Buyout Brings Happy Ending to Environmental Nightmare

by Rena Steinzor

In this day and age of harsh court opinions, derailed rulemakings, angry environmentalists, frustrated regulatees, and demoralized regulators, it’s nice to win one for a change. And win the people of Wagner’s Point certainly did, achieving a government-financed buyout of their homes in time to put their children in new schools this September.

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Clinic Litigates Clean Air Act Issue in D.C. Circuit, Develops Performance Indicators

by Rena Steinzor*

Tipping the scales at 15 participants, more than any previous year, the Environmental Law Clinic for academic year 1999-2000 has assembled a caseload that is as diverse as it is challenging, blending a wide variety of both legal issues and clients.

The Clinic continues its representation of the Cleanup Coalition, which has become the leading umbrella organization for grassroots citizen groups throughout Baltimore. On behalf of the Coalition, the Clinic will continue to put pressure on industry members of the Local Emergency Planning Committee (LEPC) to implement an effective emergency response plan for the City. Last spring, under a special grant from EPA Region III, Clinic director Rena Steinzor and student attorney Kathleen Byrne, organized a field trip to the Kanawha Valley for a delegation of state and local officials and citizen activists in order to gather ideas for improvement of the Baltimore plan. The Kanawha Valley is home to a facility owned by Union Carbide that is identical to the plant in Bhopal, India that caused thousands of deaths during a catastrophic chemical accident in the mid-1980's. Not only did members of the Baltimore delegation learn a great deal about what works and doesn't work in the Kanawha Valley, the trip gave them a badly needed opportunity to talk honestly with each other about the tensions that have undermined their efforts to cooperate at home.

In addition, the Clinic is participating in hotly contested permitting proceedings for two major dischargers into Baltimore Harbor and the Chesapeake Bay: Bethlehem Steel and Westvaco. The Clinic's intervention in these matters was prompted by its discovery last spring that both companies were operating on expired permits that are several years out of date.

The Clinic is working on two Clean Air Act issues, one in litigation and the other that seems to be headed that way. Representing the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) the Clinic helped write an intervenors' brief for the D.C. Circuit Court of Appeals in a case challenging three EPA rules imposing controls on emissions of volatile organic compounds by the paint and consumer products industries. The brief supported the EPA rule in the face of a challenge mounted by one segment of the paint industry. The case will be argued before the same panel that rendered the recent decision in American Trucking Assn., Inc. v. U.S. EPA on November 5.

The Clinic is also counsel to 1000 Friends of Maryland, an advocacy group focused on sprawl issues, with respect to a recent decision by the regional transportation authority to use 1990 data – as opposed to 1996 data – to gauge progress in returning the Baltimore area to compliance with the National Ambient Air Quality Standard for ozone. The Clean Air Act requires regional transportation plans to use the most “current” data, but the Baltimore area group discarded an analysis based on 1996 data when those more accurate figures on vehicle miles traveled showed a large gap between projected and actual progress that will actually be achieved.

The Clinic is also preparing for an oversight hearing on the success of Maryland’s Voluntary Cleanup (or Brownfields) Program, where it will staff Brian Frosh, chairman of the State Senate Environment Subcommittee. Maryland’s program has moved more slowly than expected, with environmentalists, industry, and state regulators offering diametrically opposed diagnoses of what ails it. The hearing will determine whether legislation to reform the program should be offered during the General Assembly’s next session, beginning in January 2000.

Last but not least, the Clinic is developing a legislative proposal to codify performance indicators for Maryland. The Maryland Department of the Environment, acting under a Performance Partnership Agreement with EPA, has developed its own set of indicators for measuring the success of public and private efforts to protect human health and preserve natural resources. Senator Frosh is interested in exploring the role that the legislature should play in defining appropriate indicators and in determining concrete goals for industry, government, and the public.

*A delegation of state and local officials, and citizen activists meet at Kanawha Valley to gather ideas for improving the Baltimore plan.

*Rena Steinzor is Director of the Environmental Law Clinic at the University of Maryland School of Law.
Law schools in five African countries have received a ton of additional books for their law libraries courtesy of Maryland’s Environmental Law Program. The donation was a product of Professor Robert Percival’s trip to Uganda in March when the Environmental Program co-sponsored a workshop on environmental law with the American Bar Association’s African Law Initiative (see article on page 5).

While in Africa, Percival learned that limited law library resources were an important obstacle to law reform efforts there. Upon returning to Maryland, Percival discovered that Maryland professors were discarding thousands of surplus law books in preparation for the move to temporary quarters during construction of the new law school building. Percival contacted Mike Wolf, director of the ABA’s African Law Initiative, who made arrangements to have the books shipped to law schools in five countries.

In April Maryland Environmental Law Society officers Joanna Goger and Stuart Barr packed up 25 boxes of the surplus law books and delivered them to the U.S. State Department shipping desk at Dulles Airport. These books were then shipped to law libraries at Makerere University in Uganda, the University of Nairobi in Kenya, and the Addis Abbaba School of Law in Ethiopia.

Reactions to the first shipment of books were so positive that a second shipment was arranged in June. Students James Benjamin and Michael Lofts packed up another 25 boxes of law books for shipment to law schools in five African countries, including the Ghana School of Law in Ghana and the Asmara School of Law in Eritrea. The books, which consisted of recent editions of leading casebooks in a wide variety of areas of law, are now in the law libraries of the African universities and one country’s Ministry of Justice library.
Environmental problems have helped push environmental law to the forefront of law reform efforts in Africa. To assist these efforts, Maryland’s Environmental Law Program sponsored a workshop in Kampala, Uganda in March in cooperation with the American Bar Association’s African Law Initiative and the law faculty of Makerere University. The focus of the workshop was on “Environmental Accountability.”

Participants in the workshop included a diverse group of law professors, government officials, private practitioners, and leaders of environmental organizations. The workshop focused on how to use law to hold parties accountable for the environmental consequences of their actions. As Makerere University Assistant Dean Lilian Tibatemwa-Ekirikubinza explained in her opening address to the workshop, its purpose was to ensure that the right to a clean environment “does not remain merely words on paper.”

