

GENTRIFICATION AND THE LAW: COMBATting URBAN DISPLACEMENT

*DONALD C. BRYANT, JR. **

*HENRY W. McGEE, JR. ***

TABLE OF CONTENTS

| | Page |
|---|------|
| I. INTRODUCTION | 46 |
| II. HISTORIC PRESERVATION: A PARADIGM OF GENTRIFICATION'S CAUSES AND REMEDIES | 50 |
| A. <i>Overview</i> | 50 |
| B. <i>The Law and Historic Preservation</i> | 53 |
| C. <i>Preservation Without Displacement: Current Issues</i> .. | 55 |
| D. <i>Preserving History and Neighborhood Housing Opportunity</i> | 58 |
| III. CAUSES OF GENTRIFICATION | 62 |
| A. <i>Condominium Conversions</i> | 62 |
| B. <i>Speculation</i> | 65 |

* Attorney at Law and former Director of Lawyers for Housing.

** Professor of Law, University of California, Los Angeles.

This article is based on a study directed by the authors in conjunction with the Los Angeles County Bar Association's action-research project known as Lawyers for Housing. The project was greatly aided by U.C.L.A. School of Law students Renee Campbell, Phil Diri, Audelio Miranda, Susan Schwartz, and Carmen Hermosillo.

The discussion of legal issues in the study was in part supported by empirical studies of three communities in Los Angeles County: Venice, North University Park, and suburban Pasadena. The three areas, though located miles apart and vastly different in everything from architecture to ambiance, had much in common, and demonstrate that gentrification was underway in the sunbelt as well as the historic cities of the northeast. Summaries of the empirical studies appear as appendices to this article.

| | | |
|-----|---|----|
| C. | <i>Anti-redlining</i> | 66 |
| D. | <i>Real Property Taxation</i> | 68 |
| E. | <i>Housing Code Enforcement</i> | 70 |
| F. | <i>HUD</i> | 72 |
| IV. | REMEDIES FOR GENTRIFICATION..... | 75 |
| A. | <i>Condominium Conversions</i> | 75 |
| | 1. Governmental Regulation | 75 |
| | a. <i>Subdivision Map Act</i> | 76 |
| | b. <i>Coastal Zone Restrictions</i> | 77 |
| | c. <i>The Police Power</i> | 78 |
| | i. Moratoriums..... | 79 |
| | ii. Tie-in with new construction or vacancy rates | 79 |
| | iii. Low and moderate income housing requirements..... | 80 |
| | iv. Tenant participation | 81 |
| | v. Relocation assistance..... | 81 |
| | 2. Summary..... | 82 |
| B. | <i>Speculation</i> | 83 |
| | 1. Governmental Regulation | 83 |
| | a. <i>Transfer Taxes</i> | 83 |
| | b. <i>Residency Requirements</i> | 84 |
| | 2. Private Anti-speculation Efforts | 85 |
| | 3. Summary..... | 86 |
| C. | <i>Anti-redlining</i> | 87 |
| | 1. California—Missed Opportunities..... | 87 |
| | 2. The Federal Approach | 88 |
| D. | <i>Real Property Taxation</i> | 90 |
| E. | <i>Housing Code Enforcement</i> | 91 |
| | 1. Selective Enforcement | 91 |
| | 2. Resident Participation | 92 |
| | 3. Standardized Building Materials | 93 |
| | 4. Sanction Reforms | 93 |
| | 5. Housing Clinics and Specialists | 93 |
| | 6. Financial Assistance | 94 |
| F. | <i>HUD</i> | 95 |
| | 1. Programmatic Initiatives and Adjustments | 96 |
| | a. <i>Demonstrations</i> | 96 |
| | b. <i>Section 312 Rehabilitation Loans</i> | 96 |
| | c. <i>Section 8</i> | 98 |
| | d. <i>Community Development Block Grants</i> | 99 |

| | |
|---|-----|
| e. <i>Summary</i> | 102 |
| 2. Policy Proposals | 102 |
| 3. Site Selection Criteria Revision | 103 |
| 4. HUD and Gentrification in the Eighties | 104 |
| V. ADDITIONAL REMEDIAL STRATEGIES..... | 106 |
| A. <i>Land Use Controls</i> | 106 |
| 1. Exclusionary Zoning Challenges | 106 |
| 2. Subdivision Restrictions and Development Exactions..... | 108 |
| 3. Inclusionary Strategies..... | 110 |
| 4. Transfer of Development Rights | 112 |
| 5. Summary..... | 114 |
| B. <i>Environmental Law</i> | 115 |
| 1. NEPA and the CDBG Program | 115 |
| a. <i>Socio-economic Impacts and Environmental Assessment</i> | 116 |
| b. <i>Mitigation: Mandatory or Discretionary?</i> | 118 |
| 2. Suggestions for Applying NEPA..... | 119 |
| C. <i>Rent Stabilization</i> | 119 |
| 1. History of Rent Controls | 120 |
| 2. Specifics of Rent Controls | 121 |
| a. <i>Exemptions</i> | 122 |
| b. <i>Vacancy Decontrol</i> | 122 |
| c. <i>Conversion and Demolition Regulation</i> | 123 |
| d. <i>Fair Return Requirements</i> | 123 |
| 3. Summary..... | 126 |
| D. <i>Relocation Assistance</i> | 127 |
| 1. Coverage | 128 |
| 2. "Houser of Last Resort" Implementation | 130 |
| 3. Relocation Planning | 131 |
| 4. The "Right" to Continued Occupancy | 133 |
| 5. Summary..... | 134 |
| VI. CONCLUSION: REMEDYING GENTRIFICATION— LOOKING AHEAD | 134 |
| APPENDIX I..... | 137 |
| APPENDIX II | 138 |
| APPENDIX III | 141 |

I. INTRODUCTION

Observers of urban development have adopted the term "gentrification" to describe involuntary residential displacement caused by the return of affluent gentry from suburbia to well-located but deteriorated inner city areas.¹ This displacement process has remained the darker side of urban revitalization and restoration for at least two decades.² Estimates of the magnitude and extent of the problem vary. In 1978 the United States Department of Housing and Urban Development (HUD) cited data that indicates approximately 1.4 million persons are forced to move from their homes annually.³ Other studies, however, project a displacement incidence from 2.4 to 2.8 million persons per year.⁴ A 1975 survey indicated the problem was national in scope, with private sector neighborhood revitalization activities underway in nearly half of the 260 cities surveyed with 50,000 or more population.⁵ Of the thirty largest cities surveyed in 1977, nearly all had some form of neighborhood restoration or revitalization in progress.⁶

In the continuing struggle for urban space, displacement occurs when a household is forced to move its residence because of conditions that affect the dwelling or its immediate surroundings. These conditions typically: (1) are beyond the household's reasonable ability to control or prevent; (2) occur despite the household's compliance with all previously imposed conditions of occupancy; and (3) make continued occupancy of the residence by that household impossible, hazardous, or unaffordable.⁷ Gentrification, like its corollary "in-

1. See London, *Gentrification as Urban Reinvasion: Some Preliminary Definitional and Theoretical Considerations*, in *BACK TO THE CITY* 77 (S. Laska & D. Spain eds. 1980).

2. In the United States, gentrification was discussed in the literature beginning in the 1970's. Many consider the seminal conceptual work to be C. WEILER, *REINVESTMENT DISPLACEMENT: HUD'S ROLE IN A NEW HOUSING ISSUE* (1978). THE NATIONAL URBAN COALITION, *DISPLACEMENT: CITY NEIGHBORHOODS IN TRANSITION* (1978) established that the problem was nation-wide in scope.

3. LeGates & Hartman, *Displacement*, 15 *CLEARINGHOUSE REV.* 207, 215 (July 1981).

4. *Id.* at 220.

5. Black, *Private Market Housing Renovation in Central Cities: A ULI Survey*, 34 *URB. LAND*, Nov. 1975, at 3, 6.

6. Clay, *Neighborhood Revitalization and Community Development: The Experience and the Promise*, *CENTER FOR ECON. DEV. NEWSLETTER*, Aug.-Oct. 1978, at 1.

7. G. GRIER & E. GRIER, *URBAN DISPLACEMENT: A RECONNAISSANCE* 8 (1978). Both HUD and advocates for the poor have accepted this definition of displacement.

cumbent upgrading,"⁸ results largely from the effects of private market forces, though it is often aided and abetted by actions of governmental entities. Gentrification should be distinguished from the residential displacement resulting from public programs such as urban renewal, which was the primary engine of urban displacement in the 1950's and early 1960's.⁹

The pervasiveness of this phenomenon is no accident. One urban geographer has pointed out that "[neighborhood upgrading] is generally considered a positive externality by city administrators and planners because of the perceived social and economic benefits that may accrue from such activities. . . . Simultaneous with decreasing

See, e.g., U.S. DEPT OF HOUSING & URBAN DEV., DISPLACEMENT REPORT (1979); LeGates & Hartman, *supra* note 3, at 214.

8. Professor James H. Johnson, Jr., of U.C.L.A. has pointed out the similarities and differences in the two processes in *Gentrification and Incumbent Upgrading: Benefits and Costs*, 6 UCLA CENTER FOR AMERICAN STUDIES NEWSLETTER, Nov. 1981, at 10. Professor Johnson notes:

Gentrification describes the process by which predominantly white, middle income households "resettle" in older urban neighborhoods and attempt to reverse the cycle of decline and deterioration. . . . These neighborhoods usually have historic character and/or architectural appeal and are generally located within a one-half mile radius of the Central Business District. . . . In contrast, incumbent upgrading usually occurs most often in neighborhoods located at a considerable distance from the CBD (usually greater than one mile) which are comprised of primarily deteriorating but structurally sound single family houses and duplexes. Whereas gentrification is spearheaded by outsiders, incumbent upgrading is accomplished by existing residents who collectively attempt to upgrade their residential environments, primarily through strong community organizations.

Id.

9. D. MANDELKER, C. DAYE, O. HETZEL, J. KUSHNER, H. MCGEE, & R. WASHBURN, HOUSING AND COMMUNITY DEVELOPMENT 520 (1981) [hereinafter cited as MANDELKER].

The displacement of households and their forced relocation to other areas of the community has always been an inevitable and usually unfortunate outcome of community development programs. Urban displacement was rampant in the days of large-scale urban renewal and highway construction projects. One estimate indicates that over two million persons were displaced by urban renewal and highway programs between 1964 and 1972.

Id.

The impact of urban renewal on the poor, a process once called "Negro removal," is vividly captured by Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA. L. REV. 745 (1971). The futility of judicial relief is discussed in McGee, *Urban Renewal in the Crucible of Judicial Review*, 56 VA. L. REV. 826 (1970). The highway situation is analyzed in Roberts, *Homes, Roadbuilders, and the Courts: Highway Relocation and Judicial Review of Administrative Action*, 46 S. CAL. L. REV. 51 (1972).

crime rates are improvements in other neighborhood services including schools, public transportation, and garbage collection."¹⁰ More significantly, sharp increases in property values, which in turn contribute to the city's tax base, are a major incentive behind revitalization.¹¹ As the tax base rises and the neighborhood metamorphosis continues, new business, social, and cultural institutions appear in areas previously occupied by poor or lower middle-income households. The new institutions and residents create an environment that is not hospitable to the interests of the original residents.¹²

The typical household moving into a gentrifying central city neighborhood consists of one or two married or unmarried white adults, often without children. These people are usually employed in a professional or managerial capacity, earning an above-average income.¹³ They have been called "pioneers" by some students of the displacement problem. These in-moving "pioneers" are attracted to the central city by such factors as a desire to live close to work, and by more intangible concerns such as the prestige conferred by living in structures thought to have a higher artistic and architectural value. Changing life styles, the persistence of families without children, and the attraction of culturally rich and diverse urban areas are additional factors that are difficult to quantify, but nonetheless are significant in their effects on the displacement process.

The prior residents of gentrifying areas, "natives" perhaps, are primarily from white lower income households, although there are other categories of displacees including welfare dependents, minorities, and

10. Johnson, *supra* note 8. See also R. Cybriwsky, *Revitalization Trends in Downtown-Area Neighborhoods*, in *THE AMERICAN METROPOLITAN SYSTEM: PRESENT AND FUTURE* 21, 22-23 (S. Brunn & J. Wheeler eds. 1980).

11. In the Savannah Historic District in Savannah, Georgia, property values increased 276% (23% annually) between 1965 and 1977, whereas property values for the county within which Savannah is located increased only 184% (15% annually). During this same period, the taxes generated from the sample properties in the Savannah Historic District increased by 187% between 1965 and 1977, from \$68,625 to \$196,890. ADVISORY COUNCIL ON HISTORIC PRESERVATION, *THE CONTRIBUTION OF HISTORIC PRESERVATION TO URBAN REVITALIZATION* C-35 (1979). Cf. Roddewig & Young, *Neighborhood Revitalization and the Historic Preservation Incentives of the Tax Reform Act of 1976: Lessons from the Bottom Line of a Chicago Red Brick Three-Flat*, 11 *URB. LAW.* 35 (1979) (discussing the interactive effect of the value of restored dwellings and property tax).

12. See Poinsett, *Motor City Makes a Comeback: A Special Report on Detroit*, 33 *EBONY* 29 (1978); Sutton, *America Falls in Love with Its Cities—Again*, *SAT. REV.*, Aug. 1978, at 16; Williams, *Facelift for Detroit*, *SAT. REV.*, May 1977, at 6.

13. LeGates & Hartman, *supra* note 3, at 223.

upper income white families.¹⁴ Renters suffer a disproportionately high incidence of displacement.¹⁵ Those forced from their homes usually encounter substantially increased shelter costs because of a lack of comparable housing.¹⁶

If the attractions for the in-movers are social, cultural, and economic, the forces that push out the indigenous residents are defined by federal, state, and local law. The primary forces behind gentrification are: historic preservation;¹⁷ conversions of apartments to condominiums;¹⁸ speculation;¹⁹ anti-redlining efforts;²⁰ real property taxation;²¹ housing code enforcement;²² and federal housing and community development programs that operate in tandem with the private market.²³

This article stresses a "push" perspective in its examination of how these legally structured forces have stimulated the return of the gentry to the central urban areas of the United States. Unlike virtually all of the studies to date which emphasize the socio-economic dimensions of the problem, this article concentrates on what might be called the law of gentrification. It suggests how the law can be modified to ameliorate the oppressive private market forces that disadvantage the indigenous poor and lower middle-income residents of the inner cities. First, the historic preservation movement is treated as a paradigm of gentrification that illustrates both the causes and possible remedies for displacement. Thereafter, the article discusses the primary causes of gentrification and some corresponding remedies. In addition, consideration is given to other remedial strategies that are susceptible to legal implementation. These strategies include creative applications of land use²⁴ and environmental laws,²⁵ rent stabi-

14. *Id.* The displacement struggle involves more than racial prejudice. For the nexus between housing disadvantages and racism, see Kushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Segregation in the United States*, 22 How. L.J. 547 (1979).

15. LeGates & Hartman, *supra* note 3, at 226.

16. *Id.* at 227. See also G. GRIER & E. GRIER, *supra* note 7, at 8.

17. See *infra* text accompanying notes 29-70.

18. See *infra* text accompanying notes 71-82.

19. See *infra* text accompanying notes 83-87.

20. See *infra* text accompanying notes 88-97.

21. See *infra* text accompanying notes 98-104.

22. See *infra* text accompanying notes 105-11.

23. See *infra* text accompanying notes 112-25.

24. See *infra* text accompanying notes 269-313.

lization,²⁶ and relocation assistance.²⁷

Finally, a bias—if not already manifest—should be acknowledged at the outset. Without significant governmental intervention in urban revitalization, the plight of the poor can only continue to worsen, and a system will evolve enabling the privileged to manipulate the economic order to their own exclusive interests. In the near future, this intervention is more likely to be the product of local governmental initiatives. Indeed, HUD itself has concluded that the problems associated with gentrification can best be solved, if they need solving, at the local level.²⁸ Although some of the anti-gentrification strategies discussed herein are traditionally and practically more relevant to local governments, other solutions are legally required to be addressed by state and federal officials.

II. HISTORIC PRESERVATION: A PARADIGM OF GENTRIFICATION'S CAUSES AND REMEDIES

A. *Overview*

A significant consequence of private and public efforts to restore and preserve the artistic, cultural, and historic past of neighborhoods is the burden of displacement put upon the shoulders of those least able to bear its cost—the poor and, more often than not, racial minorities. In most instances, indigenous low income residents are removed when specific landmarks are saved from demolition or entire areas are restored.

Compared to other causes of displacement,²⁹ the historic preservation movement has produced perhaps the most evidence of the class conflict dimension of urban revitalization. For example, in Indianapolis, Indiana, a mother of four declared to reporters: "I ain't going nowhere. I'll be here fighting for a long time. It's they who are intruding."³⁰ For this unidentified "urban warrior," the enemy is Indiana's Historic Preservation Commission, which designated the woman's downtown neighborhood a historical district. According to

25. See *infra* text accompanying notes 314-33.

26. See *infra* text accompanying notes 334-61.

27. See *infra* text accompanying notes 362-404.

28. G. GRIER & E. GRIER, *supra* note 7, at v-vi.

29. See *infra* text accompanying notes 71-125.

30. Hamilton, *Historic Label Brings Housing Hardship*, L.A. Times, Dec. 6, 1979, Pt. VII, at 5, col. 1.

the woman, her dog was shot, her children were harrassed, and her house was set afire. Corroboration of what otherwise might appear as paranoia was provided by the director of a central city social agency in Indianapolis who told reporters: "It's no secret that arson is a way of life down here. You use it to get rid of something you don't want."³¹ An Indianapolis fire lieutenant who was conducting his own personal investigation of arson in a downtown historic district said, "There are definitely planned arsons in the area. New residents have openly said that they are going to get all the blacks and poor whites out."³² A resident of Indianapolis for fifty-two years put it this way: "If your house is worth \$7,000 and you're worried it may be burned, and someone comes in and offers you \$4,000, you think you're lucky. Especially if you're 70 and don't feel safe."³³

The incipient violence in Indianapolis may be unique, but the struggle over older, inner city districts is not. More than half of the forty-four cities in a National Urban Coalition Study were "either designated historic by national, state or local authorities or were in the process of applying for such designation at the time they were surveyed."³⁴ Similarities were found as far apart geographically as Denver, Colorado and Baltimore, Maryland.

In Denver, the Five Points community was proposed for historic designation, but the proposal encountered opposition from area residents and a black businessmen's group. "Whose history is being preserved, and at whose expense?" asked one community leader.³⁵ Another observed that residents of the area only discovered the historic designation when "someone knocked on their doors to offer them a \$6,000 cashier's check to buy their homes."³⁶

City officials minimized the racial overtones of the conflict in Denver and characterized the problem as one of class. Class, not race, was clearly the issue in the Union Square area in Baltimore where the resistance to historic preservation had all the heat typically associated with racial conflict. "Don't Let Historical Preservation Eat Up Our Neighborhood" was the title of a pamphlet advising homeowners that at stake in the struggle were increased property taxes and

31. *Id.*

32. *Id.*

33. *Id.*

34. THE NATIONAL URBAN COALITION, *supra* note 2, at 16.

35. *Id.* at 17.

36. *Id.*

code violation notices designed to force exterior renovations or forced sales. Renters were warned that historic designation would trigger higher rents and attract a wave of middle and upper income people who could afford the increased costs that would be beyond the reach of indigenous residents on fixed incomes.³⁷

The struggles described above corroborate what two Chicago lawyers, advocates of historic preservation, have written:

Displacement of long-time and low- and moderate-income neighborhood residents by middle- to upper-income newcomers occurs as rehabilitation fever sweeps a quaint old neighborhood. "Restoration block busting" it has been labeled, and the analogy is apt. In the Lincoln Park/Sheffield neighborhood of Chicago, hundreds of black, Latino, and old-time Irish, German and Italian families were gradually displaced by the influx of small-scale investors and owner-occupiers who renovated the old townhouses and small apartment buildings. The private market forces were accelerated by the Chicago Department of Urban Renewal, which selectively cleared the worst pockets of Lincoln Park blight and made the land available for "middle-income" townhouses priced well above \$75,000, new parks, and parking lots for two large neighborhood hospitals. The old residents and absentee landlords were also encouraged to sell by the high-pressured sales pitches of real estate brokers. They were swayed by the brokers' tales of wealthy buyers ready to pay more, and all in cash, than the old time residents had ever dreamed their properties were worth. The brokers' promises were real, but the long-time residents understood little of the dynamics of the new market forces at work in the neighborhood, had no knowledge of housing costs in the neighborhoods to which they would have to move, and failed to realize that their properties might be worth twice as much in five years as the rehabilitation of the neighborhood increased in strength. As a result, "No More Lincoln Parks" has become an accepted maxim among Chicago community groups seeking to revitalize other neighborhoods without displacement.³⁸

There is, of course, a deep irony in recent perceptions of "historic displacement." The lawyers who speak of Lincoln Park also declared that "the social and ethnic diversity of a neighborhood is often as strong an attraction to the young, relatively affluent newcomers as the

37. *Id.*

38. Roddewig & Young, *supra* note 11, at 72 (footnote omitted).

charm of the old buildings.”³⁹ However, the gentrifiers’ penchant for diversity—tolerance nurtured by two decades of social and racial change in the United States—may well be the greatest enemy of inner city minorities who in previous years were somewhat shielded from displacement by the bigotry of many whites scurrying to the suburbs. Besides, greater tolerance by middle to upper income gentrifiers may not have increased racial diversity in any meaningful way. In Chicago, for example, the return of whites to inner city areas has not led to a significant alleviation of racial segregation. Rather, Chicago’s black population (notwithstanding a statistically insignificant number of privileged professionals) has simply been pushed in lumps to other sections of the city, where in some cases the blacks have displaced lower income whites. In Chicago and elsewhere, an increase in racial tensions has occurred as displaced blacks contend with working-class whites for *liebensraum*.

At one time, it was arguable that the best chance for desegregated living was in inner city areas where the poor and minorities already lived. These areas are highly desirable primarily to young middle-class white persons priced out of suburban real estate markets and squeezed by soaring transportation costs. Such individuals are most able to cope with the strains of urban living, especially where there are households with pre-school age children or no children at all. However, the market place, often abetted by cities hungry for increased tax revenues, leads inexorably to nonselective wholesale displacement. Thus, in many instances, preservation-related gentrification has led to white, middle to upper income colonization and resegregation.

