunteer) leader of CEAC believes he would be notified and would follow up.¹⁷¹ While that dedication is admirable, it does not substitute for local government action and authority.

By contrast, PADEP has a more extensive environmental justice outreach program than does Chester. PADEP requires extensive public notification of communities in high-risk areas whenever a new permit application is filed.

RECOMMENDATIONS

- The Pennsylvania Legislature should require compliance with local land use plans whenever environmental permits are sought so PADEP can better protect communities from bearing a disproportionate share of the negative consequences of industrial and commercial operations. The MPC's requirement that local land use plans be considered is a good beginning, but deference to local plans for PADEP decisions remains discretionary. A requirement that local land use plans must be followed will create a greater likelihood that community residents will receive greater protection.
- Chester's city government should enforce the 1994 changes to its municipal planning and zoning code, as well as its 1998 Performance Standard ordinance. These requirements were designed to ensure there would be no net increase in pollution from new industrial facilities, no violations of federal air quality regulations, no unlawful discharges of liquid or solid wastes, and no offensive odors beyond lot lines.
- Chester officials should look creatively at the city's existing authorities to address the range of current environmental justice concerns; and they should devise creative and aggressive strategies to solve them, including common law nuisance authorities or the Pennsylvania State Constitution, Section 27 of Article I, which states "the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."¹⁷² The city should develop effective communication strategies to inform affected communities of the status of its efforts, and should establish measurable goals and outcomes.
- Chester officials should take steps to increase public participation in local decision-making and develop a formal process for tracking citizen concerns about environmental or public health hazards.
- PADEP should work with Chester's government on developing strategies to reduce risk and addressing other community concerns, like noise, odor, and traffic; and they should set specific goals and measures to assure accountability. As a starting point for a risk reduction strategy, PADEP should consider using EPA's 1995 health risk study for the Chester area. Chester and PADEP should also make information about progress being made against goals widely available to the public on a routine basis.

ENDNOTES

- ¹ *Chester Residents v. Seif*, No. 96-CV-3960.
- ² City of Chester, PA, *Chester City: Spanning New Horizons* (undated).
- ³ City of Chester, PA, *Chester City Vision 2000*, 127 (undated).
- ⁴ *Ibid.*, 6.
- ⁵ *Ibid.*, 181.
- ⁶ Morgan Kelly, *The History of Chester* (Pennsylvania Environmental Network, February 14, 1998). Available at <www.penweb.org/chester/history.html> (visited July 2003).
- ⁷ *Ibid.*
- ⁸ *Chester City Vision 2000*, 9.
- ⁹ Chester Residents Concerned for Quality Living (CRCQL), *The Case for Environmental Justice in Chester, Pennsylvania* (Environmental Background Information Center, undated). Available at <www.ebic.org/gis/pdf/chester.pdf> (visited July 2003).
- ¹⁰ Morgan Kelly, *The History of Chester*.
- ¹¹ *Chester City Vision 2000*, 9.
- ¹² "During this period, the number of retail establishments dropped from 244 to 163, a decrease of 81 establishments. This decline represented a loss of one third of all retail establishments in the city in the five-year period [1982-1987]," *Chester City Vision 2000*, 169.
- ¹³ *Chester City Vision 2000*, 9-10.
- ¹⁴ CRCQL, *The Case for Environmental Justice*.
- ¹⁵ U.S. Census Bureau, "Your Gateway to Census 2000," website, <<http://www.census.gov/main/www/cen2000.html>> (visited July 2003).
- ¹⁶ Chester is home to Widner University.
- ¹⁷ U.S. Census Bureau, *Census 2000*.
- ¹⁸ *Ibid.*
- ¹⁹ A soil remediation facility was not sited by Chester, but was permitted by PADEP.
- ²⁰ U.S. Environmental Protection Agency (EPA), *Draft Environmental Justice Strategy for Executive Order No. 12898* (January 1995).
- ²¹ See *CRCQL v. Seif*, No. 96-CV-3960, Jerome Balter Brief, I.D. 26634: "All wastes to these facilities [Westinghouse Incinerator, Abbonizio Recycling, Thermal Pure Systems, and DELCORA Sewage Treatment Sludge] are delivered by trucks." 9.
- ²² See Zulene Mayfield, presentation at the National Environmental Justice Advisory Council's Public Meeting on Environmental Permitting, Arlington, Virginia (November 30—December 2, 1999).
- ²³ *Chester Residents v. PADER and Thermal Pure*, No. 556 CD 1994.
- ²⁴ *Thermal Pure v. PADER and the Citizens of Chester*, Supreme Court No. 63E.D-Misc, D (1995).
- ²⁵ "Thermal Pure's burners and autoclave were broken, leaving 33 un-refrigerated trucks of infectious waste sitting outside the facility for four days in violation of state law. Failings such as this led to lost customers and the eventually failure of the business." Jerome Balter, Public Interest Law Center of Philadelphia, Interview (October 31, 2002). See also, Mike Ewall, *Environmental Racism in Chester* (Pennsylvania Environmental Network, July 23, 1999). Available at <www.penweb.org/chester/ewall_article.html> (visited July 2003).
- ²⁶ Pennsylvania Department of Public Health, *State Health Improvement Plan: Special Report on the Health Status of Minorities in Pennsylvania: 2002*, 6-2 (April 2002). Available at <<http://webserver.health.state.pa.us/health/cwp/view.asp?a=169&Q=231311>> (visited July 2003).
- ²⁷ Article 1365.03(c)(3) (1999 replacement).
- ²⁸ The Pennsylvania Department of Environmental Protection (PADEP) was formerly called the Pennsylvania Department of Environmental Resources (PADER). For the purpose of this text, PADEP is used to refer also to PADER.
- ²⁹ U.S. EPA Region III and PADER, *Environmental Risk Study for City of Chester, Pennsylvania; Summary*, 2 (June 1995).
- ³⁰ *CRCQL v. Seif*, filed May 28, 1996.
- ³¹ EPA Region III and PADER, *Environmental Risk Study*.
- ³² For an extensive description of the environmental inequities in Chester by census tract, see *CRCQL v. Seif*, Balter Brief, 7-33.
- ³³ *CRCQL v. Seif*, 944 F. Supp. 413, 416-417 (E.D. Pa. 1996).

- ³⁴ *CRCQL v. Seif*, 132 F.3d 925 (3rd Cir. 1997).
- ³⁵ Jerome Balter, Public Interest Law Center of Philadelphia, Interview (October 31, 2002). Scott C. Fulton, Acting General Counsel, U.S. Environmental Protection Agency, Memorandum to Carol M. Browner, Administrator, U.S. Environmental Protection Agency, "Supreme Court Dismissal of Environmental Justice Case" (August 20, 1998).
- ³⁶ Jerome Balter, Interview (October 31, 2002).
- ³⁷ *Philadelphia Inquirer*, "State Says No to Plan for Tires as Fuel" (December 10, 2002).
- ³⁸ CRCQL, *The Case for Environmental Justice*.
- ³⁹ *Philadelphia Inquirer*, "State Says No."
- ⁴⁰ Rev. Horace Strand, Faith Temple Holy Church, Interview (August 25, 2002).
- ⁴¹ William Payne, Director, Planning Department, City of Chester, Interview (August 20, 2002).
- ⁴² EPA Region III and PADER, *Environmental Risk Study*.
- ⁴³ Dr. Masood Shaikh, Deputy Health Commissioner, Chester Health Department, Interview (August 20, 2002).
- ⁴⁴ *Ibid.*
- ⁴⁵ *Ibid.*
- ⁴⁶ *Ibid.*
- ⁴⁷ EPA Region III and PADER, *Environmental Risk Study*, 2.
- ⁴⁸ Francine Carlini, Air Quality Program Manager, PADEP, Interview (May 27, 2003); Patrick R. Andersen, Special Assistant to the EPA Region III Administrator, Interview (May 23, 2003).
- ⁴⁹ Francine Carlini, Interview (May 27, 2003).
- ⁵⁰ *Ibid.*
- ⁵¹ EPA Region III and PADER, *Environmental Risk Study*, 2.
- ⁵² Francine Carlini, Interview (May 27, 2003).
- ⁵³ EPA Region III and PADER, *Environmental Risk Study*, 2.
- ⁵⁴ Patrick R. Andersen, Interview (May 23, 2003).
- ⁵⁵ Pennsylvania Department of Public Health, *State Health Improvement Plan*, 6-1, 6-2 (undated).
- ⁵⁶ *Ibid.*
- ⁵⁷ *Ibid.*, 6-1.
- ⁵⁸ *Ibid.*, 6-2.
- ⁵⁹ *Ibid.*, 6-4, 6-5.
- ⁶⁰ *Ibid.*, 6-6.
- ⁶¹ Dave Sciocchetti, Executive Director, Chester Economic Development Authority, Interview (August 20, 2002).
- ⁶² William Payne, Interview (August 20, 2002).
- ⁶³ *Ibid.*
- ⁶⁴ Dave Sciocchetti, Interview (August 20, 2002).
- ⁶⁵ The City of Chester has received funding from the following federal agencies: Economic Development Administration; Department of Transportation; Housing and Urban Development; National Oceanic and Atmospheric Administration /Coastal Zone Management; EPA; Department of Justice-Weed and Seed; and the Department of Interior (historic tax credit). The city has also received funding from the following state agencies: Pennsylvania Housing Finance Agency; State Weed and Seed; Department of Community and Economic Development (DCED); Department of Conservation and Natural Resources. Dave Sciocchetti, Interview (October 30, 2002).
- ⁶⁶ For more information, see PADEP, "Pennsylvania's Land Recycling Program," website, <<http://www.dep.state.pa.us/dep/deputate/airwaste/wm/landrecy/default.htm>> (visited June 2003).
- ⁶⁷ Dave Sciocchetti, Interview (October 30, 2002).
- ⁶⁸ *Ibid.*
- ⁶⁹ *Ibid.* See also, Philadelphia Development Partnership, "Chester Microenterprise Partnership," website, <<http://www.pdp-inc.org/chester.html>> (visited July 2003).
- ⁷⁰ Governor Thomas J. Ridge, Commonwealth of Pennsylvania, *Executive Order 1999-1* (January 7, 1999).
- ⁷¹ Governor's Center for Local Government Services, *Growing Smarter Toolkit: Catalog of Technical and Financial Resources*, 51-53 (April 2002). Available at <<http://www.inventpa.com/docs/Document/application/pdf/94a0ce8e-5eae-423c-b2b0-da5c16376c50/GrowingSmarterToolkit.pdf>>.
- ⁷² "In the 2 years of the program's existence, LUPTAP has appropriated more than \$5.4 million to local governments in Pennsylvania and impacted 1,744 of the State's 2,567 municipalities and over half of the 67

counties." Pennsylvania Growing Smarter, "Land Use Planning and Technical Assistance Program (LUPTAP)," website, <http://www.landuseinpa.org/default.asp?content=fin_luptap> (visited July 2003).

⁷³ "In FY 00-01 a \$900,000 appropriation has been authorized for the Shared Municipal Services Program. In FY 99-00, the Department was able to fund 56 projects that benefited 15 cities, 724 boroughs and 309 townships in 37 counties with a \$900,000 appropriation." DCED, *Shared Municipal Services Program: Program Guidelines*, 2 (September 2000). Available at

<http://www.landuseinpa.org/docs/Shared_Municipal_Services/SharedMunicipalServices.pdf>.

⁷⁴ For more information, see DCED, "Invent PA: Community Development Block Grant Program," website, <<http://www.inventpa.com/default.aspx?id=321>> (visited July 2003).

⁷⁵ William Payne, Interview (August 20, 2002).

⁷⁶ Neil Kinsey, Local Government Policy Specialist, Governor's Center for Local Government Services, Harrisburg, PA, Interview (October 29, 2002).

⁷⁷ 53 P.S. Section 10101 (West 1997).

⁷⁸ 53 P.S. Section 10301.4(a) (West Supp. 2002) (municipalities and school districts within the respective county, and contiguous counties, school districts and municipalities must have an opportunity to review, comment and participate in the preparation and adoption of the county comprehensive plan).

⁷⁹ *Gerstley v. Cheltenham Tp. Planning Com'rs*, 95 Montg. 195 (1971).

⁸⁰ *Ibid.* See also, 53 P.S. Section 10306 (West Supp. 2002).

⁸¹ *Ibid.*

⁸² 53 P.S. Section 10301(a) and (b) (West Supp. 2002).

⁸³ 53 P.S. Section 10301.1 (West Supp. 2002).

⁸⁴ 53 P.S. Section 10301(d) (West Supp. 2002).

⁸⁵ DCED, "Invent PA: Governor's Center for Local Government Services," website, <<http://www.inventpa.com/default.aspx?id=136>> (visited October 16, 2002).

⁸⁶ *Ibid.*

⁸⁷ *Municipalities Planning Code*, Article 3, Section 307: "State Land Use and Growth Management Report. The Center for Local Government Services shall issue a land use and growth management report by the 2005 and shall review and update the report at five-year intervals." Available at <http://www.landuseinpa.org/docs/M.P.C/MPC.pdf>.

⁸⁸ *Ibid.*, Article 1, Section 107. Available at <http://www.landuseinpa.org/docs/M.P.C/MPC.pdf>.

⁸⁹ See note 65 for a list of federal agencies providing funding to CEDA.

⁹⁰ See note 65 for a list of state agencies providing funding to CEDA.

⁹¹ Chester City Council, *Public and Private Investment in Chester*, Map (2002).

⁹² *Chester City Vision*, 221.

⁹³ PADEP, "Gov. Ridge Signs 'Growing Smarter' Land Use Bills," *Environmental Protection Update* (June 23, 2000). Available at <www.dep.state.pa.us/dep/deputate/polycomm/update/06-23-00/062300up.htm> (visited July 2003). See also DCED, "Gov. Ridge Unveils Dramatic Environmental Budget—Implements 'Growing Greener.' Call for 'Growing Smarter,'" Press Release (February 8, 2000). Available at <www.landuseinpa.org/default.asp?content=news_press_020800> (visited July 2003).

⁹⁴ *Ibid.*

⁹⁵ 53 P.S. Section 10619.2 (West Supp. 2002).

⁹⁶ 53 P.S. Section 10601 (West Supp. 2002).

⁹⁷ *Municipalities Planning Code*, Article I, Section 107. The Code defines *preservation* or *protection* when used in connection with natural and historic resources to "include means to conserve and safeguard these resources from wasteful or destructive use, but not ... to authorize the unreasonable restriction of forestry, mining, or other lawful uses of natural resources".

⁹⁸ *Ibid.*, Article V-A, Section 502 A and Article VI Section 614, 616.

⁹⁹ 53 P.S. Section 10603(a) (West Supp. 2002).

¹⁰⁰ 53 P.S. Section 10501-A et. seq. (West 1997). If a municipality, however, chooses to enact impact fees for offsite transportation improvements, it must have adopted either a municipal or county comprehensive plan, subdivision and land development ordinance or zoning ordinance.

¹⁰¹ Pennsylvania Planning Association, "State Planning Code," website, <<http://www.planningpa.org/planning.html>> (visited 10/15/02).

- ¹⁰² *Ibid.*
- ¹⁰³ 53 P.S. Section 10304 (West 1997).
- ¹⁰⁴ 53 P.S. Section 10301.4(a) (West Supp. 2002) (municipalities and school districts within the respective county, and contiguous counties, school districts and municipalities must have an opportunity to review, comment and participate in the preparation and adoption of the county comprehensive plan).
- ¹⁰⁵ *Gerstley v. Cheltenham Tp. Planning Com'rs*, 95 Montg. 195 (1971). See note 100 above.
- ¹⁰⁶ *Ibid.* See also, 53 P.S., Section 10306 (West Supp. 2002).
- ¹⁰⁷ Susan W. Hauser, Manager, GIS & Information Services, Delaware County Planning Department, Interview (May 27, 2003).
- ¹⁰⁸ *Ibid.*; William Payne, Interview (May 19, 2003).
- ¹⁰⁹ 53 P.S., Section 10302(a.1) (West Supp. 2002).
- ¹¹⁰ *Ibid.*
- ¹¹¹ 53 P.S. Section 10301.4(a) (West Supp. 2002).
- ¹¹² *Ibid.*, Section 10603(k) (West Supp. 2002).
- ¹¹³ William Payne, Susan W. Hauser, and Neil Kinsey, Interviews.
- ¹¹⁴ 53 P.S., Section 10302(d) (West Supp. 2002).
- ¹¹⁵ *Ibid.*
- ¹¹⁶ 53 P.S. Section 10602 (West 1997).
- ¹¹⁷ Susan W. Hauser, Interview, and William Payne, Interview (May 20, 2003).
- ¹¹⁸ City of Chester, "Chester City Council," website, <www.chestercity.com/citycouncil.php>.
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- ¹²⁰ Governor's Center for Local Government Services, *Home Rule in Pennsylvania; Seventh Edition*, 3 (March 2003).
- ¹²¹ City of Chester, "Welcome to Chester," website, <www.chestercity.com> (visited May 2003).
- ¹²² *Municipalities Planning Code*, Article 2, Section 201-203.
- ¹²³ *Ibid.*, Article 2, Section 207.
- ¹²⁴ *Ibid.*, Article IX, Section 903.
- ¹²⁵ *Ibid.*, Article IX, Section 906.
- ¹²⁶ Herman Fryer, Chair, Chester Environmental Advisory Council, Interview (August 2002).
- ¹²⁷ Dr. Masood Shaikh, Interview (August 20, 2002).
- ¹²⁸ *Chester City Vision 2000*, 55.
- ¹²⁹ *Chester City Code*, 1365.07 (a-i).
- ¹³⁰ William Payne, Interview (May 19, 2003).
- ¹³¹ *Ibid.*
- ¹³² Office of Building Official, Department of Public Safety, City of Chester, PA, "Application for Plan Examination and Building Permit" (1990).
- ¹³³ *Chester City Code*, 1365.03, "M-3 Industrial Districts."
- ¹³⁴ *Ibid.*, 1365.03 (c)(3).
- ¹³⁵ *Ibid.*, 1365.05
- ¹³⁶ *Ibid.*, 1365.05(h)(1-4).
- ¹³⁷ *Ibid.*, 1365.04
- ¹³⁸ *Ibid.*, 1365.05 (a-e).
- ¹³⁹ City of Chester, *Performance Standards Ordinance*, Bill No. 23, Section 4.1 (April 1998).
- ¹⁴⁰ *Ibid.*, Section 4.4.
- ¹⁴¹ *Ibid.*, Section 4.6.
- ¹⁴² *Ibid.*, Sections 3.2 to 3.3.
- ¹⁴³ *Ibid.*, Section 5.1.
- ¹⁴⁴ William Payne, Interview (October 30, 2002).
- ¹⁴⁵ See 35 Pa. Cons. Stat. Ann. Section 6018.101 et seq (West 1993).
- ¹⁴⁶ 42 U.S.C. 6901 et seq., and other federal sources.
- ¹⁴⁷ 53 P.S. Section 10619.2 (West Supp. 2002).
- ¹⁴⁸ PADEP, *Considering Local Land Use Plans and Ordinances in Issuing DEP Permit*, Fact Sheet (January 21, 2003).

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- ¹⁴⁹ PADEP, Policy Office, *Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure*, DEP ID#012-0200-001, (June 8, 2002).
- ¹⁵⁰ *Ibid.*, 10.
- ¹⁵¹ Ordinance 12-1998, Article 1365.02(c)(3), (April 9, 1998).
- ¹⁵² PADEP, *Considering Local Land Use Plans* (January 21, 2003).
- ¹⁵³ PADEP, Environmental Justice Work Group, *Report to the Pennsylvania Department of Environmental Protection*, 4 (June 2001).
- ¹⁵⁴ *Ibid.*, 16.
- ¹⁵⁵ *Ibid.*, 4.
- ¹⁵⁶ Alice Wright, Environmental Advocate, Office of Environmental Advocacy for the Southeast Region, PADEP, Interview (October 28, 2002).
- ¹⁵⁷ *Ibid.*
- ¹⁵⁸ *Ibid.*
- ¹⁵⁹ William Payne, Interview (August 20, 2002).
- ¹⁶⁰ William Payne, Interview (May 19, 2003), and Rev. Horace Strand, Interview.
- ¹⁶¹ Rev. Horace Strand, Interview.
- ¹⁶² William Payne, Interview (August 20, 2002).
- ¹⁶³ Mike Ewall, "Environmental Racism in Chester" (Pennsylvania Environmental Network, July 3, 1999). Available at www.penweb.org/chester/ewall_article.html.
- ¹⁶⁴ William Payne, Interview (August 20, 2003).
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- ¹⁶⁶ Rev. Horace Strand, Interview (August 25, 2002).
- ¹⁶⁷ William Payne, Interview (August 20, 2002).
- ¹⁶⁸ Herman Fryer, Interview (August 25, 2002).
- ¹⁶⁹ William Payne, Interview (August 20, 2002).
- ¹⁷⁰ Rev. Horace Strand, Interview (August 25, 2002).
- ¹⁷¹ Herman Fryer, Interview (August 25, 2002).
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CHAPTER EIGHT

ALTGELD GARDENS — CHICAGO, ILLINOIS

FINDINGS

Finding 1. The environmental problems at Altgeld Gardens—and throughout the Calumet Region of Southeast Chicago—are the legacy of the region's 100-year history as an area for industrial and waste disposal and the more recent siting of nearby municipal waste treatment facilities. The environmental conditions reflect Chicago's failure to consider the potential implications of locating residential and industrial areas in close proximity to each other because current pollution controls may not provide adequate protection to residents faced with multiple exposures. At the time the Altgeld Gardens housing project for African-Americans was built—over the objections of neighboring, primarily white, communities—possible environmental problems from past and existing industrial uses in the area were not recognized, and its location near a forest and a river was considered desirable.

Finding 2. Chicago's current effort to adopt comprehensive zoning reforms provides a unique opportunity to address community and public health concerns. Zoning ordinances regarding set backs and aesthetics in transition areas between residential and manufacturing districts can be improved. Controls on such community concerns as noise, odor, toxic matter, and smoke can be strengthened and clearly made applicable to existing, as well as future, activities. Penalties for code violations can be increased so facilities will have greater motivation to comply with zoning restrictions.

As part of these reforms, public participation in zoning decisions can be expanded. Notification requirements for proposed zoning changes can ensure that every person or organization with a potential interest is notified and has a chance to participate, and the first step is ensuring adequate public participation in the rezoning effort itself. While some outreach about the zoning reforms has occurred and the public is invited to comment on draft materials, the real test will be the extent to which the public is actively engaged—and listened to—once the city prepares proposed new zoning maps.

Finding 3. Chicago's aldermen play a central role in the delivery of government services and decision-making. Local environmental and planning agencies appear to rely almost entirely on each ward's alderman to conduct community outreach and to provide the agencies with community perspectives on the issues. By contrast, the Illinois Environmental Protection Agency (IEPA) conducts extensive community outreach efforts for comments on state permits and has a draft environmental justice policy setting out its plans for ensuring consideration of disparate impacts in its permitting and other programs.

Finding 4. Much of the land near Altgeld Gardens and other nearby Southeast Chicago neighborhoods is zoned for manufacturing uses. If the Calumet Area Land Use Plan is implemented, some of the land will be preserved or reclaimed for open space and recreation. However, large tracts will remain zoned for manufacturing uses because the area—with its

existing infrastructure for transporting goods—is considered vital to Chicago’s economic redevelopment. The city’s challenge is to reduce the adverse impacts on neighboring residential districts from existing and past facilities in the manufacturing districts, such as by strictly enforcing current requirements and fostering use of pollution prevention measures. With regard to new facilities, the city must carefully consider the potential for disparate impacts on low-income and people-of-color communities and accept only new developments that do not exacerbate already poor environmental conditions or expose neighboring residents to increased pollution.

Finding 5. The whole Calumet Region of Southeast Chicago is considered a high priority for economic improvement and environmental restoration. Several efforts are underway to foster environmentally sound development that will help to address the residents’ environmental justice and public health concerns, as well as to improve conditions for wildlife and recreation. Addressing current environmental problems such as odor is a prerequisite to progress, however. For any proposed new or expanded facilities, the city can use its zoning rules and environmental reviews to establish buffer zones between residential and commercial or industrial uses. IEPA and Chicago’s Department of Environment (DoE) can also use their permitting processes to foster pollution prevention and appropriate pollution controls. Done properly, the region’s redevelopment effort could become a model of sustainable development in other Rust Belt communities.

Finding 6. Chicago appears to be committed to using sustainable development approach for the Calumet Region. Turning around both the region’s negative image and its contaminated conditions will require leadership and coordination among various local and state agencies, as well as other organizations not accustomed to working together. While the area’s community-based groups and environmentally focused groups have different perspectives, they share common goals for environmental improvement coupled with economic development. A coordinated effort by these groups to work on their common goals could be a powerful engine for ensuring action on local problems.

INTRODUCTION

Altgeld Gardens is one of several Southeast Chicago communities in the Calumet Region. While this case study focuses on Altgeld Gardens and some of the unique issues faced by the people living there, many of the environmental conditions, public health concerns, and the solutions are also relevant throughout the Calumet Region.

The environmental justice story of Altgeld Gardens begins in the early 1940s, when federal and city housing officials decided to build public housing for African-Americans on the far south side of Chicago. During Altgeld Garden's early years, there was a waiting list of people seeking to live in the pleasant, garden-style apartments located away from the city center on land bordered by the Beaubien Woods Forest Preserve and the Calumet River.¹

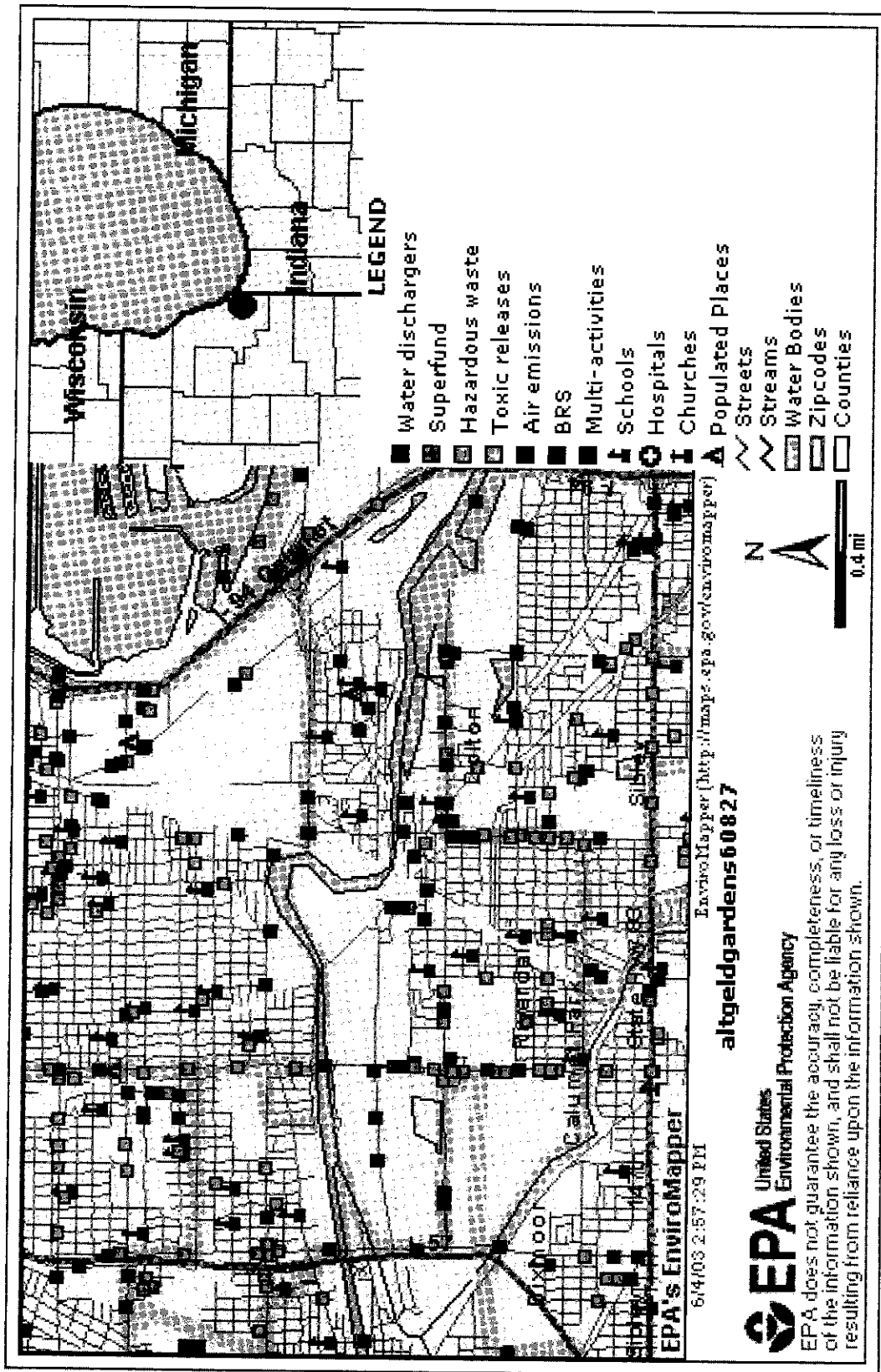
Once considered a model public housing project, Altgeld Gardens is now emblematic of the problems faced by people living near industrialized areas where past, present, and possibly future industrial development threatens public health and the environment. This case study analyzes Altgeld Gardens in the broader context of similar environmental problems throughout the Calumet Region of Southeast Chicago.

BACKGROUND

About Altgeld Gardens

Despite its campus-like setting and proximity to open space, Altgeld Gardens is located in an area that has been industrialized for more than a century. During the period of Chicago's major industrial growth after the Civil War, steel mills, railroad shops, manufacturing facilities, and many smaller industries moved into the area around Lake Calumet and along the Calumet River. The location was desirable for industry because, although the land was wild and marshy, it was cheap and had good access to transportation for both rail and lake shipping.² Moving to the then-remote Calumet Region had another advantage for industry because, at the time, few people lived there, which minimized public health concerns that city dwellers were starting to raise about smokestacks and other pollution sources.

Initially, the residential communities—such as Roseland and Pullman—that grew up in Southeast Chicago around the mills and factories were overwhelmingly white.³ Racially segregated housing was still the social norm in Chicago when Altgeld Gardens was built in the early 1940s. In 1940, African Americans lived in only nine of Chicago's 75 communities. From the very outset, Altgeld Gardens was intended to provide homes for African-Americans. When the city proposed building Altgeld Gardens and other public housing projects in Southeast Chicago, some local aldermen and community residents opposed the projects because they did not want African-Americans moving near their white neighborhoods.⁴



The Calumet Region prospered until after World War II. By the late 1980s, after the steel mills and other industries had moved away, they left behind contaminated land and water, unemployment, and economically depressed neighborhoods. The ethnic composition of Southeast Chicago's side neighborhoods changed, but they remained racially separated. In 2000, the neighborhoods of Roseland, Riverdale (including Altgeld Gardens), and West Pullman were more than 90 percent African-American, while Hegewisch and East Side were more than 75 percent white. Pullman and South Deering had more ethnically mixed populations.⁵

There are currently 3,455 residents in Altgeld Gardens, occupying 1,089 of the 1,498 housing units.⁶ Chicago's total population is 2,215,574, of which 36.8 percent are African-Americans. In the census tract where Altgeld Gardens is located, the total population is 9,809, of which 96.8 percent are African-Americans. Median household income in Chicago is \$38,321, and the median per capita income is \$20,175. The city's unemployment rate is 6.2 percent, and 19.6 percent of individuals have incomes below the poverty level.⁷ The Chicago Housing Authority reports that the average annual per capita income of Altgeld residents is \$8,256.⁸

Now more than 60 years old, Altgeld Gardens has become dilapidated; many units are boarded up and vacant. There are preliminary plans to rehabilitate the buildings as part of the Chicago's effort to transform the city's public housing.⁹ The draft 2002 Chicago Housing Authority budget allocates one million dollars for capital improvements at Altgeld Gardens.¹⁰

Residents of Altgeld Gardens face the myriad social, economic, and public safety issues common to many urban neighborhoods. But they are also concerned about the health impacts of living in the center of what local activists term a "toxic doughnut" because Altgeld Gardens is still surrounded by more than 100 industrial plants and 50 active or closed waste dumps. Citizen activists want solutions to their long-standing exposures to odors and pollution from a multiplicity of water, air, and land sources.

These sources include steel mills, landfills, a paint factory, a chemical factory, and a sewage treatment plant.¹¹ Hidden behind a landscaped area directly across the street from Altgeld Gardens, biomass sludge dries on huge slabs in the open air at two facilities controlled by the Metropolitan Water Reclamation District. Nearby, an active landfill owned by Waste Management Inc. emits methane gas.¹² Among major industrial facilities within a few miles of Altgeld Gardens are Ford Motor Company, Acme Coke, and Chicago Specialties (formerly Sherwin Williams Paints).¹³ Highways and major roads isolate Altgeld Gardens from the rest of the city.

Figure 8-1

Chicago, Illinois—Demographics

Location:	Cook County
Total Population:	2,215,574
Race and Ethnicity*:	
African-American:	36.8 percent
White:	46.2 percent
Hispanic:	26.0 percent
"some other race":	13.6 percent
Unemployment Rate:	6.2 percent
Median Household Income:	\$38,625
Individuals Below the Poverty Level:	19.6 percent
High School Graduate or Higher:	71.8 percent

Totals do not add up to 100 percent because some individuals specified more than one race.

Source: U.S. Census Bureau, *Census 2000*

To understand the environmental justice problems at Altgeld Gardens, it is important to recognize that it is located in an area that was, is, and is likely to remain, industrial. Despite the negative image of the Calumet Region and its wetlands as an area of contamination and economic decline, citizen groups, developers, environmentalists, and government officials see potential for economic revitalization, as well as for recreation and wildlife enhancement. They share a common interest in promoting sustainable economic development that will protect public health and enhance environmental quality.¹⁴

Environmental Setting

The natural environment of the Calumet Region is characterized by wetlands, rivers, and lakes. This fact is central to the area's history, its current environmental conditions, and its future.

An estimated 25,000 acres of wetlands existed in the Calumet Region before it was settled by Europeans. Only about 600 acres of wetlands remain, many now in fragmented patches.

The low and marshy land was not appealing for residential development, but historically it was deemed suitable for waste disposal. In addition, wetlands were filled to create land for industrial expansion.¹⁵ Over the years, however, working class communities grew up on the land adjacent to the mills and factories. So while land use in the area is still primarily industrial, residential communities are now located nearby.

Southeast Chicago has been an industrial center for more than 100 years. The steel industry, in particular, was very important to the local economy. Lake Michigan was convenient for receiving shipments of iron ore and coal and for shipping out product. Mills and factories used the streams and wetlands for cooling and waste disposal. Solid and liquid wastes from industry leached acids and heavy metals into the rivers and lakes. Heavy industry also caused severe air pollution. After the mills closed in the 1970s and 1980s, waste disposal became a major local industry. The wetlands had been used for waste disposal since before the industrial era, when farmers used to transport produce to the city and cart back urban waste to dump in the wetlands.¹⁶

Before landfills were required to have licenses and garbage disposal regulations were enacted, large amounts of waste were dumped in the Calumet Region; and liquid wastes were poured directly into waterways.¹⁷ Over 130 years of industrial activity has exposed the region's citizens to a wide range of contaminants. For example, fly ash left over from burning coal contained trace amounts of uranium.¹⁸ In addition, years of steel manufacturing added plentiful wastes in the form of slag, a fused aggregate of leftover minerals.¹⁹

In recent years, controversy has grown over the accumulation of odors from industrial and waste facilities near Altgeld Gardens. In particular, citizens have complained about the methane gas being emitted from the landfills and the odors from the Metropolitan Water Reclamation District's sludge drying facility.²⁰ Even so, since 1985, there has been a moratorium on siting new solid waste facilities in Chicago.²¹

When Altgeld Gardens was built during World War II, it was surrounded by a forest preserve and a river. Heavy industry was in the area, but not nearby. Later, during the 1960s and 1970s, heavy industry was permitted in the area, but half of these industries are now gone. Currently, Southeast Chicago has the most landfills of any area in the city. Wetlands have been filled with trash, and a large portion of Chicago's approximately 2,000 contaminated brownfield sites are located in the Southeast. USX's South Works, located in Southeast Chicago on Lake Michigan, is the largest brownfield site in Illinois.²²

The Calumet Region has been called a "combination landfill and nature area."²³ In 1990, the Illinois Department of Energy and Natural Resources described the legacy of industrial development and waste disposal in the area:

The effects of past pollution in the form of contaminated water, sediment, and soils in the region are continuing threats to the environment. Land and water pollution in the Lake Calumet area is a threat to humans who work, recreate, hunt, and fish in the area as well as to native and migratory fish and wildlife.²⁴

Yet, the Calumet Region remains a unique ecosystem, despite the severe pollution there. The wetlands are part of a larger hydrological system that serves as habitat for migratory birds. These features have attracted the attention of conservation and environmental organizations at regional and national levels, as well as local community groups, who understand that the area's economic future is tied to its environmental assets.²⁵

ENVIRONMENTAL JUSTICE CONCERNS

As explained below, residents of Southeast Chicago have numerous environmental justice and public health concerns due to the area's past and present use for industrial and waste disposal purposes. The air does not meet particulate matter standards; toxic releases are among the highest in the country; water quality is impaired; landfills and waste disposal facilities abound; and there are many plots of contaminated land from past industrial uses. All but two of the seven communities that comprise Southeast Chicago have mostly African-American residents.²⁶

Environmental Quality in Cook County

Because so much of Chicago's heavy industry and waste disposal has been located in Southeast Chicago, the people who live there face potential environmental threats from a variety of both existing and historical pollution sources. In addition to the general environmental threats facing all of Southeast Chicago, Altgeld Gardens residents have more specific concerns due to their close proximity to sewage treatment and sludge drying facilities, plus many contaminated and abandoned industrial sites.

