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United Voices: An Open Proposal for Smart and Fair Growth in the Central Valley

Daniel Kramer∗

Legal scholars have begun to treat the exclusion of residents of unincorporated urban areas from basic urban services such as sewer and clean water delivery as a distinct environmental injustice. Current law and historical practices of city governments have thrown these communities, many of which are in California’s Central Valley, into poverty and disenfranchisement, with little legal recourse.

At the same time, activists fighting climate change are stymied at the international and national levels, with the 2009 Copenhagen conference and President Obama’s campaign proposals leading nowhere. But lawyers have found a way to tie the California Environmental Quality Act to California’s land use planning laws in a way that gives them leverage to impel local governments to enact climate action plans that employ the principles of smart growth.

These two efforts on unincorporated urban areas and climate change can unite. As part of a highly collaborative process, lawyers and community residents can weave principles of fair growth, especially the provision of vital services to disadvantaged unincorporated areas, into the smart growth

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arguments. This will benefit both groups, each supplementing the other’s political heft to enact their unified vision. This solution is only half legal in nature; the rest will call for deft grassroots organizing and institutional coalition-building. As such, it requires not a commentary, but a proposal, which is presented herein.

Introduction..................................................................................................... 194
I.  Problem Description: Disadvantaged Unincorporated Areas.............. 196
II.  Existing Legal Strategies for Smart and Fair Growth in the Central Valley .................................................................................................. 199
    A.  General Plan Update Process ....................................................... 200
        1.  Forgotten Voices Campaign .................................................. 200
        2.  California Environmental Quality Act: Urban Sprawl and Global Warming ................................................................. 201
        3.  Tension and Cooperation in Defining General Plan Goals.... 205
    B.  Using LAFCO Advocacy to Initiate Revenue Sharing ............... 208
III.  The Synergy of Smart and Fair Growth Collaboration ....................... 211
    A.  Complementing a Participatory Model with Some Good “Macho Law” ............................................................................... 212
    B.  Complementing Some Good “Macho Law” with Stronger Grassroots Participation ............................................................... 214
IV.  Conceptual Elements of Organizationally Uniting Smart and Fair Growth................................................................................................. 215
    A.  Inverting Regionalist Smart Growth to Apply to the Central Valley........................................................................................... 216
    B.  Vision Statement for Smart and Fair Growth in Rural and Unincorporated Urban Areas ....................................................... 219
    C.  Of Baselines and Venn Diagrams ................................................ 220
        1.  Can Traditional Environmental Groups Join Coalitions to Push for Suboptimal Environmental Outcomes? ................... 220
        2.  A Response Toward Progressive Politics via the Regional Equity Movement ................................................................. 222
        3.  Resituating the Response in Localities .................................. 229
V.  Practical Elements of Organizationally Uniting Smart and Fair Growth................................................................................................. 232
    A.  Phase I: Smart and Fair Growth Project....................................... 232
    B.  Phase II: Smart and Fair Growth Network .................................. 236
Conclusion ...................................................................................................... 237

INTRODUCTION

Tension exists between environmental and environmental justice groups. Some of this tension is necessary and healthy, arising from the groups zealously advancing their different missions. Much of the tension, however, is
unnecessary, arising from their failure to imagine how working together can better fulfill their missions than working at odds.

Recently in California’s Central Valley, several groups, one built for biodiversity and the others for the health and welfare of disadvantaged communities, realized their message grew stronger by working together. They may not have seen their joint action—sending a letter to a rural county commenting on its plan for development—as extremely consequential. This Comment explains why it was, not just for what it represented at the time, but for the possibilities it promises for the future.

It is not helpful to discuss cross-organizational harmony in a vacuum. This Comment begins with a problem, a serious one though largely unexplored, facing impoverished communities in the Central Valley. People in urban areas can’t get city services, services as basic to urbanity as paved roads, sewers, and clean drinking water. This is because the communities these people live in are not part of a city. They border cities that have systematically excluded them based on their poverty, and, as evidence is beginning to show, their race.

The plight of unincorporated urban areas is not a typical issue for the traditional environmental movement. But California’s growing body of law on climate change, a more traditional environmental sphere, now restricts the choices cities and counties have in planning for growth. The law appears to require planning with “smart growth” concepts, which bring benefits for the region beyond a reduced climate footprint.

Without political force behind these smart growth plans, cities that adopt them are unlikely actually to apply their concepts when making project-level decisions. Environmental groups can attract political support to smart growth plans by imbuing the plans with “fair growth” concepts as well. In practice, these concepts would include plans to extend basic urban services to disadvantaged urban areas, which, because of classism, racism, or random chance, are not part of the wealthier city they border. Fair growth also includes extending to established, disadvantaged, rural communities the services necessary for health and community survival.

I structure this Comment loosely as a grant proposal, hopefully one which nonprofits operating in California can use. Part I lays out the problem of disadvantaged unincorporated areas. Part II details the legal strategies nonprofits already use to serve these areas and fight climate change. It then introduces the joint comment letter that provided the impetus for this Comment. The next two Parts take a turn toward the theoretical. Part III overlays one environmental justice activist’s conceptual framework on the situation in the Central Valley. The framework explains the strength behind the comment letter and how the letter introduces the potential for the groups that wrote it—and similar configurations of groups, representing environmental justice and traditional environmental interests, working on different problems in other places—to advance their respective missions through more deliberate collaboration in the future.
Part IV situates the preceding discussion in ongoing academic dialogues. First, it explains how the dynamic in the Central Valley inverts the typical understanding of how sprawl and smart growth affect civil rights. While the bulk of the literature on sprawl as a civil rights issue assumes an impoverished, racial-minority city center surrounded by wealthy white suburbs, the Central Valley dynamic proves that the reverse is possible. When applied to this region, some understandings of how smart growth can be a force for social justice remain the same, while others change. One change is that national environmental organizations need to incorporate the concept of new regionalism into their locally based campaigns. The next section of this Part provides a vision statement for a smart and fair growth movement, drawing on the preceding material. Finally, the Part addresses what I perceive to be the most potent criticism of the vision statement and the conceptual analysis surrounding the collaboration of environmental and environmental justice groups: that environmental groups will have to advance visions for local growth that appear, at least at first blush, to subordinate the groups’ missions to the goals of social justice.

Part V resurfaces from the academic debates to reconnect with the grant proposal conceit of this Comment, discussing the practical needs for a smart and fair growth campaign in the Central Valley. It suggests which existing nonprofits are in the best positions to take on a campaign (the Center on Race, Poverty & the Environment; the Center for Biological Diversity; and California Rural Legal Assistance), how they would do it together, what resources they need, and how long it will take. It also discusses how the groups can, over time, broaden the campaign into a network of organizations working together toward the same end, composed of groups starting campaigns at the same time as the groups I recommend, or following the original groups’ example.

I. Problem Description: Disadvantaged Unincorporated Areas

While the phenomenon of inner-city poverty has been thoroughly documented, another form of urban economic stratification has remained unexamined until recently. Cities grow spatially by annexing surrounding areas. This helps the city expand its economy and enlarge its tax base.1 In return for paying taxes, the occupants of the annexed areas become entitled under state law to service infrastructure from the city, including sewer systems, drinking water delivery, stormwater drainage, road construction and maintenance, curbs, and streetlights.2 Under the Fourteenth Amendment, cities may not then discriminate on the basis of race in providing these services to

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2. Id. at 1150; Michelle Wilde Anderson, Mapped Out of Local Democracy, 62 STAN. L. REV. 931, 943–44, 954–55 & n.80 (2010).
residents. For these reasons, a community often benefits from being annexed by a municipality.

As cities have grown spatially over time, however, they have excluded many communities from the annexation process. Located on the border of the city, or even “underbounded”—surrounded on all sides—by it, these communities have no municipal assurance of basic infrastructure. While state law restricts cities as to the geographic sphere from which they may annex land, no state mechanism exists to force or even encourage a city to make fair choices in selecting which areas within that sphere of influence to annex over time. Residents living in tracts proposed by the city for annexation have means of participation in the annexation decision, but residents living in untapped tracts have no parallel right to assert their inclusion into the annexation process. As might be expected, this imbalance encourages cities to annex wealthier areas over poorer ones.

But as research is beginning to show, class alone does not account for pronounced disparities in the demographic composition of populations of annexed versus un-annexed land—race plays a major role. Over time, cities’ patterns of annexation leave enclaves of low-income, minority, urban communities without the basic services needed for an equitable quality of life that can drive economic growth. Where city governments exclude these communities, county governments, often beholden to a voter majority mostly comprised of city dwellers, tend to be unequipped to provide services across disparate urban pockets scattered across the county’s much larger area. Unincorporated urban areas thus become the most likely to suffer service neglect as well as the “overlapping” problems of “health risks and depressed land values due to a concentration of a metropolitan area’s undesirable land uses, contamination from past land uses, or uncontrolled vulnerability to natural disaster.” And while city dwellers benefit from two levels of local government—city and county—to meet their needs, residents of unincorporated

3. See Anderson, supra note 2, at 941–42 n.32 (citing Kennedy Park Homes Ass’n v. City of Lackawanna, 436 F.2d 108 (2d Cir. 1970)).
4. Id. at 943–44.
6. Id. at 1149–55.
7. See Res. Def. Fund v. Local Area Formation Comm’n, 188 Cal. Rptr. 499, 499–500 (Ct. App. 1983) (holding that a city can only annex territory that is within its sphere of influence).
8. But see CAL. GOV’T CODE § 56,668(o) (West 2011) (requiring California’s Local Area Formation Commissions to consider environmental justice when deciding whether to permit an annexation); infra Part II.B.
9. CAL. GOV’T CODE §§ 57,075–57,090 (providing for landowner and voter protests to annexation).
10. Anderson, supra note 1, at 1101, 1104–05; Camille Pannu, Drinking Water & Exclusion: A Case Study from California’s Central Valley, CALIF. L. REV. (forthcoming 2012) (collecting demographic information on unincorporated urban communities).
12. Id. at 1101–02.
areas often lack any political influence within their singular local government. This inequity becomes a cycle of poverty and disenfranchisement.

Some academics and grassroots organizations have begun to address this problem by exploring and pursuing annexation for unincorporated urban areas, but annexation presents its own problems. Because annexed areas must comply with city building codes and animal codes, which are generally more stringent than county codes, annexation threatens the unincorporated areas’ existing cultures. Further, increased property values resulting from service introduction may increase housing costs in the areas enough to displace existing residents. Many of these communities therefore need another option, one that frees unincorporated urban areas from poverty and increases their local political power, but does not go so far as to put the community within the city’s jurisdiction to regulate the community’s living standards.

Meanwhile, Latino colonias, a more widely known form of poverty, persists in the same counties where unincorporated urban areas languish.

13. See id. at 1141–42; Anderson, supra note 2, at 944.
16. Id.
17. Congress has defined “colonia,” for the purpose of farm housing assistance, as:
any identifiable community that—
(A) is in the State of Arizona, California, New Mexico, or Texas;
(B) is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000;
(C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and
(D) was in existence as a colonia before November 28, 1990.
often lack many elements critical to healthy and sustainable communities, including potable water, sewer systems, parks, sidewalks, community centers, storm water drainage, and streetlights. These disadvantaged, unincorporated areas rely on local districts with limited resources or neighboring cities for discreet [sic] services, such as water, and in some circumstances, sewer services and streetlights. Often, geographically remote and unresponsive county governments provide the only local political representation for these unincorporated communities.

Like colonias, disadvantaged, unincorporated areas in the San Joaquin Valley are disproportionately communities of color.

Id.
These areas have a different history than unincorporated areas. Whereas colonia settlers sought affordable housing near agricultural or isolated industrial jobs, or other jobs outside a city’s sphere of direct economic influence, residents of unincorporated urban areas sought to balance affordable housing with access to city jobs. The two types of low-income areas overlap considerably, but “not all colonias communities are located near or on a city’s border, and not all unincorporated urban areas qualify as colonias.” As I will discuss in Part III, the interests of the two types of communities overlap considerably in county planning policy.