B. *The Law and Historic Preservation*

Although current issues in historic preservation are likely to involve conflict between old and new residents, there is little disagreement over legal power to preserve the past. It is now clear that architectural patterns in a given area may be preserved by legislative action establishing historic districts pursuant to the police power to promote the general welfare,⁴⁰ or by other acts “within the concept of public welfare and . . . effected by the exercise of the usual police

39. *Id.*

40 For an example, see the act establishing the “Old Historic Nantucket District” upheld in Opinion of the Justices, 333 Mass. 773, 774-76, 128 N.E.2d 557, 558-59 (1955).

power attendant upon zoning.”⁴¹ Though classic cases such as those that arose over the French Quarter in New Orleans⁴² and the “Old Santa Fe Style” construction in New Mexico⁴³ dealt with maintaining structures already in place, the zoning power has been extended to protect a restored area, rather than to preserve a historic area in its existing state.⁴⁴

As long ago as 1941, the Supreme Court of Louisiana relied on what remains today as the twin pillars of zoning for historic preservation theory—aesthetics and economic benefit. In *City of New Orleans v. Levy*,⁴⁵ a property owner in the Vieux Carre historic district in the French Quarter of New Orleans argued that the city’s attempt to control the size of a sign outside his business establishment was solely for aesthetic purposes and thus was an invalid exercise of the police power. The court answered:

Perhaps aesthetic considerations alone would not warrant an imposition of the several restrictions contained in the Vieux Carre Commission Ordinance. But . . . this legislation is in the interest of and beneficial to the inhabitants of New Orleans generally, the preserving of the Vieux Carre section being not only for its sentimental value but also for its commercial value, and hence it constitutes a valid exercise of the police power.⁴⁶

While the Louisiana court linked the power to preserve architectural aspects to economic considerations, it appears that the number of courts which will validate zoning on aesthetics alone is increasing.⁴⁷ On balance, perhaps, the dominant judicial view of the matter was clearly articulated almost a generation ago:

The term public welfare has never been and cannot be precisely

41. *Rebman v. City of Springfield*, 111 Ill. App. 2d 430, 441, 250 N.E.2d 282, 288 (1969).

42. *See City of New Orleans v. Levy*, 223 La. 14, 64 So. 2d 798 (1953); *City of New Orleans v. Pergament*, 198 La. 852, 5 So. 2d 129 (1941); *City of New Orleans v. Imparstato*, 198 La. 206, 3 So. 2d 559 (1941).

43. *See City of Santa Fe v. Gamble-Skogmo, Inc.*, 73 N.M. 410, 389 P.2d 13 (1964).

44. *See generally Agnor, Beauty Begins a Comeback: Aesthetic Considerations in Zoning*, 11 J. PUB. L. 260 (1962); Note, *Zoning: Aesthetics: The Chameleon of Zoning*, 4 TULSA L.J. 48 (1967), cited in J. BEUSCHER, R. WRIGHT & M. GITELMAN, *CASES AND MATERIALS ON LAND USE* 882 (2d ed. 1976).

45. 223 La. 14, 64 So. 2d 798 (1941).

46. *Id.* at 28-29, 64 So. 2d at 802-03.

47. G. GAMMAGE, P. JONES & S. JONES, *HISTORIC PRESERVATION IN CALIFORNIA* 55 (1975).

defined. Sometimes it has been said to include public convenience, comfort, peace and order, prosperity, and similar concepts, but not to include "mere expediency." . . . And it has been held or stated that aesthetic considerations alone are not enough, but that they may be taken into account, if the primary objects of the regulation are sufficient to justify it. . . . There is reason to think that more weight might now be given to aesthetic considerations than was given to them a half century ago.⁴⁸

Thus, by using such strategies as zoning⁴⁹ and eminent domain,⁵⁰ a municipality can identify and preserve individual structures and landmarks or even entire districts because of their historical relevance.

C. *Preservation Without Displacement: Current Issues*

Now that the power to preserve structures or entire neighborhoods on the basis of historic significance has been legally assured, there remains the problem of reconciling the passion for historic preservation with the needs of those who bear the social costs of the movement. As the National Urban Coalition suggested:

To those who support historic preservation, community resistance to renovation work has come as something of a surprise, but scattered incidents have been sufficient to make historic preservation for all neighborhood residents the theme of some concerned preservation groups. . . . Given the large number of improving neighborhoods surveyed by the Coalition, strategies to make historic preservation work for low income residents are badly needed.⁵¹

Clearly, the collision between historic preservation and the housing needs of low income households must be resolved if urban tensions

48. Opinion of the Justices, 333 Mass. at 773, 778-79, 128 N.E.2d 557, 561 (citations omitted).

49. In addition to enacting the typical historic zone ordinance, local authorities might employ spot zoning, interim or moratorium zoning, and floating zones to preserve areas of cultural or aesthetic interest. See G. GAMMAGE, P. JONES & S. JONES, *supra* note 47, at 60-62.

50. An early exercise of eminent domain involving compulsory purchases of private land for public purposes, namely historic preservation, was approved by the United States Supreme Court in *United States v. Gettysburg Elec. Ry.*, 160 U.S. 668 (1896). The Maryland Supreme Court upheld the use of eminent domain to acquire land for the Star Spangled Banner Flag House in *Flaccomio v. Mayor & City Council of Baltimore*, 194 Md. 275, 71 A.2d 12 (1950).

51. THE NATIONAL URBAN COALITION, *supra* note 2, at 18.

are to be alleviated. As the Task Force on Housing and Community Development of the National Association of Neighborhoods asserted, "The reality of displacement also underscores the dangerous possibility that our cities may become upper income centers, separated from the rest of the nation. This separation will have the tragic consequences of a nation divided."⁵² An example of how separation and tension can literally flare into serious conflict is given in the National Urban Coalition's discussion of Philadelphia's Spring Garden neighborhood. For years, Spring Garden was the center of Philadelphia's Puerto Rican community. In May 1977, a firebombing of a newly rehabilitated house in the area gave rise to charges of Puerto Rican resistance to the immigration of more affluent whites.⁵³

In the North University Park area of Los Angeles, the ostensibly laudable work of University of Southern California students in cataloging historic structures provoked much comment among neighborhood residents. The work inspired fear that the students were indeed Trojan horses for a take-over of the neighborhood by the university. The area is one of the few in Los Angeles where historic district designation is a likely possibility, and it illustrates both the promise as well as the problems of historic preservation.⁵⁴

The Los Angeles Historic Preservation Overlay Zone,⁵⁵ which may be applied to North University Park, provides for a historic preservation association with membership drawn from the real estate profession, construction industry, architectural community, and owners or renters in the area. Included in the governing body are representatives of those groups most interested in historic preservation, and those who stand to profit from revitalization. A bow is made in the direction of community participation through a requirement that a bare majority of the association's members live in the designated zone. Nonetheless, the preference for technical and professional representation is unmistakably clear. Perhaps more importantly, the ordinance is far more directed at physical preservation than the retention of neighborhood residents and the preservation of afford-

52. NATIONAL ASSOCIATION OF NEIGHBORHOODS, POSITION PAPER ON THE ISSUE OF DISPLACEMENT 2 (1978).

53. THE NATIONAL URBAN COALITION, *supra* note 2, at 19.

54. For a study of gentrification in the North University Park area, see Appendix I.

55. Los Angeles, Cal., Ordinance 154-2422 (June 1979) (amending LOS ANGELES, CAL., MUN. CODE ch. 1, art. 2, § 1(A)(1), (3), (4) (1979)).

ble housing. For instance, Section 4(d) of the ordinance prohibits demolition unless "the applicant has . . . made a good faith effort to sell . . . such structure at or below fair market value to any public or private person or agency which gives reasonable assurance of its willingness to preserve and restore such structure."⁵⁶ No such protection is extended to residents of the building with respect to new housing in the event the building is actually demolished.

As its purpose clause quite expressly puts it, the ordinance is, *inter alia*, designed to:

Protect and enhance the use of structures, features, sites, and areas that are reminders of the City's history or which are unique and irreplaceable assets to the City and its neighborhoods or which are worthy examples of past architectural styles. Enhance property values, stabilize neighborhoods and/or communities, render property eligible for financial benefits, and to promote tourist trade and interest. Foster public appreciation of the beauty of the City and the accomplishments of its past as reflected through its structures, natural features, sites and areas.⁵⁷

Though there is a passing reference to neighborhood stability, the purpose clause is otherwise silent about serious issues such as housing opportunity and displacement within the area coming under historic designation. Procedural steps of some complexity in practical, political, and technical terms have prevented the actual establishment of a preservation zone anywhere in Los Angeles. However, this fortuitous protection for low income residents of North University Park is not likely to be of long duration as middle income consumers of housing, blocked by exponentially inflating real estate prices on the city's west side, turn to inner city areas for affordable homes.

If the overlay zone ordinance is deficient in human terms, it is nonetheless a paradigm of the emphasis in the historic preservation movement. Indeed, it might be argued that concern for structures and not the people who live in them is the essence of historic preservation.

Recently, however, some proponents of historic preservation have become increasingly concerned about its impact upon the poor. In an article discussing the tax shelter aspects of historic preservation, it was suggested that there are unique opportunities for the long-time residents and their community groups since the attitudes of the gen-

56. LOS ANGELES, CAL., MUN. CODE ch. 1, art. 2, § 1(A)(4)(d) (1979).

57. *Id.* § 1(A)(1).

trifiers make them disposed to tolerate the racial diversity presaged by their recent arrival.⁵⁸ The authors terminated their article optimistically:

In many neighborhoods in Chicago and other cities across the country, neighborhood not-for-profit corporations are being formed to purchase and rehabilitate housing for existing neighborhood residents. If established in neighborhoods likely to attract private for-profit rehabilitation, they may be in a better position to guarantee the success of their not-for-profit rehabilitation. By properly anticipating private for-profit interest, neighborhood not-for-profit corporations may be able to buy more buildings than they have resources to rehabilitate, and sell some (perhaps those that require much more renovation than moderate-income rentals can offset) to the private redevelopers for a handsome profit that can be utilized to rehabilitate a greater number of buildings for low- and moderate-income tenants. Not-for-profit corporations may be able to interest private investors in joint ventures under the Tax Reform Act historic preservation provisions and interest financial institutions in loan programs much more easily if they can point to spontaneous private market interest in their neighborhood as evidence of long-term neighborhood stability. Finally, the influx of affluent newcomers created by for-profit redevelopment assures some improvement in neighborhood schools, commercial areas and amenities that local governments are unable to provide through spending programs alone.⁵⁹

The mix of private sector initiative and not-for-profit corporations is consistent with the experience of historic preservation, which in many instances has been spearheaded by private, not public, sector organizations. It must be asked, however, whether the private market will be more responsive to lower income housing needs in the context of historic preservation than it has been in other areas. Clearly, in addition to private sector initiatives such as those advocated above, governmental protection will be required to protect housing opportunity for all residents in preservation areas.

D. *Preserving History and Neighborhood Housing Opportunity*

If left unchecked, private real estate market forces will inevitably drive the cost of housing in historic districts beyond the reach of all

58. Roddewig & Young, *supra* note 11, at 73.

59. *Id.* (footnotes omitted).

but the most affluent. The taste for historic buildings is indeed a cultivated one, and socio-economic diversity can be maintained only by a variety of strategies which interweave public and private sector resources. The tension between the movement for historic preservation and the movement for equal opportunity in housing can be reduced, but only if compromises are made in the sometimes excessively purist goals of the historic preservationists.

First, reconsideration might be given to the geographic extensiveness of historic preservation. Perhaps in many instances, saving landmarks might suffice for restoring entire neighborhoods. Some districts no doubt need to be preserved intact, or whole villages may merit restoration as did Williamsburg, Virginia. Nevertheless, there are alternatives such as California Street in San Francisco where scores of Victorian-era mansions stand side by side with more modern—and more affordable—structures of recent vintage.

Of great importance in this regard is the position of the Office of Archaeology and Historic Preservation (OAHP) of the Heritage Conservation and Recreation Service. OAHP has suggested that it would flexibly apply building certification standards under the Tax Reform Act of 1976 so as to extend incentives for restoration. Under this view, a number of buildings in a historic district might be certifiable, even if they are from different epochs. Thus, the concept of a historic district is not defeated (for tax or aesthetic purposes) because it is a montage of historical styles. Indeed, the OAHP has urged that draft proposals for new National Register districts include more recent buildings, requiring only that they relate to the "continuity of the district and contribute to the streetscape."⁶⁰

Second, in addition to mixing styles in historic districts so that more efficient densities might be obtained throughout the neighborhood, there are important precedents for adaptively reusing interiors. Restored buildings are less expensive to maintain and can house more than one family or commercial enterprise. Historic landmark designation and consequent tax benefits need not be lost because of alterations that do not destroy the integrity of the structure. The misconception that historic preservation is designed to transform neighborhoods into museums is belied by the statement of the OAHP Chief of Technical Preservation Services who declared that in applying criteria essential for Tax Reform Act benefits, "rehabilitation,"

60. Statement by Sarah G. Oldham, National Park Service, at the Tax Reform Act Conference in Chicago, Illinois (Oct. 27, 1977).

not restoration, is the heart of the process.⁶¹

Under the certification standards as they eventually evolved, alterations essential for economic viability are permissible so long as they preserve the historic qualities of a structure. More modern interior layouts are acceptable if "significant" historical features are not destroyed and the new design is compatible with the building's character. Interior alterations should be made so that if they "were to be removed in the future, the essential form and integrity of the structure would be unimpaired."⁶² Though there is evidence that considerable delays can occur in obtaining approval of rehabilitation proposals by state historic preservation officials or by the National Park Service, the challenge of historic preservation in both architectural and policy terms is to resolve the competing demands of the present with those of the past.

Third, although federal tax benefits may be the linchpin of the incentive scheme for historic preservation, local real property taxes are crucial in determining whether there is the opportunity for low and moderate income housing in designated districts. As one commentator observed:

At the heart of the displacement process are two simple facts of economics: rapidly rising property taxes for homeowners and rapidly rising rents for tenants. . . . The real property tax leads to fiscal zoning and competition among local governments, creates disincentives to property maintenance and improvements in stable or declining neighborhoods, and is an expropriative and exclusive force in "improving" neighborhoods.⁶³

There are ways of ameliorating the impact of the property tax in the neighborhood revitalization process. In fact, some communities have already successfully experimented with employing the real property tax to support restoration and rehabilitation activity directly. A 1977 study in Chicago recommended adoption of a contract assessment tax plan for neighborhoods chosen by historic preservation criteria.⁶⁴ The plan resembled the Oregon tax preservation law

61. Statement by W. Brown Morton III, National Park Service, at the Tax Reform Act Conference in Chicago, Illinois (Oct. 27, 1977).

62. Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976, 42 Fed. Reg. 54,551 (1977).

63. C. WEILER, *NAN HANDBOOK ON REINVESTMENT DISPLACEMENT 72-73* (2d ed. 1979).

64. SHALES AND CO., *PROPERTY TAX INCENTIVES FOR LANDMARK PRESERVATION: DRAFT PROGRAM FOR USE IN CHICAGO AND COOK COUNTY, ILLINOIS* (1977).

which effectively permits owners of qualifying historic property to freeze the value of the building for purposes of calculating the real property tax for a period of fifteen consecutive years.⁶⁵ Additional tax strategies for ameliorating the impact of real property taxation might include collection of assessment increases when property is sold, spreading assessment increases out over a number of years so that they do not rise too rapidly in too short a space of time, and exemptions or rebates for low and fixed-income residents.⁶⁶

Fourth, much of the class and racial conflict associated with historic preservation could be reduced if real, not symbolic, community participation were built into the process. It is doubtful whether historic preservation ordinances—like that of Los Angeles—truly provide a forum for the community to express its views. It has been noted that:

To be effective on an ongoing basis, while instilling confidence in the community at large, resident involvement must be formalized and ongoing, through representative bodies which actually have some power over the development and implementation of program alternatives. Genuine community participation is thus predicated on a selection process which enables the affected community to have an opportunity for input, and a follow-up process which ensures that this input will be taken seriously.⁶⁷

Appointments that emanate from mayors or city councils—as provided by the Los Angeles ordinance—do not necessarily institutionalize and guarantee the kind of participation that will cut across class lines, even if the appointees are residents of the designated district.

Fifth, and most importantly, historic preservation and housing subsidies should go hand in hand. “Before it is granted, historic designation should be reviewed for the impact it will have on the neighborhood affected. Because such designation seems to promote private market rehabilitation activity, such neighborhoods should simultaneously be deemed eligible for programs aimed at assisting low to moderate income residents.”⁶⁸

Subsidy programs must be operated with greater imagination and sensitivity. It has been suggested that federal Section 8 rent supplements be extended to homeowners. This would not only keep prop-

65. OR. REV. STAT. §§ 358.475-.565 (1981).

66. See *infra* text accompanying notes 192-97.

67. C. LOWE, SAVING NEIGHBORHOODS 31 (1978).

68. THE NATIONAL URBAN COALITION, *supra* note 2, at 25.

erty taxes "to a certain presumably manageable portion of income but would also compensate for displacive effects of rising home maintenance costs, conformity to housing code or historic area standards, and rising utility costs."⁶⁹ Certainly, if new money is to flow into a district, it should reach neighborhood residents first, not affluent new arrivals as occurred in the Oakwood district of Venice, California.⁷⁰

It should be stressed that this list of strategies is more illustrative than exhaustive. The central point of this discussion is that the historic preservation movement can and must be made sensitive to housing needs and to larger social and economic forces in a given community. Moreover, no single strategy alone will serve as a brake on the gentrification of a neighborhood designated for preservation. Inevitably, housing costs will rise as neighborhoods improve. Historic preservation merely exacerbates the process by its direct appeal to the more affluent sectors of the housing market. What remains to be achieved is a reshaping of the process of historic preservation so that it does not continue to produce the socio-economic and racial segregation that has all too frequently been the end result of historically preserved or restored neighborhoods.

III. CAUSES OF GENTRIFICATION

A. *Condominium Conversions*

The conversion of apartments to condominiums and cooperatives is an urban phenomenon that depletes the supply of rental units and at the same time causes rental rates to rise in reaction to increased demand for the reduced pool of units.⁷¹ Although the wave of con-

69. C. WEILER, *supra* note 63, at 75.

70. *See* Appendix III.

71. Condominium conversions in California typify the problem nationally. The number of conversions receiving state approval has more than doubled each year with 2,089 units approved in 1976, 4,291 in 1977, and 9,167 in 1978. Cooperatives jumped to 358 approvals in 1978 from a total of 35 in the prior nine years. DEP'T OF REAL ESTATE, OWNERSHIP CONVERSIONS—THE PROBLEM (1979). (These figures represent projects which have already completed state and local processing. They do not include units in some intermediate stage of local or state approval.) In 1979, there were 135,000 units converted from rental units to condominiums in the United States. OFFICE OF POLICY DEV. AND RESEARCH, U.S. DEP'T OF HOUSING & URBAN DEV., THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS AND COOPERATIVES, at IV-5 (1980) [hereinafter cited as HUD CONVERSION STUDY].

Nationwide, as well as in California, conversions are occurring in moderate as well as high-rent areas. For example, a 1,195 unit project was proposed for conversion in San Bernardino which was occupied by elderly tenants, 84% of whom had incomes

versions does not appear to be racially motivated, it is class biased, driving out persons with low and moderate incomes. Minorities, the elderly, and the handicapped suffer particular hardships when they are displaced.⁷²

High rates of conversions have occurred principally in east and west coast cities, although some municipalities have escaped the phenomenon.⁷³ According to a study of conversions by the Department of Housing and Urban Development (HUD),⁷⁴ factors that create a climate conducive to conversion activity include: scarcity of land for new construction; high-priced single-family homes; high-priced vacant residential land; restrictive land use regulations; a declining supply of rental units; rent controls; a lack of legislation to regulate conversions; and the existence of well-organized, vocal tenant groups and strong tenants' rights legislation.⁷⁵ Other factors that influence conversions include: employment or population trends that increase the demand for housing near the urban area; availability of financing for new construction; spot code enforcement activity in housing projects serving primarily elderly or low and moderate income households; local supply of subsidy rental housing; and the existence of strong neighborhood pressure to limit high density development.⁷⁶ Given the continuation of current housing trends, energy costs, and high inflation, the rate of conversion should continue to be high in urban housing markets experiencing overall growth.⁷⁷

below \$800 per month. Most severely affected are the communities where conversion activity has been widespread. For example, in 1978 and early 1979, the City of Santa Monica received applications for conversion of over 3,000 units or nearly 10% of its rental stock. The City of Torrance, California, had 90% of its rental stock converted to condominiums within a two-year period. OFFICE OF PLANNING & RESEARCH, CAL. GOVERNOR'S OFFICE, APARTMENT CONVERSIONS (1979).

72. See Fried, *Grieving for a Lost Home*, in THE URBAN CONDITION 151 (L. Duhl ed. 1963); *Relocation of the Aged: A Review and Theoretical Analysis*, J. OF GERONTOLOGY 32 (May 1977).

73. HUD CONVERSION STUDY, *supra* note 71, at IV-7.

74. U.S. DEP'T OF HOUSING & URBAN DEV., HUD CONDOMINIUM/COOPERATIVE STUDY (1975) [hereinafter cited as HUD CONDOMINIUM/COOPERATIVE STUDY].

75. *Id.* vol. 1-3. See also HUD CONVERSION STUDY, *supra* note 71, at V-1 to V-30.

76. COMMUNITY AND ECONOMIC DEV. TASK FORCE, CONDOMINIUM CONVERSION CONTROLS 11 (1979); Mober, *Flood of the Condominium Destroys Old Neighborhoods to Create New Ones for the Affluent*, In These Times, Oct. 18, 1979, at 191-94.

77. See SAN FRANCISCO DEP'T OF CITY PLANNING, CONDOMINIUM CONVERSION IN SAN FRANCISCO 21 (1978). Conversions are expected to account for at least 80% of

Displacement results both directly and indirectly from conversions. Many formerly undesirable neighborhoods have become very attractive due to downtown access or other locational attributes.⁷⁸ Developers purchase buildings in these areas, displace lower income tenants, and then renovate the units for sale as condominiums to more affluent buyers. In addition to this direct displacement of lower income persons, indirect displacement can occur because of conversions in buildings located in "better" areas. Middle income renters may be unable or unwilling to buy their converted units. They then seek housing in less expensive parts of town, bidding up rent levels in the dwindling rental stock. This in turn forces out lower income tenants who cannot afford the higher rents.⁷⁹

Condominium conversions severely test the traditional "trickle-down" theory that has been at the heart of housing development in the United States. The trickle-down theory maintains that each time the occupancy of a unit changes, the new resident will be from a lower income level.⁸⁰ In effect, then, by meeting middle class housing needs, vacated rental units will trickle down to the poor. However, as one commentator observed, the trickle-down theory may work well for "the predominant majority of households . . . [but] for the poorest urban households, especially poor minority-group members, this process is a social disaster."⁸¹

Using the trickle-down theory in support of conversions, developers argue that condominium purchasers are former renters whose previous housing will become part of the rental supply for lower income tenants. This claim, however, does not address the absolute reduction in units caused by conversions and middle class in-migration. As market demand and inflation escalate the value of housing

future condominium development in San Francisco, assuming the continuation of existing trends and the relative scarcity of sites suitable for new construction in the city. *Id.*

78. For example, the Venice study indicates increased conversion activity as speculators exploit the desirable beachfront area. *See* Appendix III.