Professor Robert Percival, Director of Maryland’s Environmental Law Program, led several workshop sessions, which focused on environmental goals and values, institutional mechanisms for promoting environmental accountability, human rights and the environment, enforcement of environmental law, the roles of citizens and non-governmental organizations in the development and implementation of policy, and environmental education. Maryland alum Karin Krchnak (Class of 1993), the Director of the ABA/CEELI Environmental Law Program, also led some workshop sessions and shared her experiences developing environmental advocacy centers in central and eastern Europe.

The workshop featured spirited debate and discussion, particularly between government officials and representatives of NGOs, including Environmental Alert, Greenwatch, and the National Association of Professional Environmentalists (NAPE). A mock trial exercise was conducted using a criminal enforcement case based on an actual hazardous waste prosecution in the United States. Conference participants played the roles of prosecution and defense lawyers, while Uganda law professors presided as the judicial panel.

Professor Percival was particularly impressed with the high level of public concern over environmental issues in Uganda, as indicated by the large turnout when he was a guest speaker at a meeting of NAPE’s membership. The U.S. Embassy in Kampala hosted a dinner for all workshop participants, who forged some important ties that have laid the groundwork for future collaborative efforts.
SOLUTIONS FOR SPRAWL EXAMINED IN NEW BOOK

by Jutka Terris*

What is the issue that gathered 240 referendums across the country in the 1998 elections and is highlighted as a top policy priority by the Vice President? Hint: it is not a partisan issue. Governors of widely different political persuasions, such as Christine Todd Whitman (R-NJ), Jesse Ventura (Reform-MN), and Maryland’s own Parris Glendening (D), along with a multitude of local officials across the political spectrum, are in agreement over this one. The issue is urban/suburban sprawl.

As anyone who has recently driven around our country’s newer suburbs - and that certainly includes the vast majority of us - knows only too well, sprawl development is pervasive. The typical American metropolitan region is now being paved over at rates four to thirteen times faster than population growth, frequently in senseless, uncoordinated patterns of randomly placed strip malls, ever-widening highways, and isolated subdivisions. The landscape around Phoenix, for example, is being paved over at a rate of 1.2 acres per hour. Given that automobile dependence has never been greater, it is no surprise that traffic congestion is at an all-time high. No wonder also that politicians, their constituents, and a range of interest groups are looking for answers.

At the Natural Resources Defense Council (NRDC), we see urban sprawl as a root cause of several critical environmental problems: loss of open space, including farmland, critical natural habitats for wildlife, and scenic and historic resources; air pollution and greenhouse gas emissions from increased driving; and water pollution, as sprawl-related pavement brings increased volumes of contaminated runoff to more and more watersheds. As a result, developing the smart growth alternatives to sprawl is now one of our organization’s highest institutional priorities.

In partnership with the Surface Transportation Policy Project, NRDC spent over two years researching and thoroughly documenting the facts and trends associated with sprawl, its impacts, and solutions. The result is our new book, Once There Were Greenfields: How Urban Sprawl Is Undermining America’s Environment, Economy, and Social Fabric (New York: Natural Resources Defense Council, 1999), co-authored by NRDC’s Kaid Benfield and Matt Raimi and STPP’s Donald Chen. The book is intended to provide a comprehensive overview on these issues to citizens and professionals alike, and it is supported by photographs and other illustrations, an extensive bibliography, and some 800 citations to the literature. While thorough, it is written in an accessible style, bridging the gap between academic works that are obscure and popular books that are undocumented.

In addition to covering the environmental impacts of sprawl, Once There Were Greenfields contains extensive chapters on its social and economic ramifications and concludes with a discussion of the smart growth solutions. One reviewer called the book “the most exhaustive compilation of research and analysis to date on the nation’s sprawl problem.”

Once There Were Greenfields may be purchased on the Internet at Amazon.com and barnesandnoble.com. It also can be ordered by mail from NRDC’s publications department (please call 212-727-4486 for details). The cost is $20.

In addition to the book, NRDC is undertaking a range of projects to support smart growth efforts. In our Washington office, we are working with STPP on a “Smart Growth Guidebook” to help stakeholders analyze development options in their communities. We also are measuring the environmental

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ENVIRONMENTAL SYMPOSIUM FOCUSES ON "SMART GROWTH"

On April 23, the Environmental Law program hosted its annual Ward, Kershaw & Minton Environmental Symposium. This year’s topic was “Smart Growth: The Path to Liveable Communities.” A large audience heard presentations from three panels of speakers.

The first panel examined legislative and regulatory policy initiatives to promote smart growth. Stephanie Vance, staff director for Congressman Earl Blumenauer (D-Oregon), reported on the Clinton Administration’s “liveable communities initiative” and legislative proposals to promote smart growth that are being considered by Congress. Shelly Wasserman, Maryland assistant attorney general who is counsel for the Maryland Office of Planning, discussed Maryland’s smart growth legislation. Phil Schenck, the Town Manager of Avon, Connecticut reported on local efforts to promote smarter growth.

The second panel discussed transportation, environment and development issues. Klaus Philipsen, an architect with Arch Plan, Inc., gave a slide presentation that provided dramatic illustrations of how architectural design considerations influence growth patterns. Christopher Kurz, a developer who is President of Linden Associates, described how developers can work with planners to promote smart growth. Don Gray, director of the Sustainable Communities Program at the Environmental and Energy Study Group, presented a detailed history of efforts to incorporate smart growth considerations into environmental policy.

The third group of speakers considered how counties and municipalities are working to implement smart growth policies. Speakers included Merle Berke-Schlessel, former executive director of the Liveable Cities Initiative in New Haven, Connecticut, and John Woolums, director of the Maryland Association of Counties. (An article by Woolums discussing Maryland’s experience with smart growth policies appears on page 8 of this newsletter).

Videotapes of the 1999 Symposium are available for purchase for $35.00. To obtain a copy send a check or money order payable to “Thurgood Marshall Library” to: Thurgood Marshall Law Library, 515 W. Lombard Street, Baltimore, Maryland 21201.