Most data on environmental pollution and risks is available only at the county level. However, information about Cook County, which includes Chicago, illustrates the city's environmental problems. Because much of the city's industrial and waste disposal activity is concentrated in

Southeast Chicago, it is reasonable to assume that environmental conditions are poorer in that area of the city than in Cook County as a whole.

Following are some general facts about environment quality in Cook County.

- Hazardous air pollutants. Cook County ranks among the worst ten percent of counties in the United States in terms of an average individual's cancer risk from hazardous air pollutants. 82 percent of the cancer risk is from mobile sources (*e.g.*, automobiles and trucks); 12 percent is from area sources (*e.g.*, dry cleaners and gas stations); and 6.3 percent is from point sources (*e.g.*, major industrial facilities).²⁷
- Air quality standards. Cook County ranks among the dirtiest 30 percent of counties in the nation in terms of particulate matter, a mixture of particles such as dust, soot, smoke, and liquid droplets. Common sources are cars, factories, power plants, and construction activity. Particulate matter can cause or aggravate respiratory and cardiovascular disease and result in premature death; the elderly, children, and asthmatics are especially vulnerable. Southeast Chicago is a nonattainment area for PM-10.²⁸ Acme Steel, located in Riverdale near Altgeld Gardens, had the highest PM-10 emissions in Cook County, and is among the top ten percent of PM-10 emitting facilities in the nation. Acme Steel is also among the top ten percent in the nation for PM-2.5 emissions carbon monoxide, nitrous oxide, sulfur dioxide, and volatile organic compounds.²⁹
- Toxic releases. Cook County is among the top ten percent of counties in the United States for cancer and non-cancer risks from air and water releases. The top ranked source of cancer risk is chromium compounds, and the top ranked source of non-cancer risk is mercury compounds. Acme Steel has one of the highest releases of benzene (cancer-causing) and mercury (non-cancer risks) in Cook County.³⁰
- Lead. Cook County ranks as the 37th highest county in the nation for lead emissions, and ranks highest in Illinois for the percentage of housing (five percent) that is projected to have lead hazards. Lead is a known carcinogen as well as a developmental and reproductive toxicant.³¹
- Water quality. In Cook County, the quality of 19 percent of the surface water is threatened or impaired. Some rivers and streams are impaired by nutrients and habitat alterations; some lakes, reservoirs, and ponds are impaired by nutrients and sediments. Leading sources of this water pollution are urban runoff, storm sewers, municipal point sources, hydromodification/habitat modification, and construction.³²

Regional Multi-Media Cumulative Risk Analysis

In 1996, EPA began working on a phased multi-media analysis of pollution sources in Cook County, Illinois and Lake County, Indiana. The goal was to create a model for defining cumulative risk in an urban setting. The first step in the effort, developing a multi-media profile of potential exposure based on existing environmental data, has been completed. An air quality

screening analysis that will establish a ranking system for evaluating air toxics is now under development.³³

People for Community Recovery

Efforts to gain attention for environmental problems at Altgeld Gardens began in 1979. Altgeld resident Hazel Johnson thought there might be a link between pollution in the vicinity and the illnesses she had seen among her neighbors. She made 1,000 copies of a health survey and went door-to-door to collect health information about Altgeld residents. When she learned that many people suffered from cancer, respiratory problems, and skin diseases, she founded People for Community Recovery (PCR)—the only environmental organization based in a public housing project.³⁴

Ms. Johnson and about 70 women began meeting in churches and living rooms to discuss their concerns and possible actions they could take. One of the first things PCR accomplished was getting the city to provide hook-ups to the municipal water system for families that had been using water from local wells that smelled like sulfur.³⁵

Neighborhood residents believed the Chemical Waste Management Inc. incinerator was a source of the noxious fumes. In 1986, PCR began staging protests at the incinerator. In 1988, IEPA took enforcement action against the incinerator, finding the company had violations such as illegally shutting off air monitors and storing 80,000 more gallons of waste than allowed. In addition, the company was not carefully checking the type of waste it was burning, resulting in an explosion in 1987. The company paid \$5 million in fines and was required to remain shut until it got a complete operating permit.³⁶ The incinerator has now been permanently closed.

PCR has had other successes, often working with other organizations. PCR prompted clean up of many waste sites and contaminated properties in the immediate vicinity of Altgeld Gardens. Using public protests, leafleting, and community meetings, PCR has educated the community about the dangers of toxic wastes and gained support for cleanup projects. PCR's efforts have successfully blocked construction of new garbage and hazardous waste landfills, transfer stations, and incinerators in the Calumet Region. Several plants still in operation have established pollution prevention programs. PCR has also helped to establish a community monitoring program to stop illegal dumping and to review data on toxic releases and inventories at local companies.

PCR currently has a lawsuit pending against the Chicago Housing Authority (CHA). They allege that CHA has not provided a safe and healthy environment for Altgeld Gardens residents due to the presence of contaminants, toxic substances, and chemicals. The suit specifically names benzene, toxic coke, polychlorinated biphenyls (PCBs), polyaromatic hydrocarbons (PAH), selenium, arsenic, lead, and pesticides. The suit seeks damages for the health problems of some residents.³⁷ In 1999, CHA began cleaning up the PCBs.³⁸

PCR and its founder, Hazel Johnson, have received many honors for their pioneering work on environmental justice. Ms. Johnson was one of 13 African Americans who attended the United Nations Conference on Environment and Development in Rio De Janeiro, Brazil. She has

testified before Congress, met two Presidents, and spoken at countless universities and conferences. At the First National People of Color Environmental Leadership Summit People in 1991, she was tagged "Mother of the Environmental Justice Movement." In 1992, PCR received the nation's highest environmental award, the President's Environmental and Conservation Challenge Award, the only African-American grassroots group to receive this honor.³⁹

Environmental Concerns at Altgeld Gardens

Odor

About half of the complaints made to environmental officials by Altgeld Garden residents are about odors; the other half are about particulates.⁴⁰ Residents of Altgeld Gardens and other area residents believe the nearby sewage treatment plants operated by the Metropolitan Water Reclamation District (MWRD) of Greater Chicago are the source of at least some of the odors. The acres of drying sewer sludge located just across the street from Altgeld Gardens are a particular concern.

IEPA held hearings on August 23, 2000, regarding renewal of National Pollutant Discharge Elimination System (NPDES) permits for the MWRD's sewage treatment plants.⁴¹ Government officials from EPA, IEPA, and Chicago's Department of Environment (DoE) participated. To make it easier for residents of Altgeld Gardens to testify, a portion of the hearing was held at the housing project. The hearing transcript provides insights about the health effects and economic impacts of odor problems for Altgeld Gardens and the Calumet Region, as well as illustrating the frustrations felt by community residents.

- Health concerns from odors. Mardi Klevs, Chicago regional team manager, EPA, reported that odors can cause serious health effects, such as nausea and headaches. She mentioned recent research indicating that odors may be partially responsible for increased asthma incidents. In addition, prolonged exposure to unpleasant odors can result in olfactory fatigue and/or failure. This temporary or permanent loss of smell is itself a serious health effect. Sense of smell is an important component in taste and the ability to enjoy eating, and there is research linking to human sexuality with the sense of smell.⁴²
- Economic concerns from odors. Reducing the odorous emissions in the area is also important to implement plans for sustainable economic development, remediation, and preservation of wetlands and prairies in the Lake Calumet area. Ms. Klevs said: "Bad odors can be a major impediment to investment in the area. Odors can reduce the quality of life and property values. No one is going to want to live, recreate, or work in an area that smells bad."⁴³
- Odor logs. Emilio Salis, Chicago's Bureau of Air, said that government agencies need detailed information in order to be able to take action against facilities. He mentioned there are several potential odor sources near Altgeld, including the waste treatment facilities, landfills, Sherwin Williams, Chicago Specialists, Ford Motor Company, and Acme Coke. He said that, to take action, government agencies need to be able to pinpoint the sources, types, and severity of the odors.⁴⁴ Other officials said that the odor logs

were needed because, when all of the agencies involved had combined their odor records, they found there were not many actual, written complaints on file. They explained to Altgeld and other residents how to complete the odor logs, where to file them, and how the logs would be used.

The transcript makes clear that residents of Altgeld Gardens have grown weary of urging the government to take action about the odor problems. Several objected to the idea that the burden of proof for taking action should fall on citizens. Cheryl Johnson testified for PCR. Ms. Johnson's testimony expresses the community's concern about the lack of environmental justice as they deal with many undesirable facilities and disposal of other people's waste, as well as their frustration at the lack of government action:

I hear everyone talking about the different odors. There are different odors that I could distinguish because I have learned the difference by becoming a nose expert by living in it. I know the difference between garbage smell. I know the difference between chemical smell. And I definitely know the difference between what comes off the treatment plant.... We can not tolerate it any more because we have the high incidence of asthma and other respiratory problems in our community....

And it always has to be the burden on the proof (is on us), to put some kind of paper together and send it to you all when it's common knowledge when you come down 150th off the expressway that this air is a problem.... We get sludge from other neighborhoods. Let everybody be responsible for their own sludge. We should not have to bear the burden of not only sludge, landfills, incinerators, chemical companies. This is an African-American community, 99 percent black. And it just so happens we're poor, and we shouldn't have to be bombarded with all these odors among the other things that is going on in our community.

Certain parts of (the treatment plant are) regulated but the odor is not regulated. And that's what's killing a lot of people out here. And I'm tired of seeing my community thinking cancer is normal, thinking asthma is normal. None of this stuff should be normal in anybody's neighborhood. It signifies there is a serious problem. And I hope after this meeting that we work towards a solution instead of coming up here hollering about our problem. Because if you don't hear us, then we're going to be walking over to the Water Reclamation District very soon.⁴⁵

Constance Howard, a member of the Illinois Legislature, challenged the government officials to take action without asking citizens to take on the burden of additional data collection:

You say that you know that there are a number of sources of odors. Why isn't it that automatically then that you take steps to find out whether or not those odors are coming from or are hazardous to the health of the individuals of this neighborhood, and why is it that we have to get logs developed here in order for you to believe that there is something that needs to be done?...Why aren't you checking out those odors rather than rely upon these individuals to develop logs,

when, obviously, there has been some expression that it might be a difficult thing to do. If you already know where the problems might lie, then what is the point of this exercise that you are asking these good people to have to go through?⁴⁶

Marian Byrnes, Executive Director of the Southeast Environmental Task Force, spoke about the impact of odors on economic development. She said industry was unlikely to locate where the odors are bad; they would move to undeveloped areas in the suburbs instead. Plans for the Calumet Heritage Area, which could bring visitors and prosperity, would fail if people smelled bad odors. She noted that plans for the Heritage Area consider Altgeld Gardens an important historic resource, worthy of preserving, because it was the first really comprehensive public housing development of its kind.⁴⁷

IEPA renewed the MWRD permits on January 22, 2002 and at that time, also published a responsiveness summary explaining how the agency had addressed issues raised in public comments and at the permit hearings, including the on-site hearing held at Altgeld. In the responsiveness summary, IEPA reported there are no standards for odor. Instead, odors are regulated as a nuisance under the state's Environmental Protection Act, which prohibits air emissions from unreasonably interfering with the enjoyment of life and property. IEPA again urged residents to file odor logs so they can be investigated by appropriate officials, and enforcement action can be taken if appropriate. However, IEPA recognized that the odor problems are a continuing concern:

The odors emanating from the Calumet (facility) into the surrounding neighborhoods continued to be a concern for the Agency. The Agency believes the odors are from the sludge drying beds and are therefore outside the control of an NPDES permit. In October 2000, the Agency reissued state permits...for the sludge drying and disposal process but did add a provision that the MWRD was to prepare a study on proper odor management by October 2001.⁴⁸

Appendix I contains the Altgeld Gardens section of the responsiveness summary. IEPA officials acknowledge that the MWRD permit responsiveness summary contains technical and legal language that may not be appropriate for a lay audience. As part of their environmental justice effort, the agency is working to make future responsiveness summaries easier for citizens to understand.⁴⁹

The odor study by MWRD would identify potential sources and magnitude of odors at the facility and would serve as the starting point for determining what measures MWRD would need to take to control odors.⁵⁰ However, at the time of this report, plans for conducting the odor study were still being negotiated between MWRD and IEPA. While it has not yet begun the odor study, IEPA officials said that MWRD does have its own internal odor panel and investigates odor complaints from citizens.⁵¹

Chicago's legal authorities for addressing odor problems are uncertain. The city's zoning ordinance sets performance standards for manufacturing districts that limit the amounts of odor that can move beyond the property line, but it may be difficult to enforce against existing facilities.⁵² Yet, the odor issue is central to the environmental justice concerns of residents of

Altgeld Gardens. Therefore, federal, state, and local officials need to undertake a full and creative examination of all authorities under environmental, zoning, or general nuisance laws to see if there are potential solutions to the odor problem. For example, a preliminary examination of the MWRD's Title V permit, issued by IEPA under the Clean Air Act, suggests that fugitive odor emissions from the sludge drying operation may not be appropriately addressed in the permit.⁵³ Meanwhile, IEPA officials are considering trying to conduct a good neighbor dialogue between Altgeld residents and the MWRD facility to find a resolution to the odor issues.⁵⁴

Asthma

In Chicago, asthma deaths are among the highest in the United States, with particularly high mortality among minorities living in low-income communities. There have been disproportionate increases in deaths among the city's African-Americans since the mid 1970s.⁵⁵ The zip codes with the highest rates of asthma are more likely to be in the city's poorest neighborhoods, including in zip codes where a high proportion of Chicago's public housing is located.⁵⁶

A recent study of Chicago's public housing residents reveals that they are greatly affected by asthma. In the survey, 29 percent of residents stated that someone in their household had had at least one asthma attack in the past six months, and 50 percent said that a member of their household had been diagnosed with asthma by a doctor.⁵⁷

Lead

Chicago has one of the highest rates of lead poisoning in the country.⁵⁸ Lead-based paints can cause lead poisoning, as can soil contaminated from years of exhaust fumes from cars and trucks that used leaded gas before it was banned.⁵⁹

Because of the old age of the housing stock, there are lead issues throughout Chicago, and an estimated 20 to 30 percent of Chicago communities face high lead hazards.⁶⁰ Over 100,000 housing units are estimated to have lead paint.⁶¹ Lead issues are addressed through the city's Department of Health, and the city's Department of Planning and Development is working on a lead reduction program at Altgeld Gardens.⁶²

Compared to the rest of Chicago's neighborhoods, the Riverdale community—which includes Altgeld Gardens—has a relatively low percentage of children who have elevated blood lead levels greater than 10 mcg/dL. With five percent of children having elevated blood lead levels, Riverdale ranks 58th out of 77 Chicago communities.⁶³ However, average blood lead levels for children living in the Altgeld Gardens housing project cannot be determined from these aggregated data.

Altgeld residents are concerned about lead exposures. PCR founder Hazel Johnson organized and developed a lead awareness project. Working with the Chicago Legal Clinic, PCR trained public housing residents to address the issue and later started the Resident Education About Lead (REAL) Program.⁶⁴ Cheryl Johnson, daughter of the PCR founder and a PCR leader herself, said recently that concerns about lead continue, in part because Chicago Housing Authority

maintenance staff are not trained to protect residents against dust and lead paint exposure when they make repairs to apartment units.⁶⁵

Soil Contamination

In response to community concerns—including a belief that Altgeld Gardens was built on a former landfill—EPA conducted a site evaluation in 1996 to learn if hazardous materials remained due to previous activity in the area. Ten surface samples were collected from the 190-acre site from grassy areas near housing units, schools, and a community clinic. Samples were analyzed for metals, volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, pesticides, and cyanide.⁶⁶

The Agency for Toxic Substances and Disease Registry (ATSDR), through the Illinois Department of Public Health (IDPH), evaluated EPA's sampling results to determine if the contaminants detected in the soil presented any hazards. The same levels of polycyclic aromatic hydrocarbons (PAHs) at Altgeld Gardens are typically found in urban areas and are not known to cause adverse health effects. Several pesticides, including DDT, were also found. Based on the limited information, IDPH concluded there were no apparent public health hazards from surface soil contamination at Altgeld Gardens. But IDPH recommended further study of the pesticide contamination.⁶⁷

Because preliminary studies did not show significant problems and resources and authority for such studies are limited, no additional soil studies have been conducted.⁶⁸

Northwestern University, the Chicago Legal Clinic, and IEPA are now cooperating on a project to remove heavy metals from soil at Altgeld Gardens through phytoremediation, using plants to "take up" the heavy metals from the soil. If the pilot is successful, a more extensive project may be undertaken.⁶⁹

Southeast Chicago Health Consultation

In 1998, ATSDR reviewed health data for adverse reproductive outcomes, asthma mortality, and cancer rates in Southeast Chicago. The report did not identify any adverse health outcomes that are believed to be related to environmental pollution.⁷⁰

Other Issues at Altgeld Gardens

Health of Public Housing Residents

In December 1999, the Chicago Housing Authority (CHA) set up a health task force to identify current health concerns of public housing residents and to determine strategies for addressing them. The task force included representatives from multiple health and social service fields, community organizations, and CHA staff. During the eight-month study, they conducted literature reviews and analyzed health outcomes. To ensure community involvement, the task force also held focus groups with residents of public housing.

The task force's study encompassed a broad range of health issues, including family health, seniors, HIV/AIDS, environmental health and asthma, substance abuse, and mental health. The final report established that many residents of public housing have extremely poor health outcomes compared to Chicago residents overall. The task force also found that Chicago's public housing residents are dying earlier due to almost all causes of death.⁷¹

General Conditions at Altgeld Gardens

Health concerns are not the only problems that Altgeld Gardens residents face. The community is isolated, because with only one bus line, residents are not well served by public transportation. Retail shopping is limited to a small grocery store operated by CHA, which also operates an on-site health clinic at Altgeld Gardens.⁷²

According to a survey conducted by Abt Associates for the CHA in 1996, residents are also concerned about lack of building maintenance and repairs, crime, graffiti, trash, and drug activity. Abt interviewed randomly selected residents of Altgeld Gardens and three other low-rise apartment complexes (47 percent) said they were dissatisfied with their buildings. Over half of low-rise apartments said they had gone without heat for at least 24 hours the previous winter, and more than half said they had waited more than six months for repairs of a household item. More than a third said gang activity, drug dealing, and/or drug use occurs inside their buildings. Over half also observed these activities outside their buildings. More than half reported hearing gunshots outside their buildings at least ten times in the past year, and nearly one-fourth reported that they or a member of their household had been a victim of crime.⁷³

City Agencies and Environmental Justice

Four city departments or agencies have potential responsibility for addressing environmental justice issues at Altgeld Gardens: the Chicago Housing Authority (CHA), the Department of Planning and Development (DPD), the Department of Environment (DoE), and the Metropolitan Water Reclamation District (MWRD).

Chicago Housing Authority (CHA)

CHA is the third largest public housing authority in the United States. For more than 60 years CHA has played a key role in providing housing options for low and moderate-income residents in Chicago. CHA provides assisted housing for about 134,000 residents, about 4.7 percent of the city's population.⁷⁴

In 1999, Mayor Daley took control of the CHA from the U.S. Department of Housing and Urban Development (HUD), which had taken over CHA in 1995 due to serious management problems.⁷⁵ In taking CHA back from HUD, the Mayor offered city resources and expertise announced plans for fundamentally restructuring the agency.⁷⁶

Until recently, CHA's operations were independent of the city government. CHA provided its own social services, infrastructure, environmental services (e.g., trash hauling), and police

public safety. The Mayor said the city could no longer treat public housing residents differently than other Chicagoans; they should have the same city services.⁷⁷ Currently, CHA operates as a quasi-official city office, and its staff works with other city departments. The Mayor is now responsible for appointing CHA's Board and Chief Executive Officer.⁷⁸ CHA staff view the Mayor's leadership and support for public housing as a salvation for their programs.

CHA has a plan for transforming its public housing units and is in the process of rehabbing or demolishing and reconstructing 25,000 units.⁷⁹ Much of the existing public housing that is slated for redevelopment is located in desirable neighborhoods, and CHA is committed to keeping residents in their current neighborhoods.

Many of the 1,500 housing units in Altgeld Gardens are in disrepair, and nearly one-third of the units are vacant and/or boarded up.⁸⁰ According to CHA officials, Altgeld Gardens is actually in better condition than other public housing, but only preliminary planning has begun for some rehabilitation projects there. The draft 2003 budget for CHA includes \$1 million for capital improvements at Altgeld Gardens.⁸¹

However, the transformation of public housing in Chicago is not without controversy. Much of the existing public housing slated for redevelopment is located in neighborhoods where real estate values are rising. While CHA says it is committed to keeping residents in their current neighborhoods,⁸² many homes are being torn down. Residents fear they will have no place to live once the buildings are demolished and new, more expensive ones are built.⁸³ Residents of Altgeld Gardens are worried about the future of their homes as well.⁸⁴

As mentioned above, People for Community Recovery is suing CHA for environmental contamination at Altgeld Gardens, so CHA staff could not comment on the pending lawsuit.

Department of Planning and Development

Altgeld Gardens is located in Chicago's Far South Planning District. While planners at the Far South District say environmental justice is not a specific focus of their work, they believe all their work addresses the diverse social, economic, and environmental needs of citizens.⁸⁵ They acknowledge there are environmental concerns at Altgeld Gardens and in the Calumet Region. However, they contend that Altgeld Gardens was developed before the concept of incompatible uses was widely understood, and environmental regulations were not yet in place. Poor land use decisions in the past precipitated the current environmental problems, which they note may not be as severe at Altgeld Gardens as in some other Chicago neighborhoods.⁸⁶

District planners say that Altgeld Gardens is not under the jurisdiction of the city planning department, so they do not include the housing project in their plans.⁸⁷ Planners should, however, take into account the potential impacts of proposed land use changes on the health and welfare of area residents in making land use decisions.

Calumet Area Land Use Plan, produced in December of 2001, provides an overview and plan for 1,000 acres of industrial and 4,000 acres of open space in a portion of the Far South Planning District. However, the plan assumes residential neighborhoods will remain where they

are now, and does not cover Altgeld Gardens or other residential neighborhoods within the Calumet Region.⁸⁸ Some areas currently zoned for manufacturing uses in the Calumet Region would need to be rezoned to provide for reclaiming and preserving open spaces as called for in the plan.

Chicago Department of the Environment

Chicago Department of the Environment (DoE) staff acknowledge they are not yet actively addressing environmental justice concerns. However, DoE staff have attended EPA training seminars to familiarize themselves with the issues.⁸⁹ In addition, DoE reviewed an environmental justice map compiled by EPA's Region V, which highlights poor and minority neighborhoods. DoE staff may be able to plot health conditions and environmental impacts on this map because the city already has established databases and services using a Geographic Information System (GIS).⁹⁰

DoE is working with the Chicago Department of Planning and Development (DPD) to set up buffers between residential and commercial or industrial land uses. But in many areas of the city, including Southeast Chicago, commercial and industrial facilities were present before the residential uses. At least once, DoE and DPD staff have asked that additional conditions be required for new development based on environmental concerns.⁹¹ DoE does environmental reviews for the Chicago Housing Authority (CHA), and these reviews contain an environmental justice component. Thus far, DoE has not been asked to do a review for Altgeld Gardens.

DoE has not done extensive community outreach, which may help to explain why African-American community groups have limited relationships with the Department, as discussed below. DoE relies heavily on the alderman in each district for community outreach. Each alderman holds periodic meetings in his or her ward, and notices for these meetings are advertised in the classified section of the *Chicago Sun Times*. DoE does not contact community groups for comments during its permitting process, but relies instead on the ward's alderman to obtain and contribute community perspectives.

Outside the permitting context, DoE has several educational and outreach programs that are at least indirectly related to environmental justice. DoE has the staff of an entire section who are dedicated to community programs, ranging from educating the public about health and environmental issues to providing assistance in energy reduction, weather proofing, and community beautification.⁹²

DoE also has a well-established brownfields program. Chicago has received grants and other federal funding to facilitate remediation and redevelopment of numerous brownfield sites in the Calumet Region. However, because none of the sites in Southeast Chicago have been placed on the EPA's National Priorities List (NPL), they are not eligible for significant Superfund funding.⁹³

DoE is currently developing the Chicago Principles for economy, equity, and environment. These principles will be a set of guidelines to help the city and its citizens develop a holistic, integrated plan for the "greening" of Chicago.⁹⁴ William McDonough, a national leader on

sustainability issues, is conducting this project, supported by an advisory group of 12 local leaders and 12 national experts.

Metropolitan Water Reclamation District of Greater Chicago

In 1889, the Illinois Legislature created the Metropolitan Water Reclamation District of Greater Chicago (MWRD) to protect the water quality of Lake Michigan. MWRD is a separate, special purpose government with a jurisdiction that covers the entire city of Chicago, as well as 124 municipalities in Cook County. MWRD has its own taxing authority, and its nine commissioners are elected officials.

Among its responsibilities, MWRD manages wastewater reclamation (sewage treatment), disposal of biosolids, the tunnel and reservoir plan for addressing combined sewer overflows, and an industrial waste program.⁹⁵

The MWRD's elected commissioners meet twice a month and approve contracts, create policies, and determine property uses. Meetings are open to the public, and the agenda and associated information are made available to the public in advance. Meeting notes are posted on MWRD's website four to five days after each meeting.⁹⁶

MWRD facilities near Altgeld Gardens are longstanding sources of the residents' odor complaints. Citizens expressed their concerns about odors and frustration about government inaction at an August, 2000 hearing, as discussed above.

MWRD says it wants to be a good neighbor and maintains that it takes odor complaints very seriously. MWRD always checks into complaints from Altgeld Gardens. However, the exact causes of the smells are hard to determine because the housing project is located in an industrial area where other facilities could create odors.⁹⁷ MWRD reports that it is in 100 percent compliance with its water discharge permit requirements.⁹⁸

As an example of how MWRD is working with communities, MWRD points to a demonstration project at the USX site in Southeast Chicago. MWRD is testing various amounts and combinations of biosolids mixed with dirt as a method to grow plants. The objective is to prove that the site is not barren.⁹⁹

However, several individuals interviewed for this study said that MWRD has not been very responsive to government officials or nearby residents in trying to resolve its odor problems.

Community and Environmental Group Coordination

Many community and environmental organizations are active in Southeast Chicago, but they do not always work together even when they have common goals. In research conducted for EPA's Region V, anthropologists Kathleen A. Gillogly and Eve C. Pinkers found differences in the emphasis and expression of environmental concerns among groups reflecting various ethnic groups: "Groups based in predominantly African-American neighborhoods emphasized health and environmental justice; groups drawing from predominantly white neighborhoods spoke more

of heritage and quality of life; environmental activists from national and regional organizations spoke more of natural resource conservation."¹⁰⁰

In keeping with these different emphases, white and African-American community groups tend to have connections with very different governmental and nongovernmental agencies. White activists are more closely connected to the federal EPA, IEPA, Chicago DoE, the National Park Service, and outside environmental groups. African-American community groups have closer connections to health agencies, such as the Greater Roseland Health Council and Chicago Department of Public Health, and have not been very involved in the city's area-wide environmental planning and land use efforts.¹⁰¹

Significantly, however, the groups share several common interests that could make them powerful allies. They all want to make industry responsible to local communities, are concerned about the health and safety of residents, and seek sustainable economic development. Table 7-1 summarizes the primary concerns of environmental groups in Southeast Chicago.

A variety of community and environmental organizations have participated in a brownfields working group. They include the Center for Neighborhood Technology, Calumet Ecological Park Association, People for Community Recovery, Chicago Legal Clinic, Mexican Community Committee, Community Workshop on Economic Development, Committee for Economic Recovery, Grand Cal Task Force, and Calumet Project for Industrial Jobs. This working group has identified priorities for community involvement in brownfields restorations at USX South Works, Wisconsin Steel, the southern portion of LTV Steel property, the West Pullman brownfield cluster, and a 25-acre property south of Altgeld Gardens.¹⁰² Such initiatives could foster greater cross-community networking.

Table 7-1 Primary Concerns of Southeast Chicago Environmental Groups

Organizations	Primary Concerns
Groups based in predominantly white neighborhoods	Aesthetics Heritage Quality of life Local control over places
Groups based in predominantly African-American neighborhoods	Environmental justice (fairness, equality) Health, removal of toxins Jobs and economic development
National/regional organizations	Conservancy Preservation of natural resources as a resource for all
Common interests	Making industry responsible to local communities Health and safety of residents Sustainable economic development

Source: Adapted from Gillogly, Kathleen A., and Eve C. Pinsker. *Networks and Fragmentation Among Community Environmental Groups of Southeast Chicago* (U.S. Environmental Protection Agency, Region V. June 5, 2000).

LAND USE PLANNING, ZONING, AND GOVERNANCE IN CHICAGO

City Governance

Form of Government

Chicago has a Mayor-Council form of government. The Mayor is the chief executive, and the City Council is the legislative body. The Mayor is elected city-wide, but the 50 Council members—called aldermen—are elected from neighborhood wards, whose interests they protect. Each alderman represents about 50,000 citizens and serves those constituents; there are no at-large members on the Council. The Mayor presides over City Council meetings and can vote in the event of a tie.

The City Council usually meets each month to exercise general and specific powers that have been delegated by Illinois statute. The city takes official action by passing ordinances and resolutions. The City Council's 19 standing committees work with individual city departments to carry out city activities. These committees review proposed ordinances, resolutions, and orders before they are voted on by the entire Council. The City Council votes on all proposed loans, grants, bond issues, land acquisitions and sales, traffic control issues, mayoral appointees, other financial appropriations, and — most relevant to this case study—zoning changes.¹⁰³

Role of Aldermen

Two themes came through consistently in interviews by Academy researchers with city staff:

- Chicago is a very political city, where having the right connections helps to get things done; and
- There is also a great emphasis on local control and local services, so the aldermen have considerable power to produce action by city departments.

On the positive side, projects can be quickly and easily accomplished with the right political backing. Once city residents learn how to navigate the system, they can excel at getting their projects accomplished. If an alderman calls with an idea or concern, staff make the issue a priority. Because the entire City Council votes on some issues, there are numerous layers of process to ensure balanced and fair service delivery. On the downside, citizens who are not politically active or engaged do not prosper and have difficulty obtaining solutions to their problems. However, city staff believe all city residents know they need political connections in order to obtain city services.

Chicago's ward structure affects how things get done, as well as how people organize to get them done. Activists know exactly where to go when the problems are straightforward — such as garbage collection or street repair — and can expect prompt results. But complex problems, like environmental justice, take a longer time for city staff to understand and address. The resulting delays may be seen by local residents as the government's failure to take action:

In the ward structure, it is quite straightforward. If you need something like better garbage pickup, more patrol cars, or streets paved, you take it to the alderman (often via a contact such as a precinct captain)....It is a system that provides a sense of control in terms of a high degree of understandability in marked contrast to environmental issues, which can take a much longer period of time to resolve, because of the profound nature of pollution, the lower visibility of pollution, and the difficulties of enforcing federal rules and regulations. When local environmental problems are not immediately resolved, local people may be inclined to look for political reasons for this.¹⁰⁴

Land Use Planning in Illinois

State Planning Laws

There is no Illinois law requiring local land use planning, but municipalities may voluntarily create a planning commission, planning department, or both. While the state has no oversight or control for local planning and zoning, the Illinois Department of Commerce and Community Affairs is authorized to provide education and training programs in planning, regulatory, and development practices and techniques that promote sound comprehensive planning. In addition, the Department is authorized to develop and distribute model ordinances, manuals, and other technical publications.¹⁰⁵

A new state law, which took effect in August 2002, provides incentives for local governments to undertake comprehensive land use planning.¹⁰⁶ To receive technical assistance grants, local planning agencies must address several elements in their new or revised comprehensive plans. Among the elements are land use, transportation, community facilities, telecommunications infrastructure, housing, economic development, and public participation. See Appendix G for a more detailed description of Illinois' land use planning authorities.

Chicago's Department of Planning and Development

Chicago's Department of Planning and Development (DPD) prepares land use plans for the city and reviews plans for large developments. DPD also proposes all local land use laws, such as changes to the zoning code.¹⁰⁷ The last city-wide planning document for Chicago was the Comprehensive City Plan of 1946.¹⁰⁸ Planning is now decentralized in DPD's seven Community Development Planning Districts.

DPD promotes economic development in Chicago by offering financial resources, such as low-interest loans and tax increment financing, as well as other business services. DPD is also responsible for preserving the city's architectural and historical landmarks, protecting the Chicago River and Lake Michigan shorelines, and creating new public open space for city residents, workers, and visitors.¹⁰⁹

DPD develops strategic plans for specific urban redevelopment projects, such as Empowerment Zones (a program of the U.S. Department of Housing and Urban Development) and Tax Increment Financing Districts.¹¹⁰ These plans generally outline development regulations for a neighborhood. The strategic plans contain area-wide designs that include recommendations for

open space, transportation, and infrastructure improvements. DPD also prepares capital improvement plans, updated every five years, which are road maps to infrastructure improvements.

Two DPD programs are designed to encourage and retain businesses: Industrial Corridors and Enterprise Zones. Under the Industrial Corridors program, local community and business leaders develop plans for making the corridors safe, accessible, functional, competitive, marketable, manageable, and attractive.¹¹¹ State and local tax exemptions, investment tax credits, several tax deductions, and other incentives are available to companies locating or expanding within an Enterprise Zone.¹¹² In keeping with plans for economic revitalization in the region, the Calumet Industrial Corridor¹¹³ and Illinois Enterprise Zone 3¹¹⁴ are near Altgeld Gardens.

DPD's Zoning and Land Use Planning Division creates long-term land use plans, evaluates planned developments, and reviews zoning amendments and special uses. It also conducts economic research and analysis to support department programs and activities.¹¹⁵ The Zoning Division employs a team of inspectors who conduct daily inspections made in response to complaints from citizens and aldermen from all around the city.¹¹⁶

In DPD's seven planning districts, teams provide a focal point for anticipating and meeting the development needs of Chicago's neighborhoods. The team works closely with residents, community groups, businesses, and elected officials to provide coordinated and appropriate solutions to neighborhood problems. Assistance ranges from information and referral to technical assistance, program support, and local planning.¹¹⁷

Local Planning for the Far South Planning District

Altgeld Gardens is located in the Far South Planning District. Population density in the district is comparatively low, mostly due to its large number single-family homes, many vacant properties, and extensive industrial lands. As discussed above, the District is also known for its wetlands and natural areas surrounding Lake Calumet and the Calumet River.¹¹⁸

District planning officials say that Altgeld Gardens was built before the dumps and landfills arrived. Heavy industry was already in the area, but not near the housing project until the 1960s and 1970s. Spot zoning by the local aldermen played a role in developing the area surrounding Altgeld Gardens. Now, half of the industrial operations that used to surround Altgeld Gardens have closed. While in the past, haphazard development was allowed to happen, planners say the city now has regulations in place that should prevent similar situations from happening again.¹¹⁹

The Far South Planning District has two planning teams: community planners and industrial planners. While they do collaborate, the community planners primarily work with neighborhood planning and the industrial planners work on redeveloping industrial areas. District planners work primarily with four constituent groups: Community Development Corporations (CDC), individuals, developers, and churches (which are becoming increasingly active in development matters). In addition to the District's professional staff, there are advisory groups for special redevelopment areas. Within the Far South District, there are internal standing committees on

design, site selection, evaluation, and landscape ordinance coordination. These committees are made up of appointed individuals who are intended to represent diverse viewpoints.¹²⁰

The planning district holds regular meetings that are open to the public. Notices about the meetings are sent via FAX to community groups and interested individuals. The local alderman's staff also help DPD by communicating with local residents. DPD staff attend community meetings when requested. While outreach is not a routine activity, the DPD does some outreach as new projects come along and is required to mail out information regarding Tax Increment Finance districts.¹²¹

Calumet Area Land Use Plan

The Calumet Region—which includes Altgeld Gardens—is currently slated for economic revitalization and environmental improvements. The Calumet Area Land Use Plan, issued in December 2001, sets out a vision for taking advantage of the region's unique wetlands and natural areas as well as the vacant industrial lands that are ripe for redevelopment. The plan was developed by DPD in partnership with DoE and three non-governmental organizations: the Southeast Chicago Development Commission, Openlands Project, and Calumet Area Industrial Commission. Two federal agencies, EPA and the U.S. Forest Service, helped to fund development of the Region's land use plan.¹²²

The goals of the plan are to improve the quality of life in the Calumet Region by creating greater economic opportunity and enhanced environmental quality, retaining and enhancing existing businesses and industry, attracting new industrial and business development, and protecting and enhancing wetland and natural areas.¹²³

The plan provides an overview and vision for 1,000 acres of industrial and 4,000 acres of open space in a portion of the Far South Planning District. Because half of the industries located in the Calumet Region have closed, the city is looking for ways to attract new businesses to the area so they will provide local citizens with badly needed jobs and services.¹²⁴ The plan also calls for reclaiming former landfills as open space for habitat and recreation.¹²⁵

Many agencies, organizations, and individuals helped to develop the Calumet Land Use Plan, but most were representatives of government agencies. Some local elected officials and representatives of several environmental and a few community organizations are listed in the plan as having participated in focus groups.¹²⁶ But otherwise, Altgeld and other local residents did not have much involvement in preparing the plan.

The land use map published with the plan delineates five major land uses for the Calumet Region: industrial, public open space (for recreation), open space preservation (for wildlife habitat), open space recreation (for recreation), and open space reclamation (reclaimed for recreation from previous waste management sites).