79. COMMUNITY AND ECONOMIC DEV. TASK FORCE, *supra* note 76, at 9.

80. *See* J. LANSING, C. CLIFTON, & J. MORGAN, *NEW HOMES AND POOR PEOPLE* 3 (1969).

81. Downs, *The Successes and Failures of Federal Housing Policy*, 34 *THE PUB. INTEREST* 124, 127 (1974). Professor Donald Hagman proposed a "trickle-up" approach which would require the construction of low income housing on vacant sites scattered throughout higher income housing areas before any upper income housing could be constructed. *See* Hagman, *The Managed Growth Trickle-Up Theory*, 27 *LAND USE L. & ZONING DIG.* No. 1, at 7, 8-9 (1975).

in low income areas, the filtering process cannot work. Displacement eventually results from the lack of alternative rental housing in the neighborhood.⁸²

B. *Speculation*

Speculation is short-term investment in property in order to gain from quick resale at a higher price. Various factors can contribute to speculation. In particular, inflation has greatly encouraged speculation in the housing market. For example, single-family home prices in California have climbed so rapidly that speculators have been able to buy and resell at substantial profits in six months to one year.⁸³

Speculation is considered a major cause of rapidly rising housing costs and property tax bills.⁸⁴ The impact of speculation is so severe that one analysis concluded, "[S]peculation is the driving force behind most private market displacement."⁸⁵ As the studies of North University Park and Venice illustrate,⁸⁶ speculation is also a key factor in the gentrification process associated with historic preservation and condominium conversions. Lower income tenants are forced to leave when their buildings are purchased for aesthetic restoration or for sale as condominiums. In addition, indirect displacement occurs when tenants must move because they cannot afford rising rents caused by the speculator's increased property taxes and financing

82. R. FICHTER, *FREEDOM TO BUILD 79* (1972). The 1975 HUD CONDOMINIUM/COOPERATIVE STUDY, *supra* note 74, indicates conversions displace approximately 80% of the previous tenants. *See also* HUD CONVERSION STUDY, *supra* note 71, at iv. The primary reasons for tenants not purchasing their units are lack of capital to meet the down payment requirements, lack of adequate income to carry a mortgage, and unwillingness to undertake the economic responsibilities of home ownership. *Id.* at VI-18 to VI-19. The 1975 HUD study concludes that the seriousness of the displacement problem caused by condominium conversion depends upon the availability of housing alternatives, the time given to relocate, and the characteristics of the tenants themselves. HUD CONDOMINIUM/COOPERATIVE STUDY, *supra* note 74.

83. CALIFORNIA DEP'T OF HOUSING AND COMMUNITY DEV., *SPECULATION* (1977). Since they do not live in the homes they purchase, and may leave them vacant until resale, speculators compete against those who want permanent residences, creating an artificial addition to normal market demands.

84. 4 *SHELTERFORCE* 9 (Summer 1979).

85. C. HARTMAN, D. KEATING, & R. LEGATES, *DISPLACEMENT—HOW TO FIGHT IT* 28 (1982).

86. *See* Appendices I & III.

costs.⁸⁷ Thus, while speculation may be profitable for the investor, it has no benefits for the displaced renter or the potential homeowner.

C. *Anti-redlining*

"Redlining" describes a practice whereby lenders directly or effectually designate entire areas as poor risks for loans.⁸⁸ Historically, funds have been conspicuously unavailable for home mortgages and rehabilitation loans for buildings located in certain inner city neighborhoods, often those with large or growing minority populations. The resulting shortage of capital has led to disinvestment that accelerated urban decline and substantially reduced opportunities for neighborhood revitalization.⁸⁹

87. One commentary vividly describes the operations and dislocating impact of speculation on the urban poor in neighborhoods that are being "upgraded":

Block by block, private developers in Washington, D.C. are converting decaying homes into elegant townhouses. Some see this restoration movement as a godsend, for it promises both to upgrade the city's housing stock and to expand the tax base.

But there is another, less rosy side to the neighborhood rehabilitation: it has caused rampant speculation in residential property. . . . In a kind of reverse blockbusting, speculators comb neighborhoods on foot and by telephone just ahead of the restoration movement, making attractive cash offers to owners. If the owners refuse to sell, the more persistent speculators call in building inspectors who order expensive repairs on the old and dilapidated homes. Homes are bought and sold the same month, week, and even day for profits of up to 100% and more. . . .

Aside from the displacement caused by rehabilitation, the spiraling of home prices has its own dislocation effects. Tenants are sometimes evicted because they cannot afford the rent hikes that go hand in hand with the new landlord's high purchase price and increased property taxes. Since property tax assessments are based largely on sale prices of nearby properties, homeowners face tax increases whether or not their own properties have been improved; these higher taxes also are passed on to renters.

Some speculators turn the tax woes to their own advantage. At a city council hearing on property tax assessments, a woman who lived on a street on which seven homes had been sold in two years testified that speculators had knocked on the doors of the remaining homeowners saying, "I understand your property taxes have gone up. Do you want to sell?"

Richards & Rowe, *Restoring a City: Who Pays the Price?*, 1977 WORKING PAPERS FOR A NEW SOCIETY 54.

88. D. BRYANT, J. SOLOWAY & C. CHIU, CALIFORNIA AND FEDERAL LOWER INCOME HOUSING LAWS: A COMPILATION AND ANALYSIS 15-10 to 15-11 (1978).

89. See The President's Urban and Regional Policy Group, *Cities and People in Decay* (Nov. 1977) (National Urban Policy discussion draft). See also Bentley & Macbeth, *Mortgage Lenders and the Housing Supply*, 57 CORNELL L. REV. 149 (1972); Coughlin, *Redlining and Disinvestment: The Death of Communities*, 2 CHARITIES

The most obvious indication of redlining is the outright refusal to make loans solely because of the property's location. Little or no consideration is given to a loan applicant's financial status or the physical condition of the property. Redlining is not always so blatant, however. Lenders may finance loans in a redlined neighborhood, but only on terms more onerous than those required for loans in more affluent areas. Terms that may reflect redlining include lower loan-to-value ratios,⁹⁰ higher interest rates,⁹¹ and shorter repayment periods.⁹² Some lenders refuse to grant loans unless the mortgage amount equals or exceeds a minimum amount.⁹³ Additionally, lenders often underappraise properties located in blighted neighborhoods. The borrower is then required to pay cash for the difference between the mortgage amount and the sale price.⁹⁴

During the 1970's, national attention began to focus on the lending practices of financial institutions. The courts found redlining violated the Fair Housing Act.⁹⁵ Anti-redlining legislation and regula-

U.S.A. 9 (1975); Givens, *The "Antiredlining" Issue: Can Banks be Forced to Lend?*, 95 BANKING L.J. 515 (1978); Comment, *Proposals for Financial Reform: Some Implications for Housing*, 21 ST. LOUIS U.L.J. 664 (1978).

90. See Duncan, Hood & Neet, *Redlining Practices, Racial Resegregation, and Urban Decay: Neighborhood Housing Services as a Viable Alternative*, 7 URB. LAW. 510, 514 (1975). A "loan-to-value ratio" is a figure computed by dividing the amount that a lender is willing to lend by the appraised value of the collateral. Lenders will rarely advance the entire value of collateral for two reasons. First, collateral will always be insufficient to repay an advance equal to the collateral's total value because of the transactional costs involved in a foreclosure. Second, the risk that a borrower might default on a loan would be unacceptably high if the borrower has made no down payment and, thus, has no financial stake in performing his obligation.

91. *"Redlining" by Lenders is Called Cause of Old Communities' Decay*, N.Y. Times, May 26, 1975, at 20, col. 1, reprinted in 121 CONG. REC. 18,883-84 (1975).

92. *Id.*

93. See HOUSING & TRAINING INFORMATION CENTER, *THE PHASE OF NEIGHBORHOOD DETERIORATION* (1978).

94. For example, a buyer who has contracted to purchase a home for \$25,000 would be able to obtain a \$20,000 loan from a lender utilizing an 80% loan-to-value ratio, if the lender agrees to value the property at the contract price. The buyer would be expected to pay the difference between the purchase price and the loan amount, \$5,000 in cash, as a down payment. If, however, the lender sets the value of the property at \$20,000, the loan will be made for only \$16,000, thereby forcing the buyer to make a down payment of \$9,000. This substantial increase in cash required may place an impossible burden on the low or moderate income buyer. Alternatively, it may force the buyer to negotiate, with a high risk of failure, a costly second mortgage elsewhere. See S. REP. NO. 187, 94th Cong., 1st Sess. 3 (1975).

95. *E.g.*, Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489, 497-98 (S.D. Ohio 1976).

tions were enacted at both the federal and state levels.⁹⁶ Lenders were to end arbitrary geographical distinctions as part of the requirement to make nondiscriminatory lending decisions.

These actions have facilitated the flow of capital into previously redlined areas. Many programs to combat redlining, however, do not protect against gentrification. Indeed, by opening a market of older, well-located, and aesthetically attractive urban housing to private investment, anti-redlining efforts actually stimulate gentrification.⁹⁷ It becomes easier for in-moving "pioneers" and speculators to obtain home mortgage and rehabilitation loans for buildings in inner city areas. Rental units are converted into ownership housing, and as a result, property values soar, causing more displacement of low income residents.

Thus, there is a significant association between gentrification and the sudden influx of loan funds to previously redlined neighborhoods. Often affluent newcomers benefit, to the detriment of lower income and minority residents who were formerly subject to discriminatory lending practices.

D. *Real Property Taxation*

Property taxes are an important factor in the displacement process associated with inner city revitalization. Renovation triggers value appreciation and thus creates a disincentive to private rehabilitation in the form of increased assessment and taxes.⁹⁸ Nevertheless, preservation programs, conversions, and opportunities for speculation can provide sufficient profit motivation to overcome this barrier in gentrifying areas. Gentrification results in increased rehabilitation and turnover of property. In turn, the housing costs for both homeowners and renters increase since rents and taxes rise with the prop-

96. See *infra* text accompanying notes 175-87.

97. As Professor Conrad Weiler states:

[G]reening and reinvestment have often come to focus on the credit needs of specific territories rather than on the credit needs of people and their social communities. There is, consequently, the real possibility that luxury townhouses and rehabilitation loans for affluent "pioneers" in inner city neighborhoods will be the prime thrust of greenlining and inner city reinvestment efforts originally undertaken in the name of lower- and moderate-income persons originally living in these inner-city neighborhoods.

C. WEILER, *supra* note 2, at 95.

98. R. FISHMAN, *HOUSING FOR ALL UNDER LAW* 524 (1978).

erty values.⁹⁹

Localities attempt to preserve or enhance the size of the property tax base in their communities. Many local governments adopt the position that "the greater the average taxable wealth, the lower the tax rate . . . which must be paid in order to finance a given level of public service."¹⁰⁰ As a result, municipalities have welcomed "upgrading" of inner city properties by middle and upper income persons. City planners generally perceive additional tax revenues and increased consumer spending as positive factors.¹⁰¹

This local receptiveness to gentrification has been enhanced by property tax reduction movements such as California's Proposition 13. Briefly stated, this amendment to the state constitution limited effective local property tax rates.¹⁰² For elderly or low income homeowners living in areas experiencing increased market values due to inflation and gentrification, Proposition 13 reduced property taxes

99. THE NATIONAL URBAN COALITION, *supra* note 2, at 12-13; E. GRIER & G. GRIER, *supra* note 7, at 6; C. WEILER, *supra* note 2, at 68.

100. G. PETERSON, PROPERTY TAX REFORM 125 (1973).

101. Schussheim, *Private Market Displacement*, SELLER/SERVICES, Nov.-Dec. 1978, at 15.

102. Proposition 13 limited state and local government flexibility by:

- a. limiting tax rates to 1% of full cash value, plus the rate needed to service bonded indebtedness approved by the voters prior to fiscal year 1978-79. Each county will levy taxes at the new lower rates. Revenues will be divided in proportion to past property tax collections among the county governments and the municipalities, school districts, and special districts within the county;
- b. rolling back assessed values to the levels on the 1975-76 assessment rolls. If these levels do not reflect the property's value at that time, the assessment and assessed value will be increased to this level. Assessed values will be increased annually to reflect inflation, but increases are limited to no more than 2% per year. Upon sale, a property will be reassessed at its market value if that value exceeds the 1975-76 assessment. Newly constructed or substantially rehabilitated property will also be assessed at market value;
- c. requiring that statutes to increase covered state taxes be approved by two-thirds of the elected members of each of the legislature's two houses, and prohibiting new state ad valorem, sales or transaction taxes on real property; and
- d. requiring that special taxes, except for taxes on real property, be imposed by local governments only after approval by two-thirds of the jurisdiction's voters, and only if such taxes conform to the power granted to the locality under the state's statutes and constitution. The two-thirds restriction presumably would not apply to taxes proposed for general purposes (e.g., local sales tax) by a general local government.

that had been increasing with soaring market values. At the same time, however, the anti-gentrification potential from decreased housing costs may be swallowed up by the drastic reduction in total tax receipts. This could set into motion powerful pro-gentrification forces.

Urban governments facing fund cuts as well as inflation have little incentive to counter these forces. Instead, urban governments may encourage transfers and renovation since tax revenues will rise with property values. Thus, gentrification may become an urban strategy for increasing the local tax base.¹⁰³

As long as cities perceive that an influx of middle and upper income persons is beneficial to their tax base, they will be reluctant to mitigate gentrification at the local level. Even if they were inclined to address the problem, most city planners cannot initiate displacement relief through property tax reform. Many state constitutions require property assessments to reflect market values or a uniform proportion of value.¹⁰⁴ Uniformity requirements often limit the ability of a locality to enact tax abatement, deferral, or exemption programs as a matter of local policy. Consequently, state-level actions may be necessary to help alleviate displacement problems caused by rising property taxes.

E. *Housing Code Enforcement*

Housing codes are meant to insure decent housing by setting minimum maintenance and repair standards for landlords and homeowners. Some government officials have characterized code enforcement as a "capital preserving" program, while others see it as "slum cleaning."¹⁰⁵ All agree, however, that the task of code enforcement is an

103. As one urban scholar cautions, a rapid shift in population characteristics may lead to increased public service needs. Gentrification can create demands for new or improved capital facilities, better schools, increased police protection, and better trash collection. Middle and upper income "urban pioneers" want upgraded sidewalks, buried electric and telephone wires, and off-street parking. In effect, then, these demands can offset the increased tax revenues produced by gentrification. See C. WEILER, *supra* note 2, at 33-35.

104. See D. HAGMAN, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* 345-46 (1975); J. HELLERSTEIN & W. HELLERSTEIN, *STATE AND LOCAL TAXATION: CASES AND MATERIALS* 43-46 (4th ed. 1978).

105. Gräbetz & Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254, 1257 n.12 (1966).

ongoing proposition. If habitable housing is to be maintained, housing code enforcement must be a continuous process.

Courts use both criminal penalties and civil remedies to enforce minimal code requirements. Violations of housing code standards are usually misdemeanors punishable by a fine, imprisonment, or both. Jail sentences are rarely imposed, however, and the fines are typically so low that the deterrent effect is minimal. In fact, many owners view the payment of fines as part of the cost of "doing business" and consider it cheaper to pay the fine than comply with the code.¹⁰⁶ Consequently, criminal penalties generally have not forced owners to maintain and repair their buildings in accordance with code standards.

Although they have been used sparingly, civil remedies can be more effective than criminal penalties in achieving compliance with housing codes. Action can be taken against the nonconforming building rather than against its owner.¹⁰⁷ Civil remedies range from injunctions and receiverships to orders to vacate or demolish. Injunctions have been used in several states to order major reconstruction and repairs.¹⁰⁸ Receivership has been viewed as one of the most effective civil sanctions because it takes the building completely out of the hands of its owner.¹⁰⁹ The court appoints a building manager or public agency to collect rents and to make all the necessary repairs. While orders to vacate or demolish are also effective, their impact on the tenants and the neighborhood is terminal since the unit is removed from the housing market. As a result, courts have issued orders to vacate or demolish only in the most extreme cases where the municipality has found the buildings unsafe or unfit for human habitation.

On occasion, strict code enforcement has disrupted neighborhoods by triggering a chain reaction of cost increases, abandonment, building demolition, and finally displacement. Although landlords ini-

106. *Id.* at 1277.

107. *See Note, Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801, 830-31 (1965).

108. California's Health and Safety Code permits code enforcement agencies to require that repairs be made by the owner. CAL. HEALTH & SAFETY CODE § 17.980 (Deering Supp. 1983). *See, e.g., City and County of San Francisco v. Meyer*, 208 Cal. App. 2d 125, 25 Cal. Rptr. 99 (1962). Philadelphia and Chicago have also made use of the injunction to secure habitable housing for its residents. *See Note, supra* note 107, at 827.

109. Gribetz & Grad, *supra* note 105, at 1272-74.

tially may comply with code requirements without increasing the rent, eventually the costs are passed on to the tenants.¹¹⁰ Repairs can be quite expensive, especially if the building is old or deteriorated. Financing must come from somewhere, and landlord profits are an unattractive and sometimes unavailable source. Tenants who are unable to afford the rent increases will move, either surrendering their units to more affluent tenants or leaving their apartments vacant. In turn, landlords will abandon property when the cost of compliance makes building operation a losing proposition. The same process applies to home owners. When they can no longer afford the cost of repairs, owners are likely to sell to new "pioneers" who are more sophisticated in obtaining the financing needed to bring the structure up to code standards.

Beyond abandonment, demolition is the "bottom line" of housing code enforcement. Buildings may be razed when the necessary repairs are either economically unfeasible or structurally impossible. This is the ultimate disruption in an inner city neighborhood. Removal of low income units leads to attrition in housing resources and to a simultaneous increase in rents for the remaining units. Frequently, the remaining units are occupied by more affluent tenants who have "trickled back" into a housing market that is attractive because of cost and convenient location. Thus, displacement of low and moderate income residents can be the net result of overzealous or insensitive housing code enforcement.¹¹¹

F. HUD

The federal government, especially the Department of Housing and Urban Development (HUD) has been integrally involved in the displacement process. For example, during the 1960's and early 1970's, urban renewal programs were important forces in the displacement of low income groups.¹¹² Present HUD policies directed at up-

110. San Francisco has compiled data on repair costs in relationship to rent increases as high as \$30, \$40, and \$50 per month. C. HARTMAN, *YERBA BUENA: LAND GRAB AND COMMUNITY RESISTANCE IN SAN FRANCISCO* 116 (1974).

111. Studies have revealed that stringent code enforcement on a "mass basis" has led to "mass abandonment" of urban property by the property owners and "mass occupant displacement" due to the imposition of high rents. For example, in Sacramento, California, about 1,152 rental units were disposed of by demolition orders in low income neighborhoods from 1963 to 1970. E. SCOTT & E. RABIN, *HOUSING CODE ENFORCEMENT IN CITY OF SACRAMENTO: PROPOSAL FOR CHANGE* 212 (1969).

112. Hartman, *supra* note 9, at 745.

grading without clearance have produced effects not unlike the federal bulldozer. Although displacement may now be primarily a private market phenomenon, commentators have concluded that it is undoubtedly "aided by public action or inaction which tends to force displacement into the private sector, where it is harder both to detect and to remedy."¹¹³ Congress became aware of the problem,¹¹⁴ and in 1978 it directed that "in the administration of Federal housing and community development programs, consistent with other program goals and objectives involuntary displacement of persons from their homes and neighborhoods should be minimized."¹¹⁵ To achieve this objective, Congress authorized payment of relocation benefits from block grant funds to displaced persons.¹¹⁶ It also required HUD to study and make recommendations for a national policy combatting displacement.¹¹⁷

HUD issued two displacement reports in 1979.¹¹⁸ On the whole, the reports set displacement in the broadest context and tended to minimize the role of the federal government in the process.

Critics of HUD assert that it grossly miscalculated the magnitude of displacement. One study contended that HUD underestimated displacement by one million or more persons annually.¹¹⁹ The same study also maintained that displacement is far more harmful, both financially and psychologically, to low income displacees than HUD recognized.¹²⁰

In the opinion of one critic, the National Housing Law Project, the underlying suppositions of HUD's "Save the Cities" strategies are at

113. LeGates & Hartman, *supra* note 3, at 236-37.

114. *See, e.g.*, S. REP. NO. 175, 95th Cong., 1st Sess. 8 (1977). The report advocated relocating displaced families in the same neighborhood. The report proposed that the impact of revitalizing neighborhoods be fully considered. It also warned communities to guard against gentrification. *Id.*

115. Pub. L. No. 95-557, § 902, 92 Stat. 2080, 2125 (1978) (noted at 42 U.S.C. § 5313 (Supp. II 1978)).

116. Pub. L. No. 95-557, § 103(e), 92 Stat. 2080, 2084 (1978) (codified at 42 U.S.C. § 5305(a)(11) (Supp. II 1978)).

117. Pub. L. No. 95-557, § 902, 92 Stat. 2080, 2125 (1978) (noted at 42 U.S.C. § 5313 (Supp. II 1978)).

118. U.S. DEP'T OF HOUSING & URBAN DEV., INTERIM DISPLACEMENT REPORT (1979); U.S. DEP'T OF HOUSING & URBAN DEV., FINAL DISPLACEMENT REPORT (1979) [hereinafter cited as FINAL DISPLACEMENT REPORT].

119. LeGates & Hartman, *supra* note 3, at 236.

120. *Id.*

war with the interests of indigenous low income residents.¹²¹ Specifically, the Project cited the Community Development Block Grant (CDBG) program, Urban Development Action Grants (UDAG), and the Federal National Mortgage Agency (FNMA) as critical HUD activities that exacerbate the displacement crisis. Concerning the CDBG program, the Project suggested that HUD stresses the prevention or elimination of urban blight without paying sufficient attention to displacement.¹²² UDAG was seen by the Project as "an instant replay of urban renewal."¹²³ As for the FNMA regulations issued in 1978 governing the purchase of central city mortgages, the Project argued that HUD had made "an unnecessarily broad attempt to halt the invidious practice of redlining on geographic basis and [it] is bound to result in the gentrification of inner city neighborhoods."¹²⁴

The underlying thrust of criticism aimed at HUD's programs is that HUD should not save the cities at the expense of the poor. It should improve the living conditions of those who presently suffer most from decaying neighborhoods. Improving neighborhoods, however, often means transforming them. Older strategies of urban renewal transformed neighborhoods by first obliterating them, then raising in the ashes new construction such as shopping centers, gleaming central business districts, or upper income housing developments. These urban renewal programs eventually were abandoned, partly because of their expense, and partly because of the enormous impact they had on the housing supply. The emphasis then turned to rehabilitation rather than clearance. Rehabilitation is spearheaded primarily by private interests which rely on public policies that support and complement private investment. This creates a policy dilemma. Private sector initiative is a major component of the federal government's revitalization policy. At the same time, however, private investment tends to replace low income housing with shelter for more affluent residents.