In response to the problems described in this Part, what follows is a campaign proposal, directed primarily to nonprofit advocacy organizations, suggesting a way to collaboratively seek municipal services for disadvantaged unincorporated areas in the Central Valley. It largely focuses on the subset of those areas that are urban, on the fringe of an adjacent city, but it also extends to colonia-type developments in many ways as well. Part II sketches the current landscape of nonprofit advocacy for services for disadvantaged unincorporated areas, targeting the county general planning process as the primary venue. Part III lays out relevant legal mechanisms to explore the incentives of environmental justice and traditional environmental groups to work together on this issue, alongside local smart growth groups and residents of disadvantaged communities. Part IV places the proposed campaign within an ongoing movement, both scholarly and activist, to advance a regionalist, equity-oriented, smart-growth perspective. Part V proposes a plan of action in more detail.

II. EXISTING LEGAL STRATEGIES FOR SMART AND FAIR GROWTH IN THE CENTRAL VALLEY

Two legal tools already employed by nonprofit organizations operating in the Central Valley have the potential to address the problem of California’s disadvantaged, unincorporated urban and rural areas. First, the Center on Race, Poverty & the Environment (CRPE) and the Center for Biological Diversity (CBD) participate in the state-mandated process for updates of city and county general plans. Through this process, they push for policies that would bring

19. Seaton & Jacobs, supra note 17, at 15 (“Throughout the 20th century, low-wage agricultural and industrial employment drew African-Americans and Latinos into communities that offered proximity to jobs. Unfortunately, the communities lacked rudimentary infrastructure and political representation.”).
20. Anderson, supra note 1, at 1106. In this way, Professor Anderson’s definition of colonia diverges from the Housing Assistance Council’s, which includes unincorporated urban areas as colonias. Seaton & Jacobs, supra note 17, at 15–16 (including No Man’s Land, “an almost exclusively Latino community on the edge of the city of Modesto and completely within the City of Modesto’s sphere of influence,” as a “new” colonia).
services to disadvantaged communities, promote air and water quality, and restrict emissions that exacerbate global climate change. Second, California Rural Legal Assistance (CRLA) has used the state-mandated municipal service review process before a local area formation commission (LAFCO) to compel a city to extend sewer and drinking water service to a disadvantaged, unincorporated urban area.

Vital elements of these nonprofits’ campaigns, if re-focused, synthesized, and applied to a new campaign, hold promise for ending some of the most pressing issues facing disadvantaged unincorporated areas in the Central Valley. The goal of a unified campaign would be to provide these communities with the rudimentary services and infrastructure discussed in Part I in a way that is based on each community’s aspirations and is appropriate for its density. This extension of services can arise through municipal annexation, municipal service extension funded by the city, or infrastructure construction or extension from cities that would be financed through a city-county revenue sharing agreement.

A. General Plan Update Process

1. Forgotten Voices Campaign

CRPE became involved in litigation in the Central Valley through its suit to prevent another megadairy from coming to Tulare County (and emitting considerable air and water pollution) pending full review under the California Environmental Quality Act (CEQA).21 More recently, as part of its “Forgotten Voices” campaign, CRPE has worked with predominantly low-income, Latino communities in rural areas to improve Tulare County’s draft general plan update.22 As part of that effort, CRPE organized residents to participate in the update process by confronting their elected officials about provisions of the draft update that would bypass their communities’ opportunities for economic growth, including connection to roads and public transit, in favor of further


2. **California Environmental Quality Act: Urban Sprawl and Global Warming**

Under CEQA, a local agency may not approve a project that may have a significant environmental impact without preparing an environmental impact report (EIR). The EIR must identify environmentally superior alternatives to the project and mitigation measures that would reduce impacts to less-than-significant levels, and adopt these as part of the project unless they are infeasible.

One type of project that requires an EIR is a general plan update. Under California’s planning law, each city and county must establish a general plan, which serves as a “constitution for all future developments” and should be “comprehensive [and] long[term].” Generally, no development may take place in the city or county that is inconsistent with the general plan. Because municipalities re-imagine their growth trajectories over time, they periodically redesign their general plans through the legal tool of a general plan update. General plan updates must contain “elements” on land use, open space, conservation, housing, circulation, noise, and safety. The local government may include other elements at its discretion.

Because a general plan update qualifies as a project under CEQA, and because it permits new development, it typically generates significant environmental impacts. One type of impact recognized only recently is the project’s potential impact on climate change. Because projects like general plan updates eventually cause the emission of greenhouse gases—for example, through zoning an area as residential, which could eventually lead to construction of houses—and those gases in turn have a significant impact on the California environment, cities and counties must address greenhouse gas

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26. CAL. PUB. RES. CODE § 21,002; CAL. CODE REGS. tit. 14, § 15,126.6(a).


29. See CAL. GOV’T CODE § 65,588 (West 2011).

30. Id. § 65,302.

31. Id. § 65,303.

emissions as part of the analysis of a general plan update under CEQA. Where the emission increase is significant—as all new projects adding greenhouse GHGs to the atmosphere probably are—the local government must mitigate the emissions to a level of insignificance, if feasible.

Local governments are generally loath to take action to address climate change, especially if the action would require great expense and rearrangement of priorities. They simply want to update their general plans, which often have not been updated in over twenty years, and are inhibiting what local planners may see as natural growth patterns. Government officials therefore often prefer to argue that most of the actions they might take to mitigate climate change are infeasible. They may stipulate in the general plan EIR that they intend to create a climate action plan in the future, often conveying overly optimistic assumptions about its projected environmental success. Further, the general plan may lack significant details, such as a timeline for completion or specific measures for implementation.

The California Attorney General’s Office and nonprofit groups, especially CBD, have countered these tactics through strategic advocacy. In comment letters made during the public participation process CEQA requires, these organizations detail potential mitigation measures for the counties and explain their feasibility, drawing heavily on technical reports developed by the Attorney General’s Office and the California Air Pollution Control Officers Association. The comments typically recommend that the local government

33. Id. § 15,064.4.
34. See CTR. FOR BIOLOGICAL DIVERSITY, THE CALIFORNIA ENVIRONMENTAL QUALITY ACT: ON THE FRONT LINES OF CALIFORNIA’S FIGHT AGAINST GLOBAL WARMING 7-8 (2007), available at http://biologicaldiversity.org/publications/papers/CBD-CEQA-white-paper.pdf (last visited Jan. 16, 2012). A project’s impacts are significant if they are “cumulatively considerable”—if the incremental effects of an individual project are significant when viewed in connection with the effects of past and future projects. CAL. PUB. RES. CODE § 21083(b)(2); CAL. CODE REGS. tit. 14, § 15064(h)(1). There is no “de minimis” exception for projects causing a small amount of emissions compared to the climate change project as a whole; instead, “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” Cmtys. for a Better Envt’t v. Cal. Res. Agency, 126 Cal. Rptr. 2d 441, 457 (Ct. App. 2002). Therefore, any new GHG emissions probably are cumulatively significant.
36. See, e.g., TULARE CNTY., CALIFORNIA GENERAL PLAN: RECIRCULATED DRAFT ENVIRONMENTAL IMPACT REPORT ES-13 tbl.ES-4 (Feb. 2010) (requiring energy efficiency only “when feasible”—a twist on the older argument that most such measures were simply infeasible).
37. Id. at ES-5 tbl.ES-2 (“The County will develop a Greenhouse Gas Emissions Reduction Plan (Plan) that identifies greenhouse gas emissions within the County as well as ways to reduce those emissions.”).
undertake a full climate action plan as a concurrent part of the general plan update, complete with emission reduction benchmarks, specific mitigation measures, and stringent timelines for implementation.

The comments include recommendations that the counties include smart growth principles within their general plans and climate action plans to reduce greenhouse emissions. Smart growth is a multifaceted concept. One idea behind it is that “[c]ommunity design—including factors such as physical layout; proximity and accessibility to goods, services, workplaces, and schools; and the materials and designs used in building and infrastructure—affects energy consumption and vehicle use, and thus greenhouse gas emissions.”40 Another is that “each new development project should improve the entire community.”41 This includes providing for economic growth at the local level, and making common spaces beautiful and vibrant hubs of personal interaction.42 Smart growth is a broad concept, and its implementation varies from place to place, but every iteration follows a set of core principles:

- Mix land uses
- Take advantage of compact building design
- Create a range of housing opportunities and choices
- Create walkable neighborhoods
- Foster distinctive, attractive communities with a strong sense of place
- Preserve open space, farmland, natural beauty, and critical environmental areas
- Strengthen and direct development towards existing communities
- Provide a variety of transportation choices
- Make development decisions predictable, fair, and cost effective
- Encourage community and stakeholder collaboration in development decisions

Smart growth reduces vehicle miles traveled and energy use generally, therefore also reducing greenhouse gas emissions and air pollution, and enhancing public health and quality of life.44 So when commenting on cities’ general plan updates, CBD advocates smart growth principles:

Clerk, Ctr. for Biological Diversity, to Victoria Lombardo, Senior Planner, City of Tracy (June 8, 2009) (on file with author).


42. See id. at 16–21.

43. See id. at iv.

44. U.S. ENVTL. PROT. AGENCY, supra note 40, at 3–6.
• Increased density of land use, including a minimum number of units to be located in downtown areas;
• Streamlined and permissive approval of infill development projects;
• Establishing mixed land-use communities that are more “livable” and walkable, along existing transit corridors;
• Expanding zoning areas for multi-family housing;
• Green building requirements for energy efficiency, waste, and water use;
• Limiting growth on the city’s outskirts.45

Sometimes local governments comply with comments based on climate change impacts and smart growth by drafting a climate action plan.46 If the government refuses, the commenting organization sues to enforce CEQA’s mitigation requirement, and the parties either settle the dispute with an agreement on the parameters of a climate action plan,47 or the case results in a judgment.

CEQA is certainly not a bulletproof method for ensuring greenhouse gas reductions through general plans. For one thing, local governments can theoretically bypass the need to comply with CEQA’s mitigation requirements by adopting a statement of overriding considerations.48 Furthermore, for all practical purposes, pushing for and winning the inclusion of smart growth principles in a general plan is only the first stage of a much longer fight. Over the life of the plan, a county or city may approve uses that smart growth groups see as inconsistent with the plan’s smart growth provisions. Should the groups challenge a county’s consistency determination, they would face an uphill battle in court. “[A] governing body’s conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion.”49

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45. See, e.g., Letter from Jonathan Evans et al. to Victoria Lombardo, supra note 39. A fuller explanation of the contours of smart growth and its specific connections to climate change are outside the scope of the Comment, but this CBD comment letter, supra, and the Smart Growth Network report, supra note 41, are good primers.


48. CAL. PUB. RES. CODE § 21081(b) (Deering 2011) (obviating the need for mitigation of significant environmental impact to a less than significant level where “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment”).

To ensure the implementation of strong smart growth principles that have been added to a general plan, advocacy groups will need to build political clout and pressure the county or city to require strict consistency between projects and the general plan. The groups will have the leverage of being able to drag the county or city into court on a writ of mandate petition, since a case settlement may yield an outcome better for smart growth than the county’s or city’s decision. But enforcing smart growth planning principles purely through litigation—first against the general plan CEQA process and then against consistency determinations—is probably not viable.

Nevertheless, recent decisions on CEQA and climate change have been favorable to environmental plaintiffs, and with courts still fleshing out the relevant doctrine, this environmentalist tactic is already emerging as the strongest way to force local governments to incorporate “smart growth” concepts into their planning decisions.

3. **Tension and Cooperation in Defining General Plan Goals**

For the purposes of this Comment, the most critical element of smart growth is limiting spatial growth on the outskirts of cities. Smart growth generally envisions a dense, walkable urban core surrounded by greenfields where city-dwellers may play and experience nature. The concept does not inherently account for existing communities that are on the “outskirts” of a city because the city’s history, infected with racism and classism, keeps them outside city limits.