The plan does not address Altgeld Gardens or any other residential neighborhoods under the assumption that residential neighborhoods will remain in place where they are now. It is unclear

whether, in attracting new business and industries to the area, the planners considered the potential health and environmental impacts on surrounding neighborhoods.

Altgeld Gardens is at the southern end of the Calumet Region and, according to the land use map, all five land uses would be located within a mile of Altgeld Gardens. However, as noted below, the Calumet map—which includes several areas of open and recreational space near Altgeld Gardens—is not consistent with the current zoning of the area, which still allows for primarily manufacturing uses. Thus, zoning changes will be needed to implement the Region's plan.

Zoning in Chicago

Roles and Responsibilities

Three government agencies have primary roles in Chicago's zoning decisions. DPD and the seven planning districts prepare land use plans for the city. DPD also reviews plans for large developments and proposes all land use laws, such as changes to the zoning code. The DPD's Department of Zoning enforces zoning laws, mostly through advance plan approval and inspections thereafter. The City Council must approve all changes to zoning ordinances, but aldermen are usually given great discretion in zoning matters for their wards.¹²⁷ Table 7-2 summarizes the role of various players in zoning decisions.

Zoning Districts

Chicago is divided into four basic types of zoning districts and many sub-districts. There are also some special districts and planned manufacturing districts.

- Residential districts are primarily intended for residential uses; some commercial and retail businesses may also be allowed.
- Business districts include offices and retail uses, and sometimes residential uses.
- Commercial districts include offices, facilities for the sale of goods and services, residential buildings, and a limited number of manufacturing uses.
- Manufacturing districts house industrial facilities like factories or warehouses and some commercial uses. Industrial uses in the M1 and M2 subdistricts are limited to those which do not bother their neighbors. M3 subdistricts house businesses that might bother their neighbors. The performance standards for nuisances like noise, vibration, smoke, and odors differ among the three districts. Noise and vibration levels can be higher in M3 districts than in M1 districts.¹²⁸ All manufacturing facilities must comply with the air quality requirements in the Chicago Municipal Code.¹²⁹

The penalty for violating the zoning code is \$500 for each offense or day in violation, and violators must also take remedial action to correct the infraction.

Current Zoning Reforms

Chicago is now conducting a comprehensive revision of its zoning code, which has been in place since 1957 but has been changed piecemeal ever since. In 2000, Mayor Richard M. Daley called for this overhaul of the city's zoning code. His goals are to insure the stability of residential property values, maintain affordability of housing, provide vital retail areas, promote more transportation choices, and ensure parks and open spaces throughout Chicago.¹³⁰

The Mayor appointed a Zoning Reform Commission made up of aldermen, planners, architects, bankers, and nongovernmental organization (NGO) representatives to develop the revised code.¹³¹ However, none of the NGO members seem to represent local community-based or environmental justice organizations.

The Zoning Reform Commission plans to finish its work in the summer of 2003. Once completed the proposed new zoning maps and other changes will be presented to the entire City Council for a vote.¹³²

Table 7-2 Players and Roles in Chicago's Zoning Process

Player	Role in Zoning Process
Residents and Business Owners	Offer comments and recommendations to developers and aldermen on development proposals, either at public hearings or through block clubs/community groups. Citizens can submit proposed zoning amendments through the City Clerk.
Developers and Property Owners	Submit applications, advocate for the proposed project, provide information on development for other players. Usually hire any architects and lawyers involved.
Zoning Department Staff	Reviews compliance for "as of right" zoning applications, prepares recommendations for other applications, and keeps records.
Zoning Administrator	Hears requests for exceptions to zoning requirements.
Department of Planning and Development Staff	Issues recommendations to Plan Commission, develops plans for city areas, provides staff support to Zoning Board of Appeals and Plan Commission.
Plan Commission	Reviews applications for Planned Developments, including Planned Manufacturing Districts.
Aldermen	Reviews all developments in her/his ward, and offers or supports zoning amendments.
City Council	Votes on all amendments to zoning ordinances.

Source: Adapted from Metropolitan Planning Organization, *Revise, Recreate, Rezone: A Neighborhood Guide to Zoning*, 2001.

Public Participation in Zoning Reforms

The Zoning Reform Commission has actively solicited public participation. In 2000, they held seven community meetings in neighborhoods across Chicago, followed in 2001 with six public workshops on specific zoning issues. Participants represented more than 300 business and community organizations.¹³³

The non-profit Metropolitan Planning Council (MPC) is also actively engaged in helping citizens and neighborhood groups understand and influence Chicago's zoning reform process. They have developed plain-language guides and made presentations to community organizations about the proposed zoning reforms.¹³⁴ In addition, the organization conducted community forums and workshops to solicit public comment on the rezoning effort.

Focus group participants expressed concerns and made recommendations on two issues that are particularly relevant to environmental justice, transitional areas between industrial and non-industrial uses and public participation in the zoning process:

- Transitions at the edge of some industrial and non-industrial areas provide insufficient protection. Focus group participants recommended requiring landscaping and setbacks from industrial districts and creating transition requirements in manufacturing districts that match existing standards for Planned Manufacturing Districts.
- Communicate better and provide greater opportunities for neighborhood participation in the development review process. Focus group participants recommended expanding current notice requirements, which are now mailed only to property owners within 250 feet of the property in question, to all neighborhood organizations and residents that indicate interest in specific properties or areas of Chicago. They recommended establishing neighborhood contact requirements for development proposals of a certain scale, so that neighborhood organizations would have an opportunity to request an informational meeting before the city's review. They also recommended improving the public notification process by posting announcements in public spaces.¹³⁵

Performance Standards for Manufacturing Districts

Chicago's zoning ordinance establishes performance standards for noxious, odorous matter in areas zoned as manufacturing districts, as much of the land near Altgeld is zoned (see below).

Smoke and Particulate Matter. All land uses established after May 1, 1959, must comply with the city's requirements governing air pollution and waste management, as set out in Chapter 11-4 of the Municipal Code of Chicago.¹³⁶

Odor. There are increasingly stringent performance standards in M1 to M5 manufacturing zones for amounts of odor that can be detected along property lines. For all manufacturing zones, emissions of noxious odors that are detrimental to or endanger public health, safety, comfort, or welfare are considered public nuisances and are unlawful.¹³⁷

Toxic Matter. For all manufacturing districts, toxic matter cannot be discharged beyond the property line in concentrations that can be detrimental to or endanger the public health, safety, comfort, or welfare or cause injury or damage to property or business.¹³⁸

Significantly, however, neither performance standards applies to odors or toxic matter from land uses that were in already in place at the time the revised ordinance was adopted.¹³⁹

Zoning Near Altgeld Gardens

On the current zoning map, most of the area near Altgeld Gardens is zoned M3, or heavy manufacturing.¹⁴⁰ There are also a few M1 (restricted manufacturing) and M2 (general manufacturing) districts, as well as a Planned Manufacturing District in the vicinity of Altgeld. If the Calumet Area Land use Plan is implemented, some of the area near Altgeld Gardens would be changed from manufacturing uses to open space, as discussed above.

ENVIRONMENTAL PERMITTING

Illinois Environmental Protection Agency

The Illinois Environmental Protection Agency (IEPA) administers the state's environmental protection programs. EPA has authorized IEPA to administer most aspects of the federal air, water, and hazardous waste programs.¹⁴¹

- State Environmental Permits

The key categories of environmental permits issued by IEPA are: air pollution control permits for constructing and operating a source of air emissions; water pollution control permits for discharges into water, pollution control equipment, and operating permits; and land permits for waste treatment, storage, or disposal. Proposed and final environmental permits for Illinois facilities are available to the public online at a website maintained by EPA Region V.¹⁴²

- Emissions Reduction Credit (ERC) Bank

In 1995, IEPA began trading air pollution credits under the federal Clean Air Act. Through the ERC bank, DoE helps businesses that want to build or expand meet federal and state regulations for volatile organic chemicals (VOCs) by obtaining emissions credits for the amount of new emissions they will create. According to IEPA, the ERC bank will reduce air pollution because, when a business uses its credits, it must also commit to retire 30 percent of the credits, which are given to the state and never used again. Companies participating in the ERC bank must also complete an environmental project that benefits the community.¹⁴³

Environmental Justice Policy

During the spring of 2003, IEPA began soliciting comments on a Draft Interim Environmental Justice Policy. In addition to designating an Environmental Justice Officer for IEPA and an advisory group, the policy sets out the following objectives:

- Ensure that communities are not disproportionately impacted by degradation of the environment or receive a less-than-equitable share of environmental protection and benefits;
- Strengthen the public's involvement in environmental decision-making, including permitting and regulation and, where practicable, enforcement matters;
- Ensure that agency personnel use a common-sense approach to addressing environmental justice issues; and
- Ensure IEPA continues refining its environmental justice strategy so that it continues to protect the health of Illinois citizens and the environment, promote environmental equity in the administration of its program, and is responsive to the communities it serves.¹⁴⁴

The strategy includes steps to improve public participation in permitting and other actions that may have environmental justice implications. In addition to working with host communities to identify potential issues, IEPA will hold meetings in and around the affected communities before taking action. Sometimes, IEPA will hold "small group" or "living room" meetings for citizens when they request a public hearing on a permit. These small meetings encourage greater public participation and candid dialogue. Illinois regulations also allow for public participation in the permitting process beyond the hearings required under law. Thus, IEPA will sometimes hold informational hearings to inform the public about a proposed action or to gather information or comments from the public before making a final decision.¹⁴⁵

For permitting actions where environmental justice concerns are raised, IEPA will look at the information provided and other available information to assess whether there are potentially significant, adverse environmental impacts. If there are any such potential adverse impacts, the IEPA will either request an assessment or assess these impacts using the information and tools reasonably available, and within the time constraints allowed by applicable state and federal law. The assessments will be made available to the public and other affected persons or entities, and an appropriate agency response will be made based on these assessments.

Local Siting Process

The Illinois Environmental Protection Act of 1970 also includes a local siting process for pollution control facilities.¹⁴⁶ A pollution control facility is defined as any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. A developer who wants to build a new landfill or other pollution control facility must get the approval of the local siting authority—either the county board in unincorporated

areas or the governing board of a municipality. IEPA will not review a permit application for one of these facilities until the local body has approved its location.¹⁴⁷

Local governments may base their decision about the suitability of a pollution control facility only in accordance with specified criteria. Several of the criteria would allow for consideration of environmental justice concerns. The local government may consider whether:

- The facility is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected;
- The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;
- The traffic patterns to and from the facility are designed to minimize the impact on existing traffic flow; and
- If the facility will be treating, storing, or disposing of hazardous waste, an emergency response plan for the facility will be developed to include notification, containment, and evaluation procedures to be used in case of an accidental release.¹⁴⁸

Within the city limits of Chicago only, local zoning and land use requirements can also be applied as criteria for siting decisions.¹⁴⁹

Additional public participation requirements are designed to assure adequate outreach to the local community. The applicant must notify certain adjacent property owners and members of Illinois' General Assembly from the legislative district in which the facility is to be located. The applicant must also notify the general public through publication of a notice in a newspaper. At least one public hearing must be held, and any person may comment on the proposed facility.¹⁵⁰

Chicago Department of Environment

Permits

Chicago's DoE ensures compliance with and enforces air quality laws in the city. Additionally, the DoE issues permits and conducts inspections at more than 2,100 industrial facilities to ensure they are in compliance with laws and regulations.¹⁵¹

DoE issues air quality permits for such activities as installation of pollution control equipment, incinerators and afterburners, dry cleaning equipment, and spray booths in auto repair shops. DoE also issues permits for waste disposal facilities, such as landfills, transfer stations, junkyards, liquid wastes, and rock crushers, and IEPA has delegated authority to DoE for issuing permits of underground storage tanks.¹⁵²

Enforcement

DoE enforces the municipal code and, through delegation agreements, also enforces some state and federal environmental laws. DoE inspectors write tickets for violations, file inspection reports, gather evidence, and provide court testimony. DoE's enforcement programs cover landfills, transfer stations, recycling facilities, junkyards, and rock crushing facilities, illegal dumping, asbestos demolition and construction, odor complaints, air emissions, recycling, removal and management of underground storage tanks, and response to emergencies involving hazardous materials.¹⁵³

Public Participation

DoE relies heavily on the alderman in each ward to disseminate information about proposed permits. Notices of alderman meetings are placed in the *Chicago Sun Times*, and the meetings are held in the appropriate alderman's ward. DoE generally does not use community groups to participate in the permitting process, relying mostly on the aldermen to provide the local perspective.¹⁵⁴

ANALYSIS AND RECOMMENDATIONS

Leadership and Accountability

The Calumet Region of Southeast Chicago has the potential to become a positive example of sustainable development where the Region's economic revitalization is tied to enhancement of the natural environment. If this vision becomes reality, residents of Altgeld Gardens—along with other citizens in the Region—will realize improved environmental conditions as well as greater economic opportunities. To turn around both the negative image and the reality of the Region's contamination, however, leadership and coordination among many agencies and organizations that are not accustomed to working together will be necessary. They must also embrace the concept of achieving environmental justice, so that economic development opportunities are not produced at the expense of people who already face disproportionate risks from environmental threats.

Community activists, such as the People for Community Recovery based at Altgeld Gardens, have brought attention to the environmental and health problems of residents in Southeast Chicago. By educating citizens and creating political pressure, community groups have produced positive results, such as a moratorium on landfills, enforcement actions against violating facilities, and a demand for "green" industry as part of economic redevelopment plans. Community-based organizations and environmentally-focused organizations share common goals with regard to environmental improvement coupled with economic development. A coordinated effort by these groups to work on their common goals could be a powerful engine for ensuring action on problems at Altgeld and the rest of the Calumet Region.

Local agencies should adopt policies to ensure environmental justice, and should incorporate active community involvement and careful evaluation of potential health and environmental

impacts in their decision-making processes. These agencies also need to coordinate, so that their collective resources can be used most effectively.

Unfortunately, responsibility is split among several autonomous organizations. Most notably, the Metropolitan Water Reclamation District (MWRD) is managed independently by its own set of elected officials, and is not under the jurisdiction of the City of Chicago. According to local officials and federal staff interviewed for this project, MWRD has generally not been very cooperative with other agencies. Odor problems at its sewage treatment and sludge drying facilities are central to the environmental justice concerns at Altgeld Gardens, and odor is considered a major impediment to attracting new industry and recreation in the area. Federal, state, and local agencies should carefully and creatively examine all their authorities to see whether a legal solution to this ongoing problem can be found.

Chicago's Department of the Environment (DoE) does coordinate with the city's Department of Planning and Development (DPD) on new development. DoE reviews the environmental impacts of new land uses and development and makes recommendations regarding consistency with existing requirements. More recently, DoE has been working with the Department of Zoning to draft new zoning guidelines. The zoning guidelines will include requirements for noise and view barriers and measures to keep from having a heavy industrial area next to a residential area.¹⁵⁵ DoE also conducts environmental reviews for the Chicago Housing Authority (CHA). But more coordination is needed. For example, DPD does not coordinate with the Chicago Department of Health.¹⁵⁶ DPD staff say the health department focuses on people and social factors, while they are focused on physical land use planning.¹⁵⁷ This narrow focus does not recognize the need to make sure that public health concerns are addressed by land use plans.

City staff emphasized the central role that the ward aldermen play in delivery of services and in getting things done. Their leadership and involvement is essential to success in dealing with the environmental and economic problems of Southeast Chicago and Altgeld Gardens. Community and environmental groups that gain the support of the local aldermen have a greater chance of getting attention and action on their issues. Aldermen play an important role with regard to zoning issues as well. All requests for zoning changes must be approved by the City Council, and the Council normally follows the recommendation of the alderman for the ward where changes are proposed.

Thus far, it is unclear whether or how Chicago's current zoning reforms will address environmental and public health threats, particularly where manufacturing districts are located near residential districts. The city should ensure that its comprehensive new zoning code and maps consider these impacts and that there are adequate safeguards. Grandfather clauses in the current zoning ordinances—which cloud the city's authority to enforce odor, smoke, and toxic matter requirements when uses that pre-dated the ordinances—should be eliminated in the new code.

While DoE staff acknowledge the particular concerns of people-of-color and low-income communities, they do not have a goal, policy, or specific program for addressing environmental justice. However, DoE staff have received environmental justice training from EPA's Region V, which has sparked ideas for addressing environmental justice in city programs. At the time this

report went to press, IEPA was circulating for comment a draft Interim Environmental Justice Policy.¹⁵⁸ The draft policy sets out the state agency's intent to consider disparate impacts in its permitting and other decisions and to ensure fair and equitable delivery of services. However, the policy would apply only to IEPA and not to other state agencies, and it is unclear how this state policy might affect the environmental authorities that IEPA has delegated to Chicago's city agencies.

Permitting and Planning and Zoning Authorities

Plans for revitalizing Southeast Chicago call for sustainable, environmentally sound economic development and enhanced natural resources. If this vision can be implemented, residents of Altgeld Gardens and neighboring communities will benefit from increased economic opportunities, as well as a healthier and more attractive environment.

Permits can play a critical role in minimizing otherwise adverse impacts of facilities. Community and environmental groups can work with government agencies and businesses during the permitting process—including the permit renewal process for existing facilities—to ensure that facilities employ pollution prevention practices wherever possible and use the most effective pollution control techniques when prevention is not possible. Permits can also require facilities to manage their noise, odors, and traffic so that they will be good neighbors in the community.

Depending on the type of permit involved and whether the program has been delegated (air, water, waste, or multiple permits), IEPA and/or Chicago's DoE will have the lead permitting responsibility. Even where the city has direct responsibility for issuing permits, however, IEPA needs to provide technical and other expertise if needed. IEPA's proposed environmental justice policy is designed to ensure that the agency's permitting and program decisions do not have a disparate impact on people-of-color or low-income communities. IEPA's environmental justice coordinator and Office of Community Relations can be a valuable source of support for Chicago's efforts to deal with environmental justice issues where city agencies implement environmental programs. One area that should be carefully monitored is implementation of the Emissions Reductions Credit bank, to ensure that no local VOC "hot spots" emissions result from trading emission credits.

Chicago has made a political commitment to economic development that will protect the environment and public health, and the city's new zoning reform effort includes environmentally sound development as a goal. Other signs of the city's commitment are the stated goals and objectives of the Calumet Regional Land Use Plan and the effort underway to develop a policy on "green" industries.

Although additional economic development in Southeast Chicago may be a desirable goal, questions remain whether it can be accomplished without further exacerbating the health and environmental threats that area residents already face. To ensure that proposed projects are acceptable to the community and prevent or strictly control pollution, the decision-making process must include careful evaluation of potential impacts as well as active involvement of

environmental justice and community-based organizations. Some new projects simply may not be appropriate for the Region.

Already, community groups and environmental organizations are working with federal, state, and city agencies, as well as with private developers, to make sure that new businesses at redeveloped brownfields and old industrial sites will be environmentally sound. Government agencies and community groups can encourage new or expanding businesses to use pollution prevention practices, employ the most effective techniques for pollution control where prevention is not possible, and take steps to be good neighbors by addressing potential noise, traffic, and aesthetic concerns.

Clearly, it is not sufficient to have environmental permit conditions and ordinances on noise and odor. There must also be effective monitoring and enforcement to ensure that these requirements are being met. As in the permitting process, community groups and environmental organizations must work together in holding government agencies and industry accountable for compliance with permits, land use plans, and zoning and other local ordinances.

Setting Priorities and Reducing Risks

It is well established that residents of the Calumet Region face multiple environmental and public health threats. Nearly all of the Southeast Chicago neighborhoods are overwhelmingly African-American or have mostly people-of-color populations, with strong concerns about environmental justice.

Once home to many thriving industries, Southeast Chicago must now deal with the fact that many of its industries have moved away, leaving behind a legacy of contaminated land and possibly ground water contamination. Thousands of acres of vacant land await redevelopment, yet some of the facilities that remain still produce high levels of particulate matter and toxic emissions, giving the region significant air pollution problems and placing it in nonattainment for particulate matter.

The entire Calumet Region is a high priority for Chicago's economic and environmental improvement. Several efforts are underway to foster environmentally sound development that will help to address both concerns, and will benefit local residents and all of Chicago. For new facilities, zoning rules and environmental reviews can ensure proper use of buffer zones between residential and commercial or industrial land uses; and the permitting process can promote pollution prevention and ensure appropriate pollution controls are installed. Done correctly, the redevelopment effort could become a model of sustainable development for other Rust Belt communities.

Mitigating the impacts of existing pollution is especially difficult. The few studies about the health impacts of possible cumulative exposures to contaminants have been inconclusive, leaving no one satisfied. Citizens are tired of complaining but not obtaining any government action, and government agencies cannot take action without very specific data to support proposed solutions.

Nevertheless, a number of steps can be taken in the near term to help reduce environmental exposures and risks to local residents. IEPA and Chicago DoE, with assistance from EPA as appropriate, should develop and implement a strategy that includes the following actions:

- Monitor all facilities in the Calumet Region for compliance with environmental permit and other requirements, and take appropriate enforcement actions to bring them into compliance if they are not;
- For existing facilities, use the permit renewal process to solicit community perspectives about the facility and incorporate new permit conditions that address their concerns;
- Develop and implement a strategy to address the odor issues that are a primary concern of Altgeld and other area residents, as well as a barrier to business development, by:
 - Actively involving citizens in developing and implementing the strategy, such as by using focus groups and including citizen representatives on odor panels; and
 - Exploring creative and aggressive use of existing legal authorities at all levels of government—such air, water, and waste laws as well as general health and welfare and nuisance statutes—to ensure that odors are controlled through effective management practices and installation of appropriate, cleaner technologies;
- By using analytic tools, modeling, and sampling, assess the potential health impacts of cumulative exposures to contaminants in particular communities such as Altgeld Gardens;
- Identify and address sources of contamination that are most likely to be responsible for health impacts by ensuring compliance with current requirements and re-opening existing permits if necessary to reduce risks; and
- Provide education and training to local residents on risks such as asbestos, lead paint, and pesticides to prevent or mitigate household exposures.

Public Participation

Public participation and community outreach efforts by Chicago agencies appear to be minimal, at best. For each neighborhood, public participation depends almost entirely on the local aldermen. Staffs of both Chicago DoE and DPD said they rely on the aldermen's offices to do most of the outreach to community residents. DoE staff said they generally do not use community groups in the permitting process, relying mostly on the aldermen to get the local perspective on city permits. IEPA does more extensive community outreach on its air, water, and waste permits. Building on the agency's long-standing community relations program, IEPA's draft Interim Environmental Justice Policy sets out steps to ensure public participation in permitting and other actions that may have environmental justice implications. In addition to

working with host communities to identify potential issues, IEPA will hold meetings in and around the affected communities before taking action.

Regarding land use decisions, the recommendations of the local alderman on proposed zoning changes are generally approved by the City Council. Consequently, aldermen have substantial influence with regard to both permitting and land use decisions. While aldermen are elected officials and must be responsive to the concerns of their constituencies if they wish to be re-elected, Chicago's DPD and DoE could, and should, do more to reach out to affected communities regarding proposed decisions.

Chicago's current efforts to adopt comprehensive zoning reforms provide a unique and critical opportunity to ensure that environmental justice concerns are addressed. Ordinances controlling the activities that can be conducted in each type of zoning district and requirements for set-backs and aesthetics in transition areas between manufacturing and residential districts can be improved. Controls on such community concerns as noise, odor, toxics, smoke, and traffic can be strengthened. Penalties for violations can be increased above the current \$500.

Focus group participants discussing Chicago's current zoning reforms have highlighted the lack of adequate public participation as a key defect in the city's zoning process. Currently, only property owners within 250 feet of a proposed zoning change must receive a written notification. This notification requirement clearly leaves out renters and others who live beyond the 250-foot line but may still be affected by the proposed change. To improve public outreach, these focus groups have recommended developing lists of neighborhood organizations and residents who have expressed an interest in specific properties or areas of Chicago to receive notices of proposed zoning changes. They also suggested establishing a neighborhood contact requirement for development proposals of a certain size, so that neighborhood groups could request a meeting in advance of the city's decision.

The first key step is to ensure an adequate public participation in the zoning reforms. While Chicago has conducted some outreach about the process, and the public has been invited to comment on draft materials, the real test will be the extent to which the city actively engages—and listens to—the public when preparing the proposed new zoning maps.

RECOMMENDATIONS

Recommendation 1. Chicago should ensure that its current effort to adopt comprehensive zoning reforms addresses community and public health concerns, and should plan and carry out extensive public outreach and participation on the zoning reforms, particularly with regard to proposed revised zoning maps. The reformed zoning code should:

- Require explicit consideration of public health and environmental impacts for all proposed land uses;
- Strengthen controls on noise, odor, toxics, smoke, and traffic and make them apply to both existing and future activities;

- Incorporate set-backs, barriers, and other aesthetic measures in transitional areas between manufacturing and residential districts;
- Increase penalties for code violations; and
- Broaden public participation to include written notification of proposed zoning changes for all interested individuals and organizations, not just to adjacent property owners.

Recommendation 2. Chicago's plans for economic redevelopment, such as the Calumet Area Land Use Plan, must be implemented in a way that does not adversely impact neighboring residential districts. Strict enforcement of current requirements and fostering pollution prevention measures can reduce impacts from existing facilities. With regard to new facilities, the city must carefully consider the potential for disparate impacts on low-income and people-of-color communities and accept only new developments that do not exacerbate already poor environmental conditions or expose neighboring residents to increased pollution.

Recommendation 3. Officials of federal, state, and local agencies and local political leaders should work with community representatives to develop and implement a strategy that will address the odor issues faced by residents of Altgeld Gardens and other Southeast Chicago neighborhoods. The strategy should:

- Give first priority to resolving the long-standing odor problem at the Metropolitan Water Reclamation District's wastewater treatment plant and sludge drying facility;
- Provide for an aggressive and creative review of each jurisdiction's respective legal authorities—including general welfare and nuisance laws plus water, air, and waste disposal regulations—to find an enforceable solution; and
- Foster good neighbor dialogues between facility operators, representatives of community organizations, and government officials.

Recommendation 4. Chicago agencies should expand their public participation efforts and actively reach out to community-based and environmental justice organizations when making permitting, planning, and zoning decisions. They should also ensure that these organizations are represented on advisory panels and focus groups. The Illinois Environmental Protection Agency should fully implement its Interim Environmental Justice Policy, and help Chicago's planning and environmental agencies to develop and implement comparable policies and practices.

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CHAPTER NINE

ST. JAMES PARISH, LOUISIANA

FINDINGS

Finding 1: Louisiana law does not require local governments to adopt comprehensive plans or zoning ordinances, and St. James Parish has no comprehensive plan or zoning ordinances. Local officials say they lack professional planning staff, do not have adequate information about current land use, and have only limited public support for land use controls on private property.

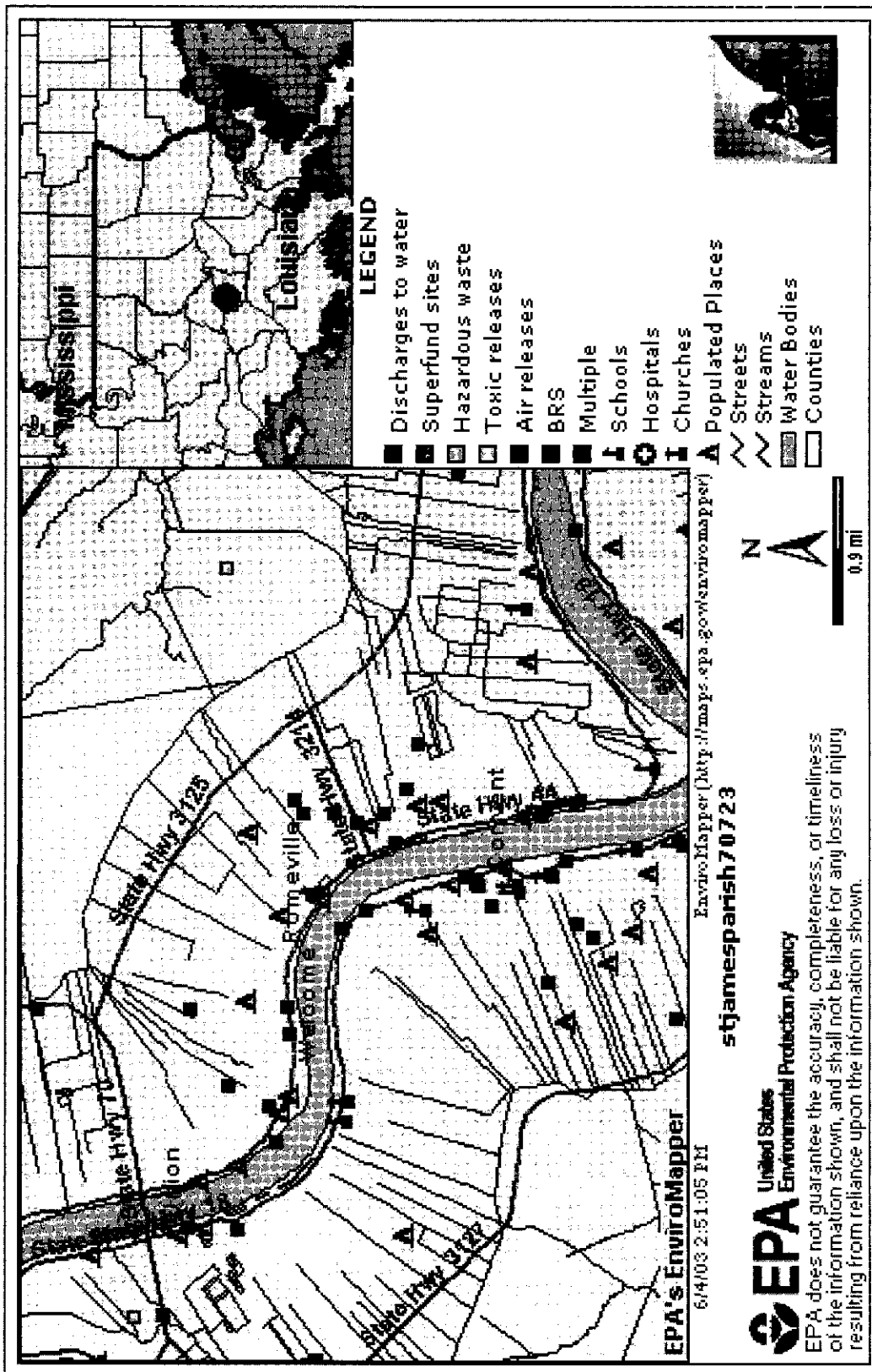
Finding 2: Louisiana law authorizes regional planning organizations to assist local governments that are interested in planning and zoning, but officials in St. James Parish have seldom used these services.

Finding 3: Regional planning officials and some St. James Parish officials acknowledge that instituting zoning has the potential both to protect citizens and to create a predictable regulatory structure for industry that might reduce future controversies about siting decisions. In 1990, the Louisiana Department of Environmental Quality (LDEQ) issued a memorandum to all local officials reminding them of their responsibility for protecting human health and welfare and of their existing authority to exercise that responsibility when making local siting decisions. St. James Parish officials are reluctant, however, to embrace land use planning or zoning because of possible political objections to local government controls on decisions about how to use private property.

Finding 4: The government of St. James Parish does not identify environmental justice as either a problem or a priority, in large part because parish officials believe there are no environmental justice issues unless a polluting facility purposefully locates near a low-income or people-of-color community intending to harm the residents.

Finding 5: Through a task force and public hearings, respectively, Louisiana's Governor and the state Legislature have solicited recommendations from stakeholders on environmental justice. Stakeholders recommended developing an environmental policy act ("little NEPA") and examining whether the state needs land use planning and zoning. They also recommended creating buffer zones around some industrial facilities. To date, these and a wide range of other recommendations from these stakeholder processes have not been implemented by state or local governments. If implemented, they would help to address many of the environmental justice complaints in St. James Parish and elsewhere in Louisiana.

Finding 6: LDEQ has not been able to provide effective assistance for St. James Parish on environmental justice issues because the agency lacks a vision, strategy, and tools that could help local governments in Louisiana understand the health and environmental implications of their siting decisions.

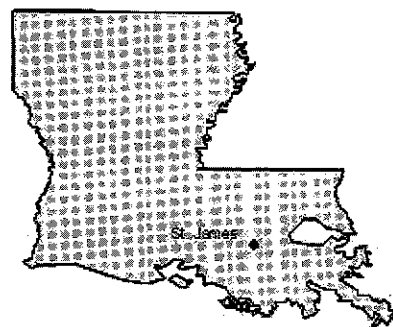


BACKGROUND

About St. James Parish

St. James Parish (the equivalent of a county under Louisiana law) is located in southeastern Louisiana between Baton Rouge and New Orleans. It covers 246 square miles, and is predominantly rural, with the Mississippi River running through the center.¹

According to the 2000 Census, the population of St. James Parish is 21,224, almost evenly divided between African-American and white (non-Hispanic) populations; no other race or ethnicity comprises more than one percent of the population.² Over 20 percent of the Parish's general population and 27 percent of its children live in poverty. Median household income is \$35,277, with 37.4 percent of households in the Parish earning less than \$25,000 annually. Just over a quarter its residents 25 years or older have not achieved a high school diploma or equivalent. Of the available labor force, 5.5 percent are unemployed. The largest industries reported in the Census are manufacturing (26.2 percent, mostly petrochemical and large-scale agricultural), plus education, health, and social services (19.9 percent).³ St. James Parish suffers from out-migration and a lack of economic development.⁴ According to the 2000 Census, the Parish's population has only increased 1.6 percent in ten years.⁵



St. James Parish, Louisiana—Demographics

Size:	246.1 square miles
Total Population:	21,216
Race and Ethnicity*:	
African-American:	49.4 percent
White:	50.0 percent
Hispanic*:	0.6 percent
"some other race":	0.1 percent
Unemployment Rate:	5.5 percent
Median Household Income:	\$35,277
Individuals Below the Poverty Level:	20.7 percent
High School Graduate or Higher:	73.9 percent

*Total does not add up to 100 percent because some individuals specified more than one race

Source: U.S. Census Bureau, *Census 2000*

Environmental Setting

The Parish contains large areas of bayou (swamp and marsh), and a settled strip of land on each side of the Mississippi River. Much of the area is not inhabitable because of the high water table. Historically, the two strips of fertile land on either side of the Mississippi consisted of plantations between the bayous and the River, with property boundaries between them running perpendicular to the River. Today, these properties make natural ports, with easy access for shipping.

The River is also a physical and cultural divide. Residents on the west bank have a strong Acadian (French) heritage and are interested in preserving this cultural tradition. Many west bank citizens still speak both Creole and English. By contrast, east bank residents, with direct access to New Orleans and Baton Rouge, tend to be more oriented to the modern urban culture of those cities. Most east bank citizens speak only English. There are no distinctive demographic, economic, or social differences between the populations on either riverbank, although each

community sees itself as distinct. The Parish also provides two sets of most public services, even drinking water treatment plants, one on each side of the River.⁶

Economic History

When slavery ended, groups of free blacks, referred to as “companies,” purchased strips of land on the edges of many plantations. The descendants of these freed slaves have remained there, generation after generation, subdividing and re-subdividing the parcels. In general, these communities are economically poor, but rich in family histories going back many generations. The result is a series of small African-American communities—a few hundred people in each community—whose residents live in dense clusters of dwellings on small strips of land.⁷

After these strips of land were purchased by the free black companies, the remaining plantation lands were usually left to the plantation owners’ children and other descendants. Today, some plantation properties are owned by up to 200 heirs. Other plantations have been sold for development; and some now contain heavy industry that is dependent on river access. Of the plantations that have not been sold, many are leased for growing sugar cane.⁸

Petrochemical and agricultural businesses are the major industries. Fourteen major factories in St. James Parish produce, transport, or distribute chemical and petroleum products. The other major industrial facilities in the parish include an aluminum producer, two grain exporters, a sugar refinery, and a potato chip manufacturer.⁹

ENVIRONMENTAL JUSTICE CONCERNS

Environmental Quality in St. James Parish

LDEQ listed air toxics as the state’s highest environmental risk statewide for 2000.¹⁰ While is an overall downward trend in toxic air releases, the state continues to be one of the largest toxic release emitters in the nation. In 1997, Louisiana ranked second highest for toxic releases, with 186,038,253 pounds of toxics released to air, water, and land.¹¹ Due to de-listing of one chemical and reduced usage of another, in 2000 the state dropped to 11th highest in toxics releases, with 154,522,635 pounds of total releases.¹²

St. James Parish is part of the 85-mile stretch along the Mississippi River where more than 100 chemical, petrochemical, refining, and industrial plants are located.¹³ The potential for human exposures to toxic chemicals has earned this area the nickname “Cancer Alley.” According to the Toxics Release Inventory, St. James Parish has an extraordinarily high level of toxic releases.¹⁴ For 1997—the year the Shintech environmental justice case was filed (discussed below)—put St. James in the national news, the Parish ranked 27th in the nation for total toxic releases, with 16,653,641 lbs.¹⁵ In 2000, St. James Parish was ranked as the 90th highest county in the nation for toxics releases; and its total toxic releases were 4,815,816 pounds, including 4,510,587 pounds of toxic air releases.¹⁶

In 2000, 88 percent of the air pollution causing cancer risks in St. James Parish was from mobile sources; while 9.9 percent was from area sources and two percent was from point sources.¹⁷ A 1998 EPA analysis for the Shintech case found that there were 30 polluting facilities within a four-mile radius of people residing in St. James Parish.¹⁸

With regard to air quality, St. James Parish was designated as nonclassifiable for ozone in 1995, but the adjacent parish of Ascension and nearby parishes of Iberville and Livingston are classified as in serious nonattainment areas for ozone.¹⁹ Based on 2000 air quality data, St. James Parish has also been rated as one of the worst counties in the nation for nitrogen oxides, particulate matter (PM-2.5 and PM-10), and sulfur dioxide.²⁰

Health Issues

According to EPA, air toxics—which are a major concern for Louisiana’s Industrial Corridor²¹—can cause serious health problems including cancer, respiratory irritation, nervous system problems, and birth defects. These effects can be minor and more immediate, like eye irritation, or longer-term and life threatening, like lung cancer.²²

The potentially adverse health effects from chemical exposures have been a major issue for residents of Convent, a town in St. James Parish. In the late 1990s, Convent residents raised environmental justice claims about a proposal for a new polyvinyl chloride facility in their community. Many residents testified about their health concerns associated due to air emissions from nearby industrial facilities, including “respiratory problems, such as asthma..., leukemia, skin rashes, lung damage, and premature death.”²³ Members of the community also expressed concern about the health effects of the cumulative risks associated with their exposures to multiple chemicals and the vulnerability of sub-populations near the proposed facility—including children attending two elementary schools and a Head Start center within one mile of the proposed boundary for the chemical plant.²⁴

Industry and state officials have disagreed over designation of Louisiana’s Industrial Corridor as “Cancer Alley” because some past studies have not shown that overall cancer rates are substantially different in the Corridor when compared with cancer rates in the rest of Louisiana.²⁵ Community and environmental groups assert that analyzing health information on a regional or parish basis may fail to detect cancer clusters or the result of other very localized impacts from emissions, like those of concern to St. James Parish residents.²⁶ Rather, they claim that science has not caught up with the way these localized health problems should be analyzed. An environmental epidemiologist, Ellen Silbergeld from Johns Hopkins University, recently said: “This is not a sensitive science.... The numbers of people are too small and our ability to see a difference in their disease patterns is very imprecise. So the two things just compound one another.”²⁷

The shortcomings of current tools to assess localized pollution impacts have been acknowledged by organizations like the National Academy of Science. In 1999, the Committee on Environmental Justice of the National Institute of Medicine conducted a study on environmental justice problems and recommended, among other things, that research to address these issues “must improv[e] the science base and collect data that is [sic] relevant to policy-makers.”²⁸

Sources of Health Data

There are a number of data sources and organizations responsible for gathering health-related data for Louisiana, the Industrial Corridor, and St. James Parish.