Stripped to the essentials, HUD's rehabilitation policies are criticized as being essentially laissez-faire, laced with moral suasion, schizophrenic, and ineffectual. Even where HUD subsidies are directly implicated, "its policies have been derelict in protecting low- and moderate-income persons displaced for rehabilitation financed

121. 8 HOUSING L. BULL., Oct.-Nov. 1978, at 3.

122. *Id.*

123. *Id.*

124. *Id.*

through its subsidy programs.”¹²⁵ Thus, the displacement problem grows more acute since HUD policies have not adequately addressed the overall housing shortage for low income persons.

IV. REMEDIES FOR GENTRIFICATION

A. *Condominium Conversions*

1. Governmental Regulation

Condominiums were initially regulated through legislation that focused on technical legal issues regarding the various property interests involved and also financing and marketing concerns. During the “condominium boom” of the early 1970’s, a host of consumer protection problems arose that were addressed by additional regulatory schemes or amendments to the basic condominium statutes. This legislation generally mandates certain provisions with respect to the management of condominium property and imposes disclosure or other consumer protection requirements.¹²⁶ For example, in California, the Department of Real Estate attempts to protect purchasers of converted units by requiring disclosure of information in a public report.¹²⁷ These disclosures provide significant consumer protection for prospective buyers of condominiums, but they do not offer relocation assistance or compensation to permit the displaced tenants to purchase the units they once rented.

While state condominium regulation is generally not concerned with displacement of the poor, the California legislature has required localities to employ a variety of anti-displacement measures when regulating land use.¹²⁸ These measures must be implemented when determining whether to issue subdivision maps for proposed conver-

125. *Id.*

126. For a complete analysis of the statutes governing or impacting upon condominium projects in various jurisdictions across the country, see HUD CONDOMINIUM/COOPERATIVE STUDY, *supra* note 74, at XI-10 to XI-19.

127. The report must contain the following information: (a) legal estate to be conveyed; (b) location and size of the project; (c) management and operation of the project; (d) maintenance and operational expenses; (e) statement that the project is a conversion of an existing structure and the structure’s age; (f) taxes; (g) conditions of sale; (h) utilities; (i) responsibility for roads; (j) availability of public transportation; and, (k) schools.

128. *See, e.g.*, CAL. GOV’T CODE § 66427.1 (Deering Supp. 1983) (delineating the requirements to issue a subdivision map for conversion); *id.* § 66427.4 (discussing zoning for mobile homes and the effect of displacement).

sions¹²⁹ and when monitoring conversions in California's coastal zone.¹³⁰ In addition, all localities have broad authority under their police powers to provide supplemental protections.¹³¹ A preference exists for resolving the displacement problem at the local level because of the unique circumstances and the need for specially tailored solutions that are found in each jurisdiction.

a. *Subdivision Map Act*

In California, the principal source of power to regulate conversions is the Subdivision Map Act,¹³² which requires localities to adopt ordinances concerning the development of subdivisions. The Act covers both conventional new construction and the conversion of existing apartment buildings from single ownership to multiple-owned condominiums.¹³³ It expressly provides protections for tenants in a building for which conversion approval is sought. The locality must deny approval unless tenants are afforded minimal notice and purchase rights.¹³⁴ The notice requirements provide tenants with advance warning that a conversion may occur, and thus affords them extended time to seek new housing. The notice requirements also ensure that tenants are aware of the public decision-making process so that they can express their views and influence the outcome.

The Subdivision Map Act does not correctly address the fundamental problem posed by conversion—displacement. For example, the price reductions for tenants are of no help to lower income households who cannot afford to buy the converted units. The Act, however, does not preempt the power of localities to provide protections beyond the minimal requirements of state law. The Act expressly

129. See *infra* text accompanying notes 132-35.

130. See *infra* text accompanying notes 136-46.

131. See *infra* text accompanying notes 147-60.

132. CAL. GOV'T CODE §§ 66410-66499 (Deering 1979 & Supp. 1983).

133. *Id.* § 66427.1.

134. *Id.* Specifically, the statute requires that tenants be given 60 days written notice of intent to file for approval of a conversion. *Id.* § 66427.1(a). Tenants must receive 10 days written notification of approval of a final map for the proposed conversion. *Id.* § 66427.1(b). Additionally, each tenant must receive 180 days notice of intention to convert before his tenancy can be terminated. *Id.* § 66427.1(c). Each tenant must also get a right to purchase the converted unit at the same terms and conditions that such unit will be initially offered to the general public, or at terms more favorable to the tenant. This right to purchase must last 90 days. *Id.* § 66427.1(d).

sets forth the legislature's intent not to "diminish, limit or expand, other as provided herein, the authority of any city, county, or city and county to approve or disapprove condominium conversion."¹³⁵ Thus, as is discussed below, localities can use the full extent of their broad police powers to complement the subdivision map requirements to address conversion-caused displacement.

b. *Coastal Zone Restrictions*

Due to the potential for widespread displacement of lower income households in beach-front communities,¹³⁶ the California legislature has required localities to place additional restrictions on conversions in the coastal zone.¹³⁷ For example, housing occupied by low or moderate income households cannot be converted or demolished unless the converter provides replacement units located in the same city or county.¹³⁸ There are some special exceptions based on project size,¹³⁹ proposed future site use,¹⁴⁰ the amount of vacant land,¹⁴¹ and the existence of alternative means for providing replacement housing.¹⁴² When replacement units are required, they must be located

135. *Id.* § 66427.1(e).

136. For a discussion of gentrification in coastal zone areas, see the study of Venice, California in Appendix III.

137. Prior to January 1, 1982, the California Coastal Commission, a state agency, regulated land use in the coastal zone to minimize the gentrifying effect of conversions. In 1982, the legislature amended the Coastal Act and so now localities regulate coastal conversions. CAL. GOV'T CODE § 65590 (Deering Supp. 1983).

138. *Id.* § 65590(b).

139. Replacement units need not be provided if the demolition or conversion is of a structure with less than three dwelling units, or is a project involving more than one building but 10 or less dwelling units. *Id.* § 65590(b)(1). Presumably, small projects are exempt because they cannot bear the cost of replacement.

140. Conversions may also be exempt if the proposed future use of the site is "coastal dependent" or "coastal related." *Id.* § 65590(b)(2). Coastal-dependent uses are those requiring a site on or adjacent to the sea in order to function (fishing is an example). CAL. PUB. RES. CODE § 30101 (Deering Supp. 1983). Coastal-related uses include those dependent upon coastal-dependent uses (such as commercial facilities serving visitors). *Id.* § 30101.3. This exemption illustrates that for the purposes of the Coastal Act, housing is a lower priority than coastal-dependent or coastal-related land uses.

141. Replacement units may not be required if there are less than 50 acres of land in the coastal zone that are vacant, privately owned, and available for residential use. CAL. GOV'T CODE § 65590(b)(3) (Deering Supp. 1983). This exception appears to be based on the premise that replacement housing should not be required if there is little land left for new units.

142. Replacement units are not required if the conversion or demolition occurs

on the site of the conversion or demolition, or elsewhere within the coastal zone. If that is not feasible, they must be located within three miles of the coastal zone.¹⁴³ The replacement units must be made available within three years of the commencement of the conversion or demolition.¹⁴⁴ They do not have to be newly built, but rather can be provided through other means such as rehabilitation of existing housing.

Several qualifications weaken the impact of this response to coastal gentrification. Replacement units do not have to remain affordable to low and moderate income households for any specific period of time. Additionally, there is no requirement that converted apartments that housed families in a particular economic group be replaced with housing affordable to others in that same group. Thus, low income units can be replaced by moderate income units.

As with the Subdivision Map Act,¹⁴⁵ the state's limitations on conversions in the coastal zone constitute only minimal requirements.¹⁴⁶ To the extent that the police power permits, all California localities can adopt more stringent displacement protections.

c. *The Police Power*

The police power provision in the California Constitution authorizes cities and counties to "make and enforce . . . all local, police, sanitary and other ordinances and regulations not in conflict with general laws."¹⁴⁷ When a regulation promulgated under the police power is determined to be a "taking," compensation must be paid to those persons whose interests are affected.¹⁴⁸ This occurs "if regulative legislation is so unreasonable or arbitrary as virtually to deprive a person of the complete use and enjoyment of his property, [that] it

within the jurisdiction of a locality that has established a procedure whereby the developer can pay an in-lieu fee into a program that will result in replacement units. *Id.* § 65590(b)(4).

143. *Id.* § 65590(b).

144. *Id.*

145. CAL. GOV'T CODE §§ 66410-66499 (Deering Supp. 1983). *See supra* text accompanying notes 132-35.

146. *See* CAL. GOV'T CODE § 65590(i) (Deering Supp. 1983).

147. CAL. CONST. art. XI, § 7.

148. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). *See generally* Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165 (1967).

comes within the purview of the law of eminent domain."¹⁴⁹

Courts have upheld regulations affecting economic interests in real property—such as rent control laws—as appropriate exercises of the police power.¹⁵⁰ Even where regulations resulted in a substantial diminution in property values, courts have declined to impose a duty of compensation.¹⁵¹

Thus, localities have wide latitude to act under the police power to control the dislocating impacts of conversions. The following presents a variety of remedial steps, premised on this authority, that have been taken in California and elsewhere in the country.

i. Moratoriums

Temporary moratoriums prohibiting condominium conversions allow local jurisdictions time to assess and prepare appropriate legislation in light of an emergency conversion situation. For example, San Mateo County, California, imposed a one-year moratorium on conversions and then banned them altogether until the vacancy rate exceeds 4.85%. Several other California cities have also employed longer moratoriums that prohibit conversions until vacancy rates exceed a prescribed level, usually three to five percent.¹⁵² While vacancy rate moratoriums have succeeded in stopping conversions, they may actually thwart the production of new rental units¹⁵³ since the feasibility of many rental projects is based on their potential for conversion once the tax shelter benefits are exhausted.¹⁵⁴

ii. Tie-in with new construction or vacancy rates

Instead of prohibiting conversions altogether, localities may seek to maintain the existing level of rental stock by linking conversions to

149. *Agins v. City of Tiburon*, 24 Cal. 3d 266, 272, 598 P.2d 25, 28, 157 Cal. Rptr. 372, 375 (1979) (quoting I NICHOLS, *EMINENT DOMAIN* § 1.42(1) (3d rev. ed. 1975)).

150. *See, e.g., Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976) (upholding rent control regulation).

151. *See, e.g., HFH, Ltd. v. Superior Court*, 15 Cal. 3d 508, 542 P.2d 237, 125 Cal. Rptr. 365 (1975) (denying compensation for zoning action which decreased value of land from \$400,000 to \$75,000).

152. One Los Angeles ordinance calls for denying conversion approval if the vacancy rate is less than five percent in a given part of the city.

153. Merl, *L.A. Moves to Cool "Condomania,"* L.A. Times, Nov. 11, 1979, § CC, Part II, at 3.

154. *Rental Market Paradox*, L.A. Daily J., Oct. 9, 1979, at 4.

new rental construction. The city of La Mesa, California, adopted an ordinance that requires the planning director to calculate annually the average number of new rental units constructed in the previous two fiscal years. The number of units that may be converted during the following year is fifty percent of this figure. If the entire amount is not converted, there is no carryover to a succeeding year.

In Palo Alto, California, conversions are authorized only when there is a rental vacancy "surplus." The amount of the surplus is formulated by multiplying the difference between the threshold or minimum vacancy rate and the actual vacancy rate by the number of rental units in the housing stock.¹⁵⁵ Once sufficient conversions have been authorized to deplete this excess, no more are permitted until there is a reduced occupancy of existing rentals or new rental units are constructed.

iii. Low and moderate income housing requirements

Another approach to alleviating conversion displacement focuses on low and moderate income units only. Under an ordinance enacted in San Francisco, California, in December 1982, only 200 units may be converted each year.¹⁵⁶ A lottery system is used to achieve the fairest and least time-consuming selection process for the conversion of residential properties to condominiums. The ordinance prohibits the conversion of apartment buildings with more than six units. More importantly, the ordinance mandates that an applicant for conversion of a building with more than four units must satisfy a ten percent low to moderate income household occupancy requirement by providing such units either in the conversion project or within new construction elsewhere.¹⁵⁷

Converters can evade the purpose of such an ordinance by rapidly increasing rents, thereby forcing lower income tenants to vacate. A proposed subdivision ordinance in Los Angeles, California, would curb such evasion. The proposal calls for disapproval of a tentative map for a condominium conversion project if more than fifty percent of the units in the project at any time during the eighteen-month pe-

155. For example, if the threshold vacancy rate must be five percent before conversions are allowed, and the actual vacancy rate is currently seven percent for 2,000 rental units in the market, then 40 units could be converted to condominiums ($7\% - 5\% = 2\% \times 2,000 = 40$).

156. SAN FRANCISCO, CAL., SUBDIVISION CODE art. 9, § 1396.

157. *Id.*

riod prior to the map application were low or moderate cost housing, unless there are exceptional circumstances.

Another approach would assure that a percentage of converted units remain available to low and moderate income households. Local governments may require that a given percentage of units in each project be sold at below-market prices. Alternatively, the units could be sold to the locality for rental to lower income persons.

iv. Tenant participation

In order to minimize displacement, a locality may require tenant participation in the conversion process. Some cities insist on tenant consent to the conversion.¹⁵⁸ Under California law, tenants must be given notice of a proposed conversion.¹⁵⁹ This enables tenants to participate in public hearings considering approval of the conversion.

v. Relocation assistance

When conversions are approved and displacement will occur, the converters may be required to pay tenants' moving expenses and to provide information about alternative housing. The quality of assistance required of developers varies. Some localities limit assistance to the posting of rental want ads. Several jurisdictions require that the developer find alternative, comparable housing for displaced tenants. Most jurisdictions, however, simply require monetary compensation. Many localities also provide special protections for tenants who are members of certain groups such as the elderly, the handicapped, or households with one or more children. Special protections range from increased relocation payments to life-time leases.

An ordinance of Los Angeles, California, illustrates how several relocation requirements can be combined in one regulatory scheme.¹⁶⁰ The converter must execute a recorded relocation agreement that is satisfactory to the city. A copy of the agreement must be provided to each tenant. The converter must provide assistance in

158. In Palo Alto, California, two-thirds of the tenants must consent if the vacancy rate is three percent or lower. In Washington, D.C., legislation requires a majority of tenants to consent to the conversion in all buildings that are not "high-rent" buildings. New York City requires that at least 35% of current tenants approve the conversion and consent to purchase their units.

159. CAL. GOV'T CODE § 66427.1 (Deering Supp. 1983). See *supra* note 134 and accompanying text.

160. Los Angeles, Cal., Ordinance 153,024 (Oct. 4, 1979).

finding replacement rental units that are comparable in terms of size, price, location, and proximity to medical, recreational, and commercial facilities. Payments of no more than \$100 per month for up to one year must be paid when tenants incur high relocation costs. No monetary limit applies where "special protection" tenants are affected. In addition, the converter must pay each tenant's moving costs up to \$500, plus a relocation fee up to \$500. Finally, until he is successfully relocated, a tenant is permitted to reside in his unit for up to twelve months. "Special protection" tenants, however, may reside in their units indefinitely.

2. Summary

There are several legal bases for controlling the displacing impacts of conversions. These include the authority to regulate land uses through such devices as subdivision maps, to impose specific requirements directed at sensitive areas like California's coastal zone, and to protect the public health, safety, and welfare pursuant to the police power.

A variety of specific remedial techniques aimed at conversions have been employed by cities and counties in California and other states. Notice and tenant first-right-to-purchase requirements have minimal impact, especially for lower income households. More effective techniques include requiring that replacement housing be provided so that the overall supply of housing will not be reduced. Relocation payments are effective means to ease the harsh financial impacts of a forced move. However, this only provides temporary relief from the substantially increased housing costs that displacees will face, and it does not address the non-fiscal impacts such as the shattering of neighborhood social support networks.

Truly effective relief will necessitate either outright prohibition of conversions through moratoriums or the provision of comparably priced replacement housing in the same neighborhood as the converted dwellings. Unfortunately, few localities have imposed moratoriums or comparable replacement housing requirements. Thus, while some steps have been taken to address gentrification through condominium conversions, the most effective means of remedying the problem of displaced households have not been generally employed.

B. *Speculation*

A variety of strategies have been developed to combat speculation and its debilitating effects on the housing market. For example, Vermont and Washington, D.C. impose property transfer taxes. Davis, California prohibits the sale of residential real property within one year of its acquisition. In the private sector, banks and developers have attempted to discourage speculation by imposing conditions on loans and sales.

1. Governmental Regulation

a. *Transfer Taxes*

The Vermont Tax on Gains From the Sale or Exchange of Land¹⁶¹ focuses primarily on protecting rural areas. It does not apply to buildings or to certain amounts of land used as the site of a principal residence. The tax rate varies. The maximum rate is sixty percent of the gain on the sale or exchange, if the gain is two hundred percent or more and the land has been held less than one year. The tax rate drops as the holding period increases or the gain decreases. The minimum rate is five percent on a gain of less than one hundred percent on property held for five or six years. No tax is applied to gains on property sold after being held for more than six years.

In 1974, the constitutionality of the Vermont Tax was upheld in *Andrews v. Lathrop*.¹⁶² In *Andrews*, the plaintiff taxpayers challenged the tax on equal protection grounds, contending that the method of assessing gains by measuring the holding period had a discriminatory impact. The Vermont Supreme Court held that the tax scheme was constitutional because it was related to the achievement of a legitimate state purpose concerning speculation.¹⁶³

The Washington, D.C. Residential Real Property Transfer Excise Tax¹⁶⁴ is essentially an anti-gentrification measure that was adopted after an inner city renaissance. Speculators were forcing out poor residents by buying deteriorated homes to convert into elegant town-

161. VT. STAT. ANN. tit. 32, §§ 10001-10010 (1981 & Supp. 1983). See also Hagman & Misczynski, *Special Capital and Real Estate Windfall Taxes (SCREWTS) in CANZEUS: A Phenomenon*, 28 NAT'L TAX J. 437, 438 (1975).

162. 132 Vt. 256, 315 A.2d 860 (1974).

163. *Id.* at 261-62, 315 A.2d at 863-64.

164. D.C. CODE ANN. §§ 47-1401 to -1471 (1981 & Supp. 1983).

houses for affluent purchasers.¹⁶⁵ The tax is based on the transferor's gain, which is essentially the sale price minus the sum of all acquisition, rehabilitation, and transfer expenses.¹⁶⁶ The highest tax rate is for properties sold within six months of acquisition. Transfers of property held longer than thirty-six months are not taxed. In addition, the tax does not apply to the first sale of a newly built home, to gratuitous transfers, or to transfers of the transferor's principal residence (even if there are also rental units in the building).

The Washington, D.C. law is unique in that transfers of property are exempt from the tax if the transferor warrants the property is fit for occupancy and use. Similarly, transfers are not taxed if the transferor warrants the major appliances that are transferred with the property are fit for the purpose for which they were made. An additional exemption is allowed for property that has been inspected and certified as meeting the standards of the District's housing regulations. These exemptions demonstrate that the transfer tax was aimed at improving the quality of housing as well as stopping speculation.

It is difficult to evaluate the impact of property transfer taxes. For example, no information is available to show the effect that the Vermont tax has had on speculation. Nevertheless, as one analysis noted, "If it [the tax] reduces speculative transfers, it may slow the rate of land price increase, and perhaps also the rate of property tax increase. If it does not reduce transfers, at least it should generate a lot of money which can be used to fund tax relief."¹⁶⁷

As for the Washington, D.C. law, the rehabilitation exemptions weaken its effectiveness as an anti-displacement device. They may even encourage dislocation if rehabilitation is less expensive than paying the tax. In addition, the law was, at least at the outset, poorly administered and unenforced. Seventy percent of the sellers failed to report sales. Almost all who did report claimed that they were exempt or that they owed no tax because expenses exceeded taxable gains.

b. *Residency Requirements*

The City of Davis, California requires¹⁶⁸ that all purchasers of sin-

165. See Richards & Rowe, *supra* note 87.

166. See D.C. CODE ANN. § 47-1401(11) (1981):

167. Hagman & Misczynski, *supra* note 161, at 439.

168. Davis, Cal., Ordinance 893 (1977).

gle-family homes sign an affidavit stating that they intend to reside in the home for a minimum of twelve months. Intentional violations of the ordinance can result in fines of up to \$500, six months in jail, or both. Additionally, the city can obtain injunctions to void real estate sales to investors.

One study¹⁶⁹ concluded that the primary effects of the ordinance have been a reduction in the waiting period of newly constructed homes (speculators dropped off of the waiting lists) and a limitation on the conversion of owner-occupied homes to rental units. It is unclear, however, whether the reduction in speculative activity in Davis was due to the restrictions or to market forces. At the time the city enacted the ordinance, there was a statewide surplus of unsold homes, financing terms were unfavorable for speculators, and the rate of inflation was slowing. These factors combined to make an unfavorable economic climate for speculation.¹⁷⁰

Residency requirements such as those adopted in Davis will not deter speculation in apartment buildings since the requirements do not apply to rentals. Nevertheless, such ordinances could curb speculative conversions where the converted units were initially purchased by other speculators for rental or resale. The effectiveness would be reduced, however, if multifamily buildings are entirely exempted when one unit is occupied by the owner.

2. Private Anti-speculation Efforts

In 1977, the California Department of Savings and Loans, a state regulatory agency, urged state-chartered lenders to discourage speculation by giving preference to buyers who will occupy the property that they own.¹⁷¹ Lenders responded to the Department's directive. Several lenders charge absentee owners higher down payments or interest rates, and others require loan applicants to commit themselves to owner-occupancy.¹⁷²

169. CITY OF DAVIS COMMUNITY DEV. DEP'T, A STUDY OF IMPACTS OF ORDINANCE NO. 893, DAVIS' ANTI-SPECULATION ORDINANCE (Nov. 1977).