The Environmental Program wishes to express its deep appreciation to Maureen O’Doherty (Class of 1993) for organizing and coordinating the symposium.
Maryland's "Smart Growth" Initiative
by John Woolums*

“Smart Growth” can be succinctly defined as residential, commercial, and industrial development that maximizes the fiscal, environmental, and community revitalization benefits and efficiencies of utilizing and reinvesting in existing infrastructure. Maryland’s Smart Growth Act can be summarized as prohibiting development of new state funded water, sewer and transportation infrastructure outside densely populated regions, focusing state spending and encouraging development in densely populated regions. Smart Growth in Maryland continues to evolve as advocates seek the Governor’s and General Assembly’s support for enhancements in the areas of zoning and building code impediments to high-density residential and mixed-use development. This article provides a brief overview of the historical roots of the key concepts underlying Smart Growth and the respective roles of the stakeholders involved in crafting compromise legislation.

Maryland’s Zoning and Planning and State Finance and Procurement Articles reflect the two major growth management initiatives of the past decade. The political dynamic of developing and enacting these bills brings a very diverse group of stakeholders to the table, including: environmentalists, developers, farmers, state and local planners, architects, private and public land use attorneys, state, county, and municipal elected officials, and others. The results have been lauded by observers from other states and national public policy organizations. Maryland’s own Director of the Office of Planning, Ron Kreitner, concludes that “with enactment of the Smart Growth and Neighborhood Conservation – “Smart Growth” Areas legislation in 1997, Maryland is uniquely equipped to address development issues and opportunities.”

Maryland’s county governments, the primary planning and zoning decision-makers, receive the brunt of criticism from the array of stakeholders listed above concerning the current state of development. Developers, bankers, and private land use attorneys advocate for streamlined permit review and approval processes in the interest of predictability, vested rights providing certainty, and flexibility to reduce unnecessary bureaucratic hurdles. Environmentalists advocate stronger protections of water, air, and land resources. Local governments advocate for state authorization to employ the planning and zoning tools needed to address these competing demands.

The Smart Growth Act of 1997 built on the statutory scheme established by the 1983 and 1987 Chesapeake Bay Agreements, the 1984 Critical Areas Program, the 1992 Forest Conservation Act, and the 1992 Economic Growth, Resource Protection, and Planning Act. Many of the legislators and interest groups engaged in the 1997 legislative session were veterans of these earlier battles. Through these battles, counties have enjoyed considerable success advocating that planning and zoning decisions must be made by locally elected and directly accountable officials. While this clearly results in uneven advancement of certain stakeholder interests, the result reflects the General Assembly’s recognition that diversity in jurisdictional practice flows from the diversity in geography, demographics, economics, and electoral politics of each of Maryland’s 24 counties, Baltimore City, and one hundred and fifty-seven municipalities.

The State has also successfully advanced its agenda and role in guiding local planning decisions through passage of the 1992 Growth Act, and more recent “smart growth” initiatives. The 1992 Act established a policy framework of seven “visions” to be incorporated by local planning commissions into the counties’ comprehensive plan. The visions, or required plan elements, are listed in § 3.06, Article 66B, Annotated Code of Maryland: “(1) Development is concentrated in suitable areas; (2) Sensitive areas are protected; (3) In rural areas, growth is directed to existing population centers and resource areas are protected; (4) Stewardship of the Chesapeake Bay and the land is a universal ethic; (5) Conservation of resources, including a reduction in resource consumption, is practiced; (6) To assure the achievement of paragraphs (1) through (5) of this subsection, economic growth is encouraged and regulatory mechanisms are streamlined; and (7) Funding mechanisms are addressed to achieve the visions.” The 1992 Growth Act
further required that local jurisdictions revise their comprehensive plans and adopt zoning, planned development, subdivision, and other land use ordinances and regulations by July 1, 1997 and at subsequent 6-year intervals.

During the 1997 legislative debate concerning the Smart Growth Areas Act, little attention was paid to the language or implementation of the earlier Economic Growth, Resource Protection, and Planning Act of 1992. However, it is useful to describe the 1997 Act as refining the State commitment to achieving Visions (1), (3), and (7). The Smart Growth Areas Act is founded on the premise that the failure to direct growth and infrastructure funding to existing population centers has resulted in development not concentrated in suitable areas. This “sprawl” poses such an inefficient use of infrastructure dollars that a “moratorium” on additional state funded roads and water services should be coupled with higher density requirements for new development.

The Smart Growth Areas Act is intended to minimize governmental, both state and local, as well as private developer, perpetuation of “sprawl” while facilitating more concentrated development. Throughout the 1997 legislative debate, county officials questioned the premise that county policies resulted in sprawl relative to market forces and personal quality-of-life preferences. Counties also contested the imposition of new planning mandates. County planners, particularly challenged and burdened by planning mandates included in the 1992 Growth Act, were striving to comply with the 1992 Act’s broad planning reforms and the July 1, 1997 deadline even as the Smart Growth Areas Act was being introduced in January of 1997. Stakeholders were called to the table to engage in another growth management debate to craft a compromise to protect existing undeveloped open space, and limit state infrastructure funding to areas where new development satisfied higher density requirements and occurred within more stringent growth area designation guidelines.

In this two-pronged “Smart Growth and Neighborhood Conservation” initiative, the Glendening Administration advanced both the Smart Growth Areas Act and the Rural Legacy Act. The Rural Legacy Program provides funding to local governments and land trusts to purchase property to preserve and create wetlands, greenbelts, and habitats.

The Smart Growth Areas Act prohibits State funding for certain transportation, economic development, housing, community development, environmental, and procurement projects that are not located within Priority Funding Areas (PFAs). The legislative debate naturally focused on identifying state “growth related” programs, establishing the criteria to allow local PFA designation, and clarifying the respective roles of the local and state development and transportation planning, PFA mapping, and county and municipal coordination.