- Federal Cancer Data

According to the National Cancer Institute's *Cancer Burden Fact Sheets* for 2002, "Louisiana ranks second highest overall in cancer mortality rates among the 50 states and Washington, D.C., with 237.3 deaths per 100,000 persons, compared to 206.0 for the United States."²⁹ The average annual age-adjusted mortality rates for cancer deaths per 100,000 persons, by race, [during] 1995-1999 for lung, colorectal, and breast cancer is higher for blacks than for whites in the United States, and the rate is higher for blacks in Louisiana than it is for blacks nationwide.³⁰ The mortality rate for prostate cancer is also dramatically greater for blacks in Louisiana (73.7 per 100,000) than for whites (32.7 per 100,000), and much higher than the overall national rate of 33.9 per 100,000.³¹

The National Cancer Institute's *State Cancer Profiles, Death Rate/Trend Comparison by State/County*³² for all races through 2000 notes that St. James Parish ranks higher than the national rate of lung and bronchial cancer deaths for males of all races, but below the national rate in this same category for females of all races. Yet, the Parish's breast cancer rate for females of all races is similar to the national rate. These profiles do not provide Parish data for other cancers for the parish because these data were either "too sparse to provide stable estimates [or to] ensure confidentiality and stability of rate estimates."³³

- State Cancer Data

The Louisiana Department of Health and Hospital's Section of Environmental Epidemiology and Toxicology (SEET) is charged with investigating potential long-term and short-term health effects caused by chemicals in the environment and residents' exposures to toxic pollutants.³⁴ Although SEET has not conducted any health effects studies in St. James Parish,³⁵ there is a study underway now—called the Lower Mississippi River Intra-agency Cancer Study—to analyze the frequency of lung cancer among residents of the Industrial Corridor.³⁶

The Department of Health and Hospitals does produce a periodic health profile report for each parish with a variety of health statistics, including a section on environmental health.³⁷ The 1999 version of this report, which is the most recent, provides data on toxic releases in St. James Parish for 1997 (8.1 million pounds to air; 7.8 million pounds to water; and 843,678 pounds to land); but it contains no analysis or other information about health effects on Parish residents.³⁸

The Louisiana Tumor Registry "does not calculate [cancer] rates for individual parishes because of concerns of statistical instability in some of the smaller parishes."³⁹ The Registry does, however, have cancer counts for St. James Parish during 1995-1999, although these data are not disaggregated by race or sex. The Parish's counts of *in situ* and invasive cancer cases for these years among males and females of all races showed the top cancers for females to be breast, colon, rectum, lung, and bronchial cancers (118 out of a total of 207 cancers for females).⁴⁰ For

males of all races, the top cancers were prostate, lung, bronchial, colon, and rectum cancers (145 out of a total of 243 cancers for males).⁴¹

The Registry's data on cancer mortality rates for the Industrial Corridor during 1994-1998, by race and sex, show that blacks had higher mortality and cancer rates than whites in the Corridor, the state, and the United States, as well as higher rates than for all blacks in the United States.⁴² The Registry's data show that for the six-year period, mortality rates per 100,000 (age adjusted to the United States 1970 population) were 345 for whites and 483.1 for blacks.⁴³ For Louisiana, the mortality rates per 100,000 were 370.7 for whites and 497.3 for blacks. The comparable numbers for the United States are 337.8 for whites and 458 for blacks.⁴⁴ But the Registry did not analyze the data, so no conclusions can be drawn as to their significance.

Cancer rates by race and gender for the Industrial Corridor⁴⁵ during 1995-1999 show that they are higher overall than in the rest of Louisiana and the United States, and that rates for blacks are higher than for whites in each area.⁴⁶ These rates are per 100,000 people, adjusted for age using the United States population in 2000.⁴⁷

The Shintech Case

In 1996, the Shintech Corporation, a Japanese producer of polyvinyl chloride, announced its intent to build a \$700 million facility, including an incinerator, in Convent, Louisiana, a small, predominately African-American community in St. James Parish.⁴⁸ The company's air permit application indicated its intent to emit annually more than 104,000 pounds of vinyl chloride, 360,000 pounds of methanol, 102, 000 pounds of chlorine, and 64,800 pounds of hydrochloric acid.⁴⁹ At the time, St. James Parish ranked 27th in the nation for total toxics releases.⁵⁰

A group of local citizens, calling themselves the St. James Citizens for Jobs and the Environment, organized to oppose the siting of this facility,⁵¹ which would have been located near 16 other large industrial plants.⁵² (See map on the next page.) Their primary concern was the potential threats that the facility would pose to the health and safety of the community.⁵³

On behalf of the St. James group and several other organizations,⁵⁴ two significant actions were initiated. First, in May 1997, the Tulane Environmental Law Clinic filed an administrative complaint against LDEQ under Title VI of the Civil Rights Act of 1964, opposing LDEQ's approval of a permit for the Shintech facility.⁵⁵ Second, in July 1997, the Louisiana Environmental Action Network (LEAN) filed a petition with the EPA Administrator to revoke Shintech's air permit, on the grounds that it was not issued in accordance to federal requirements.⁵⁶

The 1997 Shintech case was not the first Title VI case filed against Louisiana's Department of Environmental Quality.⁵⁷ The case was, however, significant for a number of reasons:

St. James Parish, LA

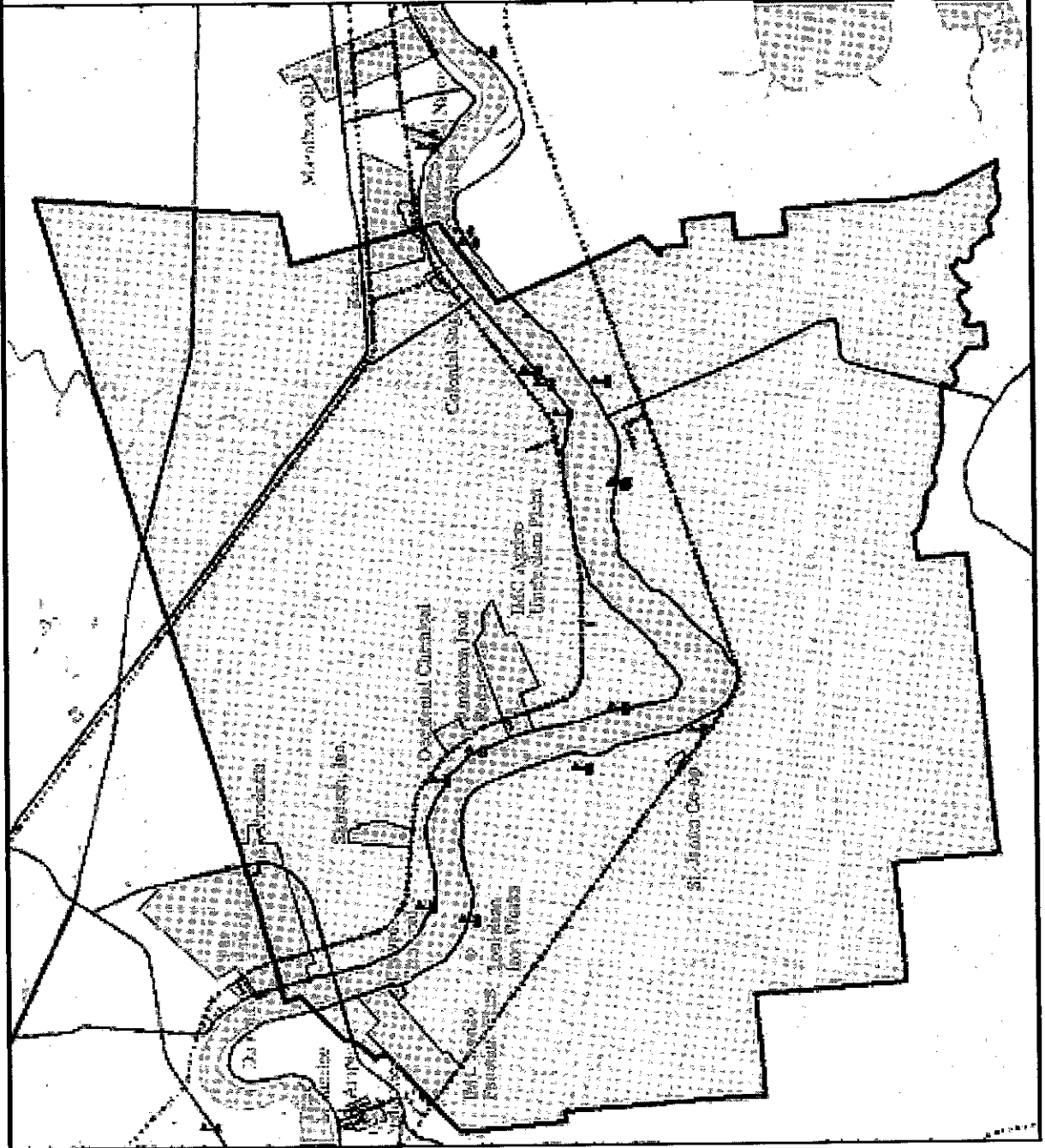
- Louisiana Iron Works & American Iron Reduction
- ▲ School
- Major Road
- Railroad
- Water Feature
- Water Body
- TTI Facility
- Shintech, Inc.
- St James Parish



Sources:
 U.S. EPA Region 6
 U.S. Bureau of the Census
 U.S. Dept. of Environmental Quality
 Homebase Company, Baton Rouge

Also Created by CDSI
 For US EPA Region 6

March 26, 1988



- It highlighted the potential disproportionate amounts of new pollution in an area already ranked nationally as having significant total toxic releases.
- The local citizens gained national and international attention for their cause by enlisting the help of other Louisiana and national environmental and civil rights organizations to assist them, thus raising the profile for issues of environmental justice for all impacted communities.⁵⁸
- It highlighted the significant obstacles faced by citizens complaining about environmental justice problems when seeking redress. In this case, these obstacles included not only the highly technical nature of the permitting process, but also the political dimensions of opposing a new multi-million dollar facility and a state bureaucracy that wanted to attract more new businesses.
- It dramatically illustrated the need for effective state management of programs to protect human health and the environment, when EPA agreed with complainants that the law had not been followed by Louisiana and revoked the air permit for Shintech, marking the first time that EPA had ever rejected an air permit because of a citizens' petition.⁵⁹ LDEQ was then required to begin the permitting process again.⁶⁰
- The issues raised by the citizens pointed not only to their concerns about health issues associated with air toxics, but also to a different vision of economic development for the Parish.⁶¹ The citizens wanted "a cleaner environment and greater economic opportunities, 'clean businesses' that employ local residents and enhance the community."⁶²

As the result of the Tulane Law Clinic's involvement in the Shintech case, the Governor of Louisiana "threatened to go after Tulane's tax breaks and to ask supporters to reconsider their financial contributions because of the [law] clinic's activities."⁶³ Additionally:

- The Louisiana Supreme Court investigated the Tulane Environmental Law Clinic, at the request of some major industry groups, who said the "environmental law student practioners should be regulated more closely because business in the state was being negatively impacted by their misguided challenges to environmental permits and other practices."⁶⁴
- The Court's investigation resulted in a revised rule that re-defined "indigence" to be 200 percent of the federal poverty level, thus severely limiting the law school's ability to represent community groups like St. James Citizens for Jobs and the Environment.
- The Secretary of the Louisiana Department of Economic Development compiled a list of nonprofit organizations with the intent to, as he put it, "use every legitimate method at my command to defeat them."⁶⁵

For their part, Shintech officials' were interested in moving to Convent because of easy access to the Mississippi River and railway lines, as well as the availability of needed raw materials like

natural gas and salt.⁶⁶ The company also proposed to provide "165 full-time jobs and 90 contract positions, plus 1,800 temporary jobs during construction."⁶⁷ After the initial controversy about siting the facility in Convent, Shintech additionally agreed to provide \$500,000 for local residents' job training and small business development, with support from the local chapter of the National Association for the Advancement of Colored People.⁶⁸ Convent residents opposed to the facility were not, however, persuaded by the promises of jobs, which they believed would not benefit very many local residents because they required higher skill levels than most local workers had attained.⁶⁹

There were also community residents who favored the facility, provided that real benefits accrued to local residents.⁷⁰ This group, however, received financial support from Shintech.⁷¹ In the final analysis, for those opposed to the facility, the issue was not whether Shintech was attempting to harm the community intentionally, but rather the harmful effects that additional toxic emissions would have on the area.⁷²

Parish and state officials saw the project very differently. In their eyes, the benefits were clear. The Parish economy had been growing slowly, and Shintech would bring 165 permanent jobs, plus 1,800 temporary construction jobs. Further, the company planned to buy 3,000 acres, using 400 for the plant and the rest as a buffer zone.⁷³ Parish officials had researched other Shintech facilities and found no past environmental problems, so they believed that Shintech workers and the communities around other Shintech plants did not seem unhappy with the company.⁷⁴

Leaders on both sides of the issue claimed to be supported by the majority of Parish residents. While Parish officials were still in private conversations with Shintech and before LDEQ had acted on the permit, they were invited to a community meeting and, according to them, were "attacked and blindsided" by accusations of environmental racism.⁷⁵ They claimed they did not understand the charges of racism. They believed that the community had good race relations and asserted that race was not considered when selecting the site for this facility. Also, Parish officials thought that many who opposed the Shintech facility seemed to be white outsiders, not from the local black community. In their view, these activists merely hurt the community by driving away potential jobs, leaving the community with no alternatives for economic development.⁷⁶ As this local issue made national headlines, the Governor of Louisiana came to Convent, went to the neighborhood closest to the proposed Shintech site, and asked several people if they wanted the project. He concluded that they did after getting several affirmative responses.⁷⁷

LDEQ's Secretary took the position that the community was focusing on the wrong organization to solve the problem, because it was a problem of siting, not the environmental permitting process for which the Department was responsible. According to the then-Secretary:

What you see happening is first and foremost an absence of normal zoning regulations that might keep people from building a sewerage plant or a refinery or a gambling establishment next to your house. There's no debate; there is a woeful lack of rules. Because you don't have zoning, they turn to environmental agencies. We have regulations. We can't just say we want all buses painted red because it's pleasing to the eye. If it meets the regulations, if it meets the science,

then taking action is a ministerial function. You can't just take action because someone says, "Oh, I don't really want you to locate there."⁷⁸

This was not a new position for the Department. In 1990, LDEQ's previous Secretary had sent a memorandum to local officials in Louisiana clarifying their responsibility for public health and the environment, and admonishing them to consider fully the environmental implications of industry siting decisions.⁷⁹

Audits of Louisiana Environmental Programs

Environmental justice organizations do not, however, agree that LDEQ has only a ministerial role. Environmental justice concerns in Louisiana and St. James Parish raise serious issues with the overall effectiveness of LDEQ.

Audit by EPA's Inspector General

In 2001, the Regional Administrator for EPA's Region VI, which has oversight responsibility for Louisiana, received a petition from the Tulane Environmental Law Clinic:

Requesting EPA to withdraw Louisiana's authority to implement the National Pollutant Discharge Elimination System (NPDES) water program. In March of 2002, the New Sarpy Concerned Citizens Group [also] petitioned Region 6 to withdraw from Louisiana the Resource Conservation and Recovery Act (RCRA) hazardous waste program and the Title V air permit program."⁸⁰

The Regional Administrator asked the EPA's Inspector General to investigate these concerns. The resulting audit highlighted the deficiencies of Region VI in overseeing Louisiana's environmental programs, by failing to establish measurable performance goals, not holding the state accountable, and failing to ensure data quality from LDEQ.⁸¹

In August 2002, another report by EPA's Inspector General focused on public participation in Louisiana's air permitting program and EPA oversight. That report concluded the program met basic requirements, but could be improved by:

- Better record keeping;
- A clearly defined role for the agency's public participation group; and
- Increased public access to information about sources that receive multiple air permits.⁸²

The report recommended that EPA improve its review of public comments before approving LDEQ's air permits and take a more proactive role in assuring that LDEQ carries out its commitments to EPA for improving public participation.⁸³

Concerns about Emissions Trading Program

Federal oversight of the Louisiana environmental program also came under scrutiny in November of 2002, when EPA employees raised concerns about its approval of LDEQ's trading program that allows industry to trade emissions of toxic volatile organic compounds (VOCs) for reductions in nitrogen oxide emissions.⁸⁴ EPA employees said that LDEQ's program violates EPA's own environmental justice policy because of the potential for disproportionate impacts on low-income and minority communities. They also alleged other deficiencies in the state trading program:

- Failure to ensure that trades will result in net reductions in air pollution;
- Lack of safeguards to prevent double counting and other illegitimate trades; and
- Inability of state authorities to conduct reliable monitoring of industry exchanges.⁸⁵

Louisiana's Legislative Auditor

Other audits have revealed a number of concerns about LDEQ's overall performance. In March of 2002, Louisiana's Legislative Auditor released a performance audit of LDEQ that found four categories of deficiencies:

1. Monitoring Functions

- LDEQ could not easily provide accurate information about the facilities regulated by its programs.
- LDEQ had not issued 66 percent of water permits as committed to EPA, and to issue; many facilities are operating under expired permits. Moreover, 69 percent of major water facility permits and 73 percent of all solid waste facility permits have expired.
- Twenty-six percent of the required self-monitoring reports in the sample for water and 22 percent of the required reports for air in the sample were either never submitted to LDEQ or could not be located at LDEQ.

2. Enforcement Functions

- Some violations never received enforcement actions, and some enforcement actions were not escalated when a facility continued to have the same or similar violation.
- Eight percent of the formal water enforcement actions in the sample were issued more than 150 days after the violation occurred.
- LDEQ has not collected nearly \$4.5 million—75 percent—of the monetary penalties it assessed in fiscal years 1999, 2000, and 2001.

- LDEQ's beneficial environmental projects and negotiated settlements may not effectively penalize facilities with violations.

3. Complaint Resolution Process

- One-third of complaints in the sample were not handled within five days from when LDEQ received the complaint.
- Some complaints in the sample that appeared to involve a violation were never the basis for any enforcement action.
- Most complainants in the sample were dissatisfied with LDEQ's handling of their complaints.

4. Other Issues

- Many of LDEQ's vital documents could not be located, were misfiled in agency files, or were indexed incorrectly in electronic files.
- Nearly \$11 million in fees were never collected because of LDEQ's poor billing and collection practices.⁸⁶

Other Environmental Justice Concerns

This legislative audit and the report of EPA's Inspector General confirmed the concerns of environmental justice groups about the failures of LDEQ and EPA Region VI in protecting their health and welfare of local residents, and they highlight the continuing incidents that harm public health in communities like St. James Parish.

Recent vinyl chloride contamination of well water used for drinking, bathing, and cooking in an African-American community in Iberville Parish, two miles from a chemical plant that produces vinyl chloride, also illustrates why the Shintech case caused such concern among many St. James residents.⁸⁷ Louisiana's first grand jury on environmental issues has been impaneled amid allegations that the state's Department of Health and Hospitals had known about the contamination since 1997 but, through what state officials call "human error," failed to inform the community or other authorities, including EPA and LDEQ.⁸⁸

Residents of this small 300-person community are concerned that their high rate of miscarriages may be attributable to the vinyl chloride.⁸⁹ Health officials have provided them with pamphlets "warning them of possible threats from vinyl chloride to unborn children," and acknowledging that this chemical can also cause "liver cancer, nerve damage, [and] circulatory problems."⁹⁰ In the final analysis, however, scientists are unsure what the effects might be from bathing in and drinking water contaminated with the chemical.

Responding to these concerns, in June 2002, the Governor established a task force to review and report on the funding and performance issues at LDEQ. The task force—made up of

representatives from industry, the environmental community, public interest groups, and government—produced their final report in March 2003, with specific recommendations for correcting various deficiencies. While the report does not address environmental justice issues specifically, it does include recommendations for improving enforcement and enhancing public access to information, all concerns frequently raised by environmental justice groups.⁹¹

PLANNING, ZONING, AND GOVERNANCE IN LOUISIANA

Louisiana Planning and Zoning Laws

The Louisiana Constitution authorizes local governments to adopt regulations for land use, zoning, and historic preservation; and state-planning legislation has authorized adoption of local land use plans since the early 1920s.⁹² However, the state does not mandate local planning or zoning by parishes or towns, nor does it provide incentives for local governments to engage in such activities. If a locality nonetheless chooses to plan, it must adopt a master plan to promote health, safety, and general welfare; provide for adequate light and air; include adequate traffic provisions; and provide for the healthful and convenient distribution of population, open space, and public housing.⁹³

Localities in Louisiana must file their plans with the State Planning Office and also file their plans and zoning ordinances with the appropriate regional planning commission, but solely for informational purposes. There is no coordinated statewide plan for Louisiana, no statewide role in local planning, and no mechanism for state approval or enforcement of local plans.⁹⁴ The Louisiana State Planning Office does, however, engage in some planning activities, such as surveying state resources, reviewing local planning, and coordinating the planning and programming of individual state agencies.⁹⁵ In addition, the Legislature authorized creation of certain regional development districts to facilitate intergovernmental cooperation and to coordinate state, federal, and local planning and development programs.⁹⁶

The South Central Planning and Development Commission carries out regional planning for the district where St. James Parish is located (see section below on planning).⁹⁷ When enacting comprehensive plans, these regional planning commissions must hold at least one public hearing and must give appropriate public notice, including posting the purpose, time, and place of the hearing in a newspaper of common local circulation.⁹⁸

Local Governance in St. James Parish

Under Louisiana law, a parish is the approximate equivalent of a county and has jurisdiction over the unincorporated areas within its borders.⁹⁹ There are two incorporated towns in St. James Parish: Litcher and Gramercy. Each has its own local government with planning and zoning capabilities,¹⁰⁰ but these two incorporated towns are not involved in this case study. The remaining unincorporated areas of St. James Parish operate under a home rule charter that grants the Parish the right to establish rules of governance “requisite or proper for the management of its affairs, not denied by general law or inconsistent with the constitution.”¹⁰¹ A Parish Council acts as the principal governing body for St. James.¹⁰²

The Parish Council—made up of 7 members who are chosen by general election—and its President govern St. James Parish, along with other elected and appointed officials. The Parish President, who has served for 14 years, is the political and administrative head and appoints four area directors for operations, finance, human resources, and emergency preparedness. These directorships are further subdivided into several departments with appointed department heads who also report to the Parish President.¹⁰³

The Office of Planning and Permitting comes under the Director of Operations and is responsible for construction permits, fees, and notifications concerning building permits.¹⁰⁴ It is a relatively new function, first established in 2001.¹⁰⁵

The Parish supplements its professional staff with advisory commissions composed of citizen volunteers appointed by the President and (elected) Parish Council. These commissions include a Planning Commission, Coastal Zone Management Board, and Economic Development Board.¹⁰⁶

Planning Commission

The St. James Planning Commission has ten volunteer members. It has authority for decisions about subdividing plots of land in unincorporated areas of the Parish.¹⁰⁷

Coastal Zone Management Board

The St. James Coastal Zone Management Board has eight appointees and three major functions:

- Protection, development, and restoration or enhancement of the Parish's coastal zone;
- Supporting and encouraging multiple uses of coastal resources, consistent maintaining and enhancing their renewable resource management and productivity; and
- Developing and implementing the coastal zone resource management program.

The Coastal Zone Management Board also has authority to review rules and regulations relative to coastal resource management; review and comment on any permit application; review and recommend modifications to the Parish Council on the coastal zone management program; issue deny, or modify permits issued by the Parish President; inspect or investigate conditions relating to the zone; and conduct other investigations related to the program.¹⁰⁸

The Director of the program is a civil engineer, and experts are retained as needed to assist the citizen board with technical expertise.¹⁰⁹ The parish-level board has never denied a permit, but it has required permit conditions that have made it difficult for new development to proceed, particularly to protect wetlands.¹¹⁰ Louisiana's coastal management agency has jurisdiction over "uses of state concern," including gas and oil related facilities; but the Parish Board has

jurisdiction over "uses of local concern," including houses, camps, small developments, and some large industry that does not fall under the state's jurisdiction.¹¹¹

Economic Development Board

St. James' Economic Development Board has 17 members. Each Parish Council member appoints two members, and the Parish President appoints four members. The Director of the Office of Economic Development invites interested companies to make presentations before the Board, works closely with them, and seeks to recruit new businesses through other outreach. While the Board cannot require new industry to hire local residents, the Board negotiates to encourage local hiring.

Planning in St. James Parish

The Parish does not have a planning department, a comprehensive plan, a future land use plan, or any professional planners on staff. Nor does the Parish intend to develop a comprehensive plan. Parish officials offer two reasons for their decision. First, with no professional planning staff, the Parish is reluctant to overburden its volunteer planning commission, which also supervises compliance with the subdivision ordinance. Second, Parish leaders believe it is important to study current land uses before undertaking planning.¹¹² Toward that end, the Parish is in the midst of developing a land use inventory based on a geographic information system (GIS) that will enumerate all of the Parish's existing land uses and parcels.¹¹³

South Central Planning and Development Commission

The South Central Planning and Development Commission (SCPDC) was formed in 1973 under Louisiana State Executive Order 27. SCPDC handles regional planning in Louisiana Planning District Three, which covers six parishes, including St. James, as well as six municipalities, including Litcher and Gramercy. A 24-member Board, whose members are the top elected officials of each Parish and municipality, governs the SCPDC.

SCPDC is partially funded by the parishes, and it assists member communities in developing master land use plans, master recreation plans, and capital improvement plans. SCPDC also helps with coastal zone management, transportation planning, environmental assessments and impact statements, floodplain management, subdivision regulations, zoning ordinances, and administration. In addition, SCPDC provides assistance on community development, historic preservation districts, and historic structure surveys.

SCPDC also serves as a conduit for state information on environmental and development permits. SCPDC receives notice of every permit application filed with LDEQ and passes this information on to affected local governments. The commission also works closely with other regional agencies, such as the Barataria Terrebonne National Estuary Program, the Port of South Louisiana, and the Greater Lafourche Port Commission.

Although St. James has access to the planning resources of SCPDC, regional planners there report that St. James seldom utilizes their expertise.¹¹⁴

Zoning and Related Ordinances

The incorporated towns of Litcher and Gramercy have adopted zoning ordinances,¹¹⁵ but the St. James Parish Council has yet to do so for the unincorporated areas. The Parish President explained this reluctance is due to the belief that zoning infringes on individuals' ability to control privately owned property.¹¹⁶ According to Parish officials, local citizens heavily resist zoning. In the absence of a state mandate to do so, the Parish has chosen not to adopt a land use plan or any zoning ordinances.¹¹⁷

St. James' failure to utilize zoning that would separate residential areas from industrial uses has two important economic consequences for the Parish. First, low-income housing is often located near heavy industry because an undesirable use can be located anywhere, leaving the poor helpless to resist new sources of pollution.¹¹⁸ Second, the lack of zoning could deter new businesses that, fearing litigation, do not want to locate near residential areas.¹¹⁹ A Parish official also acknowledged that the lack of zoning is a concern for watchdog groups concerned about environmental justice in the Parish.¹²⁰ Another city official identified zoning as one of the biggest cross-cutting issues in the Parish, and described zoning and land use plans as "laws to help poor people."¹²¹ This official described the Shintech incident as resulting from local government's lack of foresight to understand the implications of its siting decision.¹²²

Although reluctant to accept restrictions on its industrial properties, St. James has imposed restrictions on residential property. For example, St. James' has adopted an ordinance requiring that plans for any new subdivision be submitted to the Parish Council and allowing time for public comment, public hearings, and approval by both the Planning Commission and the Parish Council. The subdivision ordinance has multiple aims, including to:

- Protect the character, social, and economic stability of all parts of the Parish;
- Protect the value of Parish land, buildings and improvements; preventing pollution of air, bayous, canals, and other water bodies;
- Preserve the integrity, stability, and beauty of the community;
- Preserve the natural beauty and topography of the Parish; and
- Provide for open spaces.

To achieve these aims, the ordinance contains specific guidelines and design standards for many aspects of residential subdivisions, including roads, shoulders, utilities, and drainage.¹²³

ENVIRONMENTAL PERMITTING

Beginning in the early 1990s, various Louisiana agencies began to address the environmental justice concerns that some of the state's African-American communities had vigorously raised. While the Governor, the state Legislature, and LDEQ have noted the importance of

environmental justice, to date their collective actions have not resulted in any official definition, policy, or program beyond troubleshooting on specific issues as they emerge. Their efforts have, however, produced a body of recommendations that, if implemented, could provide useful tools for addressing environmental justice issues and other problems caused by the siting decisions of local governments.

Louisiana Department of Environmental Quality

LDEQ has primary responsibility for issuing the environmental permits, including the Shintech permit that caused major concerns for the state's environmental justice communities.¹²⁴ LDEQ's permitting responsibilities are carried out by its Office of Environmental Services, a multi-media office that also has responsibility for licenses, registrations, certifications, authorizations, pre-permit meetings, small business assistance, customer assistance, outreach, and a complaints hotline.¹²⁵ The Community/Industry Relations Group that has responsibility for responding to environmental justice concerns is housed in this Office.¹²⁶

LDEQ began to address environmental justice issues in 1992. In that year, citizen concerns about a permit for a new commercial hazardous waste incinerator eventually resulted in the filing of an administrative complaint with the U.S. EPA under Title VI of the Civil Rights Act of 1964.¹²⁷ LDEQ decided to address this problem by creating voluntary opportunities for dialogues between community members and industry representatives to discuss their mutual concerns.¹²⁸ While the Department provided technical workshops for the citizens at these meetings, it otherwise saw its role as solely a neutral convener.¹²⁹ LDEQ's philosophy was to "teach people how to solve their own problems with minimal government interference."¹³⁰ The Department hired a coordinator to manage the panel project, EPA provided the initial funding, and LDEQ created an environmental justice group that reported to LDEQ's Secretary.¹³¹

Between 1993 and 1994, three panels were convened for St. John the Baptist Parish, the Industrial Corridor, and Mossville and Westlake in Calcasieu Parish.¹³² These panels and other efforts of LDEQ's environmental justice group did produce a few actions that may benefit some communities. Examples include creating a recreation area, getting financial support for job training, providing citizens with training for responding to emergencies, installing wind socks, and setting up community advisory panels for some industrial facilities.¹³³

In 1996, with a change in state administration, the environmental justice group was renamed the Community/Industrial Relations Group¹³⁴ and was moved to LDEQ's Office of Environmental Services as part of the Stakeholder Outreach Section. The program manager for community/industry relations heads the group, and it remains there today.¹³⁵ This program manager also serves as LDEQ's ombudsman and, as such, still has direct access to LDEQ's Secretary.¹³⁶

The three-person Community/Industrial Relations Group tries to keep an eye on any potential LDEQ actions across the state, such as decisions on permit applications, that may raise environmental justice concerns. They then notify appropriate LDEQ staff if they think there might be such problems. They also work to try to defuse issues when they arise.¹³⁷

The Community/Industrial Relations Group's standard operating procedures serve as the only guidance for LDEQ's staff on how to respond to environmental justice problems.¹³⁸ These procedures are posted on the agency's Intranet. Suggested best practices for better public participation include considering access to transportation, providing translators to overcome language barriers, and adjusting the time and location of meetings to accommodate the public's availability. These procedures can be used by any LDEQ staff who may chose to do so.¹³⁹

LDEQ has also developed draft environmental justice strategic plans, but the Community/Industry Relations Group is waiting to make them final until after they receive formal guidance on Title VI of the Civil Rights Act of 1964 and environmental justice from EPA.¹⁴⁰ However, LDEQ has not changed any of its permitting procedures to address environmental justice concerns. The Department works with local governments on siting issues as they emerge through the usual public participation process, and uses its environmental justice staff to troubleshoot any problems that arise.¹⁴¹

Environmental Justice Report to the Legislature

In 1993, the Louisiana Legislature passed Act 767, which required the LDEQ to conduct public hearings across the state, gather information from citizens about environmental justice concerns, and then report back to the Legislature. In that report, LDEQ defined environmental justice as "the equitable treatment of all people, regardless of race, income, culture, or social class with respect to the development, implementation, and enforcement of environmental laws regulations and policies."¹⁴² Although the Department has not officially adopted this definition, it has been used consistently since that time.¹⁴³

In August of 1994, LDEQ made the following recommendations to the Legislature for its action:

- Consider legislation to codify the court's decision in *Save Ourselves Inc. v. the Louisiana Environmental Control Commission* 452 So. 2d. 1152 (La. 1984) (commonly referred to as the *IT* decision), and require that LDEQ establish a broad-based advisory committee to draft regulations implementing the mandates of the decision, beginning with consideration of specific criteria for siting facilities;¹⁴⁴
- Consider legislation to strengthen land use planning requirements in the state, taking into consideration environmental justice concerns;
- Consider legislation to strengthen requirements for transporting toxic materials through residential areas;
- Consider legislation offering tax incentives to reduce hazardous waste generation and disposal in Louisiana;
- Consider legislation to strengthen existing statutes on emergency response in order to meet community concerns more effectively;
- Provide funding for LDEQ to continue its environmental justice program and to create a permanent position of environmental justice coordinator with adequate support staff;

including permitted and unpermitted emissions and discharges; and should then determine and set out any correlation that may exist between the emissions and discharges and residential areas.¹⁵⁰

Other recommendations included improving communication and dialogue between stakeholder groups, developing targeted job training for Mississippi River Corridor residents near proposed facilities, ensuring that pursuit of environmental justice does not harm economic growth, increasing state resources for environmental programs, strengthening whistleblower laws to protect industrial workers who report violations, and developing and supporting health studies to determine the relationship between pollution and health effects.¹⁵¹

Unfortunately, the Governor has not yet taken action on any of these recommendations.

ANALYSIS AND RECOMMENDATIONS

Leadership and Accountability

The opportunities for leadership and accountability for resolving environmental justice problems have not been fully realized by any level of government in Louisiana although the Legislature and the Governor have each solicited recommendations on how to address environmental justice issues. The recommendations from citizens, industry, environmental groups, and state officials provide a good foundation for action that, if properly implemented, could move Louisiana forward to address environmental justice issues more effectively. But more visible leadership by both the Legislature and the Governor is necessary for making progress.

The Governor's Advisory Task Force on the Funding and Efficiency of LDEQ developed recommendations to correct the inadequacies identified by the state legislative audit. Implementation of these recommendations by LDEQ and continued follow-up by the Governor are essential to improve the state's stewardship of its environmental responsibilities and to rebuild LDEQ's credibility with citizens whom the Department is responsible for serving.

LDEQ can become an important technical resource to local governments, helping them to understand the environmental and human health implications of their siting decisions. However, for LDEQ to perform this function, the Department needs channels for early communication in advance of crisis situations; and LDEQ must demonstrate real progress in effectively exercising its overall responsibilities along with taking visible actions that demonstrate its commitment to achieving environmental justice.

Local officials throughout Louisiana have potentially valuable legal authorities for local land use planning and zoning, but they have not exercised these powers. They also should make better use of their regional planning authorities. Yet, local officials in St. James Parish have narrowly viewed environmental justice issues and have defined it to mean only intentional decisions by an industry to locate near a community-of-color. With this restricted view, they have shown little willingness to address environmental justice problems.