170. *Id.* at 1-2.

171. NEWSWEEK, May 2, 1977, at 31.

172. For example, in the late 1970's, Security Pacific National Bank, the second largest bank in California, charged an interest rate premium of 1.25% on home loans where the purchaser would not be the occupant. Sacramento Savings and Loan Association requires that owner-occupants pay a 10% down payment on a house, while it charges a non-owner-occupant a minimum of 25% down payment. Wells Fargo has set its differential financing so high for non-owner-occupants that it considers it "pro-

Major subdivision developers have also taken steps to combat speculation. Developer strategies include limiting sales to one housing unit per customer, requiring commitments that buyers live in the home for at least one year, and reserving the right to cancel a sale if resale is attempted within a specified time period.¹⁷³

Private anti-speculation measures are like residency requirements in that they do not deter apartment speculation since they are directed toward ownership housing. Nonetheless, they could help reduce the purchase of converted units by investors, and thus discourage speculative conversions.

3. Summary

Several strategies can be used to combat speculation. Property transfer taxes that reduce profits from speculation have potentially the broadest applicability. These taxes can be applied to sales of land, ownership housing, and rental units. This approach must be formulated with care, however, to insure that exemptions or allowances for rehabilitation expenses do not permit speculators to escape taxation. Enforcement is crucial.

Restricting residence to owners and imposing onerous lending terms on absentee-owner buyers are additional means by which the public and private sectors can discourage speculation in ownership housing. While these approaches can be utilized for conversion of apartments to condominiums, they generally are inapplicable to rental housing.

Speculation in the rental market can be curbed by taxation and also by rent control.¹⁷⁴ When rents are controlled, speculative profits tend to be reduced. In addition, rent regulations can be specifically tailored to combat speculation. For example, rent increases to cover increased costs of refinancing can be limited to situations where borrowed money is needed for capital improvements. This prevents

hibitive." This bank requires a full 33 $\frac{1}{3}$ % down payment and charges a higher interest rate to investors. United California Bank makes loans only to those borrowers who sign written declarations of their intention to occupy those homes. *Id.*

173. In 1977, Mission Viejo Company, an Orange County, California developer, required home buyers to sign statements that they would live in those homes for at least one year. The company also restricted home and condominium sales to one per customer. The Irvine Company, another Orange County developer, reserves a contractual right to cancel the sale if the home buyer should attempt to resell the property in less than a year. *Id.*

174. *See infra* text accompanying notes 334-61.

owners from borrowing against the building's increasing market value, passing the costs on to the tenants, and then using the funds to finance additional speculative ventures.

C. *Anti-redlining*

Anti-redlining can encourage gentrification in areas that previously had suffered from the lack of loan funds. Some anti-redlining programs fail to address the problem of displacement. For example, California's anti-redlining strategies direct capital into designated areas while ignoring the adverse effects on the indigenous residents. On the other hand, some efforts such as the federal Community Reinvestment Act recognize and attempt to mitigate the displacement caused by anti-redlining.

1. California—Missed Opportunities

California's efforts to halt discriminatory appraisal and underwriting practices do not always benefit minority or low income residents in redlined areas. For example, the state's Housing and Financial Discrimination Act of 1977¹⁷⁵ has a relatively narrow anti-discrimination focus and offers little protection to households facing displacement. The Act prohibits state-chartered lenders¹⁷⁶ from considering factors such as race, religion, or sex when making lending decisions.¹⁷⁷ Lenders may not discriminate on the basis of conditions or trends in a neighborhood, unless ignoring such characteristics would be an unsafe or unsound business practice.¹⁷⁸ Lenders may consider factors such as the "credit worthiness" of the borrower, the secured property's marketability, and the diversification of the financial institution's assets. The poverty of a general area, however, is not a legitimate business consideration.

These reforms have helped alleviate the problem of discriminatory appraisals and lending practices. Nonetheless, nondiscrimination does not necessarily aid low income households seeking to remain in their inner city neighborhoods. Indeed, such reforms may have the

175. CAL. HEALTH & SAFETY CODE §§ 35800-35833 (Deering Supp. 1983).

176. The California law as applied to federally regulated lenders was struck down in *Conference of Fed. Sav. & Loan Ass'ns v. Stein*, 604 F.2d 1256 (9th Cir.), *aff'd per curiam*, 445 U.S. 921 (1979). The Circuit Court found that only the Federal Home Loan Bank Board can regulate federally chartered loan institutions. 604 F.2d at 1260.

177. CAL. HEALTH & SAFETY CODE § 35811 (Deering Supp. 1983).

178. *Id.* § 35810.

opposite effect since displacement is caused in part by rapidly increasing property values. For example, accurate appraisals tend to raise housing prices above the ceiling imposed by prior discriminatory practices. Thus, although anti-redlining efforts may help inner city owners realize the true value of their property, the prices may exceed the resources of prospective low income buyers.

2. The Federal Approach

In contrast to California's strategies, the federal approach recognizes the displacement potential of anti-redlining efforts. For example, the Community Reinvestment Act of 1977 (CRA)¹⁷⁹ has a broad scope that enhances its effectiveness as a remedy for gentrification. The CRA seeks to reverse the flow of capital from inner city areas by redefining the public obligations of financial institutions. It imposes an affirmative obligation on federally chartered lenders to help meet the credit needs of all communities, "including low- and moderate-income neighborhoods."¹⁸⁰

The CRA directs four financial regulatory agencies (the Federal Home Loan Bank Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board) to encourage lenders to meet their affirmative obligation.¹⁸¹ The regulatory agencies must periodically assess an institution's lending record so that it can be considered when processing applications for new charters, branch offices, mergers, deposit insurance, and other changes.¹⁸² Displacement is a pertinent factor. The commentary to the agencies' joint regulations specifically provides: "[I]n connection with their assessments, the agencies will look favorably upon efforts by institutions to assist existing residents in neighborhoods undergoing a process of reinvestment and change."¹⁸³

In addition to periodic assessment, the agencies require lenders to consider the displacement potential of residential, commercial, and other revitalization projects they finance. For example, the Comptroller of the Currency directs its examiners to evaluate the rehabilitation credit needs of residents in the community. They must also

179. 12 U.S.C. §§ 2901-2905 (1982).

180. *Id.* § 2903.

181. *Id.* § 2901(b).

182. *Id.* § 2902(3).

183. 43 Fed. Reg. 47,146 (1978).

examine how a development loan, as compared to other types of financing investments, would affect the credit needs and neighborhood characteristics of the community as a whole.¹⁸⁴

The public may present its views on a lender's performance in proceedings before the federal regulatory agencies. Citizens have challenged applications for institutional changes, and in some cases, such challenges have resulted in lenders promising to provide anti-displacement relief as a condition for approval of their change requests.¹⁸⁵ In Oakland, California, an agreement between a lender and a consortium of community groups acknowledged the "need for improved financing within minority and mortgage deficient neighborhoods, but not at the social cost of displacement of the residents of these neighborhoods or extensive speculation."¹⁸⁶ The agreement called for the lender to direct loan funds to lower income owner-occupants in specified neighborhoods in order to abate speculation. The lenders also agreed to provide long-term, below-market financing of apartment renovation under the Department of Housing and Urban Development's Section 8 moderate rehabilitation program.¹⁸⁷ Since the Section 8 program subsidizes the rents of low income households, renovation can proceed without tenant displacement.

184. See 12 C.F.R. § 25.7 (1983).

185. According to HUD Notice CPD 79-10, June 1979, community groups have effectively used the CRA to combat discrimination displacement. For example, San Bernardino, California residents protested a branch application filed by the California Federal Savings & Loan. In one of the first hearings before the Federal Home Loan Bank System, lawyers reached a negotiated settlement with California Federal, including a commitment by the savings and loan to open a new branch in the city's barrio. In Missouri, attorneys represented low and moderate income community groups in filing a CRA protest against a proposed new branch opening in Kansas City by a St. Louis savings and loan. On the day of the hearing, lawyers successfully negotiated an affirmative loan policy agreement with the savings and loan that included specific commitments to the lower income west side of Kansas City. In another instance, Los Angeles community organizations challenged Home Federal Savings and Loan Association's application to open a branch in La Jolla, California, on the grounds that Home Federal had deliberately excluded South Central Los Angeles (a minority area) from its lending territory. Home Federal settled and agreed to open a branch in South Central Los Angeles. It also agreed to establish an affirmative lending unit specifically aimed at low income areas.

186. Agreement to Provide Community Reinvestment for Better Oakland Neighborhoods, entered into by the Northern California Savings and Loan Association (1980) (copy on file with the authors).

187. See *infra* text accompanying notes 225-27.

D. *Real Property Taxation*

As discussed above, fiscal pressures to increase the local tax base deter localities from addressing the displacement problem. In fact, communities may view gentrification favorably as a mechanism for generating needed revenues.

State and local governments can take action to blunt the gentrifying impact of property taxes. One approach is to reform the tax collection and distribution system, thereby reducing local dependence on property taxation as a revenue source. For example, tax-base sharing can be an alternative to singular funding of local services. Under this system, all local governments in a particular region share in the future growth of that region's commercial-industrial tax base.¹⁸⁸ This reduces conflicting fiscal interests between central cities and suburbs by minimizing the impact of tax considerations in the location of business and commercial development.¹⁸⁹ Thus, increasing the local tax base no longer constitutes an incentive to encourage gentrification.

Altering the revenue sources for traditionally local services is another technique to reduce the gentrifying effects of property taxation. The primary example of this approach has been state funding of public education. Reallocation of state tax revenues to finance local schools reduces the concern about improving the local tax base.¹⁹⁰

Alternatively, property tax remedies can focus on easing the impact of rising taxes on lower income homeowners and tenants in gentrifying areas. Property taxes are generally regressive by nature because the tax is levied in proportion to the value of real property rather than in relation to household income. Consequently, the poor and the elderly pay a disproportionate amount of their income in real property taxes.¹⁹¹

All fifty states have enacted some sort of relief program to mitigate

188. Minnesota enacted one of the first tax-base sharing programs. Known as the Minneapolis Plan, it reallocated taxes among 300 taxing districts. *See generally* R. KINGSTON & C. CHU, CAL. ASSEMBLY SUBCOMM. ON COMMUNITY DEV., TAX BASE GROWTH SHARINGS (1977).

189. The Minnesota Plan was upheld by the Minnesota Supreme Court in *Village of Burnsville v. Onischuk*, 301 Minn. 137, 222 N.W.2d 523 (1974). A similar approach was upheld in New Jersey in *Meadowlands Regional Redev. Agency v. State*, 63 N.J. 35, 304 A.2d 545 (1973).

190. *See* G. PETERSON, *supra* note 100, at 125.

191. *See* ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, PROPERTY TAX CIRCUIT-BREAKERS: CURRENT STATUS AND POLICY ISSUES 13-16 (1975).

the dislocating effects of spiraling taxes. Most of these programs provide tax relief to renters or elderly homeowners. Some states afford relief based upon income limitations.¹⁹²

One popular form of tax relief is the circuit breaker, designed to protect household income from tax overload.¹⁹³ The circuit breaker operates by allowing an eligible taxpayer an income tax credit, cash rebate, or property tax offset when taxes reach a specified percentage of income.¹⁹⁴ By establishing a tax equivalent standard for renters, such relief is available to tenants as well as property owners.

Tax abatement for rehabilitation is a second type of relief directed at individual households in areas experiencing gentrification.¹⁹⁵ Reassessments are deferred for a period ranging from five years in Ohio¹⁹⁶ to fifty years in New York.¹⁹⁷ Deferring reassessments may encourage renovation while minimizing the expenses passed on to modest income homeowners or renters. Since the amount of funds involved is relatively small, however, abatement has provided minimal assistance against displacement pressures caused by tax increases. Therefore, this type of relief is most effective when used in combination with other remedies.

E. *Housing Code Enforcement*

Housing codes need to be enforced to protect homeowners and renters from health and safety hazards. Code enforcement also permits a city to preserve its housing supply. Nevertheless, housing codes must be enforced in a sensitive manner to prevent displacement of low income residents. The following outlines a variety of anti-displacement techniques that local agencies and courts can employ when enforcing housing code programs.

1. *Selective Enforcement*

Selective enforcement of housing code requirements can be a primary strategy in low income areas. The facts and circumstances of each case are scrutinized to determine the extent of enforcement that

192. *Id.* at 20-25.

193. R. FISHMAN, *supra* note 98, at 531.

194. *Id.*

195. *Id.* at 524-25.

196. OHIO REV. CODE ANN. § 3735.67 (Page 1980).

197. N.Y. PRIV. HOUS. FIN. LAW § 93(5) (McKinney 1976).

should be ordered. The economic hardships imposed can be evaluated and then balanced against the need for enforcement.¹⁹⁸ For example, the strictness of enforcement might depend on the gravity of the problem. If the code violation is life threatening, then stringent enforcement would be imperative. If the violation were less dangerous, however, enforcement would depend to a large extent on the resident's ability to pay the cost of correction.¹⁹⁹ Of course, this does not mean that financial hardship would always constitute an acceptable excuse for noncompliance with code requirements. Rather, selective enforcement gives agencies and courts the flexibility to scrutinize the reasonableness of enforcement in individual cases.²⁰⁰ This introduces displacement considerations into the decision-making process.

2. Resident Participation

Resident participation is another anti-displacement strategy that can be used in code enforcement programs. Participation can take various forms. For instance, local residents could be hired and trained as code inspectors within their respective communities. These community inspectors could check the quality of repair work and possibly correct defects in the enforcement agencies' inspection

198. See Comment, *The Landlord's Economic Inability to Meet Housing Code Requirements: The "Hot Bath" Ordinance, an Illustration*, 23 ST. LOUIS U.L.J. 163, 185 n.158 (1979).

199. In this respect, selective enforcement is similar to the concept of "zoned housing codes" that have been suggested by some students of the problem. See Note, *supra* note 107, at 812-13.

200. Selective code enforcement based upon the economic situation of inner city residents received judicial support in *City of St. Louis v. Brune*, 515 S.W.2d 471 (Mo. 1974). The Missouri Supreme Court held that a municipal ordinance requiring every dwelling unit to have a tub or shower bath in good working condition, properly connected to approved water and sewer systems, was unconstitutional as applied to the defendant's property. The court noted that the ordinance was unreasonable, arbitrary, and confiscatory as applied, but limited the holding to the specific facts of the case. *Id.* at 476-77. In reaching its decision, the *Brune* court relied on *Dente v. City of Mt. Vernon*, 50 Misc. 2d 983, 272 N.Y.S.2d 65 (Sup. Ct. 1966). In *Dente*, a landlord attacked the constitutionality of an ordinance that required bathing and washing facilities with hot water. The *Dente* court reasoned that improvements required by ordinance are within the police power, but they "must be reasonable, proper and fair when considered with reference to the object to be attained." *Id.* at 984, 272 N.Y.S.2d at 67. The *Brune* court interpreted this to mean that "the urgency of the evil to be corrected should be weighed against the cost to the property owner." 515 S.W.2d at 475-76.

records.²⁰¹

3. Standardized Building Materials

An additional strategy for ameliorating the displacing impact of code enforcement would be widespread adoption of a national standard for building materials. Such a standard might promote innovations such as plastic pipe, romex cable, and off-site assembled plumbing facilities. By taking advantage of technological progress, a standard for building materials would alleviate part of the cost of housing code compliance. This would make it less burdensome for low income property owners and tenants to meet code requirements.²⁰²

4. Sanction Reforms

Reforming the sanctions for housing code violations may also reduce the displacement caused by code enforcement. For example, vacate orders might be issued for specific apartments rather than for entire buildings.²⁰³ Receiverships might present a viable option in some cases. Even though such a remedy removes management from the hands of owners, qualified managers and staff personnel from local public agencies have the expertise to operate such buildings until rehabilitation is complete.²⁰⁴ If, however, both the cost of repairs and the cost of alternative management are deducted from rents, receiverships might prove prohibitively expensive for seriously dilapidated buildings.

5. Housing Clinics and Specialists

Housing clinics and specialists could also be used to assist in mitigating the displacing effects of code enforcement. They can act as

201. Cities such as San Francisco and New Haven have provided model examples of how effective neighborhood organizations have worked with the city's code enforcement agency. See C. HARTMAN, *supra* note 110, at 113.

202. Of course, modernizing standards for building materials would affect persons with vested interests, especially contractors, suppliers, and tradesmen employed to handle the electrical, mechanical, plumbing, structural, pipe, and bricklaying jobs. Nonetheless, modern standards properly implemented could clearly reduce the burden of code enforcement. See C. FIELD & S. RIVKIN, *THE BUILDING CODE BURDEN* 76-79 (1975).

203. Segal, *A Slum Landlord Program—An Essential Ingredient in a Housing Code Enforcement Program*, 58 J. PUB. HEALTH 446, 448 (1967).

204. See Gribetz, *New York City's Receivership Law*, 21 J. HOUSING 297 (1964).

referral mechanisms, sources of information, and liaisons with enforcement agencies.²⁰⁵ Sometimes clinics and specialists are criticized because they can be expensive and may reach only a small number of people.²⁰⁶ Nonetheless, the benefits of housing clinics and specialists are realized not only through their direct actions, but also indirectly by helping to prevent abandonment, demolition, and ultimate displacement.

6. Financial Assistance

Code enforcement can cause displacement if the residents cannot afford the cost of compliance. If significant anti-displacement protection is to be provided, public funds will have to be made available to help low income residents pay for necessary repairs.

Several programs provide low-interest loans and grants for rehabilitation. These programs operate on the theory that cost reductions will prevent displacement. They include the federal block grants, Section 312 loans, and the neighborhood housing services and urban homesteading programs.²⁰⁷ Many localities also require that owners of apartments who receive this rehabilitation assistance agree to limit rent increases for a specified period such as the duration of the loan.²⁰⁸

Under the Section 8 program, low income tenants in renovated

205. In Buffalo, New York, the housing court has a special program where a one-person staff helps code violators who are elderly, sick, handicapped, mentally impaired, or senile. The court assistant refers such people to government social services and financing programs and also acts as a liaison between the agencies in working out a solution. See LoRusso, *The Buffalo Housing Court: A Special Court for Special Needs*, 17 URBAN L. ANN. 199, 203 (1979).

Pittsburgh has a housing clinic designed especially to deal with those code violators who have difficulty coping with their responsibilities. In the "hard" cases where fines are not appropriate, the clinic counsels, instructs, and otherwise helps violators in complying with the codes. See Penkower, *The Housing Court of Pittsburgh*, 17 URBAN L. ANN. 141, 152 (1979).

In Hampden County, Massachusetts, housing specialists' activities have included emergency relocation of tenants burned out of their homes, monitoring repairs, establishing court receiverships, settling disputes, arranging payment schedules, and assisting owners and tenants in filing pro se complaints. See Winer, *Pro Se Aspects of Hampden County Housing Court: Helping People Help Themselves*, 17 URBAN L. ANN. 71, 79 (1979).

206. See Note, *supra* note 107, at 826.

207. See C. LOWE, *supra* note 67.

208. 14 HOUSING L. BULL., Mar.-Apr. 1983, at 1.

units pay only an affordable portion of their income for rent.²⁰⁹ The balance is paid by the federal government pursuant to a contract with the property owner. Thus, residents are not displaced by increases in rents reflecting the landlord's costs to comply with housing code requirements.

Finally, relocation assistance can help ameliorate the impact of displacement caused by code enforcement. Federal relocation assistance is limited.²¹⁰ For example, in *Alexander v. HUD*,²¹¹ the Supreme Court found that relief under the Uniform Relocation Assistance Act²¹² could only be required where displacement occurred in connection with an acquisition of property for a specific federal program,²¹³ and that the Act was not intended to encompass persons indirectly displaced by government programs.²¹⁴

In contrast to the federal position, California requires governmental entities to provide relocation assistance to persons who move because of rent increases within one year after completion of publicly financed rehabilitation.²¹⁵ Agencies with residential rehabilitation programs funded by local bond proceeds must take "every possible action" to prevent displacement due to rent increases caused by rehabilitation.²¹⁶

F. HUD

In the late 1970's, HUD was more responsive to critical analysis²¹⁷ than during the urban renewal years.²¹⁸ The following considers some of the changes in HUD's posture and measures them with criticism aimed at the agency. The analysis focuses on remedial steps initiated in four of HUD's principal housing programs: demonstrations, Section 312 low-interest rehabilitation loans, Section 8, and community development block grants. Contemporaneous policy

209. See 42 U.S.C. §§ 1437a, 1437f (1976 & Supp. V 1981).

210. 9 HOUSING L. BULL., Dec.-Jan. 1979, at 10.

211. 441 U.S. 39 (1979).

212. Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, 42 U.S.C. §§ 4601-4655 (1976).

213. 441 U.S. at 52.

214. *Id.* at 60.

215. CAL. GOV'T CODE § 7265.3(b) (Deering 1982).

216. CAL. HEALTH & SAFETY CODE § 37922.2 (Deering Supp. 1983).

217. See *supra* text accompanying notes 112-25.

218. Hartman, *supra* note 9, at 801.

shifts are then considered. After noting changes that are needed in HUD's new construction site selection criteria, the section concludes with a discussion of the new federal attitude under the Reagan Administration whereby HUD's involvement in and scrutiny of programs that cause gentrification has been cut back.²¹⁹

1. Programmatic Initiatives and Adjustments

a. *Demonstrations*

In 1978-79, HUD initiated several grant programs designed to ameliorate displacement. The Innovative Grant Program gave large sums to cities such as Portland, Oregon (\$600,000) and Columbus, Ohio (over \$2,000,000).²²⁰ Both cities planned to use the funds to reduce the cost of housing for lower income residents. In addition, technical assistance grants were made to twenty-one neighborhood organizations in twelve states. These grants were designed to support indigenous self-help groups. A similar purpose grant of \$160,000 was made to Savannah, Georgia to restore 839 historic Victorian-style houses and to help more than 1,000 low and moderate income persons remain in their neighborhoods.²²¹

b. *Section 312 Rehabilitation Loans*

Regulations governing Section 312 provide that in making low-interest loans for rehabilitation, priority should be given to applications from low income persons who own the property and plan to live there after rehabilitation.²²² The emphasis on low income ownership and a declaration of intent to remain afterwards may serve to stimulate interest in rehabilitation by nonspeculators. This speculative deterrent could be strengthened by specific residency time limits or

219. As this article went to print, Congress enacted the Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181 (Nov. 30, 1983). The Act repeals the Section 8 programs, enacts new programs for the construction and rehabilitation of lower income housing, and contains several provisions reflecting Congress' continued intent that displacement be ameliorated in HUD programs. See *supra* text accompanying notes 114-15. These developments, which demonstrate that lower income dislocation is not a forgotten issue, are discussed *infra* in note 405.