PFAs, as defined in the Act, include: municipal corporations, designated neighborhoods, enterprise zones, designated heritage areas, areas located between Interstate 495 and the District of Columbia, areas located between Interstate 695 and Baltimore City, and locally designated PFAs. Local PFA designation was the focus of much of the anxiety and negotiation concerning the potential impact of this bill on the local planning and economic development processes. Because “sprawl” is generally defined by the location and patterns of industrial, commercial and residential activities and because these locations are determined by local zoning practices, the Smart Growth Act necessarily focused on constricting local prerogative to determine future growth patterns.

As introduced, the legislation authorized State review and approval of these locally identified growth areas. However, the bill as passed establishes a process for the local certification of priority funding areas that must be consistent with the local comprehensive plan and the criteria set forth in the bill. These are locally controlled processes; locally drawn maps based on local analysis of growth trends and local elected official policies. The Act as passed also preserves the Administration’s intent to place density requirements and public water and sewer mandates on new development seeking state funding. The Act thus preserves significant local autonomy to identify desired growth areas while maximizing state growth management leverage by limiting state funding of major infrastructure projects to these areas.

This compromise was accepted by the rural delegations of Western, Southern and Eastern Shore state Delegates and
Senators and the Maryland Association of Counties, representing all twenty-four counties. This compromise also generated a flurry of press that the bill had been so watered down as to be meaningless. Counties certainly did not, and do not, hold this view. The Act poses a monumental task to preserve local autonomy and control over drawing the growth boundaries that ultimately impact road, school, water and sewer, and other state-funded projects and the future economic growth and vitality of one’s county.

Notwithstanding the breadth and scope of the Smart Growth Act, the Governor issued a January 1998 Executive Order significantly expanding the State’s commitment to utilizing its power of the purse to effect denser development. The Executive Order has two thrusts. First, to emphasize to State Agencies that the Governor is serious about smart growth, desiring to limit significantly more state funding than outlined in the Act to existing developed areas; second, to supplement the Act’s funding criteria. State agencies must now consider not only whether a project is in a PFA but also whether it: supports existing communities, promotes the use of mass transit, is consistent with any adjacent jurisdiction’s smart growth plans, and whether funding reduces or promotes sprawl.

The reinvention of Smart Growth under the Executive Order raised considerable concerns about the efficacy of the negotiated compromise legislation. However, the power of the purse resides with the Governor and his commitment to advancing smart growth principles is clearly a core value of his Administration. Recognizing this, counties continue to implement growth management according to the spirit and letter of the Smart Growth Areas Act, raising implementation concerns through ongoing State Growth Commission and other official channels.

In closing, as you read this, new legislation is being developed by a Governor’s task force to establish Smart Growth oriented building codes and zoning practices. County officials, planners, and building codes officials are striving yet again to advance sound growth management within reasonable, locally managed guidelines.

*John Woolums is a '95 graduate of the University of Maryland School of Law and Associate Director, Maryland Association of Counties, Inc.

SOLUTIONS TO SPRAWL

The performance of smart growth neighborhood design, developing a book of smart growth models around the country, and working with the Congress and federal administrative agencies on policies that support state and local smart-growth initiatives.

Meanwhile, our San Francisco office has developed a creative market tool that can make it financially advantageous for homebuyers to purchase residences in smart-growth locations. The so-called “location-efficient mortgage” recognizes that urban and suburban residents in pedestrian- and transit-oriented neighborhoods save money on transportation costs, and thus can set aside a higher percentage of their income for mortgage payments than their counterparts in more automobile-dependent locations. NRDC is partnering with the Center for Neighborhood Technology, STPP, and the national mortgage institution Fannie Mae to implement the mortgage in several test-market communities around the country.

In addition, our Energy Program’s “green buildings” working group, based in our New York office, has expanded its focus beyond environmentally friendly building techniques to include environmentally friendly building locations. However energy-efficient a house or office might be, its overall energy impact may still be harmful, if it is only accessible by driving. The team is developing a system of tax credits whereby state governments can reward development decisions that embrace both green-building and green-location principles.

We at NRDC are part of a growing number of people and institutions who believe that creative solutions can be found and that “smart growth” is not just a trendy term, but an achievable goal. We hope to demonstrate that it is possible to grow and prosper, without needlessly consuming land, polluting our air and water, wasting money, and leaving the less fortunate behind. For more information, please contact Jutka Terris at jterris@nrdc.org or 202-289-6868.


*Jutka Terris is an urban planner in NRDC’s Washington office.
The Chicago Water Tower, completed in 1869, was one of the few buildings that survived the Great Chicago Fire of 1871. It now serves as a visitor's center.

One of the most effective methods for preventing suburban sprawl is through more intensive use of buildings and sites already in place within a community. For this reason, historic preservation represents an important tool in controlling sprawl.

Unlike many new developments, older towns and communities were created with the human—not the automobile—in mind. They provide pedestrian friendly tree-lined streets and sidewalks. In addition, the compact, mixed-use nature of many historic communities allows persons to live near where they work, shop, and play, thereby reducing dependence on the automobile. Further, older communities often provide greater diversity in housing options. Thus, they can offer affordable housing.

Historic preservation also helps preserve undeveloped land. Reinvesting in 20,000 square feet of previously developed property in an urban area means that there is no need to destroy 20,000 square feet of undeveloped property in outlying areas. Moreover, redeveloping the urban property maximizes the use of the existing infrastructure. Land uses are usually less wasteful in historic districts, as buildings run up to the sidewalk and are not located on top of huge parking lots hundreds of feet away from the street. Reusing historic buildings even saves landfill space—debris from the demolition of buildings accounts for over half of the available landfill space in the United States.

The reuse and recycling of historic buildings also conserves energy and resources in several ways. First, structures consist of energy that has already been expended, materials that have already been mined or harvested, and components that have already been manufactured. Second, many historic buildings have longer life expectancies than newer ones, meaning that less repairs are needed in the long run. Third, reinvesting in existing towns and cities is cheaper than paying for the subsidies of sprawl. For example, the cost of extending public services to outlying areas may be avoided when a historic building or district is redeveloped because the infrastructure is already in place. Finally, redevelopment reinforces previous public and private investments.

