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Our Town: Local Governments Play Larger Role in Environmental Policy

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Abstract: People normally perceive environmental law to be a piecemeal of federal laws mostly concerned with terminating pollution from point sources, such as smoke stacks or water pipes. Land use law on the other hand, is normally a local undertaking, often ignoring national or even regional issues. Today's new breed of environmental problems, such as sprawl, require that different levels of government work together to create a comprehensively planned land use strategy in order to mitigate long-term environmental degradation. Through the use of financial incentives and other tools, larger bodies of government help encourage local governments to take the necessary steps to work among themselves, in order to solve unique local environmental problems within the scope of a larger regional or national plan.

Local governments are becoming more and more involved in efforts to protect the environment. New York law delegates to towns, villages, and cities the authority to legislate to protect the visual and physical environment and to adopt land use regulations to achieve the most appropriate use of the land. We have documented the use of this authority to adopt a wide range of local environmental protection laws ranging from adding environmental standards to zoning and subdivision regulations to adopting laws that protect ridgelines and water bodies, among other natural resources. Learning about this trend catches many by surprise. We understand that environmental protection and clean up are the province of federal and state governments and turn to our state and federal officials for relief of our environmental troubles. The advent of these local environmental laws raises a number of new and interesting policy questions about the role of various levels of government in adopting environmental laws.

This nation's environmental policies came under the close scrutiny of the Yale Center for Environmental Law and Policy in the mid 1990s. The Center initiated the Next Generation Project through which it engaged Yale students, state and national leaders, experts from the private and non-governmental sectors, and a host of others in a comprehensive evaluation of the country's environmental problems, policies, and programs. Yale conducted two major conferences, involved dozens of students in research projects, and conducted fourteen workshops engaging hundreds of experts in this analysis. The results of this two-year effort were published in *Thinking Ecologically*:

the Next Generation of Environmental Policy, edited by Daniel C. Esty and Marian R. Chertow. An impressive number of critical observations and recommendations are contained in this report, several of which bear on the matter of local environmental law and where it fits in the panoply of the nation's environmental initiatives.

The report states that there is broad public support for environmental protection, if not for environmental spending. First generation command and control laws, adopted by Congress during the 1970s and 1980s, address a clear public concern: how to clean up the sky and water, to eliminate the serious pollution emanating from point sources – smoke stacks and water pipes. Today's environmental problems are different. They include the loss of natural resources to suburbanization and the effects of the development thousands of small parcels of land on water and air quality. The prospects are limited of remedying these problems through the apparatus created under existing federal and state laws. The key policy question, according to *Thinking Ecologically*, is *how* to move from the first generation command-and-control approach to a new strategy that can be translated into action plans for government and the private sector.

The report contains several principles to guide policy makers toward answers to this question of how to proceed. It suggests that next generation strategies be cooperative, not confrontational, comprehensive, not fragmented, and flexible, tailored to local contexts, rather than a “one-size-fits-all” approach. It emphasizes that today's environmental problems are everybody's business, since all are affected by, and most of us are in some direct way involved in, the thousands of decisions and actions that affect environmental quality. Environmental decision-making, in this context, needs to devolve to include local leaders and citizens while continuing to engage state and federal advocates, lawmakers, and administrators. The report mentions the importance in modern civil society of engaging the energy and wisdom of a wide range of civic organizations and recognizes the important role they must play in the environmental domain.

One of the report's most salient, and mystifying, observations is that, in the first generation of environmental policies, there has been a systemic disconnect between environmental policy and land use decision-making. Environmental policy is the creature of federal and state law and rule making, while land use decisions are local, for the most part. Environmental policy makers have proceeded in the apparent belief that these two realms are entirely disconnected. The authors of Chapter Six in *Thinking Ecologically* write: “Land use is the forgotten agenda of the environmental movement. In the past twenty-five years, the nation's many environmental laws addressed one problem at a time – air or water pollution, endangered species, waste disposal – and they have done it primarily through prohibitive policies that restrict private behavior. Although their achievements have been significant, such policies seem to offer diminishing returns. Environmental progress in the next generation will increasingly depend on stemming the environmental costs of current land use patterns.” John Turner and Jason Rylander, *Thinking Ecologically*, p. 61.