A more comprehensive view would enable the Parish to recognize that localized environmental impacts and effective citizen participation affect the welfare of all Parish residents; and they are elements of good government that, if enhanced, would benefit the Parish overall. The Parish has also missed opportunities to work with regional planning authorities who could help to address environmental and land use problems, for example, by recruiting a more diverse set of potential businesses that would provide more jobs without increasing toxic burdens in the Parish.

Permitting and Other Authorities

LDEQ has responsibility for approving environmental permits in St. James Parish. However, the Department has no clear strategy or demonstrated commitment to achieving environmental justice and has many basic administrative deficiencies, as documented by several community, state, and federal evaluations of its programs. Because of its own problems, LDEQ has not been able to help St. James officials in resolving their environmental justice problems. Moreover, LDEQ has not yet changed its permitting functions so it can effectively address community concerns, such as by proactive public outreach and other steps to ensure meaningful citizen participation in the Department's decisions.

Setting Priorities and Reducing Risks

Because Parish officials view environmental justice issues only as intentional discrimination by industry, they have not explored ways to address the underlying community concerns about toxic burdens that adversely affect public health and quality of life for Parish residents.

Public Participation

The Parish and the LDEQ offer only the most basic public participation opportunities required by various laws. There is no evidence that they have adopted enhanced procedures to involve local residents or respond to their environmental justice concerns.

Integration and Coordination

St. James Parish has not taken advantage of the support available from the regional planning authority, which can assist the Parish in planning for important changes, including possibly ways to address environmental justice issues. Nor has the Parish sought guidance or technical assistance from LDEQ on environmental justice issues, and LDEQ has not made efforts to engage Parishes proactively about these problems. Moreover, LDEQ still needs to remedy many of its own deficiencies, and has not been in a position to help the parishes respond more effectively to environmental justice concerns.

RECOMMENDATIONS

- The Louisiana Legislature and Governor should move forward to implement the recommendations on environmental justice resulting from public hearings in 1994 and the 1998 Mississippi Corridor Task Force. Each of these efforts produced useful recommendations from the public, business representatives, and senior state officials that will help Louisiana to resolve some pressing public health and environmental problems.
- LDEQ should develop a clear environmental justice policy, action agenda, and accountability measures that include commitments to reducing risk, improving communication, and providing public access to more information. LDEQ should also consider working with other state environmental agencies with effective environmental justice programs, so it can benefit from their experience. LDEQ should further review the environmental justice recommendations it has gathered at the request of the Louisiana Legislature and implement those actions the Department could pursue based on existing legal authorities.
- LDEQ should provide parish and town governments with guidance to help them understand the public health and environmental implications of their land use decisions. This assistance should follow up on the Department's 1990 memorandum to local officials, which reminded them about their responsibilities for protecting public health and welfare and the implications of their siting decisions.
- St. James Parish officials should work more closely with their regional planning organization to develop a land use plan and zoning rules for the Parish so they can prevent incompatible land uses such as residential communities close to polluting industries. The Parish should also engage citizens in every stage of the planning and zoning process and give them opportunities to shape the Parish plan and zoning by ongoing involvement in Parish decisions.
- St. James Parish should adopt an environmental justice policy, embracing an appropriate definition of environmental justice and acknowledging that all citizens should receive fair treatment and have opportunities for meaningful involvement in processes that affect their health and welfare. The Parish should then work with LDEQ to gather information about environmental and health hazards in the Parish, and should develop strategies—in conjunction with other state agencies, such as the coastal zone management program—to address any identified risks.

ENDNOTES

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- ³ *Ibid.*
- ⁴ Kevin Belange, Director, South Central Planning and Development Commission, Louisiana, Interview (August 13, 2002).
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- ⁶ Edie Michel, Director of Economic Development, and Diane Brathwaite, Director of Human Resources, St. James Parish, Interview (August 13, 2002).
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- ¹⁷ Environmental Defense Fund, *Scorecard* (2000), website, <<http://www.scorecard.org>> (visited December 2002).
- ¹⁸ EPA, *Title VI Administrative Complaint re: Louisiana Department of Environmental Quality/Permit for Proposed Shintech Facility, Draft Revised Demographic Information* (April 1998). Some of the facilities within a four-mile radius of the parish were in other parishes but impacted St. James Parish.
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- ²⁰ Environmental Defense Fund, *Scorecard*.
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- ²³ St. James Citizens for Jobs and the Environment, *et al.*, *From Plantations to Plants*.
- ²⁴ *Ibid.*, 13.
- ²⁵ John McQuaid, "'Cancer Alley': Myth or Fact," *The Times-Picayune* (May 23, 2000).
- ²⁶ *Ibid.*
- ²⁷ *Ibid.*
- ²⁸ The National Academies, "Better Information Needed to Guide Efforts in Addressing Environmental Justice," Press Release (March 5, 1999).
- ²⁹ Centers for Disease Control and Prevention, *Cancer Burden Data Fact Sheets, Louisiana* (2002), Available at <<http://www.cdc.gov/cancer/CancerBurden/la.htm>> (visited December 2002).
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benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former? and (3) Are there alternative projects or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable?" LDEQ, *IT/BFD Guidance* (May 22, 2001).

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CONCLUSION

Public administrators who are working to address environmental justice issues are faced with many challenges but also many opportunities. In the course of the Academy's three studies, the Panel has found that concerns at the heart of environmental justice problems really relate to how federal, state, and local governments can better serve all citizens. Solutions to environmental justice concerns include protecting citizens' health and welfare and ensuring they have meaningful opportunities to shape decisions that affect their lives and neighborhoods.

The Panel's research has shown that these issues can be addressed by using existing legal authorities, including current planning laws and zoning ordinances. The Panel has also found that it is critical for federal, state, and local agencies to work together effectively, because each level of government brings discrete tools and authorities that are critical to solving current environmental justice problems and preventing future ones. The federal government must ensure that its policies, rules, and guidance adequately consider environmental justice concerns, like localized impacts. State environmental and other agencies must implement their environmental, public health, planning, and other programs to take into consideration disproportionate impacts that may heighten risk. States must also ensure that the public has opportunities and the requisite information to participate fully in decisions about environmental permitting and future economic development. Additionally, federal and state agencies have an important responsibility to enforce environmental laws so that no community or neighborhood suffers the adverse consequences of pollution.

There are also many opportunities for federal and state governments to provide the technical assistance often needed by local governments. For their part, local governments have a unique responsibility for planning and zoning decisions that can significantly affect the environment, public health, and quality of life for their citizens.

The Panel's research has also demonstrated that addressing environmental justice problems requires government officials at every level to:

- Exercise leadership by recognizing environmental justice as an important issue and by establishing accountability to address these problems;
- Set priorities to reduce risks caused by pollution and other hazards;
- Engage the public early and proactively in substantive discussions about decisions that affect their health and welfare;
- Adopt effective mechanisms for communicating with the public and provide the public with adequate information so they can make useful contributions prior to agency decisions; and
- Coordinate with other levels of government so local citizens can benefit from the unique kinds of support that agencies at each level can provide.

The Panel believes that the goal of environmental justice can be achieved by every level of government. We have found promising examples of strategies and activities at local, state, and federal levels that can produce positive results for communities. The Panel hopes that the best practices we have described in all three studies will serve as useful models to help public administrators, citizens, nonprofit groups, and industry in quickly making real progress toward achieving environmental justice for all communities.

APPENDICES

APPENDIX A

INTERVIEWEES

CALIFORNIA

Manuel Acosta, Business Development Specialist, City of Huntington Park
Bill Chow, Redevelopment/Economic Development Manager, City of Huntington Park,
Bahram Fazeli, Staff Researcher, Communities for a Better Environment
Henry Gray, Assistant Director, Community Development and Redevelopment, City of Huntington Park
Dean Hickman, Resident, Huntington Park
Yuki Kidokoro, Lead Organizer, Communities for a Better Environment
Gregory Korduner, City Manager, City of Huntington Park
Jessica Maes, Councilwoman, City of Huntington Park
Julie O' Leary, Senior Management Analyst, Community Development Department, City of Los Angeles
Veronica Soto, Business Outreach Manager, Alameda Corridor Transportation Authority
Jesus Torres, Community Organizer, Center for a Better Environment
Jorge Villanueva, Youth Program Coordinator, Center for a Better Environment
Jack Wong, Assistant City Manager, City of Huntington Park
Larry Wiggs, Consultant, Tutor Saliba Corporation

ILLINOIS

Anatoly Belogorsky, Permit Engineer, Illinois Environmental Protection Agency.
Peggy Bradley, Public Information Coordinator, Metropolitan Water Reclamation District
Juanita Charlton, Assistant Commissioner, Far South Planning District, Chicago
Kathleen Dickhut, Planner, Far South Planning District, Chicago
Marilyn Engwall, Planner, Far South Planning District, Chicago
Matthew Fortney, Engineer, Chicago Department of Environment
Katherine Greenberg, Director of Public Information, Chicago Housing Authority
Alan Keller, Manager, Northern Municipal Unit, Bureau of Water, Illinois Environmental Protection Agency
Cheryl Johnson, People for Community Recovery
Mardi Klevs, Greater Chicago Regional Team Manager, U.S. Environmental Protection Agency
Dennis McMurray, Public Information Officer, Illinois Environmental Protection Agency
Jill Murray, Office Secretary, Chicago Department of Planning and Development
Kurt Neibergall, Manager, Office of Community Relations, Illinois Environmental Protection Agency
Ken Page, Environmental Justice Officer, Illinois Environmental Protection Agency
Kimberly Worthington, Assistant Commissioner, Department of Environment, Chicago,

LOUISIANA

Kevin Belanger, Director, South Central Planning and Development Commission
Diane Brathwaite, Director, Human Resources, St. James Parish
Martha Cazaubin, South Central Planning and Development Commission
Jody Chenier, Director of Operations, St. James Parish
Janice Dickerson, Louisiana Department of Environmental Quality, Community/Industry Relations Group
Greg Ducote, Local Government Liaison, Louisiana State Coastal Zone Management
Dianne Dugas, Manager, Section of Environmental Epidemiology and Toxicology, Office of Public Health, Louisiana Department of Health and Hospitals
Albertha Hastin, Louisiana Environmental Action Network
Dale Hymel, Parish President, St. James Parish
Ray Kliebert, Director of Permitting, Office of Operations, St. James Parish
Edie Michel, Director of Economic Development, St. James Parish
Gary Miller, Louisiana Environmental Action Network
Marylee Orr, Louisiana Environmental Action Network
Richard Parro, Sanitarian Parish Manager, Office of Public Health, Louisiana Department of Health and Hospitals
Florence Robinson, Louisiana Environmental Action Network
Michael Vince, Director, Permits, Environmental Services Division, Louisiana Department of Environmental Quality
Roger Ward, Community/Industry Relations staff, Louisiana Department of Environmental Quality

PENNSYLVANIA

Patrick R. Andersen, Special Assistant to the Region III Administrator, U.S. Environmental Protection Agency
Jerome Balter, Lawyer, Public Interest Law Center of Philadelphia
Francine Carlini, Air Quality Program Manager, Pennsylvania Department of Environmental Protection
Susan Cordes, County Solid Waste Management Official, Delaware County
Herman Fryer, Chairman, Environmental Advisory Board, City of Chester
Alisa Harris, Director, Office of Environmental Advocacy, Pennsylvania Department of Environmental Protection
Susan W. Hauser, Manager, GIS & Information Services, Delaware County Planning Department
Karen Holm, Environmental Planner, Delaware County
Neil Kinsey, Local Government Policy Specialist, Governor's Center for Local Government Services
William Payne, Director, Planning Department, City of Chester
Dave Sciocchetti, Executive Director, Chester Economic Development Authority
Irshad Shaikh, Health Department, City of Chester
Dr. Masood Shaikh, Director, Health Department, City of Chester

Reverend Horace Strand, Faith Temple Holy Church
Alice Wright, Environmental Advocate for Southeast, Office of Environmental Advocacy,
Pennsylvania Department of Environmental Protection

TEXAS

Susana Almanza, Director/Coordinator, People Organized in Defense of the Earth and her Resources
Greg Bolds, Planning, Assessment and Evaluation Unit, Austin/Travis County Health and Human Services
Mitzi Cotton, Legal Department, City of Austin
Blas Coy, Public Interest Counsel, Texas Commission on Environmental Quality
Jim Fernandez, Office of Environmental Equity, Office of Public Assistance, Texas Commission on Environmental Quality
Tom Forrest, Transportation and Sustainable Development, City of Austin
Alice Glasco, Director, Neighborhood Planning and Zoning Department, City of Austin
Miguel Gomez, Volunteer, People Organized for Defense of the Earth and her Resources
Lisa Gordon, Assistant City Manager, City of Austin
Greg Guernsey, Manager of Zoning Changes, City of Austin
Mike Heitz, Director, Watershed Protection and Development Review, City of Austin
Sylvia Herrera, Health Coordinator, People Organized for Defense of the Earth and her Resources
Stuart Hersh, Development Services Manager, City of Austin
Ricardo Soliz, Manager of the Neighborhood Planning Program, City of Austin
Marty Terry, Legal Department, City of Austin
Trish Young, Primary Care Department, Community Health Centers, City of Austin

APPENDIX B

PANEL AND STAFF BIOGRAPHIES

PANEL

Philip J. Rutledge, *Chair* - Professor Emeritus, School of Public and Environmental Affairs and former Special Assistant to the President, Indiana University. Former Director, Department of Human Resources, District of Columbia; Professor of Public Administration, Howard University; Director of Policy Analysis, National League of Cities and U.S. Conference of Mayors; Deputy Administrator, Social and Rehabilitation Service, U.S. Department of Health, Education and Welfare; Deputy Manpower Administrator, U.S. Department of Labor.

A. James Barnes - Professor and former Dean, School of Public and Environmental Affairs, and Professor, School of Law, Indiana University. Former positions with the U.S. Environmental Protection Agency: Deputy Administrator; General Counsel; Special Assistant to Administrator/Chief of Staff. Former General Counsel, U.S. Department of Agriculture; Partner, Beveridge & Diamond; Campaign Manager, Governor William G. Milliken (Michigan); Assistant to Deputy Attorney General and Special Assistant/Trial Attorney, U.S. Department of Justice.

Teodoro Benavides - City Manager, City of Dallas, Texas. Former City Manager, City of Denton, Texas. Former positions with the City of Dallas, Texas: Assistant City Manager; Director of Budget and Research Department; Assistant Director of Health and Human Services Department; Assistant Director of Capital Programs; Capital Budget Administrator; Budget Analyst.

Jonathan B. Howes - Special Assistant to the Chancellor and Professor of Planning and Policy, University of North Carolina at Chapel Hill. Former Secretary, Department of Environment, Health and Natural Resources (DEHNR), State of North Carolina; Research Professor and Director, Center for Urban and Regional Planning, University of North Carolina; Mayor, Town of Chapel Hill; Director, Urban Policy Center, Urban America, Inc.; Director, State and Local Planning Assistance, U.S. Department of Housing and Urban Development.

David Mora - City Manager, Salinas, California. Former City Manager, Oxnard, California; Manager, Los Gatos, California. Increasingly responsible positions with Santa Barbara, California, including: Director, Community Relations; Assistant to City Administrator; Deputy City Administrator.

James Murley - Director, Joint Center for Environmental and Urban Problems, Florida Atlantic University. Former Secretary and Director, Division of Resource Planning and Management, Department of Community Affairs, State of Florida; Executive Director, 1000 Friends of Florida. Former positions with the National Oceanic and Atmospheric Administration, U.S. Department of Commerce: Director, Coastal Program Office, Office of Coastal Zone Management (OCZM); Congressional Officer; Gulf Coast Regional Manager, OCZM.

Sylvester Murray - Professor of Public Administration, Cleveland State University, Former Manager, Government Consulting Services, Coopers and Lybrand; Former City Manager: City of San Diego, California; City of Cincinnati, Ohio; City of Ann Arbor, Michigan, and City of Inkster, Michigan.

Staff

Suellen Terrill Keiner - Director, Center for the Economy and the Environment, National Academy of Public Administration. Former Senior Attorney and Director, Program on Environment, Governance, and Management, Environmental Law Institute; Director of Litigation, the Environmental Policy Institute; Assistant Solicitor and Acting Deputy Assistant Secretary for Energy and Minerals, U.S. Department of Interior; Natural Resources Consultant, Council of State Planning Agencies; Attorney representing environmental and civil rights groups in citizen suits.

Ann E. Goode - Deputy Director, Center for the Economy and the Environment, National Academy of Public Administration; Environmental Protection Agency: Acting Deputy Administrator, Office of Air and Radiation; Director, Office of Civil Rights; Chief of Staff, Office of Air and Radiation; Assistant Director for Regional Affairs, Office of Atmospheric Programs.

Frances Dubrowski - Senior Consultant, Private attorney and Adjunct Faculty, University of Maryland School of Public Affairs. Former Chair of Environmental Justice Committee, American Bar Association; Co-chair, D.C. Coalition on Environmental Justice; Director of the Clean Air, Clean Water, Regulatory Reform Projects, Natural Resources Defense Council; Assistant Attorney General, Pennsylvania Department of Environmental Resources.

Donna Fletcher - Senior Consultant, Center for the Economy and the Environment, National Academy of Public Administration; Environmental Protection Agency: Senior Analyst, Office of Congressional and Intergovernmental Relations; Task Force Member, National Partnership for Reinventing Government; Analyst, Offices of Cooperative Environmental Management, Policy, Enforcement, and Ground Water Protection.

Patricia Salkin - Associate Dean and Director of the Government Law Center of Albany Law School and professor of land-use, housing law and policy, government ethics, as well as planning law; Chair-Elect of the American Bar Association's State and Local Government Law Section, Chair of the American Planning Association's Amicus Curiae Committee, and faculty for the ALI-ABA annual Land Use Institute.

Mark Hertko - Research Assistant, Center for the Economy and the Environment, National Academy of Public Administration.

Charlene Walsh - Administrative Assistant, Center for the Economy and the Environment, National Academy of Public Administration.

Joseph Aamidor - Intern, Center for the Economy and the Environment, National Academy of Public Administration.

Megan Bonner - Intern, Center for the Economy and the Environment, National Academy of Public Administration.

Anne Emory - Intern, Center for the Economy and the Environment, National Academy of Public Administration.

Tracey Harden - Intern, Center for the Economy and the Environment, National Academy of Public Administration.

APPENDIX C



Winston H. Hickox
Agency Secretary
CalEPA

State of California
California Environmental Protection Agency

Gray Davis
Governor



Air Resources Board | Department of Pesticide Regulation | Department of Toxic Substances Control
Integrated Waste Management Board | Office of Environmental Health Hazard Assessment | State Water Resources Control Board | Regional Water Quality Control Board

MEMORANDUM

TO: All Cal/EPA Employees

FROM: Winston H. Hickox *Winston H. Hickox*
Agency Secretary

DATE: March 29, 2002

SUBJECT: CAL/EPA'S COMMITMENT TO ENVIRONMENTAL JUSTICE

California has long been a pioneer in taking initiative to reduce environmental and public health risks posed by air and water pollution, solid and hazardous waste management, and pesticide application. In this tradition, our Golden State stands as one of the nation's leaders on the issue of environmental justice, being one of the first states in the Nation to have passed legislation to codify environmental justice in state statute; in fact, Governor Davis signed six bills related to environmental justice since 1999.

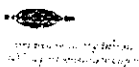
Cal/EPA is firmly committed to the achievement of environmental justice.
Environmental justice for all Californians is an Agency priority.

Accordingly, we must continue to seek opportunities to implement environmental justice principles, **especially those with a concerted, cross-media approach** to ensure the integration of environmental justice into all programs, policies, and activities within our Boards, Departments, and Office (BDOs).

Our environmental justice mission reflects the Agency's commitment to this issue:

"To accord the highest respect and value to every individual and community, the Cal/EPA and its BDOs shall conduct our public health and environmental protection programs, policies and activities in a manner that is designed to promote equality and afford fair treatment, full access and full protection to all Californians, including low income and minority populations."

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, check out www.flexyourpower.ca.gov.



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All Cal/EPA Employees
March 29, 2002
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SUBJECT: CAL/EPA'S COMMITMENT TO ENVIRONMENTAL JUSTICE

As I've stated before, "Protecting human health and the environment is a job that is never done" and indeed, the opportunities for analysis and action for environmental justice in California are varied and great. The goal of our mission will be attained when all Californians, regardless of race, culture, or income, enjoy the same degree of protection from environmental and health hazards and equal access to our decision-making processes.

Environmental justice is defined in statute as, "The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies." (Government Code Section 65040.12)

Statute obligates the Agency and its BDOs to do the following:

- Conduct all programs, policies, and activities within Cal/EPA and its BDOs in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State;
- Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of all Californians, irrespective of race, culture, and income;
- Ensure greater public participation from environmental justice stakeholders in the development, adoption, and implementation of environmental regulations and policies;
- Improve research and data collection for programs relating to the health and environment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State.
- Identify among people of different socioeconomic classifications differential patterns of consumption of natural resources for our programs.

Clearly, there is no one simple solution to environmental injustice, but rather a host of existing procedural and programmatic tools available to address the issue. In order to achieve meaningful environmental justice, we should, as a procedural and practical matter:

All Cal/EPA Employees
March 29, 2002
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SUBJECT: CAL/EPA'S COMMITMENT TO ENVIRONMENTAL JUSTICE

- Enhance our mechanisms for public involvement and input at all levels of the decision-making process to ensure early, accessible and meaningful participation of all stakeholders (e.g. fact sheets, availability of language translation, and enhanced public outreach);
- Invest in capacity development of all stakeholders, particularly those historically not engaged in the decision making process (e.g. technical assistance at the community level and leveraging of resources to support local environmental justice efforts);
- Explore opportunities to address environmental justice within current statutory and regulatory structures and identify any necessary changes or clarifications;
- Create partnerships with stakeholders in the environmental decision-making process, understanding that environmental justice requires a collaborative approach at all levels;
- Utilize research and proactive tools and approaches to environmental justice issues, such as cumulative impact analysis and pollution prevention to inform how we prioritize, develop, and implement our efforts to reduce and/or eliminate environmental pollution and deliver the benefits of environmental protection; and
- In light of our State's current economic situation, we must be more vigilant in ensuring environmental justice remains a priority and resources continue to be directed this key issue.

I have asked each of the Boards, Departments, and Office to incorporate environmental justice into their overall strategic plans. This has been accomplished and now we need to move forward in earnest to implement those plans. To assist in our efforts, there are a number of resources I recommend you become familiar with and take advantage of as follows:

- **The Interagency Working Group on Environmental Justice (IWG):** I chair, this Group along with the Governor's Office of Planning and Research Director, including all the heads of the Boards, Departments, and Office within Cal/EPA. The IWG is responsible for guiding programmatic and policy development related to environmental justice;
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All Cal/EPA Employees
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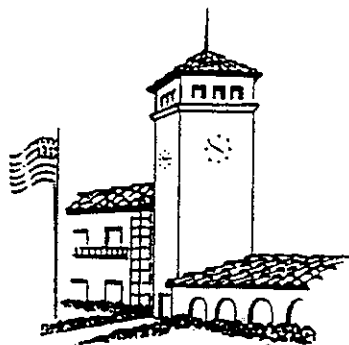
SUBJECT: CAL/EPA'S COMMITMENT TO ENVIRONMENTAL JUSTICE

- **The External Cal/EPA Advisory Committee on Environmental Justice:** This Committee is made up of various EJ stakeholders from community groups, environmental organizations, business, local/regional planning agencies, air districts, and Certified Unified Program Agencies to provide advice and consultation on environmental justice to Cal/EPA;
- **The Cal/EPA Environmental Justice Website**
(www.calepa.ca.gov/EnvJustice/): The website contains the most current information on environmental justice concerns including a Calendar of Events on environmental justice occurring throughout the State.
- **Cal/EPA Environmental Justice Fundamentals Training Program**
(<http://epanet/EnvJustice/training>): The training is offered at various times throughout the year to bring greater awareness of environmental justice issues within Cal/EPA.

Let's continue to work in this spirit to ensure environmental justice is not a series of paper exercises, but is a tangible goal attained for and by all Californians. The Assistant Secretary for Environmental Justice, Romel Pascual, and his staff are available to assist you. Mr. Pascual can be reached at (916) 324-8425 or via email at: rpascual@calepa.ca.gov.

I appreciate your continued support in this matter.

APPENDIX D



City of
HUNTINGTON PARK california

COMMUNITY DEVELOPMENT DEPARTMENT

6550 MILES AVENUE, ROOM 145

HUNTINGTON PARK, CA 90255

January 18, 2000

TO: Honorable Mayor and Members of the City Council

FROM: Jack L. Wong, Assistant CAO/Director of Community Development & Redevelopment

SUBJECT: Huntington Park Air Quality Improvement Task Force's (AQITF) response to the South Coast Air Quality Management District's (AQMD) findings from the MATES II study.

REQUEST: Staff requests that the Council approve the report prepared by the AQITF, and authorize the Mayor to forward it to the AQMD, cities in the Southeast Los Angeles area, and all other appropriate agencies.

BACKGROUND: The AQMD recently conducted an air quality study titled the Multiple Air Toxics Exposure Study II (MATES II) of the South Coast Air Basin. The study concluded that the Southeast Los Angeles area, which includes the City of Huntington Park, had the highest level of toxic air pollution in the Basin. The AQMD issued a 90 day public comment period (until February 4, 2000) to receive comments which can be incorporated into the development of future comprehensive control strategies and regulations to reduce toxic air emissions. The Huntington Park City Council agreed to convene the AQITF to respond to the MATES II study and develop a comprehensive plan to reduce toxic air emissions.

ANALYSIS: The Task Force consisted of different levels of participation from 18 individuals and/or agencies of different backgrounds (see attached list within report). The meetings consisted of technical presentations and round-table discussions, where ideas and recommendations were formed on a consensus basis from the variety of different perspectives. By virtue of the Task Force's exploration of measures to improve air quality, it became apparent that effective measures will need to be implemented at a regional level. Due to this fact, the Task Force focused on addressing the issue at a regional level, in addition to measures that could be implemented locally.

RECOMMENDATION: Staff recommends that the Council approve the attached AQITF Report, and authorize the Mayor to forward it to the AQMD, cities in the Southeast Los Angeles area, and all other appropriate agencies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack L. Wong", is written over a horizontal line.

Jack L. Wong
Assistant CAO/Director of Community
Development & Redevelopment

January 18, 2000

HUNTINGTON PARK AIR QUALITY IMPROVEMENT TASK FORCE REPORT

BACKGROUND

The South Coast Air Quality Management District (AQMD) recently conducted an air quality study referred to as the Multiple Air Toxics Exposure Study II (MATES II) for the South Coast Air Basin, which is comprised of Orange County and the non-desert portions of Los Angeles, Riverside and San Bernardino Counties. The study monitored for over 30 toxic air pollutants, and assessed the potential risk of those pollutants. On November 5, 1999, the completed MATES II report was released to the public indicating the results.

The study indicated that since the MATES I study in 1987, air toxic levels have dropped by approximately 50%, which is a significant reduction. However, since that time, diesel particulates have been listed as a toxic cancer risk air contaminant. Mobile diesel emission contaminants, such as trucks and buses, account for approximately 70 % of the air toxins in the Basin. Twenty Percent (20%) are from mobile, primarily gasoline powered, cars and trucks, and the final 10% are from stationary sources such as refineries, plating businesses, dry cleaners, gas stations, etc. The study concluded that the Southeast Los Angeles County area, which includes the City of Huntington Park, had the greatest toxic air concentrations due to the dominance of mobile sources in this urban core. According to the study, the average cancer risk from toxic air pollutants, when continuously exposed over a 70 year lifespan, in the entire South Coast Air Basin is approximately one (1) in 715 people. For comparison, the risk to residents specifically in the Southeast Los Angeles County area is approximately one (1) in 589 people.

The AQMD has issued a 90 day public comment period (until February 4, 2000) to receive comments which can be incorporated into the development of future comprehensive control strategies and regulations to reduce toxic emissions.

As a result of the study's findings, the Huntington Park City Council agreed to convene the Huntington Park Air Quality Improvement Task Force (AQITF) for the purpose of protecting the public's health by taking a strong and proactive role to reduce the level of toxic air pollutants, and create a safe environment for residents and visitors of the community. Responsibilities of the Task Force included drafting a

response to the MATES II study, develop a comprehensive plan to reduce toxic emissions, and complete this effort by January 18, 2000.

The Task Force invited participation from government officials, community groups, residents, technical experts, and other organizations and agencies. Different levels of participation from 18 individuals and/or agencies of different backgrounds (see attached list) assisted in the Task Force's process. Six (6) meetings were scheduled to accomplish the task. The methodology of the meetings consisted of technical presentations and round-table discussions, where ideas and recommendations were formed on a consensus basis from the variety of different perspectives. Due to the limited time (six weeks) given to provide comments, the Task Force sessions were intensive, yet effective given the short time period.

During the Task Force's exploration of measures to improve air quality, it became apparent that effective measures have to be implemented at a regional level. Due to this fact, the Task Force focused on addressing the issue at a regional level, in addition to measures that could be implemented locally.

The Task Force's Mission Statement and list of recommendations to help reduce toxic air pollution, which are provided as "Principles" and "Specific Measures" categories, are as follows:

MISSION STATEMENT

The Huntington Park Air Quality Improvement Task Force's purpose is to protect the public's health by taking a strong and proactive role to reduce the level of toxic air pollutants, and create a safe environment for residents and visitors of the community.

PRINCIPLES

- 1) By virtue of the Task Force's efforts in exploring measures to improve air quality, it is apparent that effective measures have to be implemented at a regional level, and a collaborative effort must be undertaken to address this concern.
- 2) That any future studies and/or reports, conducted and/or prepared by any agencies regarding air quality not identify specific cities or locations, but rather focus on general areas. Results that are overly site specific can negatively affect

the character of a community, and can create a false sense of security to cities in the same general area with relatively the same level of air pollution.

- 3) That areas found to have the worst air pollution problems, specifically the Southeast Los Angeles County area, should be the focus of toxic air emission reducing programs and funding (by all relevant agencies including the AQMD, MTA, LAUSD, ACTA, CALTRANS, EPA, State ARB, SCAG, DMV, County, Cities, etc.). "In order for the Southeast Los Angeles County area to be equal, we need an unequal (greater) amount of assistance."
- 4) That current and/or projected air pollution mitigation measures (i.e. use of ethanol) take into consideration all aspects of implementation, including delivery methods, and mitigate those impacts. It is important to stay focused on the fundamental intentions and goals when proposing new mitigation measures.
- 5) The intent of the Task Force's report is not to be critical of other agencies, but rather to stimulate a regional collaboration, with the understanding that other municipalities and agencies are currently addressing the issue politically and feasibly to the best of their ability.

SPECIFIC MEASURES

- 6) That the AQMD initiate and implement a more comprehensive review process with stricter regulations (i.e. a model air quality ordinance) for stationary sources emitting pollution, for all cities in the Southeast Los Angeles area. All local efforts, however, should be implemented equally on a regional basis.
 - A) Cities should consider various permit review changes in conjunction with the assistance from AQMD, such as: Longer noticing periods and additional noticing methods for the establishment of toxic emission producing projects/businesses; stricter zoning requirements; provide bi-lingual noticing when relevant; designating certain types of businesses as conditional uses requiring more detailed environmental review; use of CEQA as a base tool for additional review procedures; include questions in environmental checklists regarding use of diesel vehicles; local incentives for ridesharing/use of clean emission vehicles; implement a monetary fine for gross polluters; swift and strong enforcement methods; no diesel vehicle idling; etc.

- B) That the AQMD provide cities with a list of all establishments requiring AQMD permits, primarily potential toxic air emitting establishments (i.e. dry cleaners, chrome plating businesses, gas stations, truck terminals, etc.), whereas cities can designate them in appropriate zones, with appropriate entitlement requirements.
- C) That the AQMD Board adopt a more stringent Rule 1402 in their March (2000) Board meeting by amending the threshold to 1 in a million cancer risk per facility and a hazard index of 1.
- 7) That periodic mobile diesel source (i.e. trucks and buses) checkpoints be set up throughout the Southeast Los Angeles area to enforce emission standards.
- 8) That AQMD Proposed Rule 1190 consider other regulation avenues including components for any mobile source emission reduction possible, particularly for diesel, such as that all government and private companies with 10 or more diesel vehicles be required to change to cleaner burning vehicles within a specified abatement period. Funding sources may include Federal, State, Regional and/or Local sources. (Specifically, modify AQMD's Proposed Rule 1190 to include private industry.)
- 9) That all existing stationary operations emitting toxic air pollution (i.e. dry cleaners, chrome plating businesses, gas stations, etc.) be monitored, and any establishments not meeting a clean air threshold be given an abatement period to achieve standards. This should be mandated at a mass scale similar to the seismic retrofitting requirement and underground gas tank upgrading for gas stations.
- 10) That all relevant agencies (including AQMD, MTA, LAUSD, ACTA, CALTRANS, EPA, SCAG, State ARB, DMV, County, Cities, etc.) increase funding and promotion of congestion management programs, traffic projections and traffic circulation improvements (including studies and physical improvements).
- 11) That an "800" number be established and marketed throughout the Southeast L.A. area for the public to report all forms of air pollution. Immediate investigation and enforcement would be necessary.
- 12) That schools and other sensitive receptors (e.g. day care centers, hospitals, etc.) in the Southeast L.A. area install air filtration systems.

- 13) That schools in the Southeast L.A. area be consulted regarding the feasibility of implementing a health-screening program for respiratory illnesses, and monitor absences to determine how many absences are respiratory related.
- 14) That schools in the Southeast L.A. area develop "Neighborhood Schools" instead of "Mega Schools", which have the potential for greater traffic impacts.
- 15) That emphasis should be given to grants, bond initiatives, and any other financial resources, to provide additional trees, parks, and landscaping. All Southeast L.A. cities should advocate maximum green open space and landscaping for all new development, including public right-of-ways (i.e. landscaped medians). Cities can implement a citywide urban landscape element or master plan for maximum dispersion. Develop an integrated regional master plan for parks, open spaces, trails, and bikeways
- 16) That limitations on the days of the week when diesel trucks can use thoroughfares be implemented in the Southeast L.A. area (i.e. only on odd or even days), unless designated as a clean emissions vehicle (special sticker?).
- 17) That all agencies consider more carefully sensitive receptors when initiating projects that will impact air quality.
- 18) That CALTRANS conduct a study for the 110 freeway in addition to the 710 freeway study.
- 19) That CALTRANS provide High Occupancy Vehicle (HOV) lanes and/or special Truck lanes (for clean emission designated vehicles) on the 110, 710 and other freeways.
- 20) That the AQMD create or designate a special division (liaison, etc.) to provide technical assistance and coordination specifically for the Southeast L.A. area cities.
- 21) That Proposition 10 (tobacco) funds be used for air quality and alternative fuel related improvements (and oppose the initiative to repeal Prop 10).
- 22) That all relevant agencies (including AQMD, MTA, LAUSD, ACTA, CALTRANS, EPA, SCAG, State ARB, DMV, County, Cities, etc.) provide funding for planting a maximum amount of trees and landscaping along the alameda corridor.

- 23) Promote and expand the Carl Moyer program (which is a funding program to convert diesel engines to heavy duty cleaner burning fuel engines).
- 24) That an inventory for entire Southeast L.A. area be taken of all toxic air emitting sources (i.e. daily diesel truck/bus count, dry cleaners, chrome plating companies, etc.) and focus on mitigating those areas in particular. (Checking SIC codes for toxic emitting sources can help achieve this.)
- 25) That the California Air Resources Board increase the regulation of diesel vehicle emissions and expedite the schedule for fuel improvement and exhaust filtering, and other emission standards. Additionally, that the ARB provide a presentation to the AQITF.
- 26) That the California Air Resources Board require diesel vehicles to pass regular smog checks similar to gas powered vehicles, and gradually phase in increasing emission standards.
- 27) That the MTA replace all diesel buses with clean air (CNG) buses as soon as possible.
- 28) That municipalities and schools in the Southeast L.A. sub-region strictly enforce the school bus "no idling" regulations.
- 29) That schools and other sensitive receptors work with the Asthma and Allergy Foundation to target the Southeast Los Angeles area for a "Breath Mobile", which is an existing mobile program which screens and treats certain respiratory ailments.
- 30) That all relevant agencies (including AQMD, MTA, LAUSD, ACTA, CALTRANS, EPA, SCAG, State ARB, DMV, County, Cities, etc.) implement parent education programs for air pollution and related effects.
- 31) That ACTA complete a supplemental environmental review, from original EIR, addressing diesel emissions.
- 32) That Railroad Companies consider off-peak train operations in order to reduce concentration of emissions.
- 33) That incentives be created for businesses to convert to better emission control technology/equipment.

- 34) That funding to establish an alternative fuels dispensing facility for both public and private sector use be made available.
- 35) That the Southeast L.A. area COG (Gateway) explore ways to increase project review resources for improved processing, policy, technical expertise, etc.
- 36) That the AQMD do periodic monitoring of ambient air in neighboring cities to corroborate emissions findings, as well as, evaluate reduction efforts.
- 37) That SELAC (former name of Gateway COG) report from a few years ago be revisited and possibly updated.
- 38) Advocate locally, regionally, and at State and Federal level for improved regional planning and coordination and funding that can have positive impact on all sources of emissions such as:
 - A) Regional sharing of impacts from airports, truck, trains, etc. (e.g. a regional growth plan for all airports, particularly as a alternative to LAX expansion; ports and port businesses to help "pay" for impacts; etc.)
 - i. That the pending Los Angeles Airport (LAX) expansion be opposed by the Southeast Los Angeles area City Councils, because it will create an additional source of pollution to the area.
 - B) Smart growth concepts for planning and projects that provide funding and incentives for better transit oriented development particularly into regionally targeted growth areas where transit supports density, where less dense or less air impacted areas can support more growth while offsetting the pressure in high impact areas such as the Southeast L.A. cities and also allowing, for example, better opportunity/support for open space increases; tie regional housing allocation to this concept; require regional growth management elements in all general plans that addresses air quality and transportation and other shared regional issues; improve mixed use and pedestrian oriented development funding/financing/incentives/planning (i.e. less auto-dependence).
 - C) Improve funding and data sharing for GIS applications among and between all agencies that can also be used to do local and regional "what if" type analysis of uses, growth impacts, environmental impacts, transportation, etc.