This conceptual disconnect can lead to perceived or actual disagreements between traditional environmental groups and environmental justice groups in the context of a single general plan update process. In Tulare County, where CRPE was organizing to improve services to unincorporated urban areas and colonia developments, the Sierra Club’s local Kern-Kaweah Chapter filed a comment letter asserting that

`The EIR should state as a policy that future growth shall be city-centered. Directing growth towards existing cities and communities will prevent

50. CAL. CIV. PROC. CODE § 1094.5(b) (Deering 2011).
51. Friends of Lagoon Valley v. City of Vacaville, 65 Cal. Rptr. 3d 251, 258 (Ct. App. 2007); see also Cori Badgley & Kate Hart, Flexible General Plan Leads to Flexible Consistency, ABBOTT & KINDERMANN LAND USE LAW BLOG (Sept. 10, 2007), http://blog.aklandlaw.com/2007/09/articles/planning-zoning-development/flexible-general-plan-leads-to-flexible-consistency/ (noting Friends of Lagoon Valley shows planners how to write vague plans that will hold up under weak judicial scrutiny).
52. See Cmty. for a Better Env’t v. City of Richmond, 108 Cal. Rptr. 3d 478 (Ct. App. 2010) (vacating an oil refinery upgrade EIR on climate change grounds).
53. See supra notes 38–39, 46.
54. See Letter from Caroline Farrell to Dave Bryant, supra note 23.
sprawl . . . . Higher density development, including smaller lots, should be emphasized.\footnote{55}

CRPE, on the other hand, noted in its comment letter that “[c]ommunity has a specific meaning within the Tulare County General Plan Update. There are other land use designations that are distinguished from communities such as hamlets and places,”\footnote{56} including the areas CRPE was working to organize. “The Key Goal on land use should provide for the vitality and livability of these existing areas as well.”\footnote{57} The Sierra Club chapter’s letter could thus be interpreted as opposing the extension of services to many of the communities for which CRPE was advocating.

Some of this disconnect may be due to a simple lack of communication, some may indicate that local smart growth advocates are unaware of a difficult social justice problem in their community, and some may exemplify a serious conceptual divide between the two groups of advocates. In any case, contradictory recommendations from left-leaning nonprofits will not likely make a positive impression on an already right-leaning city or county government. In its next draft of the general plan, Tulare County did not correct the problems flagged by the two groups in their comment letters, and the groups found themselves writing letters once more.\footnote{58}

This time, CRPE and CBD chose to work together on the next round of comments to the Tulare County general plan update. They wrote a joint comment, along with two rural nonprofit environmental justice organizations, California Rural Legal Assistance Foundation (CRLA) and the Community Water Center.\footnote{59} The comment lays the foundation for an enduring and powerful partnership—if the groups can afford the resources to sustain and nurture it.

The forty-page comment contains a broad assault on the draft plan, alleging, among other things:

- that the land use element is unlawfully vague, failing even to include acreage totals for different land uses and a map clearly illustrating where the various land uses would occur.\footnote{60}

\begin{footnotes}
\item[57] Id.
\item[58] General Plan Library, TULARE COUNTY GENERAL PLAN UPDATE, http://generalplan.co.tulare.ca.us/gpComments.asp (last visited Nov. 26, 2010).
\item[59] Letter from Matthew Vespa et al., to Dave Bryant, supra note 24, at 1.
\item[60] Id. at 3–5.
\end{footnotes}
that the plan unlawfully fails to describe existing environmental conditions;\(^\text{61}\)
that the EIR fails to adequately analyze and mitigate significant impacts to air and water quality, energy, and climate;\(^\text{62}\) and
that the EIR considers an inadequate range of alternatives.\(^\text{63}\)

These all may be classified as routine objections to an insufficient general plan update. The letter offers numerous suggestions for ameliorating the plan’s defects. But most interesting are the elements of the letter that fuse sprawl and smart growth issues with recommendations to improve quality of life in disadvantaged unincorporated areas. In this vein, the letter recommends:

- a policy encouraging connectivity between underserved existing communities and between these communities and larger municipal service providers;\(^\text{64}\)
- planning frameworks to consider how much water a municipal provider is likely to need to provide for possible future connections by nearby existing unincorporated communities, as one way of ensuring that new developments do not impede future service connections by existing unincorporated communities;\(^\text{65}\)
- a policy to “encourage development of neighborhood commercial uses in existing unincorporated communities where such uses will not disproportionately burden such communities”;\(^\text{66}\)
- rewriting of plan provisions for considering big box development on a case by case basis, because they would subvert smart growth principles and may increase urban decay in the surrounding area;\(^\text{67}\)
- criteria to ensure that industrial development is permitted such as to protect existing communities, through setbacks and hiring preferences for people in adjacent areas;\(^\text{68}\)
- an implementation measure to prevent industrial uses from clustering and creating local cumulative impacts (“hot spots”);\(^\text{69}\)
- that livestock feed be recognized as a major source of ozone;\(^\text{70}\)
- incentivizing “job training programs that build the skills necessary for low income residents and people of color in Tulare County to take advantage of the emerging green economy”;\(^\text{71}\)

\(^{61}\) Id. at 5.
\(^{62}\) Id. at 8–9, 15, 19–20.
\(^{63}\) Id. at 37.
\(^{64}\) Id. at 5.
\(^{65}\) Id.
\(^{66}\) Id. at 6.
\(^{67}\) Id.
\(^{68}\) Id.
\(^{69}\) Id.
\(^{70}\) Id. at 8.
\(^{71}\) Id. at 11.
• offering incentives to invest in existing underserved communities in ways that would reduce vehicle miles traveled;72 and
• a policy to “encourage the development of joint-use projects, where groundwater recharge areas serve a dual purpose as parks or recreation areas, especially in unincorporated communities and hamlets.”73

I discuss the significance of the letter in Part III.

B. Using LAFCO Advocacy to Initiate Revenue Sharing

When the City of Tulare proposed to annex five hundred acres of surrounding land as an industrial park, CRLA fought for Matheny Tract, a predominantly Latino unincorporated area on the city’s fringe that had been denied annexation for decades.74 CRLA successfully petitioned Tulare’s Local Area Formation Commission (LAFCO) to condition the City’s annexation of the industrial park on both the extension of sewer and drinking water services to Matheny Tract and a serious analysis of the tract’s potential annexation.75

CRLA and other organizations should work to build on this success by extending the LAFCO tactic to other environmental and social justice goals. The joint comment letter notes, for example, that “the County can better meet its obligations to underserved communities in unincorporated areas and hamlets by entering into revenue sharing arrangements with Tulare cities.”76 While the letter does not fully flesh out this idea, it should be investigated more thoroughly as a potentially valuable component of county general plan iterations of smart and fair growth principles.

Local governments may have several reasons to share tax revenue generated in specified areas or corridors. While “[m]ulti-party regional revenue sharing has generally occurred in places with prosperous, growing suburbs and a central growing (or declining) central city,”77 the concept can readily be reversed. In the Central Valley’s case, one impetus for revenue sharing would be to lessen the incentive for cities to expand selectively to include new industrial and commercial nodes while excluding existing residential zones. Another impetus would be to decrease the perceived need for the county to expand its tax base by accumulating locally undesirable land uses, such as

72. Id. at 14.
73. Id. at 28 (emphasis omitted).
76. Letter from Matthew Vespa et al., to Dave Bryant, supra note 24, at 2.
megadairies and chemical plants, away from cities but near disadvantaged communities. These goals can be accomplished by requiring that tax revenues from new non-residential development, whether coming from within city boundaries or not, be shared equitably between the county and cities within the county. This approach may raise tax revenues overall by making it “harder for a developer to ‘play off’ one community against another in order to gain concessions from them if the new project could possibly be located in two or more such communities.”

The county would then set aside a portion of the money it collects from areas within cities’ spheres of influence and put it toward service improvements to disadvantaged areas, starting with unincorporated urban areas. These urban areas will likely be able to connect to city services more cheaply than the county can extend services like drinking water and sewer to more distant residential nodes.

The basic political problem with revenue sharing is an assumption that “[s]ome communities gain from the agreements . . . and some lose.” But as Stanislaus County and the City of Modesto showed, revenue sharing plans can overcome this assumption when they successfully eliminate competition for tax revenue, allowing “land use decisions to be based on larger public interest and community planning concerns”—in that case, favoring a business park development complex over big box retail.

Where a county finds that it is unable to persuade a city to enter such an agreement, and the city continues to attempt to annex territory and build up locally undesirable land uses around its fringe, the county may take its argument for revenue-sharing to its local LAFCO. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, a sprawling statute that sets up LAFCOs and defines their procedures and substantive duties in setting local government boundaries, carries a legislative recognition “that urban population densities . . . necessitate a broad spectrum and high level of community services.”

The Act requires that a local government, when proposing a boundary change, consider several environmental justice related issues. When a local government brings a LAFCO a proposal for a local boundary change, the LAFCO must consider a number of factors in reviewing the proposal. One of these factors is “[t]he extent to which the proposal will promote environmental

81. CAL. GOV’T CODE §§ 56,000–57,550 (West 2011).
82. Id. § 56,001.
83. Id. § 56,668.
justice.”84 Furthermore, to assist the LAFCO’s decision on whether to grant the boundary change request, the LAFCO must conduct a review of municipal services provided in the area.85 Therefore, the LAFCO is expected to consider the environmental justice implications of the proposed boundary change on municipal services before granting the proposed change. The LAFCO has some discretion in setting the size of the area for which to conduct a municipal service review (MSR).86 While the local government is likely to want the area to remain narrow, coincident with its own boundaries, “[b]y expanding the geographic scope of a local agency’s MSR, fringe communities can be included, as well as disadvantaged communities within proximity.”87

A LAFCO can include these disadvantaged fringe communities in the MSR, and, with factual support, can conclude that an annexation or other boundary change that underbounds or otherwise excludes the communities continues a pattern of excluding the communities from local government services, leaving the communities without sufficient service access. Then the LAFCO can declare that this environmental justice concern is a weighty enough factor,88 along with other factors the LAFCO must consider,89 to block the proposed boundary change.

The LAFCO can then offer to accept the boundary change, but only with additions to the proposal that would mitigate the negative implications for environmental justice arising from the unjust distribution of municipal services. The Tulare County LAFCO has already accomplished this maneuver in the Matheny Tract annexation scenario referenced above. Where the City of Tulare sought approval to annex the industrial park, the LAFCO, through its MSR process, prompted the city to agree to a modification to its proposal that will provide sewer and drinking water service to Matheny Tract, a largely Latino, unincorporated urban area on the city’s fringe.90

In the future, however, the LAFCO could also coordinate an agreement that a city not (or not only) provide the extension of physical services, but instead (or also) enter a revenue-sharing agreement with the communities or the

84. Id. § 56,668(o) (“As used in this subdivision, ‘environmental justice’ means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.”).
85. Id. § 56,430.
86. Id. § 56,430(a) (“T[he commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission.”).
87. Marcos Segura, Staff Analyst, Tulare County LAFCO, Presentation to Professor Michelle Wilde Anderson’s Environmental Justice Class: Environmental Justice: LAFCO as a Catalyst, slide 15 (Sept. 19, 2010) (on file with author).
88. See CAL. GOV’T CODE § 56,668(o).
89. See id. § 56,668(b) (factoring in “probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas”); id. § 56,668(c) (factoring in “[t]he effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county”).
90. See Cal. Rural Legal Assistance, Inc., supra note 75.
country. Instead of putting the burden fully on the city to extend its physical infrastructure—a result that worked for Matheny Tract but might not be scalable to other LAFCOs and other, larger or more distant unincorporated areas—part of the joint tax revenues can be earmarked for that purpose. The agreement should also achieve the results outlined above, including eliminating competition for tax revenue, increasing tax revenue overall, limiting sprawl, limiting the municipal patchwork that comes with underbounding and “leapfrogging,” and curtailing the appearance of a need to populate open space with locally undesirable land uses.

Politically speaking, the LAFCO is a good place to develop a revenue-sharing agreement. Its relatively well-defined procedures provide an open forum for cities, residents of unincorporated areas, the county, and organizations to present positions and proposals. Also, the LAFCO is a democratic body, consisting of two county representatives, two city representatives, two special district representatives, and a member of the public at large who is elected by the other members. The LAFCO’s composition should vest it with more legitimacy than an ordinary state agency or county department. Finally, should the LAFCO use its power to hold up city annexations and other boundary changes, its process can give the city an incentive to come to a revenue-sharing agreement more quickly than the city would have in a less structured negotiation with the county.

Both strategies outlined in this Part regarding general plan updates and LAFCO-coordinated revenue sharing require political strength and impeccable timing and coordination. Therefore they will require the considerable organizational supports I outline in Part V. But these supports are worth building because the strategies, executed well, can work. As I explain in Part III, they can unite several constituencies—environmentalists, environmental justice advocates, local smart growth advocates, and disadvantaged unincorporated communities—toward an achievable goal of spatial growth that is both smart and fair.