There are many tools available today that can be used to encourage historic preservation and, therefore, can help combat sprawl forms of development. Tax incentives are one such tool. By enticing developers, business owners and homeowners to invest in historic properties, cities and towns where these properties are located will enjoy an increase in tax revenues. Moreover, tax incentives can help reverse the bias toward suburban development by giving historic areas a competitive edge against development in outlying areas.

Under the federal government's historic preservation tax incentives program for income-producing historic properties, the federal government offers a 20-percent rehabilitation tax credit that can be used to offset federal income taxes. The program also offers a 10-percent rehabilitation tax credit for non-historic properties that were built before 1936. Numerous states also offer tax incentive programs. Like their federal counterpart, state tax incentives promote private investment in historic properties, neighborhoods, and commercial districts. Unlike the federal program, however, many of the state programs offer additional incentives for owner-occupied buildings.

Because tax credits can only be used to offset federal or state income taxes, they often do not work well for persons with modest or moderate incomes. Consequently, some states and cities offer local property tax abatements in lieu of or in addition to tax credits. Property tax abatements can be an effective preservation incentive in areas that have high property taxes and low income taxes. Because a property's value increases when it is rehabilitated, the owner is subject to a higher property tax. Consequently, the owner may be more inclined to let the property go into disrepair in order to avoid paying a higher property tax. Under a historic tax abatement program, however, the rehabilitated property enjoys an increased value while the property owner benefits from the tax abatement. In Baltimore, historic properties may be eligible for either a Maryland state tax credit or a Baltimore City property tax credit.
Historic Bolton Hill, a residential area in Baltimore City.

The use of historic rehabilitation mortgage credit certificates is another tool that can be used to promote historic rehabilitation. This is a new program that will go into effect in Maryland in October 1999. Under this program, persons who cannot use a tax credit would be able to convert the face amount of the tax credit into a mortgage credit certificate. The buyer of the property would transfer the certificate to its lender, who would use the certificate to reduce its own state income tax or franchise tax liability by the face amount of the certificate. In return, the buyer could either reduce the rate of its mortgage interest or reduce the purchase price of the property by the face amount of the certificate. Thus, persons with lower and middle incomes would have a better opportunity to purchase and rehabilitate historic homes.

In addition, the mortgage credit certificate program would allow developers to pass the credit to homebuyers at settlement. Because historic rehabilitation can be a difficult task for the average homeowner, the most efficient way to rehabilitate historic properties is through developers. Most tax incentives, however, cannot be used by developers because the incentives often require the person who rehabilitates the building to also own the building for a certain number of years. Therefore, by allowing developers to pass the credit to the homebuyer, developers are given an incentive to rehabilitate large stocks of inner-city housing that could then be offered for sale to both low income and wealthy buyers.

Another effective tax incentive that can be used to encourage historic rehabilitation is the split-rate property tax. The split-rate property tax takes the value of a piece of property and divides it into two parts—the value of the land and the value of any buildings or improvements on the land. The value of the land is taxed at a higher rate, whereas the value of the building and improvements is taxed at a lower rate. This scheme creates an incentive for property owners to rehabilitate and maintain their property. It also promotes vertical, rather than horizontal, development. Moreover, this tax system benefits all properties, not just historic ones.

There are many barriers that, although not insurmountable, stand in the way of successful historic preservation and redevelopment. Because developers have been successful building strip malls and single-family housing in outlying areas, it is difficult to persuade them to do otherwise. Uncertain market demands, conflicting city policies and local laws, project marketability, and lack of experience with historic preservation and mixed-use projects also make developers reluctant to develop new projects or rehabilitate historic properties in previously developed areas. In addition, despite changing demographics, many Americans still want bigger homes on bigger lots, and historic houses are usually smaller than what the market wants. Moreover, the social problems that cities face, such as high crime rates and weak education programs, deter persons from moving into urban areas. Further, preservationists must ensure that their efforts do not result in the gentrification of existing communities.

Despite these obstacles, historic preservation can work in many communities as a means to prevent sprawl, particularly when used in tandem with other smart growth initiatives. States, local governments, and municipalities, therefore, must not overlook the impact that historic preservation can have on future growth and they should implement historic preservation programs in their planning efforts.

For further information consult Rachel L. Schowalter, Reuse, Restore, Recycle: Historic Preservation as an Alternative to Sprawl, 29 Envtl. L. Rep. (Envtl. L. Inst.) 10418 (1999) from which portions of this article were derived. Copyright 1999 by the Environmental Law Institute.

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An Extern's Perspective
The Justice Department's Environment and Natural Resources Division, Land Acquisition Section: The Authority on Land and Litigation
by Joanna Goger*

My externship with the Land Acquisition Section was an invaluable experience for many reasons. First, I gained exposure to both transactional and trial work on a variety of projects and cases from all over the country. Second, I established strong working relationships with individual attorneys while also participating in events and activities with large groups of interns. Finally, I learned a great deal, not only about condemnation and land acquisition, but also about litigation and the work of a Department of Justice attorney.

The Land Acquisition Section - What Does it Do?

At the request of agencies of the United States Government, the Land Acquisition Section acquires land for public use through condemnation proceedings brought in the federal district court where the land is situated. The land is acquired through the United States' power of eminent domain, and the main issue at trial is the amount of just compensation due to the landowner for the land or interest in land to be acquired, as required by the Fifth Amendment of the United States Constitution. Before this can be accomplished, however, there are often questions as to exactly what interest is being acquired and who holds title to the land or interest to be acquired by the United States. Much of my work was devoted to these issues.

A Breadth of Projects and Experiences

Over the course of the summer, I had the opportunity to participate in the process of land acquisition at both the transactional and trial level. For example, I attended a meeting with high-level federal officials and leaders of environmental groups about a massive federal project to restore and protect the Florida Everglades. As part of the effort to expand Everglades National Park, I prepared several court documents to be filed in connection with upcoming condemnation proceedings in the U.S. district courts in Florida.