- 39) Tie in Brownfield (environmentally distressed site) funding with new "clean" uses.
- 40) Pursue/advocate/implement any other sound environmental policies or projects such as: "green"/sustainable building codes; air conditioning/filtration mitigations, upgrades, or improvements for sensitive receptors or other general impact areas for all buildings but particularly schools and homes.
- 41) That the City of Huntington Park Chief Administrative Officer, or designee, coordinate a meeting comprised of City Managers/Chief Administrative Officers from those cities included in the Gateway Cities Council of Governments (COG). The meeting shall address the issues within the AQITF report, proposed AQMD Rule 1190, and Air Toxics Control Plan, as well as other measures to reduce air pollution within the Southeastern cities sub-region.

ma3:rspns. to aqmd mates2 stdy. (final draft)

Huntington Park Air Quality Improvement Task Force Participants

Participants	Phone Number	Fax Number	Address
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Cesar Mott, Representative Office of State Senator Martha Escutia	(323) 724-6175	(323) 724-6566	400 N. Montebello Boulevard, Ste. 101, Montebello, CA 90640
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Alameda Corridor Transportation Authority (ACTA)	(310) 816-0460	(310) 816-0264	1 Civic Plaza, Suite 600 Carson, CA 90745
Metropolitan Transportation Authority (MTA)	(213) 922-5882	(213) 922-4928	900 Lyon Street Los Angeles, CA 90012

CHAPTER 2

Conceptualizing the General Plan

All statutory references are to the California Government Code unless otherwise noted

Preparing or comprehensively updating a general plan is an important undertaking. The resources required of the planning agency to prepare an adequate general plan are potentially great. Yet many people outside of the planning and development world are not familiar with the general plan and the role it plays in shaping our communities. So why plan?

Part of the answer is that each city and county has a statutory responsibility to adopt a general plan, as described in Chapter 1 (§65300). Once adopted, each city or county has a duty to “periodically review and revise their general plans as circumstances warrant . . .” (§65103(a), *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d. 553).

In addition, preparing, adopting, implementing, and maintaining the general plan serves to:

- ◆ Identify the community’s land use, circulation, environmental, economic, and social goals and policies as they relate to land use and development.
- ◆ Provide a basis for local government decision-making, including decisions on development approvals and exactions.
- ◆ Provide citizens with opportunities to participate in the planning and decision-making processes of their communities.
- ◆ Inform citizens, developers, decision-makers, and other cities and counties of the ground rules that guide development within a particular community.

The general plan bridges the gap between community values, visions, and objectives and physical decisions such as subdivisions and public works projects.

The California Legislature declared in 1976 that “decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan” (§65030.1). The Legislature has further declared that the state’s land is an exhaustible resource, not just a commodity, and is essential to the economy, environment, and general well-being of the people of California (§65030). The need to balance population and economic growth with environmental quality has long been a concern of Californians. State planning law, the California Environmental Quality Act, and the Cortese-Knox-Hertzberg Local Government Reorganization Act are three examples of California’s efforts to plan responsibly.

SUSTAINABLE DEVELOPMENT

Recently, the “sustainable development” and “smart growth” movements have encompassed established principles of good planning and advocated a proactive approach to future development. There is no precise definition of sustainable development, but its basic concept involves meeting the needs of current generations without compromising the needs of future generations. Sustainable development can be further defined as balancing the “Three E’s:” environment, economy, and equity.

“Smart growth” is a similar concept, although some feel sustainability is broader. The goals and methods of smart growth and the related “New Urbanist” movement are compatible with sustainable development.

Sustainability goals include the following:

- ◆ Decreasing urban sprawl.
- ◆ Preserving open space and prime agricultural lands.

- ◆ Creating strong economies.
- ◆ Creating compact, integrated communities.
- ◆ Ensuring the availability of affordable housing.
- ◆ Promoting alternative, less polluting modes of transportation.
- ◆ Promoting energy- and resource-efficient industry.
- ◆ Promoting waste reduction programs such as recycling.
- ◆ Developing community-driven strategic planning and collaborative regional planning.

The comprehensive, integrated, and long-term nature of the general plan makes it an ideal vehicle for implementing local sustainable development goals. While preparing or amending a general plan, sustainable development policies or programs may be addressed within the various elements of the plan. For example, policies on minimizing urban sprawl through limitations to development may be addressed in the land use element; policies for prime agricultural land preservation may be introduced in the open-space element; and the transportation element may be used to address public transportation concerns.

The principles of sustainable development may also guide the overall goals of the general plan. For example, Santa Clara County's general plan addresses four themes of sustainable development in the organization of its general plan vision: social and economic well-being, managed and balanced growth, livable communities, and responsible resource conservation. The general plan's goals for social and economic well-being include achieving "a healthy, diverse economy and adequate employment opportunities" by reaching "sustainable levels of growth and job formation consistent with planned improvements in housing, transportation, urban services, and maintenance of environmental quality." Goals for the other themes also reflect the necessary balance among the social, environmental, and economic goals of sustainable development.

General plans may also be combined with other documents to promote sustainability. For

instance, the City of Pasadena uses a quality of life index to identify, measure, and set quality of life indicators for a healthier, more sustainable city. "The Quality of Life in Pasadena" index combines information from the city's general plan and other documents and addresses such topics as the environment, health, education, transportation, the economy, and employment. The concept and application of sustainable development is evolving through creative interpretation and use.

JOBS/HOUSING BALANCE

While the mandatory elements of the general plan are not statutorily required to identify specific economic issues, the physical growth of the community is clearly interrelated to its economic growth. The availability and use of land and infrastructure requirements such as housing, circulation, water, and energy are all within the purview of the general plan. Many jurisdictions develop more explicit economic development policies in an optional economic development element (as discussed in Chapter 6). One issue that cuts across several elements of the general plan is jobs/housing balance.

Relying on the automobile as our primary means of transportation has encouraged patterns of development and employment that are often inefficient. Suburbanites routinely commute 25 miles or more from their homes to their places of employment. Jobs are dispersed throughout employment regions, making public transit impractical for most people. Car trips between home and the grocery store (or the bank, the dentist, the restaurant, etc.) are longer than necessary because residential and commercial areas are not convenient to one other.

Jobs/housing balance is based on the premise that commuting, the overall number of vehicle trips, and the resultant vehicle miles traveled can be reduced when sufficient jobs are available locally to balance the employment demands of the community and when commercial services are convenient to residential areas.

Planning for a jobs/housing balance requires in-depth analyses of employment potential (existing and projected), housing demand (by income

group and corrected for regional housing opportunities), new housing production, and the relationship between employment opportunities and housing availability. Other factors such as housing costs and transportation systems must also be evaluated.

Achieving a jobs/housing balance requires controlling the location, intensity, and nature of jobs and housing in order to encourage a reduction in vehicle trips and miles traveled and a corresponding increase in the use of mass transit and alternative transportation methods such as bicycles, carpools, and walking. Strategies include locating higher-density housing near employment centers, promoting infill development, actively recruiting businesses that will utilize the local workforce, and providing affordable housing opportunities within the community. Jobs-housing provisions most directly affect the land use, circulation, and housing elements.

ENVIRONMENTAL JUSTICE

OPR is required to provide guidance to cities and counties for integrating environmental justice into their general plans (§65040.12). Environmental justice is defined in state planning law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

The following section discusses environmental justice and its relationship to the general plan. Ideas for data and analysis and environmental justice policies are also included in the discussion of the mandatory general plan elements (Section 2).

Federal Framework

The Constitutional basis for environmental justice and all other challenges to governmental discrimination lies in the Equal Protection Clause. The Fourteenth Amendment expressly provides that the states may not "deny to any person within [their] jurisdiction the equal protection of the laws" (U.S. Constitution, amend. XIV, §1).

Environmental justice policy was spearheaded at the national level on February 11, 1994, when President Clinton signed Executive Order (E.O.) 12898 regarding "Federal Actions to Address Environmental Justice in Minority Populations and

Low-Income Populations." The executive order followed a 1992 report by the federal Environmental Protection Agency (U.S. EPA) indicating that "communities of color and low-income populations experience higher than average exposures to selected air pollutants, hazardous waste facilities, and other forms of environmental pollution." E.O. 12898 focused on environmental justice in relation to minority and low-income populations by reminding us that there are current laws that can be used to achieve environmental justice. Among the laws that were underscored include the National Environmental Policy Act (NEPA) and Title VI of the Civil Rights Act of 1964 (Title VI). Following E.O. 12898, on December 10, 1997, the Council on Environmental Quality (CEQ) released *NEPA Guidance for Federal Agencies on Key Terms in E.O. 12898*.

Title VI, as amended, prohibits any recipient (state or local entity, or public or private agency) of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. Title VI itself prohibits intentional discrimination (42 USC §2000d to §2000d-7; EPA's Title VI implementing regulations, 40 CFR part 7.25). Although Title VI is broader in scope than E.O. 12898, the doctrine of environmental justice is better ensured by the executive order because it explicitly applies to low-income as well as minority populations.

State and local agencies that receive federal funding must comply with Title VI, as stated above, and by extension, E.O. 12898. This is commonly known as "federalization." In response, many state and local agencies that receive federal funding have initiated environmental justice programs of their own.

State Framework

Prior to the passage of explicit environmental justice laws in California, multiple anti-discrimination statutes were already in the books. For example, state planning law prohibits any local entity from denying any individual or group of the enjoyment of residence, landownership, tenancy, or any other land use in California because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, or age of the individual or group of individuals (§65008). In addition, the Fair Employment and Housing Act (FEHA) spe-

cifically prohibits housing discrimination on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, disability, or source of income (§12900, et seq.)

In 1999, Governor Davis signed SB 115 (Solis, Chapter 690, Statutes of 1999) into law, defining environmental justice in statute and establishing OPR as the coordinating agency for state environmental justice programs. The bill further required the California Environmental Protection Agency (CalEPA) to take specified actions in designing its mission for programs, policies, and standards within the agency and to develop a model environmental justice mission statement for boards, departments, and offices within the agency by January 1, 2001. In September 2000, Governor Davis signed a related bill, SB 89 (Alarcon, Chapter 728, Statutes of 2000), which complements SB 115 by requiring the creation of an environmental justice working group and advisory group to assist CalEPA in developing an interagency environmental justice strategy. Further, SB 828 (Alarcón, Chapter 765, Statutes of 2001)) added due dates for the development of CalEPA's interagency environmental justice strategy and required CalEPA to address program obstacles impeding environmental justice by December 31, 2003.

AB 1553 (Keeley, Chapter 762, Statutes of 2001) requires OPR to incorporate environmental justice considerations in the *General Plan Guidelines*. AB 1553 specified that the guidelines should address the following:

- ◆ Distributing new public facilities in an equitable manner.
- ◆ Locating hazardous industrial facilities and uses in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.
- ◆ Avoiding locating new schools and residential dwellings in proximity to hazardous industrial facilities.
- ◆ Promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, school, and recreation.

Forms of Inequity

Problems of environmental justice can be broken down into two categories: procedural inequity and geographic inequity. In other words, unfair treatment can manifest itself in terms of process or in terms of results.

Procedural inequity occurs when the planning process is not applied uniformly. Examples of procedural inequity include:

- ◆ "Stacking" commissions or committees with certain interests while ignoring other segments of the community.
- ◆ Holding meetings at times or locations that minimize public participation.
- ◆ Using English-only written or verbal communication when a non-English speaking population will be affected by a planning decision.
- ◆ Requiring lower levels of mitigation for projects affecting low-income or minority populations.
- ◆ Uneven enforcement of environmental rules.

Geographic inequity describes a situation in which undesirable land uses are concentrated in certain neighborhoods while the benefits are received elsewhere. It also describes a situation in which public amenities are concentrated only in certain areas. Examples of geographic inequity include:

- ◆ Certain neighborhoods have a disproportionate share of industrial facilities that handle or produce hazardous waste, while the economic benefits are distributed to other neighborhoods (in the form of jobs and tax revenue).
- ◆ Certain neighborhoods have a disproportionate share of waste disposal facilities, while the benefits of such facilities are received by the community or region as a whole.
- ◆ Community centers, parks, and open space are concentrated in certain neighborhoods.

Demographics

In order to identify inequitable distribution of either undesirable or beneficial land uses, cities and counties should identify areas with low-income

and minority populations. Planners must ask two questions in order to identify low-income and minority populations. First, what is the appropriate geographic unit of analysis? Second, what is the definition of low-income and minority?

The appropriate geographic unit will vary with the size and population density of the city or county. Typical geographic units are council/supervisory districts, neighborhoods, census tracts, and census blocks. For cities and counties with higher population density, census tracts will typically be the most useful unit of analysis. For small cities and counties with low population densities, census block may be the appropriate unit. Accurate data is usually not available below the census block level.

A geographic unit is considered low-income or minority if the low-income or minority population exceeds 50 percent or is meaningfully greater than the city or county as a whole. Census Data Series P-60 on Income and Poverty provides information on income levels. Minority groups may include the following Census categories: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

Once low-income and minority populations have been identified, planners can compare the demographic data to the distribution of public facilities and potentially hazardous industrial facilities. The planning agency should work with the fire department, county environmental health department, regional water quality control board, and local air district to identify industrial facilities or uses that may pose a hazard to human health. This analysis can be used to identify inequitable distribution of beneficial public facilities and overconcentration of industrial facilities in low-income and minority neighborhoods. Geographic information systems (GIS), where available, are a powerful tool for doing this kind of analysis.

Community Participation

Community involvement in the planning process is an important part of environmental justice. Cities and counties should develop community participation strategies that allow for early and meaningful community involvement by all affected population groups. Consider strat-

egies to overcome linguistic, institutional, cultural, economic, and historical barriers to effective participation in the general plan process. Chapter 8 is dedicated to the issue of community participation and suggests methods to improve outreach to and communication with all population groups, including low-income and minority populations.

Public Facilities

Cities and counties should plan for the equitable distribution throughout the community of new public facilities and services that increase and enhance community quality of life, given the fiscal and legal constraints that restrict the siting of these facilities.

Public facilities that enhance quality of life may include parks, open space, recreational facilities (including senior and youth centers), community centers, libraries, museums, cultural centers, science centers, and zoos. Equitable distribution can be measured as the distance (or travel time) from each residential area to the facility. A geographic analysis of public facilities may reveal underserved areas in the city or county.

Some public facilities, such as parks and open space/greenbelts will be fairly numerous and should be geographically dispersed throughout the community. The facilities will usually serve one neighborhood or subdivision. Other facilities may serve several neighborhoods, such as a recreational center or branch library. The facilities should be located in neighborhood or "village" centers. Other public facilities are unique and serve the entire community, such as a central library or city museum. Unique facilities that are located in the civic center or urban core are presumed to be equitably distributed.

Fiscal constraints include the relative cost of land and the ability of public agencies to obtain financing for acquisition and construction. Legal constraints include, but are not limited to, local, state, and federal regulations for the protection of the environment, public health and safety, or the preservation of natural and cultural resources (including historical and archeological resources).

Industrial Facilities

Cities and counties should develop policies that provide for the location of industrial facilities and other uses that, even with the best available

technology, will contain or produce material that, because of its quantity, concentration, or physical or chemical characteristics, pose a significant hazard to human health and safety in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.

Over-concentration occurs when industrial facilities or uses do not individually exceed acceptable regulatory standards for public health and safety, but when considered cumulatively with other industrial facilities and uses, pose a significant health and safety hazard to adjacent residential and school uses.

Facilities that emit, handle, store, or dispose of hazardous materials are regulated by a variety of agencies. These agencies include county environmental health departments, fire departments, air districts, regional water quality control boards, the California Department of Health Services, the California Integrated Waste Management Board, and the California Department of Toxic Substance Control (DTSC). However, cities and counties, as the primary land use authority, are primarily responsible for the location and distribution of potentially hazardous industrial facilities through the general plan and zoning ordinances.

One approach to avoiding over-concentration of potentially hazardous industrial facilities and uses in proximity to residential and school uses is the use of buffer zones. Buffer zone policies may be approached in one of two ways. The general plan land use diagram may designate transitional land uses between industrial and residential areas. Transitional uses may include open space, light industry, office uses, business parks, or service commercial uses. Buffer policies may also be aimed at individual siting decisions. For example, certain industrial uses may not be allowed within a quarter mile of a residential or school use.

One weakness of buffer policies is that it is difficult to make a priori decisions about how much distance is needed to eliminate potential health and safety hazards to residential and school. A possible solution to this problem is to make certain industrial uses conditional within a certain distance of residential or school uses. This allows the city or county to consider the potential hazards associated with individual facilities or uses. Approval of a

conditional use is discretionary and thus would be subject to CEQA. It should be noted that CEQA requires that a lead agency consult with the affected school district if any facility that would create hazardous air emissions or handle acutely hazardous material is proposed within a quarter mile of a school (Public Resources Code §21151.4).

Another policy response to over-concentration is to cap the number of potentially hazardous facilities within a certain distance of each other. For example, the state of Georgia does not allow siting of a new solid waste facility if two such facilities already exist within a two mile radius of the proposed facility.

New Residential Uses and Schools

Cities and counties should provide for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce materials that, because of their quantity, concentration, or physical or chemical characteristics, pose a significant hazard to human health and safety.

The location of new residential and school development is the flipside of the problem discussed in the section above. Given the need for new housing and schools and given the need to make efficient use of land, how do cities and counties deal with existing over-concentration of industrial uses? When designating areas for residential development, the city or county should identify any over-concentrated industrial areas. Appropriate buffers should be placed between over-concentrated industrial areas and new residential areas. Using their authority over the approval and design of subdivisions, cities and counties may develop policies and standards related to industrial over-concentration and new subdivision approvals.

The location of new schools is of particular concern to both local governments and school districts. The general plan should identify possible locations for new schools. Such locations are approximate and do not indicate specific parcels. Identifying appropriate school locations as part of the general plan process may avoid project-level problems of proximity to industrial facilities and uses. The planning agency should work closely

with the school district to identify suitable school locations. Prior to adopting or amending a general plan, the planning agency must refer the proposed action to any school district within the area covered by the proposed action (§65352).

For their part, school districts are required to notify the planning commission of the city or county prior to acquiring property for new schools or expansion of an existing school. School districts are not bound by local zoning ordinances unless the ordinance provides for the location of schools and the city or county has adopted a general plan (§53091). School districts can override the general plan and zoning ordinances with regards to the use of property for classroom facilities by a two-thirds vote of the school board (§53094). The board cannot exercise this power for non-classroom facilities such as administrative buildings, bus storage and maintenance yards, and warehouses. If the school board exercises their override power, they must notify the city or county within 10 days (§53904).

In addition to general plan and zoning concerns, CEQA requires that the environmental document prepared for a new school identify whether the proposed site is any of the following: a current or former hazardous waste or solid waste disposal facility, a hazardous substances release site identified by DTSC, the site of one or more pipelines that carry hazardous substances, or is within a quarter mile of a facility that emits hazardous air emissions or handles acutely hazardous material (Public Resources Code §21151.8). If such facilities exist, the school board must make findings that the facilities do not endanger the public health (for those attending or employed by the proposed school) or that existing corrective measures will result in the mitigation of any health endangerment.

TRANSIT-ORIENTED DEVELOPMENT

Cities and counties should promote more livable communities by expanding opportunities for transit-oriented development (TOD) so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.

Transit-oriented development (TOD) is a strategy that may help a community achieve its general plan goals related to circulation, housing,

environmental quality, and economic development. By improving access to jobs and housing and revitalizing existing neighborhoods, TOD can be a tool for environmental justice.

TOD is defined as moderate- to higher-density development, located within easy walk of a major transit stop, generally with a mix of residential, employment, and shopping opportunities designed for pedestrians without excluding the auto. TOD can be new construction or redevelopment of one or more buildings whose design and orientation facilitate transit use. (*Statewide Transit-Oriented Development Study: Factors for Success in California*, California Department of Transportation, 2002).

A well-designed, vibrant TOD community can provide many benefits for local residents and businesses and the surrounding region. Compact development near transit stops can increase transit ridership and decrease rates of vehicle miles traveled (VMT), thereby yielding a good return on transit system investments. TOD can also provide mobility choices, increase public safety, increase disposable household income, reduce air pollution and energy consumption rates, help conserve resources and open space, play a role in economic development, contribute to more affordable housing, and decrease infrastructure costs.

A variety of factors need to be considered during the development and implementation of TOD. These factors include transit system design; community partnerships; understanding of local real estate markets; coordination among local, regional, and state organizations; and providing the right mix of planning and financial incentives and resources. A successful TOD will reinforce the community and the transit system. Transit operators, property owners, and residents should be involved in the development of TOD proposals.

Data to identify and assess potential locations for TOD should be collected during preparation of the land use, circulation, and housing elements of the general plan. An inventory of potential development sites within 1/4 to 1/2 mile of transit routes may reveal potential locations for TOD. Additional data may be used to verify the optimum location and mix of uses to further refine the viability of TOD at specific transit hubs. This data may in-

CASE STUDY: Integrating Transit-Oriented Development in the General Plan

The following policies from the 1998 City of Oakland General Plan illustrate how local jurisdictions can facilitate and guide transit-oriented development:

Goal: Integrate land use and transportation planning: Integrate transportation and land use planning at the neighborhood, city and regional levels by developing transit-oriented development where appropriate at transit and commercial nodes.

Objective: Provide mixed use, transit-oriented development that encourages public transit use and increases pedestrian and bicycle trips at major transportation nodes.

Policy 1: Encourage Transit-Oriented Development. Transit-oriented development should be encouraged at existing or proposed transit nodes, defined by the convergence of two or more modes of public transportation such as BART, bus, shuttle service, light rail or electric trolley, ferry and inter-city or commuter rail.

Policy 2: Guiding Transit Oriented Development. Transit-oriented developments should be pedestrian oriented, encourage night and day time use, provide the neighborhood with needed goods and services, contain a mix of land uses, and be designed to be compatible with the character of surrounding neighborhoods.

Policy 3: Promoting Neighborhood Services. Promote neighborhood-serving commercial development within one-quarter to one-half mile of established transit routes and nodes.

Policy 4: Linking Transportation and Economic Development. Encourage transportation improvements that facilitate economic development.

Policy 5: Linking Transportation and Activities. Link transportation facilities and infrastructure improvements to recreational uses, job centers, commercial nodes, and social services (i.e., hospitals, parks, or community centers).

clude origin and destination studies, transit ridership projections, and data to determine the appropriate jobs to housing ratio and level of retail services. The appropriate density will support a high level of transit service. An optimal mix of uses will provide opportunities to shop, work, live, and recreate without the need for an automobile. The jobs to housing ratio should encourage commuting via transit and reduce the need for parking in the vicinity of the TOD.

Local governments can promote TOD through general plan policies that encourage supportive densities and designs and a mix of land uses. TOD-supportive policies may provide for higher land use densities, reduced parking requirements, decreased automobile levels of service, and increased transit levels of service. TOD policies may facilitate a pedestrian-oriented environment with features such as traffic calming strategies, traditional grid street patterns with smaller blocks, and architecture that relates the building to sidewalks, plazas, and parks rather than to parking.

Implementation Tools

Successful TOD implementation is dependent upon TOD-supportive general plan policies enabled by specific zoning codes, development regulations, and design guidelines. To create an effective regulatory and review environment, local jurisdictions can modify existing zoning codes to encourage TOD; tailor development regulations to individual TOD sites where appropriate; develop TOD-friendly design standards; and simplify and streamline the permit and review process.

The following planning tools are typical ways a community can implement TOD-supportive general plan policies.

Specific Plan

Specific plans are a useful zoning tool for implementing the TOD-related policies and objectives of the general plan. A specific plan can provide detailed information on land use, development

CASE STUDY: Integrating Transit-Oriented Development in the General Plan

The following policies from the agriculture and land use element of the Fresno County General Plan illustrate how local jurisdictions can facilitate and guide transit-oriented development:

Policy LU-F.1 The County shall encourage mixed-use development that locates residences near compatible jobs and services.

Policy LU-F.2 The County shall encourage the combination of residential, commercial, and office uses in mixed use configurations on the same site.

Policy LU-F.3 The County shall promote development of higher-density housing in areas located along major transportation corridors and transit routes and served by the full range of urban services, including neighborhood commercial uses, community centers, and public services.

Policy LU-F.4 The County shall selectively redesignate vacant land for higher density uses or mixed uses to facilitate infill development.

Policy LU-F.5 The County shall encourage subdivision designs that site neighborhood parks near activity centers such as schools, libraries, and community centers.

Policy LU-F.6 The County shall encourage the creation of activity centers including schools, libraries, and community centers in existing neighborhoods.

Policy LU-F.7 The County shall seek to reduce the amount of land devoted to parking in new urban non-residential development and encourage the use of shared parking facilities.

Policy LU-F.8 The County shall adopt transit- and pedestrian-oriented design guidelines and incorporate them into community plans and specific plans. The County shall review development proposals for compliance with its adopted transit- and pedestrian-oriented design guidelines to identify design changes that can improve transit, bicycle, and pedestrian access.

Policy LU-F.9 The County shall plan adequate pedestrian-oriented neighborhood commercial shopping areas to serve residential development.

Policy LU-F.10 The County shall encourage school districts to site new schools in locations that allow students to safely walk or bicycle from their homes, and to incorporate school sites into larger neighborhood activity centers that serve multiple purposes.

standards, and infrastructure requirements in the TOD area. For a further discussion of specific plans, see Chapter 10 of this document as well as the OPR publication *The Planners Guide to Specific Plans*.

Transit Village Plan

The Transit Village Development Planning Act of 1994 (§65460, et seq.) authorizes cities and counties to prepare "transit village plans" to encourage mixed-use development in close vicinity to transit stations. Transit village plans occupy a niche similar to the community plans described in Chapter 1. What distinguishes them is their specific role in encouraging high-den-

sity, pedestrian-oriented development around transit stations.

A transit village plan must be consistent with the city or county general plan (§65460.8). The plan is adopted by resolution, like the general plan, and becomes the policy foundation for village zoning provisions, public works projects, and future subdivision activity.

To encourage pedestrian use, the entire village must be contained within a one-quarter mile radius of a transit station. The Act provides that a city or county adopting a plan will be eligible for state transportation funds but does not indicate that areas with such plans will receive priority funding. Transit villages may be excluded from con-

formance with county Congestion Management Plan level of service standards with the approval of the Congestion Management Agency.

Zoning

Transit-oriented development will typically involve changes in zoning, either as a separate action or in conjunction with a specific plan or transit village plan. The purpose of the rezoning is to specify uses and allow the necessary density and

building intensity for a successful development. Zoning changes may take the form of a new zoning district or an overlay zone. Considerations for TOD zoning include mixed-use, minimum residential densities, appropriate automobile parking standards, and optimal building setbacks to create pedestrian scale.

For more information on transit-oriented development, see the Bibliography under "Transportation and Circulation."

APPENDIX F

CALIFORNIA PLANNING AND ZONING LAWS

A. State Planning Law

The responsibility for land use planning and control rests primarily with the cities and counties in California.¹ While the State Office of Planning and Research is responsible for “developing state land use policies, coordinating planning of all state agencies, and assisting and monitoring local and regional planning,”² the Office is not vested with “any direct operating or regulatory powers over land use, public works, or other state, regional or local projects or programs.”³

B. Local Planning Requirements

Each city and county planning agency in California is required to prepare, and its legislative body is required to adopt, a comprehensive, long-term general plan for the physical development of the city or county, and for any land outside its boundaries which bears relation to its planning.⁴ The general plan may be adopted in a variety of formats—as a single document or as a group of documents—but it must address the following elements to the extent that the subject of the element exists in the planning area:⁵

- (a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land;
- (b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan;
- (c) A housing element;
- (d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources;
- (e) An open-space element;
- (f) A noise element, which must identify and appraise noise problems in the community. “The noise element...shall recognize...to the extent practicable...current and projected noise levels for all of the following sources: (1) Highways and freeways, (2) Primary arterials and major local streets, (3) Passenger and freight on-line railroad operations and ground rapid transit systems, (4) Commercial, general aviation, heliport, helistop, and military operations..., (5) Local industrial plants..., (6) Other ground stationary noise sources....”

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards.⁶

In addition to these seven required elements, cities and counties may include any other elements and address any other subjects that relate to their physical development.⁷ With respect to the housing element, a specific article was added to the Planning and Zoning title of the Local Government Code setting forth the required contents of the element.⁸

C. Incentives for Local Planning

Incentives to encourage local planning are unnecessary because local planning is mandatory.

D. State Role in Local Planning

1. State Plan and/or Policy

The Office of Planning and Research is charged with the responsibility of developing state land use policies, coordinating planning of all state agencies, and assisting and monitoring local and regional planning.⁹ In furtherance of this mandate, the Office is directed by statute to, among other things, "engage in the formulation, evaluation and updating of long-range goals and policies for land use, population growth and distribution, urban expansion, development, open space, resource preservation and utilization, air and water quality, and other factors which shape statewide development patterns and significantly influence the quality of the state's environment."¹⁰ In addition to this state-level task, the Office: coordinates the technical assistance provided by state departments and agencies in regional and local planning to assure consistency with the statewide environmental goals and objectives; develops long-range policies to assist state and local agencies in meeting the challenges of growth and development and "defining the complementary roles of the state, cities, counties, school districts, and special districts with respect to such growth"; and encourages planning assistance to city, county, district and regional planning agencies; assists local governments in land use planning.¹¹ The Office is also charged with organizing California into regional planning districts.¹²

2. Approval of Local Comprehensive Plans, Zoning Ordinances

While the development and adoption of local comprehensive (general) plans is purely local in nature, the planning agency is directed—not required—to refer the proposed plan for comment by all abutting cities and counties in the area covered by the proposed plan, any special district that may be significantly affected by the adoption of the proposed plan, all school districts within the area covered by the plan, the local agency formation commission, any area wide planning agency that may be significantly affected by the plan, federal agencies that have operations or lands within the jurisdiction covered by the plan, public water districts, and the appropriate Air Quality Management District.¹³ These entities have 45 days to comment.¹⁴

3. Consistency Requirements

Zoning ordinances must be consistent with the adopted general plan.¹⁵ In addition, no local public works project and no tentative map or parcel may be approved if it is not consistent with the plan.¹⁶ Local governments in California may adopt "specific plans or other plans" in addition to the general plan, but these other plans must be consistent with the general plan.¹⁷ Although regional plans may be developed and adopted by the regional planning districts, such plans are "advisory only and shall not have any binding effect on the counties and cities located within the boundaries of the regional planning district for which the regional plan is adopted."¹⁸ In an effort to facilitate "effective and harmonious" planning, all city, county, and other local planning agencies are required to submit to the regional planning board their general plans and/or master plans, zoning ordinances and subdivision regulations, and a similar filing requirement, for informational purposes, exists for the state agencies with respect to the regional planning boards.¹⁹ Cities and counties may submit local planning and zoning proposals to the regional planning board for advice, and such advice "shall consist of a report as to the conformance of such proposals to the regional plan, the possible effect of such proposals on other portions of the region, and any other matters which in the judgment of the board may be of assistance to the body requesting such advice."²⁰

4. Public Participation Requirements for Localities

The California Legislature has specifically recognized the importance of public participation in land use planning, declaring it the policy of the State that, "each state, regional and local agency concerned in the planning process involve the public through public hearings, informative meetings, publicity and other means available to them, and that at such hearings and other forums, the public be afforded the opportunity to respond to clearly defined alternative objectives, policies and actions."²¹ Specifically in the area of local plan development, the enabling statute requires that the planning agency provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups are involved as much as possible.²²

5. Reporting Requirements for Localities

City and county planning agencies are required to report annually to the City Council, the Office of Planning and Research, and the Department of Housing and Community Development.²³ The Regional Planning Board is also required to report annually to the legislative bodies and to the planning agencies of all of the counties, cities, and other governmental agencies within the region for the purpose of reporting on the status of the regional plan and notifying recipients of amendments and revisions within the past year as well as providing a report of other major activities.²⁴

6. Monitoring Requirements for Localities

Other than the responsibility of the Office of Planning and Research to check on the amount of time that has passed since the last update to a local general plan, there are no comprehensive monitoring requirements for local general plans.

7. Updates of Plans

Local planning agencies are required to “periodically review, and revise, as necessary” local general plans.²⁵ There is no specified statutory timeframe for such periodic review, although the Planning Office is required to notify cities and counties that their plans have not been revised within eight years, and the Attorney General is to be notified when plans are not revised within ten years.²⁶ The only other time frame for plan revisions relates to the housing element and requires updates to that element at least every five years.²⁷

E. Development Fees

Local governments are authorized to assess and collect impact fees from applicants for the purpose of defraying all or a portion of the cost of public facilities associated with a new development.²⁸

F. Coordination with Environmental Justice

The Office of Planning and Research is California’s coordinating agency for environmental justice programs.²⁹ No later than July 1, 2003, the Office is required to incorporate environmental justice guidelines into the next edition of the general plan guidelines for cities and counties.³⁰ The guidelines are to recommend provisions for general plans to do all of the following:

- (1) Propose methods for planning for the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities.
- (2) Propose methods for providing for the location, if any, of industrial facilities and uses that, even with the best available technology, will contain or produce material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety, in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.
- (3) Propose methods for providing the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety.
- (4) Propose methods for promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.³¹

ENDNOTES

¹ See generally, West's Ann. Cal. Gov. Code sec. 65100 et. seq. (establishment of planning agencies, commissions, departments); West's Ann. Cal. Gov. Code sec. 65800 et. seq., (general plan and specific plan requirements); West's Ann. Cal. Gov. Code. Sec. 65800, et. seq. (zoning regulation); and West's Ann. Cal. Gov. Code sec. 66410, et. seq. (subdivision regulation).

² West's Ann. Cal. Gov. Code sec. 65035 (1997).

³ *Ibid.*

⁴ West's Ann. Cal. Gov. Code sec. 65300 (1997).

⁵ West's Ann. Cal. Gov. Code sec. 65301 (1997).

⁶ West's Ann. Cal. Gov. Code sec. 65302 (1997).

⁷ West's Ann. Cal. Gov. Code sec. 65303 (1997).

⁸ West's Ann. Cal. Gov. Code Art. 10.6 (1997).

⁹ West's Ann. Cal. Gov. Code sec. 65035 (1997).

¹⁰ West's Ann. Cal. Gov. Code sec. 65040(a) (1997).

¹¹ West's Ann. Cal. Gov. Code sec. 65040(i) and (k)-(m) (1997).

¹² West's Ann. Cal. Gov. Code sec. 65040.4 (1997).

¹³ West's Ann. Cal. Gov. Code sec. 65352 (1997).

¹⁴ *Ibid.*

¹⁵ West's Ann. Cal. Gov. Code sec. 65455 and sec. 65860 (1997).

¹⁶ West's Ann. Cal. Gov. Code sec. 65455 (1997).

¹⁷ West's Ann. Cal. Gov. Code sec. 65359 (1997).

¹⁸ West's Ann. Cal. Gov. Code sec. 65060.8 (1997).

¹⁹ West's Ann. Cal. Gov. Code sec. 65067 (1997).

²⁰ West's Ann. Cal. Gov. Code sec. 65067.2 (1997).

²¹ West's Ann. Cal. Gov. Code sec. 65033 (1997).

²² West's Ann. Cal. Gov. Code sec. 56351 (1997).

²³ West's Ann. Cal. Gov. Code sec. 65307 and sec. 65400 (1997).

²⁴ West's Ann. Cal. Gov. Code sec. 65067.3 (1997).

²⁵ West's Ann. Cal. Gov. Code sec. 65103 (1997).

²⁶ West's Ann. Cal. Gov. Code sec. 65040.6 (1997).

²⁷ West's Ann. Cal. Gov. Code sec. 65588 (1997).

²⁸ See, West's Ann. Cal. Gov. Code sec. 66000 et. seq. (1997).

²⁹ West's Ann. Cal. Gov. Code sec. 65040.12 (Cum. Supp. 2002). The Office is also charged with reviewing and evaluating information from federal agencies obtained as a result of their respective regulatory activities under federal Executive Order 12898, and from the State Working Group on Environmental Justice that was established pursuant to Public Resources Code sec. 72002. *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

APPENDIX G

TEXAS PLANNING AND ZONING LAWS

A. State Planning Law

The Local Government Code (LGC) of Texas contains the state's authorities for local planning and development¹ and regulation of uses.² There is no state-level planning in Texas, and any regional planning is merely advisory. Therefore, land use controls are left entirely to local governments.