III. THE SYNERGY OF SMART AND FAIR GROWTH COLLABORATION

The messages of environmental and environmental justice groups need not conflict. They can instead fit together to describe a character of growth management that is more robust than either message operating alone. In this Part, I use a framework theorized by Luke Cole, an environmental justice lawyer and co-founder of CRPE, to explain the confluence of different organizations’ distinct legal-political capabilities. In using his language contrasting a “participatory model” with “macho law,” I intend no uniform preference for one or the other, nor a wholehearted endorsement of their
conceptualization as discrete models. Instead I propose that public interest groups use elements of both idealized conceptions in addressing environmental and social problems in the Central Valley and beyond.

\section{Complementing a Participatory Model with Some Good “Macho Law”}

A premise of the environmental justice movement is that the “professional model”—where lawyers analyze EIRs, write public comments, and sue public agencies to create “test cases” for later campaigns—“is entirely ineffective at building the environmental justice movement at the local level. By taking all the power out of the community and putting it in the hands of the lawyer, the professional model leaves no responsibility to the local movement.”\footnote{Luke W. Cole, \textit{Macho Law Brains, Public Citizens, and Grassroots Activists}, 14 VA. ENVTL. L.J. 687, 693–94, 704 (1995).} Even worse, as the theory goes, because it makes “communities skeptical about working with the legal system at all” and “impedes a strong local group from developing and joining regional networks”—more discussion on networks below, in Part V.B—“the professional model has a detrimental effect on the national environmental justice movement.”\footnote{\textit{Id. at 704.}}

In contrast, in a “participatory model,” it is the community group, not a lawyer purporting to represent it, that analyzes the EIR, speaks out at public meetings, and writes comment letters.\footnote{\textit{Id. at 695–97.}} This model’s advantage over the professional model is that it “begins to address the root problem of political and economic powerlessness.”\footnote{\textit{Id. at 706.}} But where the political and economic system is itself the problem, “foster[ing] a belief that the system works” may be counterproductive.\footnote{\textit{Id. at 708–09.}}

Luke Cole settled on a model where the role of the lawyer and the role of the community complement each other.\footnote{\textit{Id. at 709.}} He envisioned “[a] strong community group and a creative lawyer” working collaboratively to gain information about a project, use that information to pressure decision makers, and ultimately open decision makers to alternatives the community group offers.\footnote{\textit{Id. at 709.}} The central goal is to build the movement—to make the base larger and more organized, conscious, and militant.\footnote{\textit{Id. at 707–08.}} Winning the local campaign, and doing so through community participation and pressuring elected officials, are all means to that
end. Tactically, “litigation is usually not the answer” but is “a catalyst at best.”\textsuperscript{101}

In this paradigm, CBD often employs the professional model. From their offices in San Francisco, CBD attorneys keep apprised of scoping notices and drafts of general plan updates and EIRs. They analyze the documents using guidance from state agencies and nonprofit groups. When they conclude that the documents do not fulfill the requirements of CEQA, they submit a comment letter to the local agency. When the agency does not follow their advice, CBD may threaten suit. The government may make some changes to the general plan—usually not enough to satisfy CBD, but perhaps enough to solidify their decision-making rationale in case CBD sues. The result is that CBD relents, the two parties come to settlement, or a lawsuit drags on for years. At no point does the CEQA process require CBD to seek local input, and CBD often does not. CBD’s focus may be described as international rather than local; attorneys attended the Copenhagen conference in 2009, for example, and the group’s mission is “to secure a future for all species, great and small, hovering on the brink of extinction.”\textsuperscript{102} General plan updates are, first and foremost, one means among many to fight \textit{global} climate change. At the highest level of abstraction, the organizational impetus for fighting climate change is its global impact on imperiled species.

CRPE, meanwhile, focuses on the participation and organization of affected communities. As a comment on Tulare County’s general plan update, CRPE sent the planning agency a letter signed by 391 residents of unincorporated communities, expressing concerns that their interests were left out of the draft plan.\textsuperscript{103}

What the CRPE comment lacked, however, was a persuasive legal hook. It noted no legal deficiencies in the general plan related to provision of services. Indeed, CRPE never notes any new environmental harms that come with the continuation of the County’s failure to provide services to unincorporated communities. The group does not identify a viable CEQA cause of action. This is not because CRPE shies away from litigation—indeed, it made many enemies fighting megadairies in Tulare County a decade ago.\textsuperscript{104} Instead, CRPE simply does not have a strong, battle-tested legal argument for why the County must extend services like drinking water and sewer service to all communities equitably.

This is where CBD’s well-developed “macho law brain,” its strategy of reliance on substantive statutes and litigation to resolve disputes, can be helpfully integrated into CRPE’s campaign. CBD’s use of CEQA to further smart growth can incorporate the concerns of CRPE’s targeted communities.

\textsuperscript{101}. \textit{Id.} at 708.
\textsuperscript{102}. \textit{About the Center}, CTR. FOR BIOLOGICAL DIVERSITY, http://biologicaldiversity.org/about/index.html (last visited May 5, 2011).
\textsuperscript{103}. \textit{See} Letter from Caroline Farrell to Dave Bryant, \textit{supra} note 23.
\textsuperscript{104}. \textit{See supra} note 21 and accompanying text.
By demanding smart growth that clusters development in urban centers, but also increases energy efficiency by pushing new spatial growth into existing unincorporated developments and streamlining transportation and services to those areas, CBD can pull CRPE’s concerns into its climate change mitigation strategy. CBD and CRPE, together with local smart growth advocates and low-income, racial-minority community groups, can use the threat of such a CEQA lawsuit to pressure decision makers. The combined local strength of the two constituencies may also be worth more than the sum of its parts, as elected officials grow concerned with the empowerment of unified social justice and environmental advocates, which in turn will improve the odds that the groups can extract concessions on revenue sharing and municipal service extension before the LAFCO. The campaign would then have all the elements Luke Cole identified as essential for success and expansion.105

B. Complementing Some Good “Macho Law” with Stronger Grassroots Participation

Local smart growth advocates would, in such a scenario, find their efforts augmented not only by the legal resources they normally receive from national groups like CBD, but also by a racially charged movement of local residents fighting for the health of their homes and neighbors, supported by statewide organizations well experienced in grassroots campaigning. More voices and votes pushing for smart growth will make it more likely to happen. Beyond the simple math, the intensity of the preferences of the residents of the underserved areas should amplify the power of the campaign.106


106. Legislators will gravitate toward proposals with benefits for a concentrated group of citizens and with distributed costs. See, e.g., William N. Eskridge, Jr., Symposium on the Theory of Public Choice: Politics Without Romance: Implications of Public Choice Theory for Statutory Interpretation, 74 VA. L. REV. 275, 291 (1988). This dynamic often works against environmental campaigns, because polluters have more concentrated interests than the general public. However, environmental justice campaigns can turn this standard dynamic on its head. Because environmental justice communities face concentrated harms, legislators may be able to appeal to their residents, and earn their votes, through a single measure or decision that benefits those communities. Therefore, if environmental justice communities can organize into tight networks and communicate clearly, they can likely accomplish a great deal, unless the legislators are already entrenched in favor of another concentrated interest, such as a megadairy or a sprawl developer.

A word is warranted on the political power of noncitizens lacking the franchise. One strain of scholarship sees undocumented immigrants and permanent residents as virtually unable to affect policy. See, e.g., Kevin R. Johnson, Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement, 1993 BYU L. REV. 1139, 1147 (“The point that this Article seeks to emphasize is that, even when the interests of noncitizens are supported by a majority of the electorate, they may well lose in the political process.” (emphasis omitted)). But others see several sources of noncitizen political leverage: “[n]oncitizens can belong to and work for political parties,” have interests “advanced by powerful racial advocacy groups,” have family who can vote, have homeland governments who ever more frequently intercede in U.S. affairs “to advance social interests,” can contribute to political campaigns, and “enjoy the proxy efforts of civil society groups” including unions and ethnic communities. Peter J. Spiro, Beyond Citizenship: American Identity After
Without necessarily having to do much of their own grassroots work, state and national environmental groups would gain a grassroots influence that would empower their strategic litigation and give them more bargaining power in settlement negotiations. As a result, their opinions would be better respected in the general plan update process. They can parlay this increased influence into a further reason for funders to support their CEQA/General Plan campaigns. Greater effectiveness would also earn them wider public recognition and a broader membership base. Furthermore, this approach would help prevent the large, national groups from earning unintended enemies or simply working at cross-purposes with environmental justice groups on the ground, as happened with the local Sierra Club chapter in the first Tulare plan notice-and-comment round.  

IV. CONCEPTUAL ELEMENTS OF ORGANIZATIONALLY UNITING SMART AND FAIR GROWTH

While some organizations have successfully advocated for an integrated vision of smart and fair growth, this is unusual. More typically, the reality is one of “all-white leaders in board rooms talking to each other about implementing smart growth . . . while acting as if people of color are invisible. . . . Generally, people of color and their institutions have not played a visible role in the smart growth and regionalism dialogue.” As a result, “the environmental justice and smart growth movements . . . are proceeding on two separate tracks.” This Part delves into some of the organizational challenges and opportunities of incorporating fairness into smart growth and including environmental justice advocates and disadvantaged communities in a smart growth movement traditionally dominated by white environmentalists.

GLOBALIZATION 91–94 (2008). In local political affairs, the power of noncitizens will depend on how effectively they can organize around these alternative levers of power to mobilize a voting bloc seeing environmental injustice as a concentrated harm.

107. See supra notes 54–57 and accompanying text.

108. See GREENBELT ALLIANCE, GROW SMART BAY AREA (2009), available at http://www.growsmartbayarea.org/downloads/GSBA%20brochure.pdf (“We can make the Bay Area’s cities and towns into cleaner, greener, better places to live—enabling our region to grow in a way that is environmentally sustainable and that benefits our diverse population. We can create walkable, bike-friendly neighborhoods. We can strengthen our economy and reduce the amount of time we have to spend in our cars by building more homes close to jobs. And by protecting vital lands, we can secure clean drinking water, fresh food, and places to play.”); Sustainable Development, GREENBELT ALLIANCE, http://www.greenbelt.org/whatwedo/issues_livablecommunities.html (last visited May 9, 2011) (“We advocate for smart growth, good transit and transit-oriented development, housing choices, affordable housing, and open space protection.”); Reports, GREENBELT ALLIANCE, http://www.greenbelt.org/resources/reports/index.html (last visited May 9, 2011) (noting that the organization published a report as early as 1983 “demonstrat[ing] how the Bay Area’s housing needs can be met without compromising the greenbelt. This study presents detailed alternatives to the current development pattern of low-density suburban growth.”).


110. Id. at 371.
A. Inverting Regionalist Smart Growth to Apply to the Central Valley

The dominant strain—perhaps the only strain—in critical perspectives on smart growth has started from the assumption of an inner city populated with minority residents. As the story goes, the flight of wealthier white residents from the urban core leaves the municipality impoverished and destroys greenfields on the city’s periphery in a flurry of sprawl. As a result, “[t]he infrastructure in most U.S. cities is crumbling.” This includes “roads and bridges, housing stock, schools, public buildings, parks and recreational facilities, public transit, water supply, wastewater treatment, and waste disposal systems.” Sprawl’s decay extends beyond infrastructure:

Sprawl puts significant stress on urban livability as needed services become less accessible to inner-city residents and the institutional supports of healthy neighborhoods erode.

In Rochester, for instance, there are forty-five hundred licensed dogs, but just two practicing veterinarians left in the city. Each year about two thousand city residents die—about 40 percent of Monroe County’s total deaths—yet only fifteen funeral homes still operate within the city limits versus sixty homes in the suburbs.

Jobs, wealth, power, and opportunity all flee to the suburbs, severely stressing the “livability” of the city.