220. U.S. DEP'T OF HOUSING & URBAN DEV., RESIDENTIAL DISPLACEMENT—AN UPDATE 66-73 (1981).

221. *Id.*

222. 24 C.F.R. § 510.107 (1983).

lower income occupancy requirements, with penalties for noncompliance and hardship exceptions.

In addition to giving priority to low income residents, additional regulations provide that no loan application will be approved unless (a) any displacement is covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) or (b) the locality administering the Section 312 program agrees to provide benefits comparable to that afforded by the URA.²²³ In general, eligible tenants can rent replacement housing and receive either housing payments identical to that required by the URA or assistance under the Section 8 existing housing program. Alternatively, tenants can receive a "right to continue in occupancy" in the renovated housing at a rent that will be controlled for four years.

These regulations are an improvement over HUD's former "no assistance at all" attitude toward displacement. Nevertheless, while the regulations may provide some temporary relief to displaced households, the Section 312 approach provides little in the way of an effective displacement remedy. The rehabilitation program may be a viable tool for preserving the physical condition of buildings, but it does not assure low income persons of an affordable housing supply in the future. Rental assistance payments merely postpone the financial hardship of moving for a limited period of time. The dislocated household eventually must compete for the short supply of lower income housing. In addition, use of Section 8 to provide displacement relief deprives other needy households on the waiting lists from receiving assistance. The continued occupancy approach denies displacees the freedom to choose where to reside. Additionally, another drawback to this approach is that rents are controlled for only a limited period.²²⁴ They can be raised in two to four years to levels beyond what lower income households can afford. These problems could be alleviated if HUD would revamp its Section 312 regulations to require that replacement housing constitute a net addition to the lower income supply, Section 8 existing housing not be utilized where there is a waiting list, and Section 312 rehabilitated housing be made available to lower income households on a long-term basis.

223. *Id.* § 510.52.

224. *Id.* § 510.105.

c. *Section 8*

HUD's implementation of portions of the Section 8 program²²⁵ reflects a more effective response to dislocation and housing loss. Regulations for the moderate rehabilitation component provide for contracts with public housing authorities for long-term rent subsidies in rehabilitated housing units.²²⁶ In turn, the local authorities entertain proposals from private landlords who will improve their units in return for a long-term subsidy contract. Minimization of displacement in areas undergoing private rehabilitation is one of the qualifying policy objectives for participation under the Section 8 rehabilitation program.²²⁷

HUD has required participating cities to pick up all costs of permanent displacement. Additionally, it has limited the situations in which a housing authority can permit permanent displacement and still receive funds under the program.²²⁸ If there is a reduction in the number of units as a result of rehabilitation, displacement will be permitted for the excess number of tenants. Alternative housing for the displacees, however, must be located in comparable neighborhoods. The tenants who are not displaced must be permitted to remain in the building throughout the fifteen-year period of the subsidy.²²⁹

If attention to detail is a criterion, then HUD may indeed have left no stone unturned in preventing displacement under the Section 8 rehabilitation program. HUD, however, has not been as sensitive to displacement in the new construction component of the Section 8 program.²³⁰ Its anti-dislocation efforts in this context contain many of the same defects found in HUD's approach to the Section 312 re-

225. 42 U.S.C. §§ 1401-1440 (1976 & Supp. V 1981). This program has been repealed by the Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181 (Nov. 30, 1983). *See infra* note 405.

226. 24 C.F.R. §§ 882.401-413 (1983).

227. *Id.* § 882.401(a).

228. *Id.* § 882.406.

229. A number of processing requirements are designed to insure that existing residents remain in place after the renovation. To avoid an anticipatory avoidance of the regulations, the owner must certify that there has been no evictions in the previous year that were not for "cause." This provision, combined with requirements for ample notice to tenants once the initial screening of the application has occurred, is designed to guard against evasion of the program's requirement that it benefit existing residents. *Id.*

230. 42 U.S.C. § 1437 (1976 & Supp. V 1981).

habilitation loan program.²³¹

Proposals for Section 8 assistance must contain an analysis of any displacement that the development will cause and an enumeration of steps that can be taken to minimize this dislocation.²³² HUD has established regulations requiring developers to follow certain provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).²³³ The developer must help tenants who will be temporarily or permanently displaced to find adequate, affordable replacement housing.²³⁴ Alternatively, the developer must make a lump sum payment equalling the amount necessary to reduce the monthly replacement housing costs over a four-year period to twenty-five percent of the displaced household's gross income.²³⁵

While these payments for replacement housing may temporarily cushion the immediate impact on displaced households, their remedial potential is limited. Since no standards are set for computing the lump sum payment, the private developer will have every incentive to calculate on the minimal side. Moreover, HUD requires no guarantees that affordable relocation housing will be available for the four-year period, and the tenant has no effective recourse if it is not.

The new construction relocation approach clearly has limited effectiveness as a remedy for displacement. No responsibilities comparable to the URA's "houser of last resort" requirements²³⁶ are imposed under Section 8. In fact, it may stimulate added dislocation, since short-term availability of alternative housing could remove pressures mitigating against displacement.

d. *Community Development Block Grants*

The Community Development Block Grant program (CDBG)²³⁷ has the potential for funding activities that aid low and moderate income residents of central-city neighborhoods. Since its inception, a

231. See *supra* text accompanying notes 222-24.

232. 24 C.F.R. § 880.305(g) (1983).

233. *Id.* § 880.209. For a discussion of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-4655 (1976), see *infra* text accompanying notes 362-404.

234. 24 C.F.R. § 880.209(b)(2), (3), (5) (1983).

235. *Id.* § 880.209(b)(8)(ii).

236. See *infra* notes 388-94 and accompanying text.

237. 42 U.S.C. §§ 5301-5320 (1976 & Supp. V 1981).

primary objective of the program has been to benefit principally low and moderate income people.²³⁸ In the late 1970's, Congress further mandated that in the administration of federal housing and community development programs, the utmost care should be taken to minimize the displacement of persons from their homes,²³⁹ that people displaced by CDBG-funded activities be provided a "reasonable opportunity" to relocate in their immediate neighborhoods,²⁴⁰ and that HUD and block grant recipients examine the impact of apartment conversions on lower income housing needs.²⁴¹

Accordingly, HUD adopted a regulation in 1979 that provided: [M]ere location of an activity in a low- or moderate-income area does not conclusively demonstrate that a project or activity benefits lower income persons. A neighborhood revitalization effort which creates improved housing and better living environment, principally for low- and moderate-income persons, would be counted as such. Where such program results in a change in the income characteristics of the areas so that a majority of the ultimate beneficiaries are higher income persons, the program would not be counted as principally benefitting low- and moderate-income persons.²⁴²

Thus, in theory the "principal benefit requirement" can prevent many gentrifying activities by directing CDBG funds to meet lower income needs. In practice, however, the requirement does not totally eliminate the gentrifying potential of the block grant program. HUD chose not to require that all monies benefit low and moderate income people. Funds can be spent on activities that aid the more affluent or cause displacement.²⁴³

With respect to the congressional mandates that displacement be minimized and that neighborhood relocation opportunities be provided, HUD issued a regulation merely requiring that localities submit a strategy that would accomplish these ends.²⁴⁴ No standards

238. *Id.* § 5301(c) (1976).

239. *See* Housing and Community Development Amendments of 1978, Pub. L. No. 95-557, § 902, 92 Stat. 2080, 2125 (noted at 42 U.S.C. § 5313 (Supp. V 1981)).

240. 42 U.S.C. § 5304(c)(1)(C)(i) (Supp. V 1981).

241. *Id.* § 5304(c)(1)(A).

242. 24 C.F.R. § 570.302(g)(6) (1983).

243. *See id.* § 570.302(e), (f).

244. With respect to housing needs and displacement, HUD required: Where the community development program will result in direct or indirect displacement or other hardships to low- and moderate-income persons, the strategy

were set for measuring whether appropriate steps to minimize displacement have been taken or whether local strategies adequately deal with the problem.

In addition, the effectiveness of the neighborhood relocation opportunity requirement as a gentrification remedy has been recently cut back by court decision. Although all parties to the litigation agreed that there was no relocation housing available in the immediate neighborhood, the circuit court in *Mejia v. HUD*²⁴⁵ held that the statute is not absolute. It only requires relocation assistance if housing is available in the neighborhood and does not require a city receiving block grant funds to use its powers to create a reasonable opportunity for neighborhood relocation where comparable replacement dwellings exist elsewhere.²⁴⁶

In 1979 HUD also retreated from an older regulation which applied the URA if block grant monies were used "in conjunction with" a dislocating activity. HUD restricted coverage by requiring that the federal monies must be used for public acquisitions before the URA applies.²⁴⁷ Thus, if displacement is privately financed, dislocated households have no protection. At the same time, HUD has determined that generally the URA does not apply to dislocation occurring before submission of the CDBG application that includes the displacing activity.²⁴⁸ This is a retreat from the draft regulations issued March 31, 1978, which proposed presumptive coverage of acquisition and displacement occurring up to three years before submission of a CDBG application requesting HUD funding for demolition, rehabilitation, or new construction.²⁴⁹

Finally, HUD did not follow up on the requirement that the displacing effects of conversions be identified. Instead of directly addressing the problem, it left the discretion to act to the local block grant recipients.

Thus, although HUD recognized the dislocating potential of its

shall describe the actions the applicant will take to assist such persons to remain in their present neighborhoods when they prefer and to mitigate any adverse effects resulting from block grant funded activities.

Id. § 570.304(b)(2)(v) (1983).

245. 688 F.2d 529 (7th Cir. 1982).

246. *Id.* at 531-32.

247. 24 C.F.R. § 42.79(c) (1983).

248. *Id.* §§ 42.79(c)(1), 570.602(a)(1).

249. 43 Fed. Reg. 13,858 (1978).

CDBG program in the late 1970's and directed that localities mitigate displacement,²⁵⁰ the agency did not move aggressively to insure compliance. No standards have been set for measuring whether appropriate steps to minimize displacement have been taken or whether local strategies adequately deal with the problem. Relocation responsibilities have been restricted to certain CDBG-funded, public agency acquisitions and are not applicable to directly related, privately inspired displacement unless the locality so chooses.

e. *Summary*

HUD has responded to the displacement potential inherent in its programs in an uneven manner. The Section 312 response was unduly limited and probably had minimal remedial impact. The Section 8 moderate rehabilitation program has far more promise for dealing effectively with the problem. In the CDBG program, however, HUD has adopted a passive response, directing localities to minimize dislocation to an undefined extent. An overall examination of HUD's activities in 1978-79 indicates that while the agency may have been more responsive to criticism than in earlier years, it did not effectively move to curb displacement caused by its major programs, despite a congressional mandate that displacement be minimized.

2. Policy Proposals

In contrast to its interim report that minimized the extent of urban lower income dislocation, HUD's Final Displacement Report in 1979 characterized displacement as a serious problem.²⁵¹ The report sought to redirect some HUD programs and to promote local anti-displacement plans. Specifically, it called for: minimizing displacement, with appropriate relocation assistance provided where displacement is unavoidable; expansion of the lower income housing supply; and technical assistance from HUD to help develop local remedial strategies.²⁵² Since the implementation policies were broadly formulated and unrefined, the following summarizes the report's gen-

250. 24 C.F.R. § 570.302(h) (1983).

251. The report concluded that "public policy must seek to eliminate the adverse effects of revitalization and reinvestment on those with the least resources to cope with increasingly competitive housing markets." FINAL DISPLACEMENT REPORT, *supra* note 118, at 2.

252. *Id.* at 15-27.

eral direction and its suggestions for steps that would promote anti-gentrification.

The HUD report established a goal that "no person shall be displaced as a direct result of a HUD or HUD-assisted program or activity unless an affordable, decent, safe and sanitary replacement dwelling is available."²⁵³ To achieve this end, HUD proposed that displacement potential be analyzed in conjunction with all project selection and program funding decisions. Formerly, this requirement was applied only in conjunction with the CDBG and the Section 8 construction/substantial rehabilitation program. Local anti-displacement strategies would have to address the effects of private investment and revitalization activities, even though they are not the result of community development programs.

These policies need more detail for effective implementation. Standards should be set for localities to clarify the extent that they are expected to address the displacement problem. HUD will have to go beyond broad pronouncements. It should delineate performance criteria, and monitor implementation to insure that the requirements are met.

In addition to delineating the program requirements, HUD should take complementary supportive action to eliminate the uneven anti-displacement features of its various programs. It should also consider "bonus" funding to stimulate local responses and cut down on financially inspired resistance. Additionally, to encourage the development of housing where it will be most effective, HUD should revamp its site and neighborhood locational standards so that new units can be made available in revitalizing neighborhoods. This proposal warrants separate discussion.

3. Site Selection Criteria Revision

HUD's ability to address inner city displacement is hampered by its 1972 site selection criteria for locating insured and public housing.²⁵⁴ The criteria are premised on the view that locating federally assisted housing in central city neighborhoods will adversely affect areas that are already "overconcentrated" with low income households. Ironically, these criteria were adopted as an aftermath of civil rights litigation in the 1960's that successfully challenged the prevail-

253. *Id.* at i.

254. 24 C.F.R. §§ 200.700-.710 (1983).

ing HUD practices of locating subsidized housing only in minority communities.²⁵⁵

In 1977, HUD proposed regulations that called for easing the 1972 standards. The proposed regulations would allow approval of sites in areas of minority concentration if there are no feasible sites outside such areas.²⁵⁶ They also exempt neighborhoods undergoing concentrated revitalization or preservation.²⁵⁷ This approach should have been implemented. It is a reasonable middle ground that promotes expansion of housing opportunities in nonconcentrated areas and, at the same time, allows housing to be provided so that displaced urban households can remain in their neighborhoods. However, the proposals were not adopted in the late 1970's nor by the Reagan Administration.

4. HUD and Gentrification in the Eighties

With the election of President Reagan, the demonstrations, Section 312, and Section 8 housing programs discussed above have been severely curtailed or eliminated. As a result, the question of the effectiveness of anti-displacement protections in these contexts has become moot for the present time.

Reflecting the deregulation philosophy of President Reagan, in 1981 Congress also amended the Housing and Community Development Act of 1974²⁵⁸ to change significantly the block grant program. The 1981 amendments reduced HUD's ability to require localities to remedy dislocating effects of the program. Comprehensive application requirements were eliminated. Instead, a locality must only submit a simple statement of funding objectives and activities. HUD's application review authority is effectively eliminated,²⁵⁹ and now it

255. Courts have held that these locational practices violated the 1964 and 1968 federal civil rights acts on the grounds that increasing or maintaining racial concentration and isolation is a form of prohibited discrimination. *See, e.g., Shannon v. HUD*, 436 F.2d 809 (3rd Cir. 1970).

256. 7 HOUS. & DEV. REP. (BNA) 790 (Feb. 18, 1980).

257. *Id.*

258. The block grant legislation is found at 42 U.S.C. §§ 5301-5320 (1976 & Supp. V 1981). The 1981 amendments are in the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357. For a detailed discussion, see *1981 Legislative Changes in the Federal Housing Program*, 15 CLEARINGHOUSE REV. 767 (1982).

259. *See* 42 U.S.C. § 5304 (Supp. V 1981) (amending 42 U.S.C. § 5304 (1976)). For cases concerning the scope of HUD's review authority prior to the 1981 amendment, see *Coalition for Block Grant Compliance v. HUD*, 450 F. Supp. 43 (E.D.

can only scrutinize performance.²⁶⁰ No longer can it require that sufficient information be submitted for evaluation before funds are released. Even if HUD somehow obtained data that indicated minimal requirements were not being met, it has been deprived of the ability to withhold funds until it secures adequate assurances of compliance.

Accordingly, HUD adopted regulations²⁶¹ that implement the CDBG program to reflect this philosophical shift. With the decrease in HUD's oversight authority and the easing of the standards for determining whether block grants benefit lower income people, it is now easier for localities to fund activities that aid more affluent urban pioneers.²⁶²

In adopting its new regulations, HUD disregarded the relatively strong policy proposals that were developed under the preceding administration.²⁶³ Instead, the agency has retreated to a posture of minimum intervention at the national level to brunt the effects of gentrification.

HUD now requires that block grant recipients estimate the number of lower income people that will be involuntarily displaced by public and private actions.²⁶⁴ In response to the congressional directive that localities seek to provide alternative housing for dislocated persons in their original neighborhoods, the agency's new regulations merely provide that localities consider this objective (along with several others) in selecting the general location for newly constructed or substantially rehabilitated publicly assisted housing.²⁶⁵ When CDBG activities could lead to displacement, localities are directed to prepare a policy statement indicating the steps that it will take to minimize displacement and mitigate the harm that lower income displacees will suffer.²⁶⁶ Displacing activities include acquisition, rehabilitation, or demolition that is totally or partially financed with block grant funds;

Mich. 1978) and *City of Hartford v. Hills*, 408 F. Supp. 889 (D. Conn.), *rev'd sub nom. on other grounds*, *City of Hartford v. Towns of Glastonbury*, 561 F.2d 1032 (2d Cir. 1976).

260. 42 U.S.C. § 5304(d) (Supp. V 1981).

261. 48 Fed. Reg. 43,538 (1983) (to be codified at 24 C.F.R. pt. 570).

262. *Id.* at 43,574-76 (to be codified at 24 C.F.R. § 570.901).

263. *See supra* text accompanying notes 112-25.

264. 48 Fed. Reg. 43,566 (to be codified at 24 C.F.R. § 570.306(e)(2)(ii)).

265. *Id.* at 43,567 (to be codified at 24 C.F.R. § 570.306(e)(5)(i)).

266. *Id.* at 43,565 (to be codified at 24 C.F.R. § 570.305).

such activities that are privately carried out, but are a prerequisite to a CDBG-funded activity (e.g., land acquisition with non-CDBG funds for a block grant-funded project); and code enforcement that receives CDBG monies.²⁶⁷

Under HUD's new regulations, localities are not required to avoid involuntary displacement. HUD rejected proposals that it adopt a provision to this effect.²⁶⁸ The final rule is so noncommittal that it appears to afford block grant recipients the discretion to ignore displacement and its negative impacts.

Thus, HUD is retreating to a relatively inactive role in combatting gentrification induced by the block grant program. While localities have the authority to address the problem, gentrifying forces and the relative powerlessness of the poor make it unlikely that local governments will aggressively combat displacement on their own initiative. The charges of ineffectiveness made in the late 1970's are likely to increase in the 1980's, unless significant policy shifts are made.

V. ADDITIONAL REMEDIAL STRATEGIES

A. *Land Use Controls*

1. Exclusionary Zoning Challenges

Some localities have used zoning to maintain high socio-economic levels in their communities. Such zoning practices can stimulate gentrification by forcing middle income households to seek less expensive housing in inner city areas occupied by the poor. Although courts have traditionally upheld the power of local governments to control development by zoning,²⁶⁹ exclusionary land use regulations have been facing increasing opposition in recent years.²⁷⁰

267. *Id.* at 43,572 (to be codified at 24 C.F.R. § 570.612(a)).

268. *See id.* at 43,545.

269. *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926); *Ayres v. City Council of Los Angeles*, 34 Cal. 2d 31, 207 P.2d 1 (1949).

270. Minimum building areas or large-lot zoning regulations have been frequently subject to litigation. Minimums up to five acres had been upheld prior to the 1960's. *E.g.*, *Clemons v. City of Los Angeles*, 36 Cal. 2d 95, 216 P.2d 1, *vacated*, 36 Cal. 2d 95, 222 P.2d 439 (1950). Later decisions have been hostile to minimum area designations, especially where the effect was to exclude low income housing. *See Southern Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151, 336 A.2d 713, *appeal dismissed*, 423 U.S. 808 (1975); *Appeal of Girsh*, 437 Pa. 237, 263 A.2d 395 (1970). *See generally* Ackerman, *The Mount Laurel Decision: Expanding the Boundaries of Zoning Reform*, 1976 U. ILL. L.F. 1; Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767 (1969).

In general, the federal courts have proved unreceptive to exclusionary zoning challenges.²⁷¹ In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,²⁷² the Supreme Court refused to invalidate a local ordinance even though it had the effect of excluding racial minorities from the municipality. The Court held that a discriminatory purpose had to be shown before an ordinance could be found constitutionally infirm.²⁷³ As commentators point out, however, the structure of land use law makes it practically impossible to prove purpose or motivation in the legislative process.²⁷⁴ In addition, the Court placed high, if not insurmountable, hurdles in establishing standing to sue municipalities for exclusionary practices.²⁷⁵ As a result, the Supreme Court has effectively shut off a role for the federal courts in opening up the suburbs.²⁷⁶

Compared to the federal courts, some state courts have been more amenable to attacks on exclusionary zoning. In California, for example, standing is not a barrier²⁷⁷ and restrictive zoning will be upheld as a permissible exercise of the local police power only if it bears a reasonable relation to the general welfare.²⁷⁸ The California courts evaluate zoning laws not only by their impact on the enacting community, but also by their effects upon the welfare of the surrounding region.²⁷⁹

In a pioneering decision, the New Jersey Supreme Court estab-

271. See *James v. Valtierra*, 402 U.S. 137 (1971) (exclusionary zoning cannot be challenged in federal courts on the grounds of economic discrimination). But see *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir.), cert. denied, 412 U.S. 1042 (1974) (applying Title VIII, the Fair Housing provision of the 1968 Civil Rights Act, 42 U.S.C. §§ 3601-3631 (1976 & Supp. V 1981), to strike down a prohibition against multifamily housing where the municipal action was indisputably racially motivated).

272. 429 U.S. 252 (1977).

273. *Id.* at 265.

274. See, e.g., Mandelker, *Racial Discrimination and Exclusionary Zoning: A Perspective on Arlington Heights*, 55 TEX. L. REV. 1217, 1245-49 (1977).

275. See *Warth v. Seldin*, 422 U.S. 490 (1975). See generally MANDELKER, *supra* note 9, at 571-74; Note, *Alternatives to Warth v. Seldin: The Potential Resident Challenger of an Exclusionary Zoning Scheme*, 11 URBAN L. ANN. 223 (1976).

276. See McGee, *Illusion and Contradiction in the Quest for a Desegregated Metropolis*, 1976 U. ILL. L.F. 948, 961-87.

277. *Associated Home Builders v. Livermore*, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976).

278. *Id.* at 602, 557 P.2d at 483, 135 Cal. Rptr. at 51.