B. Local Planning Requirements

Texas did not adopt comprehensive planning regulations until 1997; but the state has had subdivision laws³ since the late 1920s.⁴ Local governments in Texas may adopt and define the content and design of comprehensive plans for long-range development.⁵ It is important to note, however, that while municipalities may adopt comprehensive plans for the long-range development of the municipality,⁶ there is no requirement to adopt these plans. Municipalities may also define the relationship between comprehensive plans and development regulations and may adopt standards for consistency.⁷ Although local zoning regulations must be adopted in accordance with a comprehensive plan, this requirement is weakened by Texas caselaw holding that zoning ordinances may constitute the comprehensive plan.⁸ State statutes provide little guidance for municipalities when developing comprehensive plans; they simply authorize plans to include, but do not limit them to, provisions on land use, transportation, and public facilities.⁹ A local comprehensive plan may consist of a single plan or a coordinated set of plans organized by subject and geographic area to coordinate and guide the establishment of development regulations.¹⁰

County governments in Texas have no statutory authority to develop and adopt comprehensive plans or zoning ordinances. The only exceptions are Padre Island¹¹ and the Amistad Recreation Area.¹² Some authority is granted for several Texas counties to establish zoning ordinances and regulations in protected areas,¹³ but counties may establish building and setback lines only in areas beyond the corporate limits of municipalities.¹⁴

C. State Rules & Guidelines

Texas has no state rules and guidelines for local planning beyond the statutory provisions described above. The Local Government Code authorizes planning and zoning for housing and other structures, including authority to secure substandard buildings, preserve historic buildings, conserve energy, control rent, and adopt fair housing ordinances.¹⁵ Other miscellaneous community development tools authorized by the state include Neighborhood Empowerment Zones, which can be created by municipal governing bodies to build or rehabilitate affordable housing, increase economic development, improve the quality of social services, education, or provide public safety to residents;¹⁶ and the North American Free Trade Agreement Impact Zones to promote opportunities for developing local businesses and jobs for residents of the zone, as well as requiring certain businesses to hire NAFTA displaced workers.¹⁷

D. Incentives for Local Planning

Texas has no state incentives to encourage local comprehensive land use planning. There is, however, a vast array of special district legislation for a variety of purposes, including water supplies, electric utilities, tax increment financing, county development and economic development. A popular tool for municipalities is Chapter 380 of the Local Government Code, which authorizes municipalities to create programs for a variety of economic development purposes. There are many projects related to land development that impact local economies and assist municipalities with obtaining appropriate infrastructure and addressing other planning and zoning related matters.

The Office of Rural Community Affairs offers various grant programs, such as the *Colonia Planning Fund*,¹⁸ to promote the development of viable communities through affordable housing and increased economic opportunities for persons of low to moderate income. The Texas Historical Commission also provides technical assistance and preservation grant priority for localities participating in Commission programs, including funding for preservation through local community visioning processes.¹⁹

E. State Role in Local Planning

The state and counties have no role in local planning, nor do they provide regional oversight of local planning. Instead, the councils of government throughout Texas are purely advisory. The regional councils of government may provide training on local land use issues, may oversee and coordinate federal grants, or coordinate air quality issues, but their function for local land use planning is advisory at best. Moreover, state government has no role in approving local comprehensive plans or zoning ordinances.

F. Regional Role in Local Planning

Any combination of Texas counties or municipalities may agree to establish by ordinance a regional planning commission²⁰ for the future development of communities within the region. These commissions plan transportation system improvements, adequate public facilities (e.g., streets, utilities, health, educational, recreational facilities), agricultural needs, business and industry needs, preservation of historical and cultural values, and improving quality of life.²¹ The regional planning commissions have no authority to require consistency among or between local plans; rather the commissions may develop regional planning recommendations, which participating local governing bodies may then adopt in whole or in part.²²

In a state planning region or sub-region where a regional planning commission exists, the commission functions as an areawide planning agency for purposes of the reviews required for certain federal and state funding programs.²³ If a project has regionwide significance, a commission has responsibility for reviewing the proposed project and determining whether the project conflicts with the regional plan or policy.²⁴

Adjacent municipalities are also authorized to form joint planning commissions.²⁵ Once formed, a joint planning commission is required to complete a Master Plan to ensure orderly planning.²⁶

That plan must include: highway design; street and park layout; and designation of areas for the location of schools, residences, businesses and commerce, industry, and water reservoirs.²⁷ It should be noted that, while joint planning commissions are authorized by Texas statute, none currently exist.

G. Public Participation Requirements for Localities

There are no special public participation requirements for developing and adopting a comprehensive plan or zoning ordinance except for the usual public notice and public hearing requirements.²⁸ With respect to subdivision law, in economically distressed counties, the Texas enabling statute requires that notice be published in English and in Spanish.²⁹

H. Reporting Requirements for Localities

Texas does not have any general reporting requirements for municipalities or counties.

I. Monitoring Requirements For Localities

There are no monitoring requirements for municipalities and counties except when local government assesses impact fees, and in that case, they must annually submit a written certification verifying compliance to the Attorney General.³⁰ With respect to local zoning and land use laws, the governing body of a municipality may adopt ordinances to enforce its zoning regulations.³¹

J. Benchmarks for Localities

Because there is no state or regional role in planning and zoning, there are no performance measures or benchmarks.

K. Updates of Plans

Planning and zoning commissions may update their comprehensive plans and zoning regulations whenever necessary as long as proper public notice procedures are followed.

L. State Leadership on Environmental Justice

The Texas Commission on Environmental Quality administers the state's environmental equity program, but there is no Texas statute or regulation on environmental justice.³² Through this initiative, the state strives, among other things, to assist citizens and neighborhood groups for participating in regulatory processes.³³ In addition, the program function as a community liaison and provides environmental awareness and outreach campaigns to educate communities about the siting of various potential hazards.³⁴

M. Impact & Development Fees

In Texas, the municipalities, counties, and other local governments may impose impact fees to finance new capital improvements or public facility expansions.³⁵ To enact impact fees, the local governing body must comply with appropriate public notice and hearing requirements, complete a capital improvement plan, and submit land use assumptions.³⁶ Within the North American Free Trade Impact Zone and Neighborhood Empowerment Zones, municipalities may waive or adopt fees related to the construction of buildings within the zones, including impact fees.³⁷

ENDNOTES

- ¹ V.T.C.A., Local Government Code, Title 12 (West Group 1999).
- ² V.T.C.A. Local Government Code, Title 7 (West Group 1999).
- ³ V.T.C.A. Local Government Code, Ch. 213 (West Group, Cum. Supp. 2002).
- ⁴ American Planning Association, *Planning for Smart Growth: 2002 State of States*, 121 (2002).
- ⁵ V.T.C.A., Local Government Code, sec. 213.002 (West Group Cum. Supp. 2002).
- ⁶ V.T.C.A., Local Government Code, sec. 219.002 (West Group 1999).
- ⁷ The "Home Rule Provision" allows cities with a population of 5,000 or more to enact and amend ordinances as long as they do not conflict with the state constitution or other state laws (Texas Constitution – Article 11, § 5). See *Planning for Smart Growth*, supra note 4, 120.
- ⁸ See, *Bernard v. City of Bedford*, 593 S.W.2d 809, 812 Tex. Civ. App. (Fort Worth 1980).
- ⁹ V.T.C.A., Local Government Code, sec. 219.002 (West Group 1999).
- ¹⁰ *Ibid.*
- ¹¹ V.T.C.A., Local Government Code, sec. 231.012 (West Group 1999).
- ¹² V.T.C.A., Local Government Code, sec. 231.031 (West Group 1999).
- ¹³ V.T.C.A., Local Government Code, sec. 231.101 (zoning around Lake Tawakoni and Lake Ray Roberts); sec. 231.131 (zoning around Lake Alan Henry, Lake Cooper and Post Lake), sec. 231.171 (zoning and other regulation on El Paso Mission Trail Historical Area); sec. 231.201 (zoning around Lake Somerville); and sec. 231.221 (development regulations in Hood County) (West Group 1999 and Cum. Supp. 2002).
- ¹⁴ V.T.C.A., Local Government Code, sec. 233.001 (West Group 1999).
- ¹⁵ See, V.T.C.A., Local Government Code, Chaps. 214, 302 and 318 (West Group 1999).
- ¹⁶ V.T.C.A., Local Government Code, Ch. 378. (West Group, Cum. Supp. 2002).
- ¹⁷ V.T.C.A., Local Government Code., Ch. 379 (West Group, Cum. Supp. 2002).
- ¹⁸ See, <<http://www.orca.state.tx.us/PDF/cd/2002cfp.pdf>> (site visited 10/02).
- ¹⁹ See, <<http://www.thc.state.tx.us/visioninpres/vpdefault.html>> (site visited 10/02).
- ²⁰ V.T.C.A., Local Government Code, sec. 391.003 (West Group 1999).
- ²¹ V.T.C.A., Local Government Code, sec. 391.001 (West Group 1999).
- ²² V.T.C.A., Local Government Code, sec. 391.004 (West Group 1999).
- ²³ V.T.C.A., Local Government Code, sec. 391.008 (West Group 1999).
- ²⁴ *Ibid.*
- ²⁵ V.T.C.A. Local Government Code, sec. 371.042 (West Group 1999).
- ²⁶ V.T.C.A. Local Government Code, sec. 371.043 (West Group 1999).
- ²⁷ V.T.C.A. Local Government Code, sec. 371.043(a) (West Group 1999).
- ²⁸ See, e.g., V.T.C.A., Local Government Code, secs. 211.006, 213.003 and Ch. 231 (West Group 1999).
- ²⁹ V.T.C.A., Local Government Code, sec. 232.025 (West Group 1999).
- ³⁰ V.T.C.A., Local Government Code, sec. 395.082 (West Group 1999).
- ³¹ V.T.C.A. Local Government Code, sec 213.012 (West Group 1999).
- ³² See, <<http://www.tnrcc.state.tx.us/comm/opa/envequ.html>> (site visited 10/02).
- ³³ *Ibid.*
- ³⁴ *Ibid.*
- ³⁵ V.T.C.A., Local Government Code, Ch. 395 (West Group 1999).
- ³⁶ V.T.C.A., Local Government Code, sec.395.014; secs. 395.042 - 395.0455 (West Group 1999).
- ³⁷ V.T.C.A., Local Government Code, sec. 378.004(1) and sec. 379.004(1) (West Group Cum. Supp.. 2002).

APPENDIX H

PENNSYLVANIA PLANNING AND ZONING LAWS

A. State Planning Law

In Pennsylvania, the state has delegated its planning authority to local governments through the Municipalities Planning Code (MPC).¹ The MPC establishes the framework for local, county, and regional governments to conduct land use planning.² The cities of Pittsburgh⁵ and Philadelphia are excluded from this legislation and operate under their respective home rule charters.³

The MPC allows a municipality to enact or adopt a comprehensive plan, zoning ordinances, subdivisions, and land development ordinances, including an official map. It also contains procedures for establishing a planning agency, a zoning hearing board, and appeals of their decisions. Since its initial enactment in 1968, the MPC has been amended several times, including the addition of impact fees.⁴

In 2000, two planning bills—Acts 67 and 68—were enacted as part of Governor Ridge's Growing Smarter Initiative.⁶ Collectively, these Acts clarify the authority of counties and municipalities to create Locally Designed Growth Areas as part of their comprehensive land use plans; encourage and enhance Transferable Development Rights as a tool to preserve open space and farmland; direct that state agencies must consider and may rely on local land use plans or ordinances when reviewing applications for funding or permitting to avoid conflicts with local planning decisions; and provide local governments with the ability to withstand legal challenges while facilitating consistent planning at local, county, and regional levels and planning for growth.⁷

On December 22, 2000, Act 127 was signed by Governor Ridge to clarify the amendments to the MPC by Acts 67 and 68. In June of 2000, the Downtown Location Law⁸ further required the Department of General Services to set guidelines for locating state agencies in central business districts. Also in 2000, the General Assembly amended the Industrial Sites Environmental Assessment Act⁹ to provide performance-based loans to businesses and communities for remediation and cleanup of non-hazardous wastes.

B. Local Planning Requirements

In Pennsylvania, municipalities—cities, towns, and boroughs—are given the primary responsibility for regulating land use.¹⁰ The local governing body generally does not conduct the planning function, and a planning commission is appointed to assume this responsibility. But the local governing body controls the basic functions and operation of its appointed planning commission.¹¹ The powers and duties of the planning commission, as well as the statutory guidelines for planning and zoning, are outlined in the MPC. Municipal authority to regulate land use is exercised by the planning commission through zoning, subdivision, and land development ordinances, and is limited by state legislation and the Constitution.¹²

Pennsylvania counties are granted planning functions in the absence of municipal authority, and can adopt zoning or subdivision regulations for the entire county if there are no municipal ordinances or for as much of the land within the county that is otherwise not regulated.¹³ Each county has an appointed planning commission,¹⁴ and municipalities wishing to engage in certain planning activities are required to submit their proposed actions to the county planning commission for review.¹⁵

Although the MPC requires counties to develop a comprehensive plan,¹⁶ municipalities are not required to develop and adopt their own plans.¹⁷ However, should a municipality develop its own comprehensive plan, it must do so in accordance with the MPC, and its plan must be consistent with the county's comprehensive plan.¹⁸

County and municipal comprehensive plans must be prepared and adopted in accordance with Section 10301 of the MPC and must contain, but need not be limited to, the following elements:

- Statement of objectives for future development;
- Land use plan;
- Plan to meet housing needs of present and future residents;
- Transportation;
- Community facilities and utilities;
- Statement of relationships among various plan components (*i.e.*, environmental, energy conservation, fiscal, economic development and social consequences on municipality);
- Short and long-range plan implementation strategies;
- Statement that existing and proposed development is compatible with existing and proposed development and plans in contiguous municipalities or a statement that measures have been taken to provide buffers or transitional devices between disparate uses, *and* a statement that existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan;
- Plan for the protection of natural and historic resources;
- County comprehensive plans must identify:
 - land uses related to important natural resources and utilization of existing minerals;
 - current and proposed land uses that have a regional impact and significance;
 - a plan for the preservation and enhancement of prime agricultural land and to encourage compatible land use regulation of existing agricultural operations; and
 - a plan for historic preservation; and
- Plan for reliable supplies of water.¹⁹

In addition, a comprehensive plan may:

- Include an energy conservation plan;²⁰ and
- Identify areas for future growth and development.²¹

C. State Rules & Guidelines

With the exception of requirements preempted by other federal or state legislation, local zoning ordinances in Pennsylvania must take into account transferable development rights, preservation and protection of prime agricultural land, environmentally sensitive areas, areas of historic significance, and availability of reliable, safe and adequate water.²² In addition, zoning ordinances must provide for reasonable development of minerals in each municipality and may not unreasonably restrict forestry.²³

D. Incentives for Local Planning

Pennsylvania's incentives to encourage planning mostly are various types of funding for planning purposes. Priority for state grants to develop or revise comprehensive plans will be given to those municipalities that agree to adopt comprehensive plans generally consistent with county comprehensive plans and to enact new zoning ordinances or amendments that would fully implement the municipal comprehensive plan.²⁴ When a county adopts a comprehensive plan in accordance with the MPC and where any municipalities therein have adopted plans and zoning ordinances in accordance with provisions of the MPC, "commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities."²⁵ Similarly, joint municipal zoning ordinances receive the same consideration and municipal authorization to, by agreement, share tax revenues and fees remitted to municipalities located within the joint municipal zone.²⁶

The Department of Community and Economic Development (DCED),²⁷ whose mission is to foster opportunities for businesses and communities to succeed and thrive, also provides various grants and other financial assistance to municipalities, including grant programs to support community development, community services, housing assistance, infrastructure, municipal services, and neighborhood improvement.²⁸

The Governor's Center for Local Government Services,²⁹ designated by Executive Order 1999-1 as the lead state agency responsible for land use assistance and monitoring at the local level, offers technical assistance; financial assistance, including the Land Use Planning and Technical Assistance Program (LUPTAP), the Shared Municipal Services Program and the Local Government Capital Project Loan Program; and education and training for local governments to encourage sound land management practices, economic development, and healthy and strong communities.³⁰

E. Regional Planning

Under Pennsylvania's Planning and Development Act, municipalities are specifically authorized to enter into intergovernmental cooperative agreements.³¹ Cooperative planning and implementation agreements are authorized for the purpose of developing, adopting and implementing a comprehensive plan for the entire county or for any area within the county.³²

F. State Role in Local Planning

1. State Plan and/or Policy

Pennsylvania does not have a statewide land use plan, but Executive Order 1999-1 serves as a guide for all state agencies making decisions that impact land use.³³

2. Approval of Local Comprehensive Plans, Zoning Ordinances

There is no state approval for plans or zoning ordinances. However, as discussed below, the statutes contemplate an opportunity for review and comment among and between different government jurisdictions.

2a. Comprehensive Plans

Municipalities: A municipal governing body is authorized to adopt and amend a comprehensive plan as a whole or in parts.³⁴ Prior to adopting or amending a plan, the municipal planning agency must hold at least one public meeting pursuant to public notice before forwarding the proposed plan or amendment to the local governing body.³⁵ In reviewing the proposed plan, the governing body must consider the comments of the county, contiguous municipalities, and the school district, as well as the public meeting comments and the recommendations of the municipal planning agency.³⁶ Comments of the county, contiguous municipalities, and local school districts must be sent to the governing body within 45 days after the plan is received, and the proposed plan or amendment can not be approved until these comments are received.³⁷ If a contiguous municipality or school district fails to respond within 45 days, the governing body may then proceed without their comments.³⁸

Counties: The governing body of a county is authorized to adopt and amend the county comprehensive plan as a whole or in parts.³⁹ Before adopting or amending the comprehensive plan, or any part thereof, the county planning agency must hold at least one public meeting before forwarding the proposed plan or amendment to the county's governing body.⁴⁰ In reviewing the proposed comprehensive plan, the governing body must consider comments from other municipalities, or school districts within the county, other contiguous school districts, municipalities, or counties, as well as comments at the public meeting and recommendations of the county planning agency.⁴¹ Comments of the counties, municipalities, and school districts must be sent to the governing body within 45 days after the plan is received, and the proposed comprehensive plan must not be approved until these comments are received.⁴² If, however, the counties, municipalities, or school districts fail to respond within 45 days, the county's governing body may then proceed without their comments.⁴³

In accordance with MPC Section 10302(a.1), counties must consider any amendments to their comprehensive plan proposed by municipalities that are considering adoption or revision of their municipal comprehensive plans so as to achieve general consistency between the respective plans.⁴⁴ When two or more contiguous municipalities request amendments to a county comprehensive plan for purposes of achieving general consistency between the municipal plans or multi-municipal plan and the county plan, the county must accept the amendments unless good cause for their refusal is established.⁴⁵

Adoption of a comprehensive plan, any part of a comprehensive plan, or an amendment to a comprehensive plan must be by resolution carried by the affirmative votes of not less than a majority of all members of the county's governing body.⁴⁶

2b. Zoning Ordinances

Municipalities: The governing body of each municipality may enact, amend, and repeal zoning ordinances to implement comprehensive plans.⁴⁷

Counties: The powers of county governing bodies to enact, amend, and repeal zoning ordinances are limited to land in municipalities, wholly or partly within the county, that have no zoning ordinances in effect when a county zoning ordinance is introduced and until a municipal ordinance is adopted. Once a municipality, whose land is subject to county zoning adopts an ordinance, it repeals the county zoning ordinance.⁴⁸

Zoning ordinances must reflect the policy goals of the community development plan as outlined in MPC Section 10606 and must give consideration to the character of the municipality, the needs of the citizens, and the suitabilities and special nature of particular parts of the community.⁴⁹ A county must hold a mediation session with any municipalities that believe the county's ordinances will have negative local impacts.

3. Consistency Requirements

Municipal comprehensive plans must be generally consistent with the adopted county comprehensive plan.⁵⁰ A municipality may amend its comprehensive plan at any time, provided that its plan remains generally consistent with the county plan and compatible with the comprehensive plans of abutting municipalities.⁵¹ Where a municipality with a comprehensive plan is located in a county that has adopted a comprehensive plan, both the county and municipality must give each other's plan consideration so that the objectives of each plan (county and municipal) can be protected to the greatest extent possible.⁵² County planning commissions must publish advisory guidelines to promote consistency with the adopted county comprehensive plan.⁵³ These guidelines must promote uniformity with respect to local planning and zoning terminology and common types of municipal land use or zoning regulations.⁵⁴

4. Public Participation Requirements for Localities

Other than traditional public notice and hearing prior to the adoption of local plans and zoning ordinances, Pennsylvania has no specific requirements for public participation in the development of these documents.

5. Reporting Requirements for Localities

Municipalities must forward a copy of their comprehensive plans and any future amendments to Pennsylvania's Center for Local Government Services for informational purposes.⁵⁵

6. Monitoring Requirements For Localities

Except for a five-year report on Land Use and Growth Management and the required filings described above, there is no state-level monitoring of local government compliance with planning and zoning laws.

7. Benchmarks for Localities

The Center for Local Government Services must issue a Land Use and Growth Management Report by the year 2005 and must review and update the report at five-year intervals.⁵⁶

8. Updates of Local Plans

The MPC requires a municipal or multi—municipal comprehensive plan to be reviewed at least every ten years.⁵⁷ The municipal or multi—municipal plan must be sent to the governing bodies of contiguous municipalities for their review and comment and must also be sent to the Center for Local Government Services for informational purposes.⁵⁸ In addition, the municipal or multi-municipal comprehensive plan must be sent to the county planning commission or, upon the request of the county planning commission, to a regional planning commission when the comprehensive plan is updated or at ten-year intervals, whichever comes first, for review and comment on whether the municipal plan remains generally consistent with the county comprehensive plan and to indicate where the local plan may deviate from the county plan.⁵⁹

County comprehensive plans must be updated at least every ten years.⁶⁰ Counties must consult with municipalities and solicit comment from school districts, municipal authorities, public utilities, and the Center for Local Government Services, for informational purposes during the process of preparing or updating a county comprehensive plan in order to determine future growth needs.⁶¹

9. Impact & Development Fees

Pennsylvania authorizes localities to impose development impact fees, but they may only be used for transportation purposes associated with new development.⁶²

G. State Leadership

Executive Order 1999-1 established Pennsylvania's land use policy, which all state agencies must follow. It requires soundly planned growth; farmland and open space preservation; development in areas that have been previously developed or in locally designated growth areas; increased understanding of land use planning impacts in relation to environmental, economic and social factors; regional cooperation; preservation of private property rights; preservation of the economic and social vitality of Pennsylvania's communities; and infrastructure maintenance and improvements that are consistent with sound land use practices.⁶³

Specifically with respect to environmental justice, in June 2001, Pennsylvania's Environmental Justice Work Group recommended to the Department of Environmental Protection (DEP) that

the DEP "should lead in the coordination of local, state and federal governmental agencies that can play a role in improving the conditions of environmentally burdened minority and low-income communities."⁶⁴ The Work Group's report focused on strategies to address environmental justice issues when certain applications for environmental permits are filed, but the report fails to consider the opportunities for using local land use planning and zoning decisions to address environmental justice issues.

ENDNOTES

¹ 53 P.S. Sec. 10101 (West 1997).

² Pennsylvania Planning Association, *Planning in Pennsylvania*, undated. Available at <<http://www.planningpa.org/planning.html>> (visited October 2002).

⁵ *City of Pittsburgh v. Zoning Board of Adjustment of City of Pittsburgh*, 535 A.2d 278, 112 Pa.Cmwlth. 246; appeal granted, 546 A.2d 622, 519 Pa. 661; appeal granted, 546 A.2d 623, 519 Pa. 662; affirmed, 559 A.2d 896, 522 Pa. 44 (holding the MPC does not apply to the City of Pittsburgh because the definition of municipality does not include cities of the second class). See 53 P.S. Sec. 10103 (West 1997).

³ *Ibid.*

⁴ Municipalities Planning Code 1990-2000, *A Decade of Amendments to the Pennsylvania Municipalities Planning Code* (Act 247 of 1968 as reenacted and amended by Act 170 of 1988); Local Government Commission, General Assembly of the Commonwealth of Pennsylvania (September 2000).

⁶ H.B. 14 (Act 67 of 2000) and S.B. 300 (Act 68 of 2000).

⁷ American Planning Association, *Planning for Smart Growth: 2002 State of the States*, 109-110 (February 2002).

⁸ P.L. 318 (2000).

⁹ H.B. 2057 (2000).

¹⁰ Pennsylvania Planning Association, *Planning in Pennsylvania*.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ 53 P.S. Sec. 10304 (West 1997).

¹⁶ 53 P.S. Sec. 10301.4(a) (West Supp. 2002) (municipalities and school districts within the respective county, and contiguous counties, school districts and municipalities must have an opportunity to review, comment and participate in the preparation and adoption of the county comprehensive plan).

¹⁷ *Gerstley v. Cheltenham Tp. Planning Com'rs*, 95 Montg. 195 (1971). If a municipality, however, chooses to enact impact fees for offsite transportation improvements, it must have adopted either a municipal or county comprehensive plan, subdivision and land development ordinance or zoning ordinance.

¹⁸ *Ibid.* See also, 53 P.S. § 10306 (West Supp. 2002).

¹⁹ 53 P.S. Sec. 10301(a) and (b) (West Supp. 2002).

²⁰ 53 P.S. Sec. 10301.1 (West Supp. 2002).

²¹ 53 P.S. Sec. 10301(d) (West Supp. 2002).

²² 53 P.S. Sec. 10603 (West Supp. 2002).

²³ *Ibid.*

²⁴ 53 P.S. Sec. 10301.5 (West Supp. 2002).

²⁵ 53 P.S. Sec. 10619.2 (West Supp. 2002).

²⁶ *Ibid.*

²⁷ Department of Community and Economic Development (DCED), *About DCED*. Available at <<http://www.inventpa.com/default.asp?path=About%20DCED/Samuel%20A.%20McCullough.xml>> (visited October 2002)

²⁸ DCED, *Communities in PA, Community Resources*. Available at <<http://www.inventpa.com/default.asp?path=Communities+in+PA%2FCommunity+Resources>> (visited October 2002).

²⁹ DCED, Governor's Center for Local Government Services. Available at <<http://www.inventpa.com/default.asp?path=Communities%20in%20PA/Governor%27s%20Center%20for%20Local%20Government%20Services>> (visited October 2002).

³⁰ DCED, Governor's Center for Local Government Services, *Pennsylvania Growing Smarter*, undated. Available at <<http://www.landuseinpa.com>> (visited October 2002).

³¹ 53 P.S. Sec. 10212 (West Supp. 2002).

³² 53 P.S. Sec. 11102 (West Supp. 2002).

³³ American Planning Association, *Planning for Smart Growth*, 109.

³⁴ 53 P.S. Sec. 10302(a) (West Supp. 2002).

³⁵ *Ibid.*

³⁶ *Ibid.*

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- ³⁷ *Ibid.*
³⁸ *Ibid.*
³⁹ 53 P.S. Sec. 10302(a.1) (West Supp. 2002).
⁴⁰ *Ibid.*
⁴¹ *Ibid.*
⁴² *Ibid.*
⁴³ *Ibid.*
⁴⁴ 53 P.S. Sec. 10302(d) (West Supp. 2002).
⁴⁵ *Ibid.*
⁴⁶ 53 P.S. Sec. 10302(c) (West Supp. 2002).
⁴⁷ 53 P.S. Sec. 10601
⁴⁸ 53 P.S. Sec. 10602 (West 1997).
⁴⁹ 53 P.S. Sec. 10603(a) (West Supp. 2002).
⁵⁰ 53 P.S. Sec. 10301.4(a) (West Supp. 2002).
⁵¹ 53 P.S. Sec. 10603(k) (West Supp. 2002).
⁵² 53 P.S. Sec. 10306(a) (West Supp. 2002).
⁵³ 53 P.S. Sec. 10301.4(b) (West Supp. 2002).
⁵⁴ *Ibid.*
⁵⁵ 53 P.S. Sec. 10301(7)(c) (West Supp. 2002).
⁵⁶ 53 P.S. Sec. 10307 (West Supp. 2002).
⁵⁷ 53 P.S. Sec. 10301(c) (West Supp. 2002).
⁵⁸ *Ibid.*
⁵⁹ *Ibid.*
⁶⁰ 53 P.S. Sec. 10302(d) (West Supp. 2002).
⁶¹ 53 P.S. Sec. 10306(c) (West Supp. 2002).
⁶² 53 P.S. Sec. 10501-A *et seq.* (West 1997).
⁶³ Governor Thomas J. Ridge, *Executive Order 1999-1*, Commonwealth of Pennsylvania (January 7, 1999).
⁶⁴ Pennsylvania Department of Environmental Protection, Environmental Justice Work Group, *Report to the Pennsylvania Department of Environmental Protection*, 16 (June 2001).

APPENDIX I

ILLINOIS PLANNING AND ZONING LAWS

A. State Planning Law

Illinois law does not require planning, but every "municipality may create a planning commission, planning department or both," and local planning commissions are appointed by the mayor of a city or president of a village board, subject to confirmation by the governing bodies.¹

B. Local Planning Requirements

Where they have been created, local planning commissions and planning departments are authorized to prepare and recommend to the local governing body a comprehensive land use plan for present and future development or redevelopment: "Such plan may be adopted in whole or in separate geographical or functional parts, each of which, when adopted, shall be the official comprehensive plan, or part thereof, of that municipality."²

Local comprehensive plans may do the following:

- Include reasonable requirements for streets, alleys, public grounds, and other improvements;
- Establish reasonable standards of design for subdivisions and for re-subdivisions of unimproved land and of areas subject to redevelopment in respect to public improvements as herein defined;
- Establish reasonable requirements governing public streets, facilities, playgrounds, schools, etc.;
- Designate land suitable for annexation to the municipality;
- Recommend changes, from time to time, in the official comprehensive plan;
- Prepare and recommend to the governing bodies, from time to time, plans for specific improvements that implement the official comprehensive plan;
- Assist municipal officials responsible for improvements that are part of the official plan, to implement these projects and, generally, to promote realization of the comprehensive plan;
- Prepare and recommend to the governing body schemes for regulating or forbidding structures or activities that may hinder access to solar energy necessary for the proper functioning of solar systems, as defined in Section 1.2 of the Comprehensive Solar Energy Act of 1977, or to recommend changes in such schemes; and

- Exercise other powers that are germane to the powers listed above, as may be conferred by the local governing body.³

In addition to local comprehensive plans, regional comprehensive plans may be adopted pursuant to Illinois' Counties Code, Section 5-14001.

C. State Rules & Guidelines

Illinois has authorized creating a statewide comprehensive plan.⁴ The Department of Commerce and Community Affairs serves as the state's planning agency. For example, it is responsible for using state planning grants or federal funds to conduct statewide comprehensive planning, as well as state and interstate comprehensive planning and research. However, as a practical matter, it has little involvement in local land use planning issues, as discussed below.

D. Incentives for Local Planning

Prior to August 2002, Illinois had no specific incentives for local planning. But Public Act 92-0768 was adopted to provide, among other things, technical assistance for local planning, to encourage local governments to plan and adopt other regulatory and development approaches that will promote comprehensive planning, and to support planning efforts for one or more units of local government or planning agencies that are working together.

To receive funding in the form of technical assistance grants under this new Illinois statute, a locality's new or revised comprehensive plan must address, at a minimum, each of the following elements:

- 1) **Issues and Opportunities**—This element sets forth the vision of the community, identify the major trends and forces affecting the local government and its citizens, set goals and standards, and serve as a series of guiding principles and priorities to implement the vision.
- 2) **Land Use and Natural Resources**—This element translates the vision statement into physical terms; provides a general pattern for the location, distribution, and characteristics of future land uses over a 20-year period; and serves as the portion of the comprehensive plan upon which all other elements are based. The land use element must be in text and map form, and it must include supporting studies on population, the local economy, natural resources, and an inventory of existing land uses.
- 3) **Transportation**—This element covers all relevant modes of transportation, including mass transit, air, water, rail, automobile, bicycle, and pedestrian modes of transportation; accommodates special needs; establishes the framework for acquiring, preserving, and protecting current and future rights-of-way; and incorporates transportation performance measures.
- 4) **Community Facilities** (schools, parks, police, fire and water and sewer)—This element provides for community facilities; establishes levels of service; ensures that facilities are provided as needed; and coordinates with other units of local government that provide the needed facilities.

- 5) Telecommunications Infrastructure—This element coordinates telecommunications initiatives; assesses short-term and long-term needs, especially regarding economic development; determines existing telecommunications services; encourages investments in the most advanced technologies; and establishes a framework for providing reasonable access to public rights-of-way.
- 6) Housing—This element documents the present and future needs for housing within the jurisdiction of the local government, including affordable housing and special needs housing; takes into account the housing needs of a larger region; identifies barriers to the production of housing, including affordable housing; assesses the condition of the housing stock; and develops strategies, programs, and other actions to address the need for a range of housing options.
- 7) Economic Development—This element coordinates local economic development initiatives with those of Illinois agencies; ensures that adequate economic development opportunities are available; identifies the strategic competitive advantages of the local community and the surrounding region; assesses the community's strengths and weaknesses with regard to attracting and retaining business and industry; and defines the municipality's and county's respective roles.
- 8) Natural Resources—This element identifies and defines the local natural resources such as water, land, flora, and fauna; identifies land and water areas in relation to these resources; assesses the relative importance of these areas to the needs of the resources; and identifies mitigation efforts needed to protect these resources.
- 9) Public Participation—This element must include a process for engaging the community in outreach, developing a sense of community, and building consensus; as well as a public education strategy.
- 10) Comprehensive plans may also include natural hazards, agriculture and forest preservation, human services, community design, historic preservation, and adopting subplans as needed. The decision whether to include these elements in a comprehensive plan must be based on the needs of the particular locality. See Pub. Act 92-0768, Section 25.

The Act further provides that "municipalities and counties that have adopted official comprehensive plans in accordance with Division 12 of Article 11 of the Illinois Municipal Code or Section 5-14001 of the Counties Code may be eligible for additional preferences in state economic development programs, state transportation programs, state planning programs, state natural resources programs, and state agricultural programs." See Pub. Act 92-0768, Section 30(b).

Tax increment financing is also authorized for increasing the availability of affordable housing.

E. State Role in Local Planning

1. State Plan and/or Policy

Illinois does not have any state oversight or control of local planning and zoning. However, under the new Act, the Department of Commerce and Community Affairs is authorized to provide education and training for local officials on planning, regulatory, and development practices and techniques that promote sound comprehensive planning. In addition, the Department may develop and distribute model ordinances, manuals and other technical publications. See Pub. Act 92-0768, Section 35.

2. Approval of Local Master Plans and Zoning Ordinances

No state approval is required for local land comprehensive plans or zoning ordinances.

3. Consistency Requirements for Localities

In general, there is no specific language requiring consistency, but the state Board for Consistency reviews local plans.⁵ However, where a municipality chooses to accept funding under Pub. Act 92-0768 for the development or revision of its comprehensive plan, local land development regulations, including amendments to the zoning map and any other land use actions, should [not "must"] remain consistent with the new or revised plan for five years after the plan takes effect. See Pub. Act 92-0768, Section 30.

4. Public Participation Requirements for Localities

There is no specific requirement for public participation other than the public participation element in comprehensive plans developed under the new Public Act 92-0768 (see item D above).

5. Reporting Requirements for Municipalities of over 500,000:

The planning commission must review every plan, design, or other proposal and, within 30 days after they are submitted, must report to the public body or agency with jurisdiction over affected property or improvements about whether the plan, design, or other proposal conforms with the long range planning objectives and the official plan for the municipality.⁶

6. Monitoring Requirements for Localities

There are no enforcement or monitoring mechanisms for action by a state agency. However, municipalities have authority to monitor and enforce their local land use laws.

7. Benchmarks for Localities

There are no performance measures or benchmarks for local plans other than the requirements of the new Public Act 92-0768 for certain plan elements.

8. Updates of Plans

Local planning and zoning commissions may amend comprehensive plans and zoning regulations when necessary as long as they follow proper public notice procedures.⁷

9. State Leadership

- The Urban Renewal Consolidation Act of 1961 states that the governing body of each municipality has the power to "acquire by purchase, condemnation or otherwise any improved or unimproved real property, the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area or any conservation area as defined in Section 3 of the Urban Community Conservation Act."⁸
- Local governing bodies may enact ordinances prescribing fair housing practices, defining unfair housing practices, and establishing an office of fair housing or human relations.⁹
- Illinois has adopted standards for the operation of local commissions that administer and enforce local ordinances that prohibit discrimination based on race, color, religion, sex, creed, ancestry, national origin, or physical or mental handicap in the listing, sale, assignment, exchange, transfer, lease, rental, or financing of real property for residential use, and prescribing penalties for violations of those ordinances.¹⁰

10. Impact & Development Fees:

Illinois law does not authorize collection of such fees.

ENDNOTES

¹ S.H.A. 65 ICLS 5/11-12-4 (1993).

² S.H.A. 65 ICLS 5/11-12-5 (1993)

³ S.H.A. 65 ICLS 5/11-12-5 (1993)

⁴ S.H.A. 65 ICLS 5/11-12-5 (1993)

⁵ S.H.A. 65 ICLS 5/11-12-6 (1993)

⁶ S.H.A. 65 ICLS 5/11-12-4.1 (1993)

⁷ S.H.A. 65 ICLS 5/11-12-7 (1993)

⁸ S.H.A. 65 ICLS 5/11-11-1 (1993)

⁹ S.H.A. 65 ICLS 5/11-11-1 (1993)

¹⁰ S.H.A. 65 ICLS 5/11-11-1 (1993)

APPENDIX J

ANSWERS TO QUESTIONS ABOUT ODORS

**Verbatim Excerpts from the Illinois Environmental Protection Agency's
Responsiveness Summary on NPDES Permit Renewal Hearings
Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) Facilities
January 22, 2002**

ALTGELD GARDENS

- 1. There are a number of sources for these odors. Why isn't it possible to find out which odors originate at the MWRDGC facility?**

The greatest number of complaints in this area seemingly related to emissions are from Chicago Specialties. The IEPA and the US EPA have taken legal action against Chicago Specialties, and the production unit which is the main source of odor complaints, has been shut down permanently.