Smart growth policies can reconcentrate wealth and economic activity within the city’s boundaries, especially in the downtown area. These are...
positive steps not just for the environment and “smart” planning, but also for racial justice:

This policy framework is also extremely compatible with the objectives of civil rights. By strengthening existing communities instead of encouraging fringe development, providing greater transit and housing choice, and making development decisions fair and cost-effective, policies based on Smart Growth principles will provide greater opportunities for economic and social mobility to low-income and disadvantaged communities.\(^{118}\)

To deal with the problem of existing suburbs concentrating wealth away from the city, these scholars propose a new scope for assessing and addressing equity concerns: not the city or the county, but the region.\(^{119}\)

The reality of the Central Valley is quite different, as explained in Part I. Cities have organized themselves to protect the wealth of their residents, leaving impoverished pockets unincorporated. While fairness is already a key part of smart growth,\(^{120}\) the relationship between the two complicates when the paradigm shifts from one where poverty and powerlessness have been concentrated in urban centers to one where the urban center has shielded itself from impoverished and powerless communities. Even smart growth literature

some level of gentrification is a sign of health in the housing and commercial markets and community environment. While programs such as housing subsidy, production, and relocation assistance designed to mitigate the cost of relocation through conversion should be enacted, the poor, particularly those in America's central cities, have more to fear from the absence of gentrification.\(^{118}\) (citation omitted)). But see powell, supra note 111, at 61, 63 (disagreeing with the perception, arguing that “an infill project is not gentrification because no one is being pushed out”). While residents may fear that gentrification will replace blight, reducing the ideal of an integrated, vibrant city to caricature, powell argues that “there is little, if any, gentrification occurring” in poor cities. Id. at 67. Although “it is conceivable that some partial/small-scale gentrification in poor cities will occur,” “[i]f residents are displaced it is more likely to be to a nearby neighborhood in the city through what I have termed intrajurisdictional gentrification.” Id. at 66–67. Kushner, on the other hand, believing gentrification is a real threat, argues that “[t]he antidote for displacement is a healthy housing production program that starts with obligations on developers to include affordable housing.” Kushner, supra, at 68. In this view, however, a fully successful smart growth revolution would be dystopic:

Should the unimaginable occur and New Urbanism become orthodox, a different set of problems would beset the poor, ethnic and racial minorities, and immigrants. America's major cities have provided slum housing and a stock of barely habitable shelter to those of very low income, particularly new immigrants. Were these slums and lower-cost shelter replaced by new and revitalized development, cities such as New York or Los Angeles may cease to serve their democratizing and incubation function, and the quality of life and opportunity for new immigrants and the poor could diminish.

Id. at 71.

118. Hutch, supra note 117, at 363.
119. See powell, supra note 111, at 68.
120. See SMART GROWTH NETWORK, supra note 41, at 2 (“Expanding options in new developments . . . is important, but it is also critical to restore opportunity to cities and older suburbs.”); id. at 3 (“By investing money for schools in communities where families already live and by creating neighborhoods that have a diversity of housing types and income levels, smart growth approaches can make good educational opportunities accessible to more children.”); id. at 4 (“Communities should strive to provide decent homes in safe neighborhoods for people of all incomes.”).
targeted at rural areas can gloss over these communities’ needs.\textsuperscript{121} In this context, developed concepts of smart growth can seem to pull against fair growth,\textsuperscript{122} and uniting smart and fair growth must be an even more active and conscientious process than in the metropolitan realm.

Nevertheless, the framework erected to orient equity regionally, although developed for an opposite equity problem, can be inverted and applied to the situation in the Central Valley. Professor Manuel Pastor notes that, even in the context of urban poverty among Latinos in the Los Angeles area, getting advocates together to push for growth that is both smart and fair is a challenge:

[T]he alliance between the smart growth and social justice movements is not necessarily “natural.” . . . Latinos, like other urban groups facing higher poverty rates, have more to gain from an infusion of regional equity than they do from a simple infusion of “good planning”—and so the key for engaging Latinos in the smart growth movement is to ensure that the issues of equity and justice remain high on the agenda.\textsuperscript{123}

With these considerations in mind, Pastor asks, why are “Latinos so seemingly underrepresented in smart growth advocacy and organizations, even in the apparently fertile fields of California?”\textsuperscript{124} He notes the fiscal incentives of permitting locally undesirable land uses, but believes a greater factor is that Latino community leaders have lacked “gusto” for the “tax-sharing schemes new regionalists insist could help.”\textsuperscript{125} Presenting the history of the Latino connections to smart growth issues in Southern California, Pastor observes that “all arose because they solved a concrete local problem that had regional implications,”\textsuperscript{126} which shows that smart growth advocates’ “usual words about needed outreach” and the “traditional call for diversity” are not enough.\textsuperscript{127} Something more is needed to draw Latinos into smart growth

\begin{itemize}
\item \textsuperscript{121} See \textit{Smart Growth Network, Putting Smart Growth to Work in Rural Communities} 17, available at http://icma.org/Documents/Document/Document/301483 (“Communities can employ a ‘fix-it-first’ approach to infrastructure spending in order to help existing places thrive. A fix-it-first approach means that communities will prioritize public funding to repair, restore, and conduct preventive maintenance on existing infrastructure, including buildings, roads, and water and sewer lines, before building new infrastructure.”). This report does note, “Comprehensive plans should clearly identify designated growth areas, including hamlets, town or village centers, and neighborhoods, in order to target new growth into the areas that the community sees as best suited for the development of new places.” \textit{Id.} at 24. But this ignores the possibility that smart growth would direct services to areas that are not designated for spatial growth.
\item \textsuperscript{122} See discussion of apparent divide between Sierra Club and CRPE activists, \textit{supra} Part II.A.3.
\item \textsuperscript{123} Manuel Pastor, Jr., ¿Quién es Más Urbanista? Latinos and Smart Growth, in \textit{Growing Smarter: Achieving Livable Communities, Environmental Justice, and Regional Equity}, \textit{supra} note 109, at 73, 80; \textit{see also} \textit{supra} notes 54–57 and accompanying text (explaining how smart growth advocates, unless they carefully consider the impacts of their arguments on minority residents, are as likely to offend and alienate these potential allies with policy recommendations that entrench poverty and the absence of necessary urban services).
\item \textsuperscript{124} Pastor, \textit{supra} note 123, at 88.
\item \textsuperscript{125} \textit{Id.} at 88–89 (“A series of interviews with individuals active in smart growth movements suggests that they recognize that Latinos are not as involved as they might be . . . .”); \textit{see supra} Part II.B.
\item \textsuperscript{126} \textit{Id.} at 93.
\item \textsuperscript{127} \textit{Id.} at 89.
\end{itemize}
advocacy, something that connects the issues to community consciousness rather than esoteric planning considerations:

For smart growth advocates to find allies in Latino and other minority communities, they will need to take seriously the struggle for social and economic justice as the main driver for community engagement. Rather than simply inviting minorities to come to a preset table, proponents of smart growth will have to become allies in community-defined struggles.\(^{128}\)

In the adage of community organizers, you have to meet people where they are. For disadvantaged unincorporated areas in the Central Valley, that meeting ground may include basic services like water and sewer, and the increased tax income potential that can come through city/county revenue-sharing. These aims, on their face, are regionalist concerns which may seem only tangentially connected to smart growth. But they are an “entry point,” allowing traditional environmentalist groups like CBD to join with an emergent “‘populist base’ for smart growth provided that direct connections to local needs are made.”\(^{129}\)

National-scale environmental organizations fighting global climate change have only recently realized the need to come down to the local level, the smart growth level, to pursue the fight. It will be a whole new leap to bring these organizations from the local level to the local-regional level, the level of equity for minority groups. But that’s where the national groups need to go, because that’s the next frontier in the fight against climate change. Whether the minority residents occupy the city or its outskirts, so long as the environmentalists design their smart growth plans to avoid entrenching minority poverty, the two groups’ interests will be aligned.\(^{130}\)

\section*{B. Vision Statement for Smart and Fair Growth in Rural and Unincorporated Urban Areas}

Fair growth focuses not on maintaining existing power relationships but on reordering power relationships to reflect distributional and social justice. Where racism has poisoned groundwater, fair growth would direct clean drinking water service. Where classism expects underpaid farmworkers to find a way to build their own sewer system, fair growth would allow them to connect to the city’s. Fair growth does not allow a city to cluster hazardous facilities at its “fringe,” threatening the health of communities it has selectively excluded, merely because city residents would prefer not to have to look at, or smell, the works they require. Fair growth recognizes not only that everyone

\begin{itemize}
\item \(^{128}\) Id. at 93.
\item \(^{129}\) Id.
\item \(^{130}\) Robert D. Bullard, \textit{Smart Growth Meets Environmental Justice}, \textit{in Growing Smarter: Achieving Livable Communities, Environmental Justice, and Regional Equity}, \textit{supra} note 109, at 23, 44 (“Both smart growth and environmental justice advocates should commit to working on joint projects while including stakeholders from both movements.”).
\end{itemize}
should have an opportunity for economic success, but that because everyone’s health and connection to the environment is equally valuable, historical injustices threatening these qualities of life must not live forever through apathetic public planning law that perpetuates the status quo.

Smart and fair growth applies smart growth principles to combat historical injustice. It may require that a city generally contract around a dense core, but it may also require city residents to live among some of the giant public works it constructs. It may require stringent water use guidelines, but it may also foresee extending water service to areas where residents currently drink dangerous amounts of the pesticides used to grow the city residents’ food. It may require a reduction in vehicle miles traveled, but it may also prevent the city from accomplishing the reduction through reliance on its calculated refusal to pave roads in Latino communities.

Because smart and fair growth forces awareness of all the effects of its adherents’ public environmental choices, forces a city to confront those choices and pay their “whole cost,” and encourages a city to consider humans as an important part of the environment, I could refer to the concept simply as smart growth. I call it smart and fair growth to emphasize its conjunction of existing campaigns.

C. Of Baselines and Venn Diagrams

1. Can Traditional Environmental Groups Join Coalitions to Push for Suboptimal Environmental Outcomes?

Possibly the most potent criticism of the above analysis is that it is too optimistic. The problem with the analysis, the critique goes, is that the priorities and values of green groups and the local disadvantaged communities do not align nearly as neatly as this Comment suggests. Building up infrastructures and property values in rural and outlying urban areas may spur economic growth in those areas, which would, after all, increase vehicle miles traveled and therefore GHG emissions. Environmental groups will want to tightly bound the spatial growth of these communities to prevent greenfield-gobbling sprawl, whereas the community may eventually want to attract office parks and big-box stores to provide jobs and tax revenue. The critique concludes that activists opposing air pollution and climate change therefore have interests opposed to disadvantaged communities that do not lie within a metropolitan core.

Another popular line of thought equates sprawl with quality of life and economic health. A push for basic quality-of-life enhancements in non-core areas, like drinking water delivery and sewer line connection, is open to

131. See, e.g., Gregg Easterbrook, The Case for Sprawl, NEW REPUBLIC, Mar. 15, 1999, at 22 (arguing that sprawl is “caused by affluence and population growth,” and that Americans “of all races seek the sprawled areas because” cars and detached homes are “what they like”).
interpretation as a push for more sprawl. This line of thought raises the question: How can environmentalists seek equity (sprawl) without prioritizing it above sustainability (smart growth)? The critique suggests that if environmental groups are to continue to follow their mission statements, and not drift into coalition-building for the sake of coalition-building, then they will have to part ways with small community groups as soon as those groups’ interests are no longer to seek stringent protections for the environment.

An apt illustration for the perceived problem is a Venn diagram, with one circle representing traditional environmental groups and the other representing disadvantaged communities. The overlapping area indicates convergent interests—reducing water pollution in these communities, for example—where they can jointly develop a campaign. The non-overlapping areas indicate divergent interests, where the groups cannot support each other, and may even need to oppose each other.

Another key concept in this critique is the environmental baseline. Since the world’s ecology has been evolving for over three billion years, today’s ecologists cannot point to any particular ideal environmental state of being. All ecological contingencies are only meaningful as compared to a benchmark ecological state, a baseline. State and national environmental laws struggle with defining the proper baseline comparator, when necessary to determine whether a project’s environmental impacts are “significant.”

This critique presumes that environmental advocacy organizations employ baselines in internal strategy and decision making. CBD, for example, probably would never support building a new community at the outskirts of a city or in rural areas of a county. In deciding to support the extension of services to the unincorporated disadvantaged communities of Tulare County, CBD necessarily took as a given that those communities already existed and would continue to exist. The existence of the communities and the establishment of their residents were incorporated as elements of CBD’s baseline by which it would evaluate the environmental impacts of its own proposals for the county’s general plan. That these communities were part of CBD’s internal understanding of the baseline explains why the group did not find it necessary, for the good of the world’s species, to call for the eventual death of the communities, as the county’s last general plan did.