279. *Id.*

lished the doctrine that zoning is presumptively contrary to the general welfare if it impedes lower income housing.²⁸⁰ The court also held that land use regulations must offer realistic housing opportunities for lower income households.²⁸¹ Recently, the court held its exclusionary zoning doctrine required that localities not only remove restrictive barriers, but they must also take affirmative actions to meet their regional fair share requirements of low income housing.²⁸² Such affirmative actions include encouraging or requiring the use of federal and state subsidies, providing zoning incentives to developers, requiring developers to set aside a certain number of units for lower income persons, and zoning specific areas exclusively for low-cost housing or mobile homes.²⁸³

The New Jersey approach helps to mitigate the harsh effects of gentification in two ways. By discouraging exclusionary zoning practices, middle income households are not forced to displace residents in inner city neighborhoods. In addition, by promoting the development of low income units, households that have been displaced are able to relocate to other affordable housing in the same region.

2. Subdivision Restrictions and Development Exactions

Almost equal in importance to the zoning power is the right of communities to regulate subdivisions. Indeed, in many ways subdivision regulation is far more intimately bound up with the development process. Most states had enacted legislation authorizing subdivision controls by the end of World War II, just in time to regulate the explosive development in the post-war era.

Like zoning, subdivision laws were predicated on the police power and were written to require developers to dedicate land for parks or schools, to pay for or install infrastructural improvements, and otherwise to bear the indirect costs of new development that might have been shifted onto previously developed areas.²⁸⁴ California's Subdi-

280. *Southern Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151, 179-80, 336 A.2d 713, 728, *appeal dismissed*, 423 U.S. 808 (1975).

281. 67 N.J. at 180, 336 A.2d at 728.

282. *Southern Burlington County NAACP v. Township of Mount Laurel*, 92 N.J. 158, 261, 456 A.2d 390, 443 (1983).

283. *Id.* at 262-77, 458 A.2d at 443-51.

284. An excellent overview of subdivisions and the sale of subdivided land may be found in D. HAGMAN, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* 245-76 (1971).

vision Map Act²⁸⁵ is typical of legislation in more developed states. Developers must prepare a subdivision map for submission to a planning body for approval. The map must conform to existing laws governing the development of land. All conditions imposed on the developer must relate to the subdivision's design, but the legislation broadly defines design as anything "necessary or convenient to insure conformity to or implementation of the general plan."²⁸⁶

Although some states have been careful to delineate what can be required of a developer, most courts have upheld requirements that developers provide water lines, streets, sewers, and sidewalks. For example, in *Ayres v. City Council of Los Angeles*,²⁸⁷ the California Supreme Court upheld a Los Angeles City Planning Commission's requirement that the subdivider widen a boulevard, dedicate a street through the subdivision, and set aside land to improve traffic conditions at an intersection. The court found no confiscation of the owner's property and did not require compensation.²⁸⁸

Even if *Ayres* was arguably restricted to improvements directly related to the subdivision, recent decisions have expanded the power of municipalities to impose exactions on developers as a condition of building homes and apartments.²⁸⁹ In *Associated Home Builders v. City of Walnut Creek*,²⁹⁰ the California Supreme Court followed what it said was the majority rule and upheld the imposition of reasonable conditions upon developers even where the conditions did not exclusively benefit the proposed project.²⁹¹ The court only required that there be a reasonable relationship between the exaction and the subdivision.²⁹²

Other decisions, however, appear to restrict the power to impose

285. CAL. GOV'T CODE §§ 66410-66499 (Deering 1979 & Supp. 1983).

286. *Id.* § 66418.

287. 34 Cal. 2d 31, 207 P.2d 1 (1949).

288. *Id.* at 42-43, 207 P.2d at 7-8.

289. Exactions are costs generated by the development that are imposed on developers instead of the general public. Examples include having the developer pay for dedication of streets and creation of sewers. *See generally* Heyman & Gilhool, *The Constitutionality of Imposing Increased Community Costs on New Suburban Residents Through Subdivision Exactions*, 73 YALE L.J. 1119 (1964).

290. 4 Cal. 3d 633, 484 P.2d 606, 94 Cal. Rptr. 630, *appeal dismissed*, 404 U.S. 878 (1971).

291. 4 Cal. 3d at 639, 484 P.2d at 610, 94 Cal. Rptr. at 634.

292. *Id.* at 640, 484 P.2d at 611, 94 Cal. Rptr. at 635.

exactions.²⁹³ In the words of one court, the "burden cast upon the subdivider [must be] specifically and uniquely attributable to his activity . . . ; if not, it is forbidden and amounts to a confiscation of private property"²⁹⁴

Despite the conflict in the case law, local governments can still impose conditions on developers. Through the power of the municipality to approve a development, the developer can be forced to meet regulatory requirements or to comply with discretionary controls. Under the latter, the developer is required to make a completely developed proposal to a planning body, which then through a process of negotiation shapes the proposal to attain objectives unobtainable through more traditional forms of exactions. Both the formal and informal exercise of this authority can be used as the legal basis for local action to ameliorate the dislocating effects of gentrification.

3. Inclusionary Strategies

As the previous discussions of zoning, subdivision regulations, and development exactions indicate, municipalities have the power to influence what is and is not built within their boundaries. Two recent examples from California illustrate how localities can use this power to preserve low income housing opportunities. Local governments in California now have jurisdiction over coastal housing. They are required to employ many of the strategies developed by the California Coastal Commission.²⁹⁵ The Commission sought not only to preserve the existing low income housing stock, but also to provide new subsidized housing. Despite fierce opposition from developers and city governments, the Commission launched a plan that would make nearly thirty percent of all new multiple-unit housing available to moderate and low income consumers. The Coastal Commission's plan required builders to dedicate a portion of their projects to the low income program as part of the price of obtaining a permit for the construction of new condominiums or the development of new subdivisions.²⁹⁶ It was premised on the assumption that a developer can

293. *See, e.g.*, *Pioneer Trust & Sav. Bank v. Village of Mount Prospect*, 22 Ill. 2d 375, 176 N.E.2d 799 (1961); *Frank Ansuini, Inc. v. City of Cranston*, 107 R.I. 63, 264 A.2d 910 (1970).

294. *Pioneer Trust & Sav. Bank v. Village of Mount Prospect*, 22 Ill. 2d 375, 380, 176 N.E.2d 799, 802 (1961).

295. CAL. GOV'T CODE § 65590 (Deering Supp. 1983).

296. The Los Angeles Times reported one developer labeled the Commission re-

absorb the loss created by the controlled units from the enormous windfalls realized from development in the coastal areas. Where the profit margin appeared more modest, the Commission could grant density bonuses that allowed additional units a market rate over and above those included in the developer's original plan.²⁹⁷ Thus, through its land use regulatory authority, the Coastal Commission insured that there is a lower income presence, albeit minimal, in a gentrified area. Similar techniques can be used by local governments in other areas where the poor are being displaced.

While the Coastal Commission proceeded largely by conditioning the issuance of development permits on the provision of low income housing, the City of Los Angeles has used its zoning power to require the inclusion of low income housing in new developments. In 1973, Los Angeles adopted a municipal ordinance providing that in every new development of five or more units (including buildings converted to condominiums), developers must make "every reasonable effort" to develop at least six percent of the units for very low income tenants and at least nine percent for low or moderate income tenants.²⁹⁸ Under the ordinance, developers can be required to execute a written agreement with the city granting it the right to lease or purchase fifteen percent of the units for use by low income tenants. Such an agreement can be required as a condition precedent for a building permit or approval of the tract map.

As originally proposed, the ordinance would have forced the developer either to absorb the loss from the low income units from ultimate profits or to allocate the difference to the other units. Thus, the more affluent tenants would have paid slightly higher prices if low

quirements "blackmail." "They come to us and say, 'You can't build your hotel until you take care of the social problems in the Marina.' Well, we're businessmen. The social problems are a separate subject. Why should they be tacked onto our project?" But, the developer concluded, "Sometimes, the most expedient way to handle blackmail is to go ahead and pay it. We concluded that subsidizing the poor probably cost less than fighting the Commission in court." L.A. Times, Oct. 28, 1979, Pt. 1, at 11, col. 2.

297. Donald Neuwirth, Coastal Commission access manager, was quoted by the Los Angeles Times as stating, "It's a situation where everybody wins. The developer will make a pile. The city gets its share from the taxes, and the poor people don't get run out of the neighborhood." *Id.*

298. See D. BRYANT, J. SOLOWAY & C. CHIU, *supra* note 88, at 3-27 to 3-28. The Los Angeles Ordinance prompted neighboring Orange County, California, to promulgate a similar ordinance encouraging developers to set aside 15% of developing land for federal subsidy, usually Section 8. *Id.* at 3-28.

income tenants lived in the development. Objections from the building industry led to the present compromise in which the implementation of the ordinance's inclusionary policy depends upon the availability of public housing subsidies.²⁹⁹

The practice of requiring the inclusion of low income housing as a condition of permission to develop has received favorable comment from legal scholars.³⁰⁰ California passed legislation in 1979 that endorsed inclusionary strategies.³⁰¹ The legislation resolved potential legal issues as to the authority of certain types of cities to impose such requirements on builders. It also permitted developers to pay fees in lieu of including subsidized units.³⁰² This practice is probably valid under existing California land use law.³⁰³

4. Transfer of Development Rights

The growth of the concept known as Transferable Development Rights (TDR) further supports the position that communities have the power to regulate development. TDR recognizes that the right to develop is an intrinsic aspect of real estate ownership.³⁰⁴ Nevertheless, TDR requires development potential to be placed in the service of comprehensive planning for the entire community. Under TDR, the planning authority designates conservation zones and transfer zones. Development may occur only in transfer zones. The development potential in transfer zones can be augmented by acquiring development rights from parcels in the conservation zones. The owners who can develop land in the transfer zones must share any income they eventually receive as a result of purchasing rights from owners

299. *Id.*

300. See generally H. FRANKLIN, D. FALK & A. LEVIN, IN ZONING, A GUIDE FOR POLICY MAKERS ON INCLUSIONARY LAND USE PROGRAM (1974); Kleven, *Inclusionary Ordinances—Policy and Legal Issues in Requiring Private Developers to Build Low Cost Housing*, 21 U.C.L.A. L. REV. 1432 (1974).

301. A summary of Assembly Bill 1151 can be found at Chapter 1207, SUMMARY DIGEST OF CALIFORNIA STATUTES AND RESOLUTIONS ADOPTED IN 1979, at 403. The parts of the bill relevant to this discussion were codified as CAL. GOV'T CODE §§ 65050, 65915 (Deering Supp. 1983).

302. CAL. GOV'T CODE §§ 65050, 65915 (Deering Supp. 1983).

303. See *Associated Home Builders v. City of Walnut Creek*, 4 Cal. 3d 633, 484 P.2d 606, 94 Cal. Rptr. 630, *appeal dismissed*, 404 U.S. 878 (1971).

304. See Baker, *Development Rights Transfer and Landmarks Preservation—Providing a Sense of Orientation*, 9 URBAN L. ANN. 131 (1975); Carmichael, *Transferable Development Rights as a Basis for Land Use Control*, 2 FLA. ST. U.L. REV. 35 (1974).

unable to develop conservation zone property. Thus, owners of land in conservation zones can be compensated for any loss caused by restrictions on their right to develop.

Although TDR has been hailed as an innovative, break-through concept,³⁰⁵ it actually is part of a general movement toward greater government flexibility in land management. Processes such as easement purchases, land banking, contract zoning, planned unit developments, and cluster zoning also reflect attempts to regulate the use of urban land in a more comprehensive way. Unlike most of these other regulatory techniques, however, TDR is usually community-wide, not limited to a single parcel or group of parcels assembled by a developer. Its use for historic preservation of single or contiguous properties is effected by the establishment of planning districts that contain both historic areas and transfer sites. Owners of transfer site property can increase the density and value of their land by buying development rights from owners whose properties been "struck" with a historic preservation designation.³⁰⁶

While TDR is perhaps best known for its use in historic preservation and open or recreational space controls,³⁰⁷ it has been suggested that the concept be applied to further development of inner city neighborhoods.³⁰⁸ For example, in 1979 a proposal was made to expand TDR to include areas that have the potential to become economic assets to the municipality.³⁰⁹ In addition to allowing the transfer of development rights, the proposal would also permit the shifting of parking, outdoor advertising, and various licenses and easements.³¹⁰ Although this proposal would strengthen the suitability of inner city neighborhoods to participate in a TDR system, controls and incentives would be needed to insure that the plan is responsive to the policy of preserving inner city neighborhoods for

305. See Schnidman, *Transferable Development Rights (TDR)*, in *WINDFALLS FOR WIPEOUTS* 532 (D. Hagman & D. Misczynski eds. 1978).

306. See generally Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 *HARV. L. REV.* 574 (1972).

307. See Chavooshian, Nieswand & Norman, *Growth Management Program: A New Planning Approach*, 34 *URB. LAND*, Jan. 1975, at 22.

308. See Rose, *The Transfer of Development Rights: A Preview of an Evolving Concept*, 3 *REAL EST. L.J.* 330, 348-50 (1975).

309. Danels & Magida, *Application of Transfer of Development Rights to Inner City Communities: A Proposed Municipal Land Use Rights Act*, 11 *URB. LAW.* 124, 128 (1979).

310. *Id.* at 129.

indigenous residents. The proposal does call for bonuses to participating inner city landowners in the form of subsidies, additional transfer zone certificates, and bonus zone certificates.³¹¹ To avoid windfalls, bonuses would be bestowed only if the proceeds from the sale of the development or other rights are reinvested to bring the transfer zone into compliance with local housing codes.³¹²

In addition to helping preserve the inner city housing supply, TDR plans could also be used to facilitate the relocation of low and moderate income residents who are displaced by commercial development. Under this proposal, the municipality would select suitable sites for new housing and designate them as preservation zones. Owners of property in the preservation zone would receive certificates that they could sell to other owners who wish to develop their land located in transfer zones. To induce landowners in the transfer zone to participate in the TDR plan, development at greater than normal densities would be permitted only if the owners acquired some of the preservation zone transfer rights. In order to sell their development rights, however, preservation zone landowners would have to agree to use part of the proceeds to develop subsidized housing for low and moderate income families displaced from the transfer zones. If a preservation zone landowner declines to participate in the TDR system, his property could be acquired by eminent domain. The city could then develop the property from the proceeds of TDR sales made prior to the commencement of the eminent domain litigation.³¹³

5. Summary

Once displacement has been identified as a social and planning concern of consequence, local land use authorities should experience little legal difficulty employing their broad authority to ameliorate the impact of gentrification. The applicability of a given land use strategy will, of course, be determined by the political planning and environmental realities of a given community. The range of available techniques, however, indicates that the problem is not one of power but of will.

311. *Id.* at 136.

312. *Id.*

313. *See* Ellinwood, A TDR Plan for Equitable South Inlet Redevelopment (1979) (unpublished monograph) (on file with Prof. B. Budd Chavooshian, Dept. of Environmental Resources, Cook College, Rutgers University).

B. *Environmental Law*

Federal and state environmental protection laws can hinder development of lower income housing. The preparation of an environmental impact assessment is expensive and time consuming, thereby contributing to the rise of housing production costs. Additionally, alleged environmental protection can be the basis for rejecting unwanted development.

This analysis covers relatively new legal ground: the use of environmental law as a gentrification remedy to protect inner city residents. The environmental assessment process can be a mechanism for identifying and avoiding displacement and housing loss. It can be particularly useful in the context of indirect or secondary dislocation, purely private renewal, condominium conversions, mixed public-private projects, and other areas in which alternative legal remedies may not be applicable.

1. NEPA and the CDBG Program

The National Environmental Policy Act of 1969 (NEPA),³¹⁴ as applied by HUD to the Community Development Block Grant program (CDBG),³¹⁵ provides a framework for analysis. Neighborhood revitalization, housing rehabilitation, and other block grant-financed activities have the potential for causing substantial displacement and housing loss. At the same time, the CDBG program is one of HUD's major tools for providing a decent home and a suitable living environment for all Americans. Creative application of NEPA may harmonize these competing interests.

NEPA requires all agencies of the federal government to prepare an environmental impact statement for all "major Federal actions significantly affecting the quality of the human environment."³¹⁶ The Council of Environmental Quality (CEQ) has issued implementation regulations³¹⁷ that are binding upon all federal agencies. In turn, the agencies have promulgated their own regulations governing their specific programs.

As a result of the 1974 Housing and Community Development Act, HUD requires block grant recipients to participate in the environ-

314. 42 U.S.C. §§ 4321-4370 (1976 & Supp. V 1981).

315. 24 C.F.R. pt. 58 (1983).

316. 42 U.S.C. § 4332 (1976).

317. 40 C.F.R. pt. 1500 (1982).

mental review process.³¹⁸ Localities must assess the effects of block grant-funded activities at the earliest point in the planning process.³¹⁹ After the initial assessment is completed, but before requesting release of funds from HUD, a locality must determine whether the proposed activity would be a major federal action that might significantly affect the human environment. If a potentially significant effect is found, an environmental impact statement (EIS) must be prepared.³²⁰ The locality must study direct, indirect, and long-term effects of the proposed activity. In addition, the cumulative impact of the proposed activity and related activities must be considered. HUD requires that "all individual activities which are related either geographically or functionally, or are logical parts of a composite of contemplated actions" must be grouped together by the recipient for evaluation as a single project in a comprehensive environmental review.³²¹

For environmental assessment purposes, HUD does not distinguish between publicly and privately financed or conducted dislocation. This gives federal environmental law great possible utility as a gentrification remedy. Its effectiveness, though, is related to the following questions: (1) whether the socio-economic impacts of lower income displacement and housing loss alone are sufficient to require an environmental assessment, and (2) whether mitigation of these impacts is mandatory or merely discretionary.

a. *Socio-economic Impacts and Environmental Assessment*

Socio-economic impacts on the environment can be distinguished from traditional physical impacts such as air and water pollution. In the gentrification context, the socio-economic impacts are the focal point and are also the ones most susceptible to accurate measurement. Physical impacts, on the other hand, may be indirect, difficult

318. 42 U.S.C. § 5304(f) (Supp. V 1981); 24 C.F.R. § 58.10 (1983). Generally, the block grant-related activities that must be considered in the environmental review or impact statement are those funded or authorized for funding with Title I monies, along with those that are not funded or authorized but are set forth by the locality as a part of its strategy for the revitalizing area in question. HUD regulations make it clear that "it is not the source of funds for an activity, but the nature of the activity and its relationship to other activities, which is relevant." *Id.* § 58.2.

319. 24 C.F.R. § 58.31 (1983).

320. *Id.* § 58.37(a)(1). The EIS must be prepared in accordance with CEQ regulations, 40 C.F.R. pt. 1502. See 24 C.F.R. § 58.62 (1983).

321. 24 C.F.R. § 58.32(a) (1983).

to ascertain, or possibly beneficial if they eliminate blight and disrepair. It is important to determine whether displacement, housing loss, and neighborhood disruption are sufficient to require an environmental assessment when they are the sole or primary effects of a block grant-related activity.

Early federal cases broadly defined "environment," thus bringing gentrification-related socio-economic concerns within NEPA's purview.³²² One court noted:

The National Environmental Policy Act contains no exhaustive list of so-called "environmental considerations," but without question its aims extend beyond sewage and garbage and even beyond water and air pollution. . . . The Act must be construed to include protection of the *quality of life* for city residents. Noise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban "environment" and are surely results of the "profound influences of . . . high density urbanization [and] industrial expansion."³²³

Despite the early court decisions, there is an emerging line of cases that hold an EIS is not required when the sole or primary environmental effects are socio-economic.³²⁴ CEQ regulations follow this trend.³²⁵ Nevertheless, socio-economic effects still must be evaluated when the physical impacts otherwise require an EIS.³²⁶ Such physical impacts may be readily identifiable in the context of demolition or new construction. Although they may be less visible in rehabilitation activities, the lifestyles of affluent in-movers or the cumulation of sec-

322. See *First Nat'l Bank v. Richardson*, 484 F.2d 1369 (7th Cir. 1973). See also *Hanly v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972); *McDowell v. Schlesinger*, 404 F. Supp. 221 (W.D. Mo. 1975); *Jones v. HUD*, 390 F. Supp. 579 (E.D. La. 1974).

323. *Hanly v. Mitchell*, 460 F.2d 640, 647 (2d Cir. 1972) (citing 42 U.S.C. § 4331(a)) (emphasis added).

324. See *Goodman Group, Inc. v. Dishroom*, 679 F.2d 182 (9th Cir. 1982); *Breckinridge v. Rumsfeld*, 537 F.2d 884 (6th Cir. 1976); *Township of Dover v. United States Postal Serv.*, 516 F.2d 378 (2d Cir. 1975); *National Ass'n of Gov't Employees v. Rumsfeld*, 418 F. Supp. 1302 (E.D. Pa. 1976).

325. See 40 C.F.R. § 1508.14 (1982) ("economic or social effects are not intended by themselves to require preparation of an environmental impact statement"). Cf. 24 C.F.R. § 58.34(a)(9)(ii) (1983) (recipients of public service grants do not have to comply with HUD's environmental review requirements if the funded services affect only the social or economic environment).

326. 40 C.F.R. § 1508.14 (1982).

ondary impacts may provide the physical effects necessary to trigger an EIS.

b. *Mitigation: Mandatory or Discretionary?*

Once an environmental assessment is completed, the question arises whether adverse effects must be minimized or can be ignored. Neither NEPA nor the CEQ regulations flatly mandate environmental protection. Instead, both require that all federal agencies direct their policies, programs, and plans to protect and enhance environmental quality "to the fullest extent possible."³²⁷

In the CDBG context, HUD has granted localities broad discretion regarding whether and how to implement environmental protection.³²⁸ HUD has limited its role to determining whether prescribed notice and other procedures have been followed. It has retained virtually no substantive review authority. Substantively, only other federal agencies can object that the activity in question is "unsatisfactory from the standpoint of environmental quality."³²⁹

Thus, in the context of the CDBG program, HUD is implementing NEPA in a way that minimizes its potential to mitigate dislocation. Amelioration of lower income displacement and housing loss is left to local discretion, even though a variety of pressures may make local governments favor gentrification.³³⁰

Little in the way of substantive enforcement or oversight can be expected from the courts. In *Strycker's Bay Neighborhood Council, Inc. v. Karlen*,³³¹ the Supreme Court limited judicial review under NEPA to the factual issue of whether environmental consequences have been considered.³³² In selecting a course of action, an agency cannot be ordered to elevate environmental concerns over other appropriate considerations. Its priorities are not to be reordered by a reviewing court; that is, a court should not interfere with administrative discretion to choose the action to be taken.³³³ Curtailing the scope of judicial review, however, does not prevent HUD or localities

327. 42 U.S.C. § 4332 (1976); 40 C.F.R. § 1500.2 (1982).

328. See 24 C.F.R. § 58.4(b) (1983).

329. *Id.* § 58.75(h).