My projects involved the acquisition of lands all over the United States for a wide variety of public purposes. In addition to Florida, I worked on projects involving acquisitions in Maryland, Pennsylvania, New York, New Mexico, and Oklahoma. The purpose of these acquisitions ranged from the construction of new federal prison facilities to the protection of the health and safety of people living on land contaminated with...
Joanna Goger joins fellow Justice Department interns on a canoe trip down the Patuxent River.

hazardous waste. In connection with these projects, I completed extensive research and writing, analyzed maps, reviewed title evidence, and assisted attorneys in preparing for trial. Working on these projects provided me with the breadth of experience I was looking for in an externship.

From One-on-One Interaction with Attorneys to Group Events and Activities

Although I was one of only two law students working in the Land Acquisition Section, I was one of over 70 interns working for the Environment and Natural Resources Division. This was the perfect scenario because it enabled me to reap the benefits of one-on-one interaction with the attorneys, while also allowing me to partake in events planned on a larger scale for all of the interns.

At the Land Acquisition Section level, I worked closely with a supervising attorney on each assignment I was given, which for most of the summer involved working directly with the Chief and Assistant Chiefs of the Section. The attorneys provided prompt feedback, both verbally and through a formal system of written review and evaluation. The attorneys, many of whom had over 20 years of experience in land acquisition, had an incredible knowledge of the legal principles governing condemnation. They took every opportunity to answer my questions and to educate me on these concepts.

At the Environment and Natural Resources Division level, numerous events were planned which provided a fun as well as informative atmosphere. The Division sponsored a brown-bag lunch series, providing interns with information on the work of each section of the Division, a Supreme Court tour, and tours of area museums. We were kept abreast of upcoming Congressional committee meetings of interest and trials in the neighboring federal courts where Department of Justice attorneys could be seen in action. The highlight, however, was a canoe trip down the Patuxent River led by the Chesapeake Bay Foundation.

At the Department of Justice level, a briefing was held on the Attorney General’s Honors Program, the primary vehicle for recruiting attorneys to work at the Department of Justice upon graduation from law school. Interns were also given the chance to meet Attorney General Janet Reno at a reception. I missed this opportunity, as I could not pass up the chance to go out in the field that day with two attorneys to meet with an expert witness. This blend of opportunities provided a summer externship experience that was well-structured, educational, and enjoyable.

A True Learning Experience

Through this externship experience, I gained knowledge of a specific area of property law that is only brushed upon in law school. Furthermore, I learned how land acquisition can further the goal of environmental protection through the preservation of the nation’s natural resources, such as the Florida Everglades, national forests in Oregon, and the Appalachian Trail. I was also exposed to the many aspects of litigating on behalf of the United States. In my opinion, there is no better place than the Environment and Natural Resources Division of the Department of Justice to gain both exposure to litigation on behalf of the United States and experience in environmental and natural resources law. With the environmental community shifting its focus to the land and how we can better use, preserve and protect it, the experience I gained through this externship will serve me well as I pursue a career in environmental law. An externship, whether with the Department of Justice or elsewhere, can be a valuable addition to the total law school experience.

* Joanna Goger is a third year law student and a board member of the Maryland Environmental Law Society. After graduation next spring, Joanna will be serving as a law clerk for United States District Judge Frederic N. Smalkin.
ALUMNI UPDATE

1976

Jane Barrett is a partner with Dyer Ellis & Joseph specializing in white collar crimes, including environmental crimes. Jane serves as co-chair of the ABA Section of Environmental, Energy and Natural Resources Environmental Crimes and Enforcement Committee, 1999-2000. In addition, Jane is an adjunct professor at the law school teaching environmental enforcement.

1989

Pamela Wexler is an associate with The Cadmus Group, an energy and environmental consulting firm in Rosslyn, VA. In addition, Pamela teaches Global Environmental Change at College Park and is co-chairing the American Bar Association's Committee on Climate Change and Sustainable Development. An October wedding is planned for Pamela.

1990

Leslie Allen is an attorney specializing in managed care for Blue Cross in Philadelphia.

Ann Burke Lloyd is Director of Associate Development at Piper & Marbury, L.L.P. in Baltimore.

1991

Stephanie P. Brown is Branch Chief, U.S. EPA, Office of Enforcement & Compliance Assurance, Office of Site Remediation Enforcement in Washington, DC.

David Fischer was promoted to Associate General Counsel for the Chlorine Chemistry Council, a business council of the Chemical Manufacturers Association.

Cynthia Golomb is a sole practitioner in Columbia, MD.

John Hopkins has joined the corporate legal department of Camp Dresser & McKee, Inc. in Cambridge, MA. CDM is a global consulting, engineering, construction and operations firm. John serves as pro bono counsel for the Taunton River Watershed Alliance and the Massachusetts chapter of the American Association of Women Dentists. John is married with 3 children, all girls.

1992

Margaret Curtin Begley is Senior Counsel with Pioneer Group, Inc., in Boston. Margaret’s position deals with foreign projects, such as gold mines in Ghana, timber in the Russian Far East and real estate in Central Europe. She is expecting a baby in October.

Christopher Hamaty is an associate with Morgan & Finnegan in Washington, DC.

Shek Jain is a partner with Jones, Jain, L.L.P. in Washington, DC.

Tom Lavelle is Senior Counsel for Environmental Affairs, ADI Technology Corporation in Arlington, VA.

1993

Ali Alavi is Director, Environment, Health & Safety Performance, Horsehead Industries, Inc. in Pittsburgh, PA.

Wib Chesser is an Senior Associate with Jones, Jain, L.L.P. in Washington, DC.

Lisa Satterfield Daly is Assistant Legislative Counsel to the United States House of Representatives. Lisa was recently married and resides in Olney, MD.

Lorraine Ebert is an Administrative Law Judge and Deputy Director of Quality Assurance at the Maryland Office of Administrative Hearings in Hunt Valley, MD.

Catherine Faint is a trademark attorney for the U.S. Patent and Trademark Office in Washington, DC.

Maureen O'Doherty is an environmental attorney in Hamden, CT.

Mary Raivel is on the environmental litigation team at the Navy Office of General Counsel in Washington, DC.