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133. See Anderson, supra note 1, at 1148 n.182 (quoting CNTY. OF TULARE, GENERAL PLAN 2-4 (1971), available at http://generalplan.co.tulare.ca.us/documents/gp_issues_summary/02-Water-LiquidWasteMgmt.pdf (“Public commitments to communities with little or no authentic future should be carefully examined before final action is initiated. These non-viable communities would, as a consequence of withholding major public facilities such as sewer and water systems, enter a process of long term, natural decline as residents depart for improved opportunities in nearby communities.”)).
But CBD, consciously or not, advanced its baseline a step further. Taking as a premise that existing communities should not face disproportionate, discriminatory, and unjust environmental health effects, the environmental group necessarily reasoned that it was worth joining a coalition to minimize the health threats even though doing so might lead to increases in local greenhouse gas emissions. CBD may have done something at once obvious and revolutionary: embedding axioms of environmental justice within its understanding of the environmental baseline. Of course, it helped that the coalition CBD was joining to write the joint comment letter could help it enact its other, climate-oriented goals for Tulare County. This might explain CBD’s move entirely; most coalitions require a little bit of compromise. Yet CBD’s move raised eyebrows; the counsel for the coalition of cities of Tulare County for the general plan update process noted that he was quite surprised to see CBD move its baseline as far as it did to join the environmental justice groups in their joint comment letter.134 CBD is known as a radical environmental group, not prone to compromise or “engineered solutions.”135 So why the compromise, if that’s what it was? Did CBD violate its mission “to secure a future for all species, great or small, hovering on the brink of extinction?”136

2. A Response Toward Progressive Politics via the Regional Equity Movement

That environmental justice groups have not gotten more involved in the smart growth discussion is surprising because, as a growing body of scholarship argues, sprawl is a civil rights issue.137 Professor John A. Powell138 explains that spatial segregation is thriving as a “predictable consequence” of the way we have managed it.139 White flight and its federal subsidies—discriminatory Federal Housing Administration loan policies and the Federal

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134. Gabriel M.B. Ross, Partner, Shute, Mihaly & Weinberger LLP, Remarks During Discussion in Local Government Law Class at UC Berkeley School of Law (Mar. 28, 2011) (with the explanation that he was speaking as to his personal views and not on behalf of his clients) (notes on file with author). One wonders why the Tulare County cities would not wish to join the joint comment letter, given that a political alliance with the smart and fair growth advocates may be the most promising way to prevent sprawl into greenfields from sucking investment away from city centers.

135. Id. (notes on file with author).


Aid Highway Act—helped sprawl and fragmentation follow in the wake of Jim Crow as “the two strongest forces perpetuating racialized, concentrated poverty.” Powell notes that countering this structural racism will “require not only collective action and a bold commitment to the ideals of democracy and justice but also a new way of seeing.”

Consciously or not, Powell touched on an issue deep within environmental law with his use of the term “way of seeing.” As Professor William Boyd understands the phrase, it “is intended to encompass the various practices, conventions, techniques, tools, infrastructures, and institutions that allow certain phenomena to be organized and understood as coherent objects of governance.” William Boyd, *Ways of Seeing in Environmental Law: How Deforestation Became an Object of Climate Governance*, 37 Ecology L.Q. 843, 847 (2010). He “argues that the seemingly technical work involved in rendering certain environmental problems comprehensible for purposes of environmental law and governance is in fact instrumental in shaping the very possibilities of such governance and must be interrogated directly as part of the construction of particular forms of governance.” *Id.* at 847–48.

Environmental law has gone through many ways of seeing forests, for example: first as “the very idea of wilderness,” then as an object of “managerial logic of simplification and control” for state conservation and “colonial enterprise,” then as a global resource, then as a carbon dioxide “sink,” and most recently as a source of carbon dioxide, through deforestation. *Id.* at 857–58, 869, 872–77. But the slow progression was, in some sense, necessary: “Tropical deforestation had to be understood as part of the climate problem before it could be approached as an object of climate governance.” *Id.* at 878.

Like forestry several decades ago (or still), the regional equity/smart growth/civil rights movement finds itself in one of the middle stages of its theoretical development. Pinpointing the connections among the movement’s concepts indeed requires a new “way of seeing.” Bringing in advocates with perspectives originating in faith, labor, business, and the environment will be necessary to spread the new way of seeing, but coming to a consensus on a new way of seeing is only the first step in its transition to an object of governance. Professor Boyd goes into much further detail than possible here, but one necessary “knowledge practice[...]” for the transformation is “calculability.” *Id.* at 898, 902–11. Calculability holds problems together, “allowing new problems to be seen, understood, and governed—often over vast expanses of space and time.” *Id.* at 902–03.

Of course, there are many other examples of how particular practices of calculation have shaped, and are shaping, environmental law and governance. The development of standardized measures for various kinds of pollution, the deployment of new analytical techniques for monitoring the fate and transport of substances in the environment, probabilistic risk assessment, biomonitoring, the modeling and simulation of global climate change, satellite observations of earth system dynamics, and many other examples all demonstrate how the past, present, and future of environmental law are deeply bound up with calculative practices of various kinds—practices that, each in their own way, can be understood as “technologies of visibility.” Their role in environmental law and governance would be difficult to overestimate.

*Id.* at 904. So it is a good sign that scholars of regional equity are well aware of the need to bring calculability to its concepts. See David Rusk, *Measuring Success: Using Metrics in Support of Regional Equity, in Breakthrough Communities: Sustainability and Justice in the Next American Metropolis, supra* note 139, at 323, 323 (“As regional equity takes root in the next generation of practice, techniques and tools for measuring progress are critical to building momentum and gaining traction.”).

This is all to say that the legal tools outlined in this Comment are adolescent. They are borrowed from other spheres and other purposes and can be applied only crudely to the problems of smart growth, regional equity, and climate change. But over time, as new knowledge practices and “technologies of visibility” transform these perspectives into more robust ways of seeing, environmental law can grow to incorporate them into mature objects of cultivated regulation—because that is what environmental law does.
“[T]raditional interventions” to organize communities disadvantaged by sprawl will not be enough. Since the systems of racializing space depend on facially neutral laws underlying individual local governments, scholars and organizers can bring the systems of racialing into focus only “within the larger scope of regional dynamics.” More poetically, “the city is now the region.” And equity at the regional level requires sustainability, inasmuch as the focus of the movement is “the need to ensure a better quality of life for all, now and into the future, in a just and equitable manner, while living within the limits of supporting ecosystems.” Proponents of the concept call this “just sustainability.” Framing the matter slightly differently, another scholar argues that the movement demands a “triple bottom line” for communities: “economy, environment, and equity.” This quest requires the movement’s organizers to seek at the “metropolitan regional scale . . . to reform those policies and practices that create and sustain social, racial, economic, and environmental inequalities among cities, suburbs, and rural areas, and to integrate marginalized people and places into the region’s structures of social and economic opportunity.”

This will require a broader focus, and thus a broader coalition, than progressives have been able to organize over the past three decades. The “traditional weakness” of these movements, in contrast with the early civil rights movement, has been “their temptation to become compartmentalized, too narrowly oriented around single issues, and lacking a broad moral vision.”

On the other hand,

The regional equity movement represents a change in tactics, combining research, community development, and social approaches in a broad-based multi-issue effort . . .

Regional equity strives to elevate a diverse cross-section of interests and constituencies to the “uncommon common ground”—not a lowest common denominator of compromise grudgingly accepted by coalition members

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143. *Id.*


145. *Id.* at xxxi–xxxii (quoting Julian Agyeman, *Sustainable Communities and the Challenge of Environmental Justice* (2005)).

146. *Id.*

147. *Id.* at xxxii (laying out Pavel’s own view).

148. *Id.* at xxxiv.

with conflicting interests, but rather the highest possible point of agreement and collective possibility.\textsuperscript{150} 

So this nascent civil rights movement is ready and eager to form “[n]ew alliances.”\textsuperscript{151} The present question is whether environmentalists can rise to that challenge.

One man who thinks they should is Van Jones, founder of Green for All, a group dedicated to building an inclusive green economy:

As the new environmentalists advance, who will they take with them, and who will they leave behind? . . . The rising environmental lobby will fight for subsidies and supports for the booming clean energy and energy conservation markets. But will they insist that these new industries create jobs and wealth-building opportunities for low-income people and people of color?

The sad racial history of environmental activism tends to discourage high hopes among racial justice activists. And yet this new wave has the potential to be much more expansive and inclusive than previous ones.\textsuperscript{152} Jones believes environmental activism is entering a new wave of investment.\textsuperscript{153} With climate change policies will come investment in new energy sources, and with that investment jobs, green wealth, and “a chance to improve community health.”\textsuperscript{154}

This is not a framework that will sound familiar to many professional environmentalists. The recent environmental movement tells a story not of wealth-maximizing sustainable investment, but of the indifference of our leaders to impending ecological catastrophe. They point to Katrina as an example of the effects of climate change,\textsuperscript{155} to Deepwater Horizon as a result

\begin{itemize}
\item \textsuperscript{150} Id.
\item \textsuperscript{151} Pavel, supra note 144, at xxix.
\item \textsuperscript{152} Van Jones, Climate Change and the Quest for Regional Equity, in BREAKTHROUGH COMMUNITIES: SUSTAINABILITY AND JUSTICE IN THE NEXT AMERICAN METROPOLIS, supra note 139, at 341.
\item \textsuperscript{153} Id. at 343.
\item \textsuperscript{154} Id.
\item \textsuperscript{155} See Katrina and Global Warming, PEW CTR. ON GLOBAL CLIMATE CHANGE, http://www.pewclimate.org/specialreports/katrina.cfm (last visited May 9, 2011) (“So, although we cannot be certain global warming intensified Katrina per se, it clearly has created circumstances under which powerful storms are more likely to occur at this point in history (and in the future) than they were in the past. Moreover, it would be scientifically unsound to conclude that Katrina was not intensified by global warming. A reasonable assessment of the science suggests that we will face similar events again and that powerful storms are likely to happen more often than we have been accustomed to in the past.”); see also Robert F. Kennedy, Jr., “For They That Sow the Wind Shall Reap the Whirlwind,” HUFFINGTON POST (Aug. 29, 2005, 6:03 PM), http://www.huffingtonpost.com/robert-f-kennedy-jr/for-they-that-sow-the-win_b_6396.html (“As Hurricane Katrina dismantles Mississippi’s Gulf Coast, it’s worth recalling the central role that Mississippi Governor Haley Barbour played in derailing the Kyoto Protocol and kiboshing President Bush’s iron-clad campaign promise to regulate CO$_2$.’’); Ross Gelbspan, Op-Ed, Hurricane Katrina’s Real Name, N.Y. TIMES, Aug. 31, 2005, http://www.nytimes.com/2005/08/30/opinion/30hth-edgelbspan.html (“The hurricane that struck Louisiana and Mississippi on Monday was nicknamed Katrina by the National Weather Service. Its real name is global warming.”).
\end{itemize}
of exploitative policy,\footnote{156} to Copenhagen as a failure of the world to unite for solutions,\footnote{157} and to the 2010 midterm elections as the reason the President has stopped talking about the issue.\footnote{158} They point to dying oceans,\footnote{159} to extinction rates,\footnote{160} to deforestation.\footnote{161} They point to projections of fresh water decline,\footnote{162} of industrial development in Asia,\footnote{163} and of oil shale extraction in Canada;\footnote{164} to the souring politics of wilderness,\footnote{165} to a market plunge in cleantech

\footnote{156}{See Scott Slesinger, \textit{The House Votes for More Drilling; Less Protection}, NRDC \textsc{Switchboard Blog} (May 5, 2011), http://switchboard.nrdc.org/blogs/sslesinger/the_house_votes_for_more_drill.html ("Amnesia is a rare disease common only on soap operas and, apparently, in the House of Representatives. What lessons did the House learn from the BP spill? Apparently none. . . . Our energy policy should be to lower our usage, become more energy efficient, and reduce our addiction to oil. American families, and our planet, deserve no less.").}

\footnote{157}{See Adam Vaughn & David Adam, \textit{Copenhagen Climate Deal: Spectacular Failure—Or a Few Important Steps?}, \textsc{Guardian}, Dec. 22, 2009, http://www.guardian.co.uk/environment/2009/dec/22/copenhagen-climate-deal-expert-view (including comment by one “climate campaigner” that “Copenhagen was a spectacular failure on many levels”); George Dvorsky, \textit{Five Reasons the Copenhagen Climate Conference Failed}, \textsc{Inst. For Ethics \\& Emerging Techs.} (Jan. 8, 2010), http://ieet.org/index.php/IEET/more/dvorsky20100110/.
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\footnote{158}{See David Corn, \textit{Obama Goes Quiet on Climate Change}, \textsc{Politics Daily} (Dec. 3, 2010), http://www.politicldaily.com/2010/12/03/obama-goes-quiet-on-climate-change/ ("In the past year, as climate change legislation foundered in the Senate (largely due to Republican obstructionism), the subject has sunk in terms of presidential priorities. Long story short: It’s back to timid politics.").}