This chapter notes that environmental progress and land use decision making are two sides of the same coin. Environmental policy can be only marginally successful if the cumulative effects of local land use decisions are ignored. The authors state that the land use regulatory process has failed. It is too narrowly focused, parochial in effect, based on inadequate information, and alienating to the public - and even the responsible officials - who fail to understand it. These flaws can be addressed through long-term planning that is based on ecological systems: watersheds, landscapes, bio-regions, and estuaries. Development policies should consider the carrying capacity of the land and avoid the degradation of critical environmental resources. Since environmental resources cross municipal boundaries, this planning must be intermunicipal in nature. Since broad-based interests are affected and involved, this planning must be collaborative and inclusive. Land planning involves community visioning and without significant citizen input it cannot hope to succeed. The tremendous public interest in the environment has not been invested in land use planning, but in lobbying at the national and state level. At the local level citizens form and fund land trusts whose laudable objective of protecting individual parcels of land misses the opportunity to work on the root causes of environmental degradation. Local citizens and officials need technological assistance to measure the effects of land use decisions, to conduct cost-benefit analyses of local policies, and to inventory critical environmental assets that need to be protected from development pressures. And, finally, the chapter notes, *"Next generation policies must include new models of collaboration to avoid the rancor of our traditional adversarial approach to environmental issues."*

The empowerment of local governments to adopt local environmental laws addresses a number of the issues raised by *Thinking Ecologically*. While, as the report points out, local citizens may have difficulty understanding the relevance of land use regulation to the quality of their lives, they have no such problem becoming engaged in regulatory efforts to protect the environment. This engagement will help them learn how land use controls can create favorable development patterns, ones that not only preserve environmental assets, but that create jobs, build healthy tax bases, provide needed houses for workers and the retired, and create densities that support alternatives to car-dependent living. In this way, land use practice and environmental policy can become connected. By planning where the environment must be preserved, citizens determine where development can occur. This message can reduce the ambiguity experienced, and the litigation brought, by landowners and developers who do not know where development is desired and why they are opposed everywhere they try to build.

Engaging local citizens and officials in the adoption of local environmental laws requires long-term planning to identify and prioritize critical environmental areas and assets. It interests locals in geographical information technology and calls for state and federal assistance to local governments to purchase and apply such technology. Sound regulatory approaches to environmental conservation reduce the costs of clean up, the external costs of environmental degradation, and the costs to society of overzealous opposition to development. Such approaches also reduce the cost of land acquisition

programs carried out by land trusts and governmental agencies. Since it is easy to understand that watersheds, landscapes, and other ecological resources are intermunicipal in nature, local environmental advocates are quick to understand the value of intermunicipal planning, a missing ingredient in most local land use planning. For local governments to conduct proper planning, especially across municipal lines, requires incentives and assistance from higher levels of government. As state and federal agencies provide this type of support, the environmental and land use regimes of all levels of government become interconnected.

Local environmental regulations address this generation's environmental problems, those associated with the diffuse, diverse, and very local causes of water and air pollution in the 21st Century: sprawling development patterns, traffic congestion, and the high cost of development. Local responses are inherently flexible and context specific. Recognizing the importance of local governments in environmental protection allows them to become useful partners in the state and federal environmental protection systems and encourages the integration of approaches rather than perpetuating fragmentation. Because citizens at the local level must live with each other over time, there is a strong incentive to resolve land use and environmental problems collaboratively, rather than confrontationally.

One of the lessons learned from examining the wide variety of adopted local environmental laws is how varied local environmental conditions are. The diversity of local conditions – climate, terrain, hydrology, and biodiversity – suggests that centralized approaches to environmental protection are not necessarily desirable when dealing with environmental problems. By supporting innovation at the local level, citizens are encouraged to define for themselves what is acceptable in their communities. Their local environmental laws will define the linkages between what is built and what is natural and the separations needed between the two. Such laws will also define who has responsibility for the proper functioning of natural resources. By codifying environmental expectations in local law, today's citizens will establish and pass along their understanding of environmental protection through the local development patterns and the preserved landscapes that their laws create.

Federal and state efforts to encourage a healthy trend toward local protection of natural resources are a strategic effort to build the capacity of local governments, their permanent partner in land use control and environmental protection. This capacity-building approach can also be seen as a complementary effort to enforce federally established environmental standards by building and reinforcing the state and local implementation infrastructure.