Ruth Waxter is an associate for Matthew B. Ruble and is married to Scott Waxter, ‘93. Ruthie & Scott have two children, Grant and Quinn.

Scott Waxter is an associate with Weinberg & Weinberg in Frederick, MD.

1994

Lori Bruun is an Adjudications Officer and Congressional Liaison for INS, Baltimore District Office. Her first child, Emily Catherine, was born in January, 1999.

Lauren Calia is an associate with Israelson, Salsbury, Clements & Bekman, L.L.C. in Baltimore.

Carrie Capuco has her own environmental consulting firm, Capuco Consulting Services, Inc., in Annapolis, MD.

Kathryn Delahanty is an associate with Gorman & Williams in Baltimore.

Jeanne Grasso is an attorney with Dyer Ellis and Joseph in Washington, DC.

Steven J. Groseclose is an associate with Piper & Marbury in Washington, DC. He is married to Jael Polnac, ‘94.
Jennifer Miller Masuret has taken a year leave of absence from her position as associate with McDermott, O’Neill & Associates in Boston, to care for her new baby, Lucy, born in July, 1999.

Dave McRae is an associate with Griffin, Griffin, Tarby & Murphy, L.L.P. in Washington, DC. He is the proud father of twins, Marci Hope and Tess Hayley, born in January 1999.

Shannon Miller is a sole practitioner in Gainesville, Florida and the mother of a daughter, Alex.

Lauri McEntire Moylan is an associate with Turnbull & Sanders in Towson, MD. Lauri has one son, Oscar, and expecting a second child in April, 2000.

Kathleen (KC) Murphy is an Assistant State’s Attorney, Baltimore City. KC recently became engaged.

Darshana Patel is a M.C.P. student at Michigan Institute of Technology.

Jael Polnac is Director, Professional Program and Books Editor, Environmental Law Institute. Jael is married to Steve Groseclose, ‘94.

1995

Lauren Buehler has moved from the U.S. EPA, Office of General Counsel, in Washington, DC to Region 8 in Denver, CO.

Jake Caldwell is Trade & Environment Program Manager at the National Wildlife Federation in Washington, DC.

Tamara Catchpole is an attorney with Legal Aid’s Nursing Home and Assisted Living Program.

Chris Dollase is an associate with Whiteford, Taylor & Preston, L.L.P. in Baltimore. In February, he became the father to a baby girl.

Fred Schoenbrodt is serving a three-year tour with the Army JAG Corps in Hawaii. He married last summer.

Jean-Cyril Walker is Environmental Counsel for Parsons Engineering Science, Inc.

John Woolums is Associate Director with Maryland Association of Counties (MACo). John was recently a panelist at our Ward, Kershaw & Minton Smart Growth Symposium.

1996

Theresa Bouchyard is an Associate with the Law Office of Patrick P. Spicer, P.A. in Bel Air, MD.

Jennifer Bragg Jones is an Associate Chief for Environment, Food & Drug Administration.

Michael Carlson is an associate with Corbin, Schaffer & Aviles in Severna Park, MD. He is the proud dad of Huber H. Carlson, born May, 1999.

Andrew Saindon is an attorney with the District of Columbia Department of Consumer and Regulatory Affairs.

Chris Van de Verg is General Counsel for Core Communications, Inc. in Annapolis, MD.

1997

Carrie Bland is an associate with Kincaid, Cohen & Swanson, P.C., in Baltimore, MD.

Pat Deem is an associate with Verner, Liipfert, Bernhard, McPherson & Hand in Washington, DC.

Mike Gieryc is Assistant Regional Counsel with U.S. EPA, Region 7, Kansas City, KS.

Jennifer Lewis is an attorney with Spectra, Inc. in Baltimore.

Jared Littmann is an associate with Armstrong, Donohue, Ceppos & Vaughan in Rockville, MD.

Robin Schoeps is an attorney with Bergeson & Campbell, P.C. in Washington, DC. In December, she will be receiving her L.L.M. in Environmental Law from George Washington University Law School.

Rachel Schowalter is an Associate Editor at the Environmental Law Institute in Washington, DC.

Imoni Washington is an attorney for National Association of Public Interest Law in Washington, DC.

Cheryle Wilson is an environmental attorney/consultant for Science Applications International Corporation in Gaithersburg, MD. In December, Cheryle had a beautiful baby girl named Caroline.

1998

Michele LeFaivre is Staff Counsel with the National Association of Home Builders. Michele practices constitutional, land use and environmental law.

Joseph Pellitier is an attorney with the Office of General Counsel, U.S. Dept. of HUD, Fair Housing Division.

David Thomas is an associate with Preston, Gates, Ellis & Rouveloas Meeds, L.L.P. in Washington, DC.

Anne Ward has moved to Denver Colorado and is practicing elder law.

Mary Ledwell Weidenbach is an associate with Riemer & Braunstein in Boston, MA.
TWENTY-TWO STUDENTS GRADUATE WITH CONCENTRATIONS IN ENVIRONMENTAL LAW

Twenty-two members of the class of 1999 received certificates of concentration in Environmental Law at graduation in May, 1999. This is the third group of graduates to qualify for the concentration, which was established by the Faculty Council in 1996.

(from left to right) Stu Barr, Chuck Dodge, Apple Chapman, Pete Johnson, Katy Byrne, Mike Woodruff, Kim Dodd, John Shoaff, Charlie Wagner, Lori Schectel, Adrienne Beck Taylor, John Sheer
(not shown) Nicole Bowles, Mila Leonard, Eric Manas, Jenny No, Yvette Pena, Bill Piermattei, Alison Rosso, Dan Schreier, Paul Versace, Kelly Walker

1999

Stuart Barr is a law clerk for Judge Albert J. Matricciani, Jr., Baltimore City Circuit Court.

Nicole Bowles is a full-time Environmental Planning graduate student at the University of Maryland School of Architecture.

Jennifer Brune is a law clerk for Judge Eldridge with the Maryland Court of Appeals.

Katy Byrne is a law clerk for Judge James Lombardi, 7th Circuit, Prince Georges County.

Apple Chapman is an attorney advisor with the U.S. EPA, Office of General Counsel in Washington, D.C.