\footnote{159}{See Ocean Acidification, \textsc{Ctr. For Biological Diversity}, http://www.biologicaldiversity.org/campaigns/ocean_acidification/index.html (last visited May 8, 2011) (describing decline of ocean ecosystems from climate change); \textit{Overpopulation and Oceans}, \textsc{Ctr. For Biological Diversity}, http://www.biologicaldiversity.org/campaigns/overpopulation/oceans/index.html (last visited May 8, 2011) (describing decline of ocean ecosystems from overfishing).}

\footnote{160}{See \textit{About the IUCN Red List}, \textsc{Int’l Union For The Conservation Of Nature} (Sept. 14, 2010), http://www.iucn.org/about/work/programmes/species/red_list/about_the_red_list/ ("It has been estimated that the current species extinction rate is between 1,000 and 10,000 times higher than it would naturally be.").}

\footnote{161}{See Deforestation, \textsc{World Wildlife Fund}, http://wwf.panda.org/about_our_earth/about_forests/deforestation/ (last visited May 8, 2011) ("12–15 million hectares of forest are lost each year . . . . Deforestation is responsible for 15% of all greenhouse gas emissions."); \textit{Photo Gallery: Rain Forest Deforestation}, \textsc{Nat’l Geographic}, http://environment.nationalgeographic.com/environment/photos/rainforest-deforestation/ (last visited May 8, 2011).}

\footnote{162}{See Freshwater Crisis, \textsc{National Geographic}, http://environment.nationalgeographic.com/environment/freshwater/freshwater-crisis (last visited May 8, 2011) ("By 2025, an estimated 1.8 billion people will live in areas plagued by water scarcity, with two-thirds of the world’s population living in water-stressed regions as a result of use, growth, and climate change.").}

\footnote{163}{See \textit{International Energy Outlook 2010}, \textsc{U.S. Energy Info. Admin.}, http://www.eia.doe.gov/oiaf/ieo/world.html (last visited May 8, 2011) ("Energy use in non-OECD Asia (led by China and India) shows the most robust growth of all the non-OECD regions, rising by 118 percent from 2007 to 2035 . . . . ").}

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\footnote{165}{See Nathan Rice, \textit{Ridering into the Sunset}, \textsc{High Country News Goat Blog} (Apr. 14, 2011), http://www.hcn.org/blogs/goat/rid-er-ing-into-the-sunset (reporting on the congressional budget rider preventing the Bureau of Land Management from implementing a new policy to protect wildlands).}
to the declining percentage of Americans who think climate change is really happening. This is not an age of plenty for environmental groups, not a time when they will be apt to spread the wealth around. This is an age of crisis.

If regional equity and environmental justice proponents desire to work with environmental groups, they will need to become fluent in this environmentalist narrative. The traditional environmentalists, inspired by a line of thought passing through Henry David Thoreau, John Muir, Aldo Leopold, Rachel Carson, and Edward Abbey, have a deep commitment to an environmental ethic. This is not something for which they should apologize. Our polity still dearly needs advocates for conserving our resources and maintaining ecological balance with other species, lest Carson’s silent spring scenario come to pass. So if the traditional environmental movement has “disregarded the environmental problems faced by urban and metropolitan areas,” the oversight might be due to the racism of the movement’s leaders or their indifference to human suffering, but the cause may also be (and in my view is) more benign, that those leaders see themselves as focused on different problems. They responded to their movement’s challenges partly by guarding themselves against perceived mission drift, in order to better play the David role against Goliaths like the oil and chemical industries.

And yet, in framing the environment so narrowly, these leaders have fallen into the same “compartmentalization” trap afflicting progressives in recent years, “too narrowly orient[ing] around single issues, and lacking a broad moral vision.” This deficit of imagination is understandable, but insofar as the

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166. See Jess McCabe, Clean-Tech Stock Pickers Look to Energy Efficiency Again in 2011, ENVTL. FIN. (Jan. 6, 2011), http://www.environmental-finance.com/news/view/1478 (“Analysts and investors predict last year’s gloom for clean-tech stocks will continue in 2011, with few expectations that renewable energy share prices will recover—but energy efficiency is once again tipped to outperform. Clean-tech stocks were hit hard in 2010. The WilderHill New Energy Global Innovation Index (NEX), tracking 100 listed global clean energy companies, dropped 14.6% last year, while the US S&P 500 rose 12.8%.”).

167. See Jeffrey M. Jones, In U.S., Concerns About Global Warming Stable at Lower Levels, GALLUP (Mar. 14, 2011), http://www.gallup.com/poll/146606/concerns-global-warming-stable-lower-levels.aspx (“For example, 49% currently believe the effects of global warming have already begun to happen, similar to last year’s estimate and one point above the historical low from 1997. Just three years ago, 61% thought the effects were already occurring. Over the same time, the percentage doubting global warming’s effects will ever happen has increased, from 11% to nearly 20%, including 18% this year.”); see also Evan McMorris-Santoro, Every Single GOPer on House Energy Cmte Won’t Say Climate Change Is Real, TALKING POINTS MEMO (Mar. 15, 2011), http://talkingpointsmemo.com/2011/03/every-single-goper-on-house-energy-cmte-wont-say-climate-change-is-real.php (“Thirty-one Republicans on the House Energy And Commerce Committee—the entire Republican contingent on the panel—declined on Tuesday to vote in support of the very idea that climate change exists.”).

168. RACHEL CARSON, SILENT SPRING 1–3 (Houghton Mifflin 1994) (1962) (sketching some maladies humans inflict upon themselves and the environment as they continue to pollute).


170. See supra note 149 and accompanying quotation.
environmentalists’ compartmentalized focus has caused them to maintain a rigid zone on its side of the Venn diagram, it has been to their discredit. While Jones’s assessment of the main problem facing environment as one of how to divide an ever-enlarging pie may have been too rosy—“Today, we can ask: How do we equitably share the benefits of a brighter future?”—his prescription for political success is still dead-on:

To avoid getting outmaneuvered politically, green economy proponents must actively pursue alliances with people of color. And they must include leaders, organizations, and messages that will resonate with the working class. Otherwise, opponents of change will actively recruit everyone this new movement ignores, offends, or excludes.

The environmental movement is languishing at the national level, not having scored a serious success since the Clean Air Act amendments of 1990. To revitalize, the movement must expand and join a broader progressive coalition. Environmentalists will have to show that the compartmentalization of the past is over, and that they are committed to reaching that “highest possible point of agreement and collective possibility” together with a new progressive movement. Like any true movement, this one will have to begin at the grassroots level, the hyper-local level. Person by person, community by community, environmentalists will have to demonstrate that “[t]his country can save the polar bears and black kids, too.”

The commitment must be mutual. Even as environmentalists struggle to overcome language and cultural barriers to persuade people that they are invested in environmental justice and regional equity, environmental justice and civil rights groups will have to persuade these communities that supporting policies to conserve biodiversity and fight climate change is in their interest. The organizational challenges are enormous. Yet without this reciprocity, environmentalists would have to characterize these projects as mission drift.

171. Jones, supra note 152, at 343. To be fair, the referenced Jones piece printed in 2009, a time of greater cause for environmental optimism than when this Comment went to press.

172. Id. at 344.


174. See supra quotation accompanying note 150.


176. Jones, supra note 152, at 345.
But, if the groups can forge a true alliance, “[w]e can create a long-lasting coalition that includes African-Americans and Latinos, white people who live in . . . older suburbs, environmentalists, and the legislators that form a majority. We can build a coherent coalition”\(^{177}\) centered on the concept of “just sustainability”\(^{178}\) and “lasting for as long as we continue to be forward-thinking.”\(^{179}\)

The promise of this coalition is worth more to environmentalists than the benefits of maintaining a rigid circle in a Venn diagram. The power of a broader base is worth advancing the conception of an environmental baseline to the point that presupposes the need for regional equity and for bringing economic and environmental health to suffering communities. In this context, and with a practical eye toward reciprocal commitment, environmental groups deserve a bit of prodding toward environmental justice: Baselines can move. Move them. Circles in a Venn diagram can be stretched to find more overlap. Stretch them.

The time may come when growing prosperity in minority and low-income areas may cause the groups’ perceived interests to diverge so sharply that maintaining a coalition would be impossible. But that time may be a long way off. Only through persistent baby steps of experimentation, communication, and negotiation is it possible to know.

3. Resituating the Response in Localities

That’s all a bit ostentatious for the purposes of this Comment. As in most situations, the grand theory will be far less relevant to the process than local events and local actions taken by individual people. So, it is helpful that a campaign in the Central Valley will not have to scout a completely new trail. It will have predecessor campaigns to look to for guidance.

In 2004, environmental groups joined with labor and community-based organizations to secure a community benefits agreement for communities surrounding Los Angeles International Airport.\(^{180}\) In return for the groups accepting an airport expansion, the city ensured that “homes and schools [would] be soundproofed, emissions and truck traffic dramatically reduced, and millions of dollars earmarked to provide local residents with training for living wage jobs.”\(^{181}\) Environmental Defense, one of the coalition members, found the campaign worthwhile not only because of the emissions cuts, but also because it included “the largest study in the nation examining toxic sources of

178. See supra notes 145–146 and accompanying text.
181. *Id.*
pollution attributable to airport operations and the impact on nearby communities.\(^{182}\) Environmental Defense and Los Angeles Alliance for a New Economy, a principal community-based organization in the coalition, were continuing to coordinate their communications on the matter through at least 2008.\(^{183}\)

The planning process for rebuilding Lower Manhattan and the surrounding region in the wake of the September 11 attacks has brought together a similar coalition, pushing for the plans to advance regional equity, sustainability, affordable housing, and other matters of social, economic, and environmental justice.\(^{184}\) The coalition, called the Civic Alliance to Rebuild Downtown New York, began by facilitating a high-tech town hall meeting, attracting forty-five

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183. See Press Release, Environmental Defense and LAANE, supra note 182.

hundred participants.185 As a result of these community members’ broad rejection of the city’s plans for Ground Zero, public officials threw out their original plans and hired a new master planner.186

The Civic Alliance continued to work together, finding broad agreement on matters of regional equity and traditional environmental concern: they jointly recommended, for example, “2,000 units of housing affordable to low- and middle-income households in Lower Manhattan,”187 the completion of the Second Avenue subway,188 the continued closure of downtown roads for more effective foot traffic,189 “zero net carbon dioxide emissions and water waste at the [World Trade Center] site, . . . a Platinum level LEED certification from the U.S. Green Building Council,”190 and more extensive public participation in several steps of the planning process.191 The private and public organizations overseeing the reconstruction of the World Trade Center have not heeded all of these recommendations—architects are aiming for LEED Gold, not Platinum, for example—but the campaign did score victories, such as prompting the federal government to allocate $4.5 billion to transportation in Lower Manhattan, which could help complete the Second Avenue subway.193

As promising as the benefits of environmental groups forging these alliances can seem, the downsides of rejecting them may be starker. In Richmond County, South Carolina, environmental groups supported the county council in limiting rural development.194 The county’s rationale for the plan appears to have been focused on sprawl’s costs in green space and infrastructure, without acknowledging the inequities it produces.195 But while the council saw the county as primarily “struggling with the crippling rise in infrastructure costs and loss of open space that come with rampant, uncontrolled growth,” “rural black communities lack[ing] many basic services . . . see the restrictions as ending any hope of appreciation” of the value of their land, “their one real asset.”196 Making a bad situation worse, the

185. Yaro et al., supra note 184, at 216–17.
186. Id.
187. REG’L PLAN ASS’N, supra note 184, at 8.
188. Id. at 17.
189. Id.
190. Id. at 32.
191. Id. at 7.
193. Yaro et al., supra note 184, at 218–19.
194. Maya Wiley, Smart Growth and the Legacy of Segregation in Richland County, South Carolina, in GROWING SMARTER: ACHIEVING LIVABLE COMMUNITIES, ENVIRONMENTAL JUSTICE, AND REGIONAL EQUITY, supra note 111, at 149.
195. Id. at 154.
196. Id. at 149.
director of the state Sierra Club chapter opined publicly that the plan would harm only those wishing to subdivide their land, but not “the true farmer.”197 In response, one resident publicly compared the Club to the Klan.198 Meanwhile, careful data mapping shows that the county’s sprawl management policies will likely be ineffective.199 The lesson to environmental groups should not only be that they “must engage in context-based analyses of the causes and effects of sprawl” before drawing conclusions, but that aligning smart growth against regional equity is unlikely to spark the “more productive discussion of how to promote healthy, sustainable communities.”200

Every success story of a community that achieves a breakthrough in equity-environment relations provides hope to future communities that just sustainability is practicable. Every story of infighting between environmental justice advocates and traditional environmentalists breeds cynicism. The Richmond County story shows the difficulties and pitfalls of uniting smart and fair growth in counties with the “inverted” scenario of minority communities residing in rural areas beyond a whiter urban core. Yet the Los Angeles and New York stories promise that uniting smart and fair growth is possible. The Central Valley, starting with Tulare County, may present the first major possibility for this type of just sustainability alliance to blossom between environmental and environmental justice groups in rural and urban areas surrounding agricultural cities.