On any given day in a metropolitan community, odors can be emitted by any number of industrial and/or residential activities. Depending on prevailing winds and varying climatic conditions, odors can be detected from many miles away. Even if the odors are confined to a narrow wind pocket or particular locality, they can be indistinguishable from each other because of either aggregating affects or the similarities of the emission activity (e.g., several chemical manufacturers emitting a similar 'chemical-like' smell).

As a general rule, the IEPA does not speculate about what odorous compound(s) may be present at ground level or in the atmosphere on any given day unless a complaint was filed with the IEPA's field office and/or a field inspector was able to investigate the apparent source of the odors. Even then, the IEPA's authority to enforce against any person(s) or business entity causing the odors is somewhat limited. As discussed herein, the current framework of Illinois' environmental laws and regulations does not recognize every type or every occurrence of odors as an actionable offense. Rather, the odors must be of such a quality or nature as to constitute "air pollution" as defined by Section 3.02 of the Illinois Environmental Protection Act. See, 415 ILCS 5/3.02 (2000).

The IEPA will monitor facility operations for future compliance with applicable environmental regulations and permits. The IEPA will also make every effort to promptly and thoroughly investigate odor complaints involving MWRGDC's Calumet Plant that are brought to our attention. Concerned citizens should continue to make their opinions and/or odor complaints known to the IEPA, local authorities and their elected public officials.

- 2. If you know there are odors in the area, why are you relying on the logs filled out by the residents instead of checking out the source yourselves?**

The IEPA does conduct inspections. However, the IEPA cannot be at the site constantly. Further, when Agency staff have been at the site odors that extend to the vicinity of the Altgeld Gardens neighborhood have not been observed. Odors logs are often the only evidence of the existence of such odors. Odor logs maintained by citizens can be very important in identifying the source of odors, its off-site impact and in assisting with any resulting civil or criminal prosecution of any person(s) or business entity responsible for the air pollution.

If you believe the MWRDGC facility is the source of odor, you should contact their odor hotline.

- 3. What chemicals are causing odors that we smell in Altgeld gardens?**

With the general Calumet area being highly industrialized and the source of odors possibly coming from many different sources, it is impossible to say what odors the residents of Altgeld Gardens have experienced.

- 4. The people of this area suffer from numerous reported ailments. The current and future health concerns range from asthma, heart disease, cancer, skin irritations and rashes, migraines, kidney failure, Crohn's disease, throat irritation, pink eye, viruses, congested respiratory system, hair loss, stuffy ears, thyroid problems, allergy, eye irritation, stomach pain, leg aches, ear pain, neck pain, chest pain, bumps on skin, vision problems, chronic cough, olfactory fatigue. We believe them to be caused by the odors from the Calumet facility.**

The complaints described at the hearing are various in nature and could be found in any general population. Odors from the facility are likely not the cause of many of the variety of symptoms and ailments described. Genetics and personal lifestyle choices have a much greater effect on the formation of disease including heart disease and cancer. Odors could be an asthmatic or allergenic irritant and cause nuisance complaints. If you feel that there are increased illnesses in your neighborhood you should contact the Illinois Department of Public Health, which performs health assessments.

- 5. Who should residents contact when the odors are strong from the Calumet plant? Can there be a 1-800 number, because it is costing us now?**

The residents should contact the Chicago Department of Environment, the IEPA or the MWRDGC. The Chicago Department of Environment can be reached at 312-744-7672. The city can also be reached by dialing 311 toll free. The IEPA, Bureau of Air, Field Operations Section, telephone number is 847-294-4000. The Chicago Department of Environment can be contacted toll free at 311 to make an odor complaint. If you believe the MWRDGC facility is the source of the odor, you should contact their odor hotline.

6. Can the odors (from MWRDGC) be regulated or monitored by the EPA or other agencies?

The IEPA, Bureau of Air, Field Operations Section, investigates odors from this site and all other industrial/commercial sites in Illinois. Last year the Agency investigated dozens of complaints, many of them for sources around Altgeld Gardens, but did not receive any complaints of odor originating at the Calumet Water Reclamation Plant.

There are no instruments to directly monitor odors. Neither the IEPA nor the U.S. EPA has an odor standard. Odors are regulated under the "Environmental Protection Act" as a nuisance violation. The nuisance provision prohibits air emissions from unreasonably interfering with the enjoyment of life and property. There are no other regulations applicable to air emissions from drying beds at the Calumet WRP.

Sources of odors are frequently regulated by local municipal or county zoning ordinances and are generally prohibited to the extent that such odors constitute a legal nuisance. Under state law, odors can fall within the prohibition established under Section 9(a) of the Illinois Environmental Protection Act, which generally provides that no person shall cause or allow the emission of contaminants into the environment so as to cause or tend to cause air pollution. See, 415 ILCS 5/9(a)(2000).

Air pollution is defined by the Illinois Environmental Protection Act as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health or to property, or to unreasonably interfere with the enjoyment of life or property." See, 415 ILCS 5/3.02 (1998). Illinois courts have recognized that this definition creates two distinct categories of air pollution: 1) air pollution which causes an injury to a person(s) life or property, and 2) air pollution which "unreasonably interferes" with a person(s) enjoyment of life or property. See, Incinerator, Inc. v. Pollution Control Board, 59 Ill.2d 290, 319 N.E.2d 794 (Ill. 1974).

Most odor cases commonly involve the second category of air pollution. In evaluating this type of air pollution case, the Illinois Supreme Court has observed the following:

"There is little that any person can do which does not in some degree 'interfere with the enjoyment of life or property' of other persons. The very act of breathing consumes oxygen. In our opinion the word 'unreasonably' as used in Section 3(b) was intended to introduce into the statute something of the objective quality of the common law, and thereby exclude the trifling inconvenience, petty annoyance or minor discomfort." See, Processing and Books, Inc. v. Pollution Control Board, 64 Ill.2d 68, 351 N.E.2d 865 (Ill. 1976).

Because of the "reasonableness" standard inherent in the definition, a focal point of this type of air pollution case is those facts and circumstances that bear upon the severity or impact of the alleged odors. Thus, evidence that a complainant(s) periodically cannot enjoy a backyard barbeque, must frequently close all windows to a house or business, or avoid participating in the normal social, economic or recreational pursuits because of the

interference of odors are important considerations in any such lawsuit. The Pollution Control Board or reviewing court will then determine, based on the totality of the evidence presented at trial, whether a cause of action based on this category of air pollution can be sustained.

Most important for this site is that last year the Illinois EPA investigated several odor complaints for sources around Altgeld Gardens, but did not receive any complaints for the Calumet WRP.

7. Does any governmental agency currently monitor odors from the Calumet facility?

See response to #6.

8. Can odors from the treatment process be controlled?

Odors can be controlled by ozonators, air scrubbers and by operational controls by treatment plant personnel. The Agency does not know the exact source of any odors from the Calumet facility. This will be identified in a study to be performed by MWRDGC.

See response to #9.

The odors emanating from the Calumet WRP into the surrounding neighborhoods continue to be a concern for the Agency. The Agency believes that the odors are from the sludge drying beds and are therefore outside the control of an NPDES permit. In October 2000, the Agency reissued state permits to the MWRDGC for their sludge drying and disposal process but did add a provision that the MWRDGC was to prepare a study on proper odor management by October 2001.

9. Odors from the Calumet facility seem to increase during periods of precipitation. Why?

The IEPA, Bureau of Water, has issued a permit requiring the Calumet WRP to conduct an odor study. This study should identify potential sources of odors as well as the possible magnitude of any odor. From that study, the MWRDGC can determine what measures need to be taken to control odors.

10. What is an odor log?

Odor logs are a type of 'form' document developed by the IEPA that are meant to assist citizens in recording facts about a given odor occurrence. These forms enable a person to document the time and place of the odor occurrence, specific weather conditions, and other relevant characteristics about the odors. If citizens experience odors that are harmful to their health or unreasonably interfere with the enjoyment of their lives or property, they should also document or maintain information pertaining to the effects of said odors (e.g., medical records, video tapes of visible emissions or discharges, reported occurrences in which citizens had to close the windows to their house, relocate or cancel an outdoor barbeque, etc.).

11. How important is it for the neighbors of the Calumet facility to fill out the odor logs?

Unless the IEPA's field inspector was notified or otherwise present at a given time and location to perform an investigation of the alleged odors, odor complaints and copies of any accompanying odor logs that are reported to the IEPA or other local authorities are often the only evidence of the existence of such odors. This is especially true where the odors dissipate after a short period of time and may not be ascertainable by the time that a field inspector arrives at a given location. For this reason, odor logs maintained by citizens can be very important in identifying the source of the odors and in assisting with any resulting civil or criminal prosecution of any person(s) or business entity responsible for the air pollution.

12. How can a person obtain an odor log?

Odor logs can be obtained from the IEPA upon request. Copies can be requested from the Illinois EPA's regional field office located at 9511 Harrison Street, Des Plaines, Illinois 60016. The phone number for the regional office is 847-294-4000.

13. Is the Calumet facility currently in compliance with state and federal regulations? Is non-compliance the basis for permit denial?

Section 39 of the Illinois Environmental Protection Act imposes upon the IEPA a duty to issue permits for the construction, installation or operation of any type of facility, equipment, vehicle, vessel or aircraft that is required to obtain a permit by the Pollution Control Board upon proof by the permit applicant that the facility, equipment, vehicle vessel or aircraft will not cause a violation of the Act or regulations adopted thereunder. The Pollution Control Board and Illinois courts have recognized that this standard for permit issuance requires the IEPA to review the permit application and then determine whether "the application and the supporting documents demonstrate that the Environmental Protection Act will not be violated if the requested permit is issued." City of East Moline v. Illinois EPA, PCB No. 86-218 (September 8, 1983); Illinois EPA v. Pollution Control Board, 118 Ill.App.3d 772, 455 N.E.2d 158 (1983).

Permitting and enforcement responsibilities vested in the IEPA under the Illinois Environmental Protection Act are separate and distinct functions. The Pollution Control Board and Illinois courts have held that the IEPA cannot lawfully deny a permit as a substitute for enforcement. See, Environmental Protection Agency v. Pollution Control Board, 252 Ill.App.3d 828, 624 N.E.2d 402 (3rd Dist. 1993); ESG Watts, Inc., v. Pollution Control Board, 286 Ill.App.3d 325, 676 N.E.2d 299 (3rd Dist. 1997); Waste Management v. Illinois Environmental Protection Agency, PCB Nos. 84-45, 84-61 and 84-68 (October 1, 1984); Centralia Environmental Services, Inc., v. Illinois Environmental Protection Agency, PCB No. 89-170 (October 25, 1990).

It is the Agency's duty to incorporate operational controls and restrictions in an NPDES permit to comply with federal and state law.

- 14. We get the sludge from other neighborhoods. Let everybody be responsible for their own sludge. We should not have to bear the burden of everyone's sludge. We need to make them come into compliance. Certain parts are regulated, but not the odor and it needs to be. It is killing a lot of people here.**

In waste management it is beneficial to have large centralized locations. This makes it economically and technically feasible to treat the waste. There are three treatment facilities in the Chicago area to treat sewage from the city's residents at Calumet, Stickney and on the North Side. The facilities are generally put along highways or in industrial areas to generally minimize impacts to residential areas.

The sludge treatment and drying areas for the District are regulated under a state-operating permit that included an odor control study and development of a management plan referenced in response #9.

- 15. The Calumet Water Reclamation Plant is one of the major emitters of odors in the area. Why haven't you placed an agency employee here to monitor the odors? The IEPA should have a field inspector monitor odors at the facility daily.**

A field inspector is assigned to the Calumet area and is in the vicinity frequently. Restricting a field inspector to one facility is unwarranted. Further, because of citizen complaints, the IEPA has increased surveillance of the MWRDGC facility since July 2000.

- 16. Isn't the EPA's job to determine the effects of these odors from the Calumet plant on human health?**

The IEPA monitors and regulates emission sources to assure compliance with the environmental regulations. Regulations are developed to be protective of human health. The environmental regulations treat odors as a nuisance violation and an impediment to enjoyment of personal property, not as a threat to human health.

- 17. We would like to have an air pollution test done in the community regularly – every week and even in the rain.**

There are no air quality standards for odors and significantly, there are no specific air testing methods for monitoring odors. Rather, odors are regulated on a nuisance basis. Only humans can determine the degree of interference due to a particular odor. Documented odor complaints through IEPA investigation or through community odor logs provide the best technical data and support for compliance related relief. Accordingly, the IEPA relies on citizens to report odors and Agency inspections.

- 18. In 1990 an orange cloud broke out over Calumet Facility (across from Rosebud Farm) around 6 or 7 in the morning and I passed out. I have been sick with asthma and breathing problems. What was that orange cloud and could it have contributed to these problems?**

The IEPA is unaware of this incident. MWRDGC is not a likely source of an orange cloud. Unfortunately, there is probably no way to find out today what was released from an unknown source 11 years ago.

19. Can IEPA make MWRDGC and the other companies clean up the area or shut them down?

As with any other person or business entity, MWRDGC and nearby companies in the surrounding area are each responsible for the consequences of their own actions. To the extent that MWRDGC or the other companies are found to have caused or allowed air, water or land pollution, the IEPA has authority to initiate enforcement for said occurrences. It should be noted that a State's Attorney of the county in which the alleged violation occurred also has that authority.

20. Are you going to communicate with the community to let them know about potential or actual risks here? The community needs information and warnings on the hazards in the area.

Information on the amount of emissions released to the environment by various industries is published by the U.S. EPA annually in their Toxic Release Inventory report. In the case of emergency, local emergency responders would notify residents of immediate danger and any action needed. Also the IEPA notifies mass media, businesses and other state agencies to spread information when there is a possibility of a high ozone day.

21. Can you include information on general spills from companies in the area and monitoring reports?

A review of the Agency data from 1996 to 2001 finds the following number of spills have been reported:

Calumet City	-	10
Chicago	-	794
Burnham	-	3
Dolton	-	311
River Dale	-	23

Additional information can be obtained for specific locations on request.

APPENDIX K

LOUISIANA PLANNING AND ZONING LAWS

A. State Planning Law:

The Louisiana Constitution specifically authorizes local governments to adopt regulations, subject to uniform procedures established by law, for land use, zoning, and historic preservation; to create commissions and districts to implement those regulations; to review decisions of any such commission; and to adopt standards for use, construction, demolition, and modification of certain areas and structures.¹ Although Louisiana's comprehensive planning statutes remain virtually identical to those adopted by the Legislature in the early 1920s,² a new statute in 1977 was enacted to authorize the creation of state planning and development districts for the purpose of facilitating intergovernmental cooperation.³

Parish planning commissions are authorized to develop and adopt master plans for the physical development of unincorporated territory within each parish, and municipal planning commissions are authorized to adopt master plans for the physical development of municipalities.⁴ Municipalities are also granted authority to adopt zoning regulations,⁵ enact transfer of development rights programs,⁶ and enforce local zoning laws.⁷ In addition, local historic preservation commissions and districts are recognized by state statute.⁸

B. Local Planning Requirements

Louisiana has authorized local governments to adopt local land use regulations and plans. A parish planning commission adopts a master plan for the unincorporated territory of a parish, while a municipal planning commission adopts a plan for the municipality. If a locality—either a parish or a municipality—chooses to plan, its planning commission must adopt a master plan for development; and its plan must promote health, safety, and general welfare. Its plan must also provide adequate access to light, protect open space and air quality, establish traffic systems, promote healthful and convenient distribution of population, and provide for public housing. Local plans must include, among other things:

- General location, character, and extent of railroads, highways, streets, viaducts, subways, bus, streetcar, and other routes, bridges, waterways, lakes, waterfronts, and playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces;
- General location of public buildings, schools, and other public properties;
- General character, extent, and layout of public housing and replanning of blighted districts and slum areas;
- General location and extent of utilities and terminals — whether publicly or privately owned or operated — for water, light, sanitation, communication, power, transportation and other purposes;

- Removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing; and
- For a parish planning commission, the zoning plan must control height, area, bulk, location, and use of buildings and other premises in urban areas or in areas suitable for urbanization outside municipal limits.⁹

Parish development boards may also be created¹⁰ and, once established, they:

(S)hall prepare a written plan and report for the development of the resources and facilities of the parish including information showing the location and condition of the streets, highways, bridges, waterways, parks, aviation facilities, commercial airlines, pipe lines, railroads, electric power lines, mines, factories, forests, other natural resources, public utilities, and other pertinent and appropriate information. The plan and report shall include definite recommendations by the board for the utilization and correlation for better economic use and distribution of the resources of the parish.¹¹

Municipalities must choose to establish either a parish development board or a planning commission, but they may only have one or the other, not both.¹²

A municipality located in a parish that has a parish planning commission may designate the parish commission as its local planning commission. If this occurs, the parish planning commission has all the powers and functions relating to making, adopting, and amending a master plan for that municipality.¹³

C. State Rules & Guidelines:

Louisiana's enabling statutes as discussed here authorize local planning and zoning and land use controls. There is no coordinated statewide planning, although many state agencies handle a variety of planning activities. For example, the Division of Administration in the Governor's Office may conduct surveys and studies concerning the development of state resources and facilities, review current programming and future planning of all state agencies, review programming and planning of parishes and municipalities, and coordinate planning among various state agencies.¹⁴

D. Incentives for Local Planning

Louisiana does not offer any state incentives for local planning.

E. State Role in Local Planning

1a. State Plan and/or Policy

There is no statewide role in land use planning and zoning in Louisiana, as this function is left largely to the parishes and municipalities under the statutory structure described above.

However, Louisiana has created certain state development districts to facilitate intergovernmental cooperation and to coordinate state, federal, and local planning and development programs.¹⁵

1b. Regional Planning Commission

Pursuant to state statute, the legislative bodies of any municipality and a surrounding or contiguous parish, any two or more contiguous municipalities, any one or more municipalities and one or more parishes all forming a single urbanized or suburbanized area, or any one or more municipalities and one or more parishes all forming a single urbanized area of more than fifty thousand population and including contiguous municipalities and parishes—referred to as "urbanized areas"—are authorized to create a regional planning area out of their combined territories; and the police jury of any parish may likewise join with one or more counties in an adjoining state to form a single area for that purpose.¹⁶

Regional planning commissions must prepare and amend their regional development plans.¹⁷ A regional plan, designed to promote the general welfare and prosperity of the regions must contain:

- (a) A statement of the objectives, standards and principles sought to be expressed in the regional development plan;
- (b) Recommendations for the most desirable pattern of land use within the regional planning area, in the light of the best available information concerning topography, climate, soil and underground conditions, water courses and bodies of water, and other natural or environmental factors, as well as in the light of the best available information concerning the present and prospective economic bases of the regional planning area; trends of industrial, population or other developments; the habits and standards of life of the people of the regional planning area; and the relation of land use within the regional planning area to land use in adjoining areas. These recommendations must, insofar as appropriate, indicate areas for residential uses and their maximum recommended densities; areas for farming and forestry, mining and other extractive industries; areas for manufacturing and industrial uses, with classification of such areas in accordance with their compatibility with land uses in adjoining areas; areas for concentrations of wholesale, retail, business, and other commercial uses; areas for recreational uses and open spaces; and areas for mixed uses;
- (c) The circulation pattern recommended for the regional planning area, including routes and terminals of transit, transportation and communication facilities, whether used for movement within the regional planning area or for movement from adjoining areas;
- (d) Recommendations concerning the need for, and the proposed general location of, public and private works and facilities, such as utilities, flood control works, water reservoirs, pollution control facilities, military or defense installations, when those works or facilities—by reason of their function, size, extent, or any other causes—are

of regional or metropolitan, as distinguished from purely local, concern or for any other cause are appropriate subjects for inclusion in a regional development plan;

- (e) Such other recommendations of the regional planning commission concerning current and impending problems as may affect the regional planning area as a whole.¹⁸

In addition, regional planning commissions are authorized to, among other things:

- Conduct or assist in studies and investigations of existing and emerging problems of agriculture, industry, commerce, transportation, population, housing, public service, local government and allied matters affecting the development of the regional planning area;
- Prepare inventories of the region's natural resources and of major public and private works and facilities of all kinds which are deemed of importance to the development of the regional planning area as a whole;
- Cooperate with, and provide planning assistance—including but not limited to surveys, land use studies, urban renewal plans, technical services and other planning work to parish, municipal, or other local governments, or planning agencies;
- Coordinate planning activities with the planning activities of state agencies, parishes, municipalities or other local units within its regional planning area, and cooperate with or assist departments and other agencies of federal, state, and local government as well as other regional planning commissions in the execution of their planning functions with a view to harmonizing their planning activities with regional development plans.¹⁹

Regional planning commissions may not exercise the functions of any municipal planning commission or parish planning commission if these bodies are established within a regional planning area, except where the legislative body of the municipality or where a parish designates the regional planning commission as its local or parish planning commission.²⁰

Two or more regional planning commissions are authorized to form an association for the purpose of coordinating comprehensive planning and development programs so they can resolve any economic, social, physical, or governmental problems of the state and its citizens.²¹ In addition to the general grant of authority to create regional planning entities, Louisiana statutes specifically allow for creating specialized regional planning organizations covering specified areas within the state, such as a Metropolitan Planning Commission.²²

2. Approval of Local Master Plans, and Zoning Ordinances

2a. Master Plan

The development and adoption of a local master or comprehensive plan does not require state approval. However, before adopting a master plan, a local planning commission must follow appropriate public notice procedures and allow an opportunity for public input.²³ Certified copies of the adopted plan must be filed with the local legislative body, parish clerk of court, and the Louisiana State Planning Office.²⁴

2b. Zoning Ordinances

The local governing bodies of all municipalities may enact zoning ordinances,²⁵ and these regulations must comply with their comprehensive plans.²⁶ Where certain municipal planning commissions have been established, they must also serve as the zoning commissions but must hold separate meetings and maintain separate records.²⁷ The governing bodies of parishes with populations over 23,000 that have no municipal government, are authorized to adopt zoning within the parish after appropriate notice to all landowners.²⁸ In addition, Louisiana statutes grant specific parishes general zoning authority.²⁹ Parishes with home rule charters and populations in excess of 400,000 may also adopt comprehensive plans and zoning ordinances.³⁰

As mentioned below, copies of zoning ordinances, as well as other land use documents, must be filed with appropriate regional planning commissions for informational purposes only; but municipalities and parishes may seek advice and input from the regional commissions.³¹

Affordable housing exceptions to zoning ordinances for local housing authorities are also authorized to facilitate development, redevelopment, and other activities.³² Zoning ordinances may not prohibit condominium ownership or impose requirements that would not be imposed on similar property ownership.³³

3. Consistency Requirements for Localities

3a. State

Parishes, municipalities, and local planning agencies must file all their plans, zoning ordinances, official maps, building codes, subdivision regulations and planning reports with the appropriate regional planning commission for informational purposes.³⁴ The governing bodies of parishes and municipalities may also submit this information to the regional planning commission and obtain the advice of the Commission.³⁵

3b. Adjacent Localities

In a parishes where there are both parish and municipal planning commissions, a municipal commission must consult and cooperate with the parish commission to ensure adjusted and harmonious development among the multiple jurisdictions, zoning districts, public improvements, utilities, and subdivisions that exist in the parish.³⁶

4. Public Participation Requirements for Localities

When enacting comprehensive plans, planning commissions must hold at least one public hearing and must issue appropriate public notices that include the purpose, time, and place of the hearing in a newspaper of common local circulation.³⁷

5. Reporting Requirements for Localities

Localities are required to file their plans with the State Planning Office although that office does not conduct any legal review.³⁸ Localities are also required to submit their planning documents to the appropriate regional planning commission for informational purposes.³⁹

6. Monitoring Requirements For Localities:

Enforcement of local zoning and land use regulations is the responsibility of the enacting municipality or parish. There is no statewide or regional monitoring of compliance with land use plans or zoning ordinances.

7. Benchmarks for Localities

There are no statewide performance measures or benchmarks for local or regional planning and zoning because these functions are optional at the local level.

8. Updates of Plans

There is no statutorily prescribed time period for regularly reviewing and updating comprehensive plans or master plans.

9. State Leadership on Environmental Justice That Could Impact Local Land Use

Louisiana's Department of Environmental Quality has been mandated by the Legislature to complete an environmental justice study concerning the impacts of air pollution and waste discharge from facilities in or near residential areas.⁴⁰ That study has never been completed, probably because the mandate was contingent on funding being available. Allegedly, the funding for the study has never been approved by the Legislature.⁴¹

10. Impact & Development Fees

Impact fees on development are not statutorily authorized in Louisiana.

ENDNOTES

- ¹ LSA-Const. Art. 6, section 17 (1974). This language is based on the 1921 State Constitution, Art. 14, section 29 (West 1996).
- ² See American Planning Association, *Planning for Smart Growth: 2002 State of the States*, 65 (2002). Available at <www.planning.org> (visited October 2002).
- ³ Id. Citing, La. Acts of 1977, No. 472, sec. 1.
- ⁴ LSA-R.S. 33:106 (West Group 2002).
- ⁵ LSA-R.S. 33:4721 (West Group 2002).
- ⁶ LSA-R.S. 33:4722 (West Group 2002).
- ⁷ LSA-R.S. 33:4728 (West Group 2002).
- ⁸ LSA-R.S. 25:731 et. seq. (West Group 2002).
- ⁹ LSA-R.S. 33:106 (West Group 2002).
- ¹⁰ LSA-R.S. 33:121 (West Group 2002).
- ¹¹ LSA-R.S. 33:127 (West Group 2002).
- ¹² LSA-R.S. 33:130 (West Group 2002).
- ¹³ LSA-R.S. 33:118 (West Group 2002).
- ¹⁴ LSA - R.S. 39:4.1 (West Group 2002).
- ¹⁵ LSA- R.S. 33:140.61 (West Group 2002)
- ¹⁶ LSA-R.S. 33:131 (West Group 2002).
- ¹⁷ LSA-R.S. 33:135 (West Group 2002).
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.*
- ²⁰ LSA-R.S. 33:137 (West Group 2002).
- ²¹ LSA-R.S. 33:135.1 (West Group 2002).
- ²² LSA R.S. 33:140.6 (West Group 2002) (authorizing the Shreveport Metropolitan Planning Commission).
- ²³ LSA R.S. 33:108 (West Group 2002).
- ²⁴ *Ibid.*
- ²⁵ LSA-R.S. 33:4721 and 33:4722 (West Group 2002).
- ²⁶ LSA-R.S. 33:4723 (West Group 2002).
- ²⁷ LSA R.S. 33:106 (West Group 2002) (this section is applicable to planning commissions established pursuant to Subpart A (Planning Commissions), Part IV (Physical Development of Parishes and Municipalities) of Chapter 1 (Creation, Organization, Alteration and Dissolution) of the Municipalities and Parishes Code).
- ²⁸ LSA-R.S. 33:4877 and 33:4878 (West Group 2002).
- ²⁹ LSA-R.S. 33:140.51 -140.59 (West Group 2002) (St. Bernard Parish); 33:140.121-140.129 (Grant Parish); 33:140.151-140.159 (Natchitoches Parish); 33:140.161-140.169 (Acadia Parish); and 33:140.171-140.179 (West Baton Rouge Parish).
- ³⁰ LSA-R.S. 33:140.181 (West Group 2002).
- ³¹ LSA-R.S. 33:138 (West Group 2002).
- ³² LSA-R.S. 40:524 (West Group 2001).
- ³³ LSA-R.S. 9:1121.106 (West Group 2000).
- ³⁴ LSA-R.S. 33:138 (West Group 2002).
- ³⁵ *Ibid.*
- ³⁶ LSA-R.S. 33:119 (West Group 2002).
- ³⁷ LSA-R.S. 33:108 (West Group 2002).
- ³⁸ *Ibid.*
- ³⁹ LSA-R.S. 33:138 (West Group 2002).
- ⁴⁰ LSA-R.S. 30: 2011.2 (West Group 1997).
- ⁴¹ Morgan, Lewis & Bockius, LLP, *Environmental Justice: 50 State Summary*, prepared for the American Chemistry Council (March 2000). See Louisiana section.

APPENDIX L

Final Recommendations to the Governor by the Mississippi River Corridor Task Force September 30, 1999

Executive Order MJF 98-01, as amended, requires the Mississippi River Corridor Task Force "to provide the Governor and state agencies with objective recommendations regarding the most efficient and effective means to obtain and address public comment on all aspects of future proposals for development or expansion projects, including possible human health, environmental, and economic development issues, along with recommendations as to the resolution of any potentially conflicting concerns." In satisfaction of this mandate, the Mississippi River Corridor Task force makes the following recommendations:

1. The State of Louisiana should consider the establishment of a State Environmental Review Process (SERP) modeled after the National Environmental Policy Act and implementation guidance developed by the Council on Environmental Quality. It should be a relatively short, streamlined and focused process required of only "major" projects. It should apply to all "major" actions within the state, not just environmental permitting actions. This process could also accommodate the "I.T. Questions" issue. Scoping meetings and hearings would provide for public participation and due process. It would provide a much-needed open, structured, and predictable process for decision-making. There is a wealth of federal case law concerning NEPA decisions to provide guidance. Some fifteen states and the District of Columbia have enacted mini-NEPA statutes that generally require state agencies to oversee the preparation of environmental impact statements on proposed actions that may significantly affect the environment.
 - a) The State of Louisiana also should consider the development of a set of guidelines designed to promote dialogue between the community and a prospective industry prior to or early in the environmental permitting process.
 - b) There should be an earnest attempt to seek input about local concerns in the process of scoping an environmental impact assessment study for a proposed development. Such input would provide a good means for addressing the concerns of citizens residing in the vicinity of the proposed industrial facilities.
 - c) Expand the LDEQ pre-permitting program to include representatives of the Department of Economic Development, the Department of Health & Hospitals, the Department of Labor, and the Department of Agriculture, and any other state agency, where appropriate, to serve as resources to both industry and the community during the permitting process.

2. Consider the formation of a regional organization to integrate, give greater voice to, and assist with coordinating of activities of the multiple jurisdictions of the region. Such an organization would be established as a resource for coordination, not as another layer of bureaucracy. Louisiana has metropolitan planning organizations such as the Capital Region Planning Commission and river basin organizations such as the Amite River Basin Drainage and Water Conservation District that are designed to address specific issues on a regional basis and assist with coordination of efforts of numerous local jurisdictions. The Mississippi River Corridor is a major economic engine for the State of Louisiana and is rich in history and human and natural resources. The parishes and communities of the region have to deal with a lot of common, local issues, but do not have the vehicle for addressing regional concerns such as sustainability of environmental and economic resources, including quality of life and self-sufficiency.
 - a) This organization should consist of officials from state and local government, industrial representatives, and residents of the Mississippi River Industrial Corridor, and should continue working on Environmental Justice-related issues in the Mississippi River Industrial Corridor and elsewhere in Louisiana.
 - b) Develop a mechanism whereby the positive impact of industry in the Mississippi River Corridor can be assessed and made available to the public each year. Annual investment, jobs, annual payrolls, annual state and local taxes paid, community outreach programs in place, funds donated for community programs, and value of service time given to communities each year by the company are examples of this positive impact. The information provided by each company to the data collector could be aggregated by the type of industry before release to the public so individual company information is not disclosed. This type of information will allow the public to see positive impact of industry. It will also serve as a tool that companies can use to identify effective community outreach programs. Finally, this data can be used to derive standards to allow for the projection of the total positive impact of a new industrial company locating in the area.
 - c) Establish a stakeholder team to develop guidance on how to most effectively accomplish that communication in the river corridor parishes. This guidance should also address means to avoid or mitigate the polarization that so often develops around a proposed action.
 - d) The pre-permitting process should include a component that allows business, government and the community an opportunity to form an advisory alliance to jointly discuss considerations involved in siting, expansions and other permitting requests at the beginning of the permit application process.
3. Seek funding for collaborative job training programs between business and government that target residents of the Mississippi River Corridor who live in

close proximity to existing or proposed industrial facilities. Establish a mechanism for dissemination of job training program information and dispersal of funds.

4. Encourage continued support of on-going health studies, including the Lead Surveillance System and the Lower Mississippi River Interagency Cancer Study (LMRICS).
 - a) Secure funding to establish health screenings in the Mississippi River Industrial Corridor to determine whether there is any relation between emissions and residents' illnesses.
 - b) Continue the monitoring of cancer and other health problems in both the Mississippi River Industrial Corridor and elsewhere in Louisiana.
 - c) Find out if health concerns around emissions are valid. If such concerns are valid, change permits; if concerns are not valid, take steps to promote better communication.
5. Recognize the importance of Environmental Justice in the context of environmental permitting and regulation. However, the impact of Environmental Justice upon economic growth should be recognized and steps should be taken to ensure that existing laws do not unfairly impact long-term growth in the state. Recognize that Environmental Justice does not apply universally. Take steps to identify areas where Environmental Justice allegations are being lodged for questionable purposes and areas where there are genuine cases of Environmental Justice.
6. The Governor and the Legislature should support additional resources for the state's environmental programs.
7. Strengthen existing state whistleblower laws to provide increased guarantees and protections for employees of industrial facilities who report suspected violations and suspected near violations of existing environmental laws and regulations. Existing state whistleblower laws should be compared to similar federal laws. Where a federal whistleblower law is found to be more stringent and effective, then the federal law should be incorporated into Louisiana law.
8. Encourage private groups to develop a program that offers financial rewards to citizens who step forward to report suspected violations of existing environmental laws and regulations.
9. Seek funding to develop a program designed to heighten public awareness of existing federal and state whistleblower laws.

10. The Governor should recommend that the Legislature study the concept of zoning with a goal of developing more active and broader based land use planning. Explore the possibility of statewide zoning laws and minimum statewide siting standards for new industrial development. Develop legislation requiring the establishment of buffer zones between a given community and a proposed industrial facility. Encourage local governing bodies to listen to and address resident concerns about local zoning and land use planning.
11. Secure legislative funding to allow LDEQ to conduct the environmental justice study mandated by Louisiana R.S. 30:2011.2

The department shall examine and study the relationship between emission of air pollutants and the discharge or wastes by facilities located in or near residential areas. The study shall determine the amount of such emissions and discharges in each residential area of the state. The study shall include permitted and unpermitted emissions and discharges. The study shall determine and set out any correlation that may exist between the emissions and discharges and residential areas.

The department shall not commence the study authorized in this section until funds have been specifically approved for the study by the Legislature. The department shall not divert existing funds or fees from other budgeted programs to fund this study, but may provide in-kind services to match any federal grants received.

The present report and its recommendations should be included in any study conducted under Louisiana R.S. 30:2011.2.

12. Investigate the development of an Environmental Dispute Resolution program, utilizing alternative dispute resolution (ADR) techniques, that those individuals with environmental justice-related grievances can employ in lieu of Title VI complaints and other lawsuits.
13. Conduct further review and study of recommendations made by the Institute of Medicine in its recently released book, *Toward Environmental Justice: Research, Education, and Health Policy Needs* (Washington, D.C., National Academy Press, 1999), to assess their possible application to the state environmental regulatory process. These recommendations include the following:
 - a) A coordinated effort among federal, state, and local public health agencies is needed to improve the collection and coordination of environmental health information and to better link it to specific populations and communities of concern.

- b) Public health research related to environmental justice should engender three principles: improve the science base, involve affected populations, and communicate the findings to all stakeholders.
 - c) Environmental justice in general and specific environmental hazards in particular should be the focus of educational efforts to improve the understanding of these issues among community residents and health professionals, including medical, nursing, and public health practitioners. This would include the following:
 - Enhancing health professionals' knowledge of environmental health and justice issues;
 - Increasing the number of health professionals specializing in environmental and occupational medicine; and
 - Improving the awareness and understanding of these issues by the general public.
 - d) In instances in which the science is incomplete with respect to environmental health and justice issues, policymakers are urged to use caution on behalf of affected communities, particularly those that have the least access to medical, political, and economic resources, taking reasonable precautions to safeguard against or minimize adverse health outcomes.
14. Explore ways to expand use of the *Toxic Release Inventory* and environmentally related Internet sites as tools for greater public understanding of toxic chemicals in the community.

APPENDIX M

Recommendations from the 1994 Public Hearings on Environmental Justice Held Pursuant to Louisiana Legislative Act 767 (1993)

- 1) Consider legislation to codify *Save Ourselves Inc. v. the Louisiana Environmental Control Commission* decision (452 So. 2d. 1152 (La. 1984)) (commonly referred to as the *I T* decision) and require that LDEQ establish a broad-based advisory committee to draft regulations implementing the mandates of the decision, beginning with consideration of criteria for siting facilities;
- 2) Consider legislation to strengthen land use planning requirements in the state, taking into consideration Environmental Justice concerns;
- 3) Consider legislation to strengthen requirements on the transportation of toxic materials through residential areas;
- 4) Consider legislation to provide tax incentives to reduce hazardous waste generation and disposal in Louisiana;
- 5) Consider legislation to strengthen existing statutes related to emergency response in order to more effectively meet community concerns;
- 6) Provide funding to the LDEQ to continue the Environmental Justice program and to create a permanent position of Environmental Justice coordinator with adequate support staff;
- 7) Provide funding for community/industry environmental justice panel program to allow for expansion beyond the current limited areas;
- 8) Provide funding for a joint project between the LDEQ Environmental Justice Program and the Louisiana Emergency Planning Committees (LEPC) to train local citizens in emergency response;
- 9) Provide increased funding to Historically Black Colleges and Universities (HBCU) in the state to support programs in environmental sciences and engineering in order to ensure eligible minority candidates for positions at the LDEQ;
- 10) Have LDEQ report to the Legislature on modified public notification procedures and public hearing activities;
- 11) Have LDEQ report to the Legislature annually on the status and progress of the environmental justice program; and
- 12) Have LDEQ review enforcement alternatives to better serve highly industrialized areas and report findings to the Legislature.

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