Kim Dodd is a law clerk for Chief Judge Loren A. Smith, United States Court of Federal Claims, Washington, D.C.

Tom Fort is an attorney with the U.S. Navy, Office of General Counsel, Naval Air Systems Command.

Pete Johnson is a law clerk for Chief Judge Robert Bell, Maryland Court of Appeals. At completion of his clerkship he will become an associate with Dyer, Ellis & Joseph in Washington, D.C., practicing environmental law.

Mila Leonard is a law clerk for Judge Richard D. Savell, 4th Judicial District in Fairbanks, Alaska.

William Piermattei is a law clerk for Judge Paul A. McGuckian, Montgomery County Circuit Court.

Alison Rosso is Legislative Assistant with Congressman John LaFalce in Washington, D.C.

Lori Schectel is a staff attorney for U.S. EPA, Office of Administrative Law Judges in Washington, D.C.

John Shoaff is an Environmental Protection Specialist with U.S. EPA, Office of Pollution Prevention and Toxics in Washington, D.C.

Charlie Wagner is Director, Corporate Compliance, Constellation Energy Group (parent/holding company of Baltimore Gas & Electric Co.).

Michael Woodruff is an associate with Shanley & Fisher in Morristown, New Jersey.
CONGRATULATIONS TO LAW SCHOOL SOFTBALL TEAM

The Law School Softball Team, coached by Environmental Program Director Robert Percival, had a successful summer. The team won the 1999 championship of the Campus Intramural League, finishing with an 18-6 record. The team also reached the semifinals of the Intraprofessional (Lawyer's) Athletic Conference championships.

During the fall semester 1999, students in Professor Percival’s Comparative Environmental Law seminar are focusing on how environmental law can be used to hold private and public entities more accountable for the long-term environmental consequences of their actions. Students in the seminar have agreed to participate in a joint research project on control of intergenerational externalities. The project involves a comparative analysis of laws regulating activities that create environmental risks extending far into the future. The project is being conducted in cooperation with Luke Danielson, director of the Mining Policy Research Initiative at the International Development Research Centre in Montevideo, Uruguay.

Danielson notes that existing laws and policies generally have assumed that with proper planning (such as preapproved closure plans or cleanup funds) we could “walk away” from sites of mining or waste disposal activities. However, we now are realizing that some of these activities impose ongoing environmental costs far into the future that cannot be dealt with easily or inexpensively. The challenge is to develop improved mechanisms for ensuring that these costs are not unconsciously transferred to future generations.

Students in the seminar also are helping to plan next year’s Ward, Kershaw & Minton Environmental Symposium, which will be held in Baltimore on Friday, April 28, 2000. The focus of the symposium will be “Global Environmental Accountability”. It will feature presentations by environmental lawyers and academics from around the world, including Mr. Danielson.
ALUMNI, FACULTY AND STUDENTS ENJOY THE

(from left to right) '96 Alumnus David Zuchero, Professor Marley Weiss, Assistant Dean Dana Morris, Assistant Dean Jose Bahamonde-Gonzalez and Professor Alan Hornstein.

(from left to right) Alumni Lauren Buehler '95, Mary Raivel '93, and Steve Groseclose '94.

Environmental Law 20
PROGRAM'S SEVENTH ANNUAL WINETASTING

Alumni Cathy Faint '93 and Pat Ostronic '97

(from left to right) Alumni Ann Hobbs '91, Laura Mrozek, Administrator, Environmental Law Program, Pat Deem '97, Jared Littmann '97, and Maureen Power '92.
MELS MEMBERS CELEBRATE EARTH DAY

Maryland Environmental Law Society members join members of the Gunpowder Conservancy to help plant trees along the Dulaney Branch of the Loch Raven Reservoir. Pictured are Sonja Mishalanie 3D, Stu Barr '99 and Tracey Spriggs 3D.

Members of MELS and the Gunpowder Conservancy join forces to celebrate Earth Day.

MELS RETIRES ANOTHER 11 TONS OF SO₂

MELS Board Member Tracey Spriggs displays plaque marking MELS's successful purchase of a total of 43 tons of SO₂ since 1994.
CHESSER AND JAIN HONORED FOR OUTSTANDING TEACHING

Shek Jain and Wib Chesser receive congratulations from Dean Donald Gifford for being named the 1999 Charles Taylor fellows. The award is made annually for outstanding teaching by an adjunct professor. Chesser and Jain, who formerly co-taught the Environmental Law Program's seminar on Nuclear Regulation, now co-teach a seminar on Environmental Issues in Business Transactions. The Charles Taylor award is made possible through the generosity of the law firm of Gordon, Feinblatt, Rothman, Hoffberger & Hollander.

Maryland Students Place Fourth in National Environmental Negotiation Competition

On March 26, the University of Maryland's Negotiation Board sent two teams to compete in the Robert R. Merhige, Jr. National Environmental Negotiation Competition in Richmond, Virginia. The competition was hosted by the University of Richmond, T.C. Williams School of Law. The team of Linda Coco and Marvin Muller placed fourth in the competition. There were approximately 26 teams from across the nation competing in the two-day competition.

(from left to right) Linda Coco, Marvin Muller, Jennifer Marshall and Melanie Flynn.
Rena Steinzor, Director of the Environmental Law Clinic, presents Bill Piermattei, class of '99, with plaque for winning third place in the national Roscoe Hogan Environmental Law Essay Competition. Bill’s paper was entitled “From Frye to Joiner: The Supreme Court Muddies the Waters of Judicial Reasoning.” Bill received a $1,000 cash prize. Congratulations!

MARK YOUR CALENDAR!!!

THE 8th ANNUAL ENVIRONMENTAL LAW PROGRAM WINETASTING PARTY

DATE: Wednesday, December 1st

TIME: 6:30 P.M.

PLACE: Gladhill Room of the Health Science Library
(5th Floor of 601 W. Lombard Street)

(PLEASE NOTE NEW VENUE)

R.S.V.P. to Laura Mrozek at 410-706-8157 or email to lmrozek@law.umaryland.edu