This campaign can prove that smart growth can incorporate fairness in an “inverted” region as much as in the prototypical minority- and low income-centric region. Though this elaboration of the smart and fair growth movement may require even more trust building, it poses the potential for similar breakthroughs for communities, with similar payoffs for equity and the environment.

V. PRACTICAL ELEMENTS OF ORGANIZATIONALLY UNITING SMART AND FAIR GROWTH

A new campaign can take the elements of a unified campaign from Parts I, II, III, and IV and put them to practice in the Central Valley. The main legal and participatory inroads will be general plan updates and city proposals to the LAFCO.201

A. Phase I: Smart and Fair Growth Project

The campaign for smart and fair growth in the Central Valley has already begun, the opening volley being the joint comment letter on the Tulare general

197. Id. at 150.
198. Id.
199. Id. at 151–68.
200. Id. at 168.
201. See supra Parts II, III.
plan amendment.202 The campaign should expand and continue as a centralized project, with a single liaison/organizer. This person would often need to be the only local representative of both a traditional environmental organization focused on climate change and an environmental justice organization. The organizer’s job would be to discover when a general plan of LAFCO process is about to begin in the Central Valley, bring together local smart growth advocates and disadvantaged community members, listen to their concerns, facilitate their composition of a joint message correlating with the smart and fair growth model sketched above, persuade them to work together to push the decision makers to incorporate their smart and fair growth recommendations, and organize that campaign.

Funders and parent organizations can measure the project’s success by the following metrics:

- The number of community members speaking out and writing to county decision makers. This number should be compared to the number of already active members in smart growth groups, the size of disadvantaged communities in the county, and the size of the county as a whole.
- The ratio of disadvantaged community members and smart growth advocates the organizer brings together. The closer to one-to-one, the better.
- The degree to which the two groups, or sets of groups, are speaking to the county with one voice. They should be willing to write a joint comment letter and support each others’ viewpoints at public hearings.
- The degree to which the city, county, or LAFCO adopts aspects of the smart and fair growth model.

Any two similarly situated organizations could take on this project, but the best suited may be CBD and CPRE. CBD is known for its aggressive stance against sprawl that contributes to climate change.203 CRPE is known for applying its values of inclusion to an eclectic set of campaigns challenging locally undesirable land uses in the Central Valley.204 CRPE already has a campaign, complete with PowerPoint and live music, to educate communities on land use and the green economy.205

202. See Letter from Matthew Vespa et al. to Dave Bryant, supra note 24; supra note 59 and accompanying text; discussion supra Parts II, III.

203. See supra Part II.A.2.


CRLA also collaborated on the Tulare joint comment letter, and is another good candidate to fill the function of statewide environmental justice organization for this project. CRLA is a much larger organization than CRPE. It employs 195 people, compared to CRPE’s 20. It spends over $12 million per year, to CRPE’s less than $2 million—with much of the latter figure only possible through running budget deficits. And it has twenty-two offices, many of which are located in the Central Valley, to CRPE’s two, with only one location in the Valley. CRLA’s activities go beyond environmental justice: the group runs workshops on “social security disability, workers compensation, family law, debt and debt collection and more,” uses its many offices to provide direct legal services, and none of its seven “program priorities” is specifically environmental justice-related. While CRLA has taken on a number of environmental justice projects, its approach even in that sphere appears to be more geared toward direct services and legal representation, whereas CRPE, historically and in current practice, appears to follow a more grassroots-activism model in its campaigns. Furthermore, CRLA’s direct-services model may be strongly influenced by the fact that most of its revenue comes from government grants, and those quasi-government grantors, particularly the federal Legal Services Corporation, restrict the uses of those funds to prevent most political advocacy.

CRPE should partner with CBD in this effort, with CRLA included for institutional support. CRLA may know these communities better than anyone, and can guide the organizer with local contacts. But CRPE’s tactical identity, of grassroots activism and education, will be key in complementing CBD’s

206. Letter from Matthew Vespa et al. to Dave Bryant, supra note 24, at 1.
208. Ctr. on Race, Poverty & the Env’t, 2009 Return of Organization Exempt from Income Tax (Form 990) 1 (on file with author).
210. Ctr. on Race, Poverty & the Env’t, supra note 208, at 1.
214. See supra Part II.A. Luke Cole, the group’s founder, strongly believed in this model. Cole, supra note 93.
217. See 42 U.S.C. § 2996f(a)(5)-(6), (b)(4).
“macho law.” CRPE’s small size also means that communication and approval of new organizing methods—major potential hurdles—will likely be less onerous than with CRLA. CRPE has also already shown an appetite for forming organizational networks, booting up the Central California Environmental Justice Network in 1999. And like CRLA, CRPE has a strong history of local efforts in the Central Valley.

CBD’s job would be to train the organizer on how to apply CEQA to climate change and general plan updates, and to be ready as an organization to litigate on these issues should the need arise. CRPE’s job would be to assist the organizer’s grassroots action with staff time when necessary, and, along with CRLA, to connect the organizer to leaders of disadvantaged communities and local organizations that work with these communities. The rest of the considerable effort will fall on the organizer.

Ultimately, the liaison/organizer should spend as much time as possible on the ground organizing, and as little as possible liaising—just enough to keep the parent organizations invested and feeling in control of the organizer’s activities, which is to say, just enough for them to continue to provide whatever staff time and resources are necessary to ensure that the organizer is successful.

The program should run in this first phase for three to five years, and should cover two to four local campaigns. That should be enough work to keep the organizer busy, and should give him or her enough time to score some campaign victories and build trust among a fair number of local groups. Building on that momentum, the project should have enough support among local leaders to move to its next phase.

\[218. \text{ See supra Part III.} \]

\[219. \text{ CBD, by comparison, has an organizational profile that fits between the other two groups: eighty-one employees and expenses of about $6 million (running at an enormous budget surplus). Ctr. for Biological Diversity, 2008 Return of Organization Exempt from Income Tax (Form 990) 1 (on file with author). About twenty-one of those employees are based in California, with approximately none of them stationed in the Central Valley. Meet the Staff, CTR. FOR BIOLOGICAL DIVERSITY, http://biologicaldiversity.org/about/staff/index.html (last visited Dec. 15, 2010).} \]


\[221. \text{ To support the organizer, other facilitative efforts will need to continue. For example, it was not until 2009–10 that CRLA and PolicyLink were able to collect data and populate maps of disadvantaged unincorporated areas in the Central Valley. See, e.g., Disadvantaged Unincorporated Communities, POLICYLINK (2009), http://www.policyleink.org/atf/cf/%7B97C6D565-EE4D-46D5-ECA3BBF35AF0%7D/Disadvantaged%20UCs.pdf; DUCs with Household Incomes Less than 60% of State Household Income, POLICYLINK (2009), http://www.policyleink.org/atf/cf/%7B97C6D565-EE4D-46D5-ECA3BBF35AF0%7D/DUCs%20with%20lower%2060pct%20HHInc.pdf. Mapping and data collection will continue to be prerequisite for effective organization and advocacy.} \]
B. Phase II: Smart and Fair Growth Network

Despite the multi-year timeframe and high workload of the Smart and Fair Growth Project described above, such a model cannot hope to address the challenges facing smart and fair growth in the Central Valley in the longer term, and comes with no opportunity to spread the paradigm to other locales. The purpose of the liaison/organizer is to magnify the strengths of two very different statewide organizations by focusing narrowly on a small set of counties. The organizer will have no time, money, or organizational support to then spread the concept to neighboring counties, regions, and states. The best he or she can hope for is positive regional press coverage to generate discussion in other places facing similar problems, but even then, small smart growth groups and disadvantaged community leaders will not often have the organizational and communication resources to link up and collaborate with each other without additional support.

What is needed in this situation is a nonprofit network. A social issue like the general need for smart and fair growth across a wide region dwarf[s] even the most well-resourced, well-managed nonprofit. And so it is wrongheaded for nonprofit leaders simply to build their organizations. Instead, they must build capacity outside of their organizations. This requires them to focus on their mission, not their organization; on trust, not control; and on being a node, not a hub.222

In practice, this means finding a way to translate one organization’s successes into the successes of new startups without the original organization needing to be directly involved at every stage. First, the idea or organization must be proven to work, and that is one purpose of Phase I. Only once the Smart and Fair Growth Project has successes to share with others—and those successes will take years to accumulate—can the Project expand its focus into a Network.

The likely path to the Smart and Fair Growth Network will come through a recurring convention to bring together local smart growth, environmental justice, and disadvantaged community leaders from around the region to learn how the Project succeeded, meet up with other such leaders from their counties who might see the concept of smart and fair growth from different perspectives, and workshop nascent campaigns for smart and fair growth in their areas. Organizers can teach these local leaders to use traditional and internet-based organizing tools for “working wikily,” a process more geared toward a local group fitting in as a node of the Network and allowing other groups to take part in mission fulfillment, compared to the traditional model of a centrally controlled nonprofit.223


Once the convention is well established, the Network will do what networks do: take on a life of its own to find new solutions, refocus its concept of the social problem, and adapt to challenges as they arise. This fluidity and responsibility sharing allows such “trust-based partnerships [to] consistently achieve more sustainable mission impact with fewer resources than do monolithic organizations that try to do everything by themselves.” The staff-driven focus on communication that was necessary for the Project will become less essential as the new tools of working wikily—“blogs, wikis, tags, texts, and tweets,” etc.—promote a mindset of “greater openness, transparency, decentralized decision making, and collective action.” Organizers are still necessary, but as non-hierarchical “network weavers” whose job it is to “link previously disconnected individuals and groups, surface untapped opportunities for community members to produce better outcomes, and encourage new relationships and collaborations.” This is the point at which the smart and fair growth idea conceptualized in the joint comment letter and in this Comment can hope to sway the politics of state governments. Where previous smart and fair growth efforts have faltered, this one will have the opportunity to prove its strength: a mobilized, motivated, militant base growing from its roots.

**CONCLUSION**

Unincorporated urban areas and colonias in the Central Valley face several disadvantages relative to incorporated areas. Because of their historical poverty and racially divisive electoral frameworks, they are unable to receive basic infrastructure services from city or county governments. These areas can rectify this problem in part by collaborating with smart growth and traditional environmental groups. This allied grassroots effort centered on a new paradigm of smart and fair growth will always challenge its members’ ability to stay united, and will require the intensive effort of a skilled and dedicated organizer. The organizer should facilitate communication and action among a statewide environmental group with expertise in climate change-centric CEQA challenges to general plan updates, a statewide environmental justice group specializing in grassroots activism, and local disadvantaged communities and smart growth citizen groups. After a few years of successes, this project should shift from an inward focus to an outward one, initializing a network of

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225. Scearce et al., *supra* note 223, at 32.
226. Id. at 33.
227. See 2009 Legislative Session, SIERRA CLUB MD. CHAPTER, [http://maryland.sierraclub.org/action/p0157.asp](http://maryland.sierraclub.org/action/p0157.asp) (last visited Dec. 15, 2010) (“HB 1116/SB 878: Smarter and Fairer Growth for Maryland 2009. This bill sought new policies to help communities make smarter decisions about how to grow. For instance, new development patterns, protection for parks and open spaces, and better transportation planning. This bill also did not make it through.”).
organizations to advance the policy and politics of smart and fair growth across the Valley and to an expanding geographical sphere.