330. See, e.g., *supra* text accompanying notes 98-104.

331. 444 U.S. 223 (1980).

332. *Id.* at 227.

333. *Id.* at 227-28 (citing *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)).

from exercising their discretionary authority to implement NEPA in a broader fashion to counter the dislocating effects of gentrification.

2. Suggestions for Applying NEPA

As discussed above, there are key shortcomings that limit the utility of NEPA as a gentrification remedy in the context of the CDBG program. In order for environmental protection to serve as a useful anti-displacement tool, the following policies should be considered.

First, any significant lower income displacement and housing loss should trigger an environmental assessment. The broad statutory and regulatory definitions of environment, along with expansive judicial interpretations of NEPA's scope, provide ample enabling authority for this administrative action. This policy would further HUD's anti-displacement mandate from Congress and would be consistent with the department's requirement that block grant recipients develop anti-displacement strategies.

Second, the environmental review roles of HUD and the public should be expanded to insure that all potential impacts have been thoroughly and accurately analyzed. While HUD may not want to set local priorities, it should at least require localities to submit a statement when gentrifying impacts are not ameliorated. The statement should explain how inattention to displacement is consistent with HUD's mandate from Congress. Insufficient justification should trigger disapproval of the localities' environmental assessment.

Finally, even though an environmental assessment may not solve all the problems it identifies, the preparation of the assessment will have several extra-legal remedial impacts. Since it is available for public scrutiny and comment, any displacement noted will alert community residents. This can stimulate comments and pressures for protective action or for further investigation. In addition, groups in gentrifying neighborhoods can utilize the assessment process to negotiate for the inclusion of ameliorating steps in the block grant process.

C. *Rent Stabilization*

In some areas during the late 1970's, astronomical inflation in property values³³⁴ and conversions of rental units to condomini-

334. For example, single-family dwelling prices in southern California increased by 185% between 1974 and 1979. For the period between 1970 and 1976, when the rate of increase was not as great, the average sales price to income ratio in Los Angeles increased from 2.9 to 3.6. COMMUNITY DEVELOPMENT DEP'T, CITY OF LOS AN-

ums³³⁵ caused many tenants to become subject to substantial increases in rent.³³⁶ Under such highly speculative market conditions, middle income persons who can pay more for rental housing rapidly displace indigenous low income residents. The implementation of rent controls is one way city planners can attempt to curb such displacement.

1. History of Rent Controls

Prior to the 1970's, rent controls in the United States were limited to periods of war-generated "emergency" housing situations.³³⁷ The first American rent controls were enacted after World War I, in Washington, D.C. and in New York City. In 1921, the Supreme Court held that rent control in Washington, D.C. was unconstitutional since the war emergency was over.³³⁸ In New York, however, where the courts construed the emergency requirement in a more liberal manner, rent controls remained in effect until 1929.

Rent controls were not adopted again until World War II. In 1942, Congress passed the Emergency Price Control Act, which authorized the Office of Price Administration to stabilize rents in areas designated as potential defense-rental areas.³³⁹ By October 1942, the entire nation had been so designated. After the war, the number of defense-rental areas was gradually decreased. Federal rent controls disappeared entirely by 1954.

Local rent controls have been adopted in a number of jurisdictions

GELES, HOUSING VACANCY, BUILDING ACTIVITY AND PRICE TRENDS: 1965-1976, at 26. Sales prices of rental apartment buildings have also been increasing at a rapid rate. In Los Angeles, the average sales price of buildings with 20 units or less, which comprise about two-thirds of the city's rental stock, increased at a rate in excess of 15% per year from 1975 to 1978. COMMUNITY DEVELOPMENT DEP'T, CITY OF LOS ANGELES, TAX SAVINGS IN APARTMENT UNITS FROM PROPOSITION 13 (1979) [hereinafter cited as TAX SAVINGS].

335. See *supra* notes 71-82 and accompanying text.

336. Increases in operating costs, excluding debt service, cannot account entirely for the increases in rent. In most rental units, tenants pay for gas and electricity, which have also increased in cost at a rapid rate. Additionally, as a result of Proposition 13, apartment owners in Los Angeles received on the average a 57% reduction in their property taxes. See TAX SAVINGS, *supra* note 334.

337. For a history of the housing emergency requirement for rent controls, see Baar & Keating, *The Last Stand of Economic Substantive Due Process—The Housing Emergency Requirement for Rent Control*, 7 URB. LAW. 447, 456-67 (1975).

338. *Block v. Hirsch*, 256 U.S. 135, 157 (1921).

339. Emergency Price Control Act of 1942, ch. 26, § 2(b), 56 Stat. 23, 25-26 (1942).

in recent years.³⁴⁰ The first California rent control law was adopted by Berkeley through the initiative process in 1972. It prohibited across-the-board rent increases. Rather, the law provided that applications for rent increases had to be considered on a unit-by-unit basis. In *Birkenfeld v. City of Berkeley*,³⁴¹ the California Supreme Court ruled that this mechanism was so unwieldy that it in effect would deny landlords rent increases for years and therefore constitute a denial of due process.³⁴² While the court struck down the Berkeley ordinance, the decision clearly indicated that California cities retained the power to adopt rent controls under the police power granted to them by the state constitution.³⁴³

2. Specifics of Rent Controls

Rent controls appear in many different forms, and so the effects of alternative rent control provisions on the process of gentrification vary. An effective rent control law is one which will provide tenants with the security of continuous occupancy free from rent increases which exceed owners' increases in operating costs. In California and many other states, a tenant can be evicted without cause by a landlord upon thirty days notice, unless the tenant has a lease for a longer tenancy or local law provides otherwise.³⁴⁴ This lack of protection creates a perpetual tenant insecurity in that the continuing right to rent a unit depends on the will of the landlord, even when the tenant meets all his obligations. Laws requiring "good cause" for eviction often can be adopted in the absence of rent controls. Without rent controls, however, landlords may easily circumvent a good cause requirement by substantially increasing rents, thereby making continued occupancy by tenants economically unfeasible.

Essentially, therefore, rent control ordinances must avoid legal

340. The one exception to this pattern is New York City, where rent controls have remained in effect continuously since World War II. See M. LETT, *RENT CONTROL: CONCEPTS, REALITIES, AND MECHANISMS* 5 (1976). Starting in 1969, other localities have enacted rent controls. Boston and several of its suburbs adopted rent controls for varying periods. See generally G. STERNLIEB, *THE REALITIES OF RENT CONTROL IN THE GREATER BOSTON AREA* (1975). In New Jersey, over 100 cities have enacted rent controls since 1973. See Baar, *Rent Control in the 1970's: The Case of the New Jersey Tenants' Movement*, 28 HASTINGS L.J. 631 (1977).

341. 17 Cal. 3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976).

342. *Id.* at 173, 550 P.2d at 1033, 130 Cal. Rptr. at 497.

343. *Id.* at 158-59, 550 P.2d at 1022-23, 130 Cal. Rptr. at 486-87.

344. See CAL. CIVIL CODE § 789 (Deering 1971).

loopholes. The following examines some factors that can undercut the effectiveness of rent controls as a remedy for gentrification.

a. *Exemptions*

Rent control laws typically exempt some units. A standard exemption is for owner-occupied buildings with fewer than a specified number of units. Rent control laws have also exempted single-family dwellings, buildings with fewer than a certain number of units, new construction, luxury units, and federally subsidized housing.³⁴⁵

While the exemption of owner-occupied units might make sense in instances where the dwelling is the bona fide residence of the owner, it is essential that any provision that exempts such dwellings include rigorous tests for owner occupation. Less stringent provisions allow landlords to evade controls merely by moving in for a few months, thereby defeating the purpose of the rent control law. Similarly, blanket exemptions for single-family homes that are not owner-occupied are unjustifiable from an anti-displacement standpoint.³⁴⁶

b. *Vacancy Decontrol*

The presence of a vacancy decontrol provision in a rent control law is a critical determinant of its impact on gentrification.³⁴⁷ Decontrol allows a landlord to raise the rent without limit for a unit that becomes vacant. After the unit is rented to a new tenant, it again becomes subject to the rent control restrictions. However, the new rent may be much higher than the old rent.

Vacancy decontrol provisions create enormous incentives for land-

345. For example, the Los Angeles ordinance exempts single-family dwellings, units constructed after Oct. 1, 1978, and luxury units. This list is not all inclusive. LOS ANGELES, CAL., CITY CODE ch. XV, § 151. The Santa Monica ordinance exempts owner-occupied dwellings with fewer than three units and housing constructed after the adoption of the rent controls. SANTA MONICA, CAL., CITY CHARTER art. XVIII, § 1801 (1979).

346. Such exemptions are particularly inappropriate where single-family homes constitute a significant portion of the rental stock. In Los Angeles, for example, about 25% of all rental units are single-family dwellings. See Appendices.

347. The Los Angeles ordinance contains a vacancy decontrol provision that applies in cases in which either the tenant voluntarily vacated the premises or was evicted by the landlord. Specific grounds for eviction include: not paying the rent; breach of the lease; committing a nuisance; subletting without the landlord's approval; the landlord seeking to use the unit for a family member. LOS ANGELES, CAL., CITY CODE ch. XI, §§ 151.05.C.1, 151.10. See *Flaws in Rent Law Not Lost on Landlord*, L.A. Times, Sept. 17, 1979, pt. II, at 1.

lords to evict tenants in order to charge higher rents. Vacancy decontrol may encourage landlords to act on breaches of leases that were previously ignored. Alternatively, landlords may refuse to maintain a unit, making continued occupancy undesirable. In neighborhoods that are undergoing rapid change and increases in rent, landlords can usually skirt the rent control laws because tenants are poor and not particularly knowledgeable. In a few years, vacancy decontrol can lead to substantial discrepancies in rental levels for comparable units in the same building. Therefore, successful rent control laws specifically exclude vacancy decontrol provisions.

c. *Conversion and Demolition Regulation*

In addition to substantial rent increases, conversion or demolition of units may displace low income tenants. With rising home prices, property owners can profit more by converting their units for sale as condominiums than by maintaining them as rental units.³⁴⁸ In fact, condominiums are so valuable that it is often profitable to demolish rental buildings and build condominiums, especially when the number of units per lot can be increased. Thus, to be effective in preventing gentrification, rent control laws must regulate conversions and demolitions.³⁴⁹

d. *Fair Return Requirements*

Due process requires that landlords subject to rent controls be permitted to receive a fair return on their investments.³⁵⁰ Rent control laws either provide for statutory increases for all landlords each year,

348. See *supra* notes 71-82 and accompanying text.

349. The Los Angeles rent control law places no restrictions on demolitions or conversions. In fact, the intent to demolish or convert a unit is a basis for eviction under the law. LOS ANGELES, CAL., CITY CODE ch. XV, § 151.09.A.9. In contrast, the Santa Monica law severely curbs the removal of rent-controlled units from the market for demolition or conversion. The rent control board must find that the unit is not occupied by a person of low or moderate income, that it is not affordable by such a person, and that its removal will not adversely affect the supply of housing in Santa Monica. SANTA MONICA, CAL., CITY CHARTER art. XVIII, §§ 1803(t) (1979). In *Nash v. City of Santa Monica*, 143 Cal. App. 3d 251, 191 Cal. Rptr. 717 (1983), a California Court of Appeal held that the city could not normally force a landlord to continue in the business of renting apartments by denying him a demolition permit. *Id.* at —, 191 Cal. Rptr. at 725. On Jan. 9, 1984, the California Supreme Court granted a hearing on the case and vacated the judgment of the court of appeal.

350. See *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 165, 550 P.2d 1001, 1027, 130 Cal. Rptr. 465, 491 (1976).

or they grant discretion to determine what rent increases shall be allowed across the board based on general criteria, including increases in operating costs and fair return.³⁵¹ These laws make provision for individual adjustments for landlords who are not receiving a fair return on their investment, who have made major capital improvements, or who for other reasons should receive an exceptional rent increase.

The standard definition of fair return is a return commensurate with returns on investments in other enterprises having comparable risks.³⁵² A problem arises when city planners attempt to translate this principle into a specific formula to determine a fair return for a particular building. Is a fair return a specific percentage of the fair market value of the property or of the cash investment made by the owner? Should mortgage interest rates, depreciation, and potential capital gains be taken into account? Despite substantial efforts, a precise formula has not been articulated for determining what is a fair return.³⁵³

351. The Los Angeles ordinance permits increases of: 19% for units on which the rent has not been increased since May 31, 1975; 13% for units which have had no rent increases since May 31, 1977; and 7% for units which have had no rent increase since May 31, 1978. LOS ANGELES, CAL., CITY CODE ch. XV, § 151.06. Under the Santa Monica law, the Rent Control Board determines across-the-board rent increases. In 1979 the Santa Monica board granted an increase of 7% over current levels.

352. The two competing fair return standards are "return on value," favored by landlords, and "return on historical investment." The generally pro-tenant rent control boards in Berkeley and Santa Monica have since adopted a third formula, "maintenance of net operating income." The courts appear to be moving toward acceptance of this third standard as a formula midway between the value and investment standards. Owners are entitled to a rent increase if their net operating income is less than a designated percentage of gross rental income. Both the Berkeley and Santa Monica rent boards permit an additional inflation factor in this formula, although it is less than the actual rate of inflation. See Brom, *Courts Consider Limits on Landlords' Profits*, CAL. LAW., Sept. 1983, at 16. The situation in California awaits definitive word from the California Supreme Court, which has agreed to hear *Fisher v. City of Berkeley*, 148 Cal. App. 3d 267, 195 Cal. Rptr. 836 (1983), having vacated the court of appeal decision in December, 1983. The supreme court left standing another court of appeal decision, *Cotati Alliance for Better Housing v. City of Cotati*, 148 Cal. App. 3d 280, 195 Cal. Rptr. 825 (1983), which approved the return on investment standard. The latter case is of dubious precedential value, however, because of idiosyncrasies in the Cotati rent control ordinance. See *2 Victories for Rent Control*, San Francisco Chron., Dec. 30, 1983, at 10, col. 1.

353. Under the Los Angeles law, individual rent increases can be granted in instances where the maximum rent allowed under the ordinance "does not constitute a just and reasonable return." LOS ANGELES, CAL., CITY CODE ch. XV, § 151.07.B.1. The ordinance states that property taxes, reasonable operating and maintenance ex-

In 1975, the New Jersey Supreme Court stated that a fair rate of return should be based on the market value of a property in a market free from aberrant forces such as a severe housing shortage.³⁵⁴ Three years later the court reversed itself, holding that a calculation of a fair rate of return could not be based on the fair market value of a property determined by what rent level is permitted.³⁵⁵ It then indicated that a fair return was one which maintained owners at their levels of net operating income prior to the implementation of rent controls.³⁵⁶

The New Jersey approach is a reasonable and practical standard for determining fair return. Landlords held to a negative cash flow by this approach argue that it is unfair and confiscatory. When landlords purchase buildings at prices that will lead to negative cash flows, they are speculating that substantial profits will offset the risks and losses incurred in taking that position. Since they are speculating, it is not the role of rent control laws to protect them and award them individual rent increases not given to other landlords who do not have negative cash flows. Speculation necessarily implies the possibility of loss as well as profit.³⁵⁷

penses, capital improvements, housing services, deterioration, and amount of maintenance shall be taken into account in determining what is a "just and reasonable return." *Id.* The Santa Monica law, like that of Los Angeles, simply states factors which shall be considered in determining whether an individual landlord is making a fair return. In effect, these laws designate the task of determining fair return criteria to the local rent control boards.

354. *Hutton Park Gardens v. West Orange Town Council*, 68 N.J. 543, 556-67, 350 A.2d 1, 13-14 (1975); *Brunetti v. Borough of New Milford*, 68 N.J. 576, 594, 350 A.2d 19, 28 (1975); *Troy Hills Village v. Township Council*, 68 N.J. 604, 622-24, 350 A.2d 34, 44 (1975) (the three cases were decided on the same day).

355. *Helmsley v. Borough of Fort Lee*, 78 N.J. 200, 215, 394 A.2d 65, 72 (1978).

356. *Id.* at 241-42, 394 A.2d at 85-86.

357. The Santa Monica rent control law states in pertinent part:

(g) No rent increase shall be authorized by this Article because a landlord has a negative cash flow if at the time the landlord acquired the controlled rental unit, the landlord could reasonably have foreseen a negative cash flow based on the rent schedule then in existence within the one year period following acquisition. This paragraph shall only apply to that portion of the negative cash flow reasonably foreseeable within the one year period following acquisition of a controlled rental unit and shall only apply to controlled rental units acquired after the date of adoption of this Article.

SANTA MONICA, CAL., CITY CHARTER art. XVIII, § 1804(g).

The Los Angeles law states:

2. Anti-Speculation Provision. If the only justification offered for the requested rent increase on the landlord's application is an assertion that the maximum rents or maximum adjusted rents permitted pursuant to this Chapter do not allow the landlord a return sufficient to pay both the operating expenses and debt

Landlords also argue that the net operating income standard is inherently inequitable because landlords who charged high rents and received substantial incomes before rent controls were adopted are rewarded, while landlords with relatively low rents are penalized. Rent control ordinances can compensate for these differences by permitting rent increases based on the length of time since the last increase.³⁵⁸

Other definitions of fair return present problems. If fair market value is the standard to determine fair return, the result is tautological because fair market value for property depends on its rental income. If return on cash investment is the standard, fair rent becomes a function of the purchase and financing terms of the building rather than the rent levels previously in effect for the building.

While fair return eludes precise definition, the courts have indicated that the constitutional fair return standard does not require that every landlord make a profit or receive a positive cash flow.³⁵⁹ They have consistently held that calculating a landlord's cost need not include debt service.³⁶⁰ The emerging standard is that "efficient" landlords have a right to a net operating income equal to that amount which they had prior to the adoption of the rent controls.³⁶¹

3. Summary

Rent control is essential to prevent gentrification. Without it, low income tenants can be priced out of their neighborhoods. To be effective, rent controls must apply to all units whether occupied or vacant. Exemptions must not provide loopholes for property owners. Permissible rent increases should be tied to average increases in operating costs for landlords. In the long run, this policy leads to a reduction in rents relative to other living costs since operating costs are usually equal to only a portion of rental income. The law may ex-

service on the rental unit or units or on the housing complex containing the rental unit or units, a rent adjustment will not be permitted pursuant to this subsection to a landlord who acquired an interest in the rental unit or units after October 1, 1978.

LOS ANGELES, CAL., CITY CODE ch. XV, § 151.07.B.2.

358. See LOS ANGELES, CAL., CITY CODE, ch. XV, § 151.06.

359. See, e.g., *Zussman v. Rent Control Bd. of Brookline*, 371 Mass. 632, 639-40, 359 N.E.2d 29, 33-34 (1976).

360. See, e.g., *id.*

361. *Helmley v. Borough of Fort Lee*, 78 N.J. 200, 241-42, 394 A.2d 65, 85-86 (1978).

empt new construction if necessary to encourage it in the face of rent controls, but it must restrict demolition and conversions to prevent further shortage of rental housing. Only this formula will limit the gentrification of certain inner city areas.

D. *Relocation Assistance*

The federal Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970 (URA)³⁶² embodies a two-pronged attack on the problems of dislocation. First, it prohibits displacement on account of any federal project unless decent, safe, and sanitary relocation housing is available to the people displaced, at prices that they can afford.³⁶³ If that is unavailable, the dislocation cannot take place until such housing is provided, through use of project funds if necessary.³⁶⁴ Second, it provides some relief against the hardships of a forced move by requiring the displacing agencies assist people in finding new housing, adjusting to their new situation, and easing the financial burdens of moving, including increased housing costs.³⁶⁵

The purpose of the URA is to establish a uniform policy to insure that people displaced as a result of federal and federally assisted programs are treated fairly and equitably, and that they will not suffer disproportionately because of projects undertaken for the benefit of the public as a whole.³⁶⁶ To lessen the impact of involuntary dislocation, the URA provides for payments to both homeowners and renters. The payments are to cover moving expenses,³⁶⁷ replacement housing costs,³⁶⁸ and a dislocation allowance.³⁶⁹ In addition, the URA requires that advisory services be set up to assist displaced persons searching for or adjusting to relocation housing.³⁷⁰ Not only must the relocation housing be decent, safe, and sanitary, it must be within the financial means of the displaced household.³⁷¹ In addi-

362. 42 U.S.C. §§ 4601-4655 (1976).

363. *Id.* § 4626(b).

364. *Id.* § 4626(a).

365. *See id.* §§ 4622-4626.

366. *Id.* § 4621.

367. *Id.* § 4622(b) (moving expenses payment not to exceed \$300).

368. *Id.* §§ 4623 (replacement housing payment for homeowners not to exceed \$15,000), 4624 (replacement housing payment for tenants not to exceed \$4,000).

369. *Id.* § 4622(b) (dislocation allowance of \$200).

370. *Id.* § 4625.

371. *Id.* § 4625(c)(3).

tion, it must be in neighborhoods generally as desirable as the former neighborhood with regard to public and commercial facilities.³⁷² Perhaps more importantly, the new housing must be within reasonable proximity to the displaced' employment.³⁷³ If the federal agency involved cannot find satisfactory relocation housing, it must decide either to cancel the project, or, as a last resort, it may develop the needed units using funds that otherwise would be used to finance the project under consideration.³⁷⁴

The URA also applies to displacement caused by a state or local project or program receiving federal financial assistance.³⁷⁵ The federal agency providing the funding cannot approve the federal grant or contract without assurances that the local agency will comply with the relocation requirements. Specifically, the local agency must submit assurances that (1) suitable relocation housing will be available, (2) relocation payments for moving expenses, dislocation allowances, and replacement housing costs will be made, and (3) the relocation assistance services will be provided.³⁷⁶

The following examines the effectiveness of federal relocation law as a gentrification remedy. To avoid losing sight of central issues, the analysis does not dwell upon specific regulations and special program rules. Instead, the focus is on certain key features of the URA (coverage; last resort housing; planning; the "right" to continued occupancy) and HUD's general implementing regulations.

1. Coverage

A key question in assessing the effectiveness of the URA is the extent to which displaced persons are protected by its provisions. Unfortunately, from an anti-displacement perspective, the courts have narrowly interpreted the Act's coverage.

In 1979, the Supreme Court in *Alexander v. HUD*³⁷⁷ denied relocation protection to tenants evicted by HUD from a subsidized apartment complex. After the agency had acquired title, it foreclosed upon the complex, intending to demolish the buildings and sell the

372. *Id.*

373. *See id.* §§ 4623(a)(1)(A), 4624(1).

374. *Id.* § 4626(a).

375. *Id.* § 4630.

376. *Id.*

377. 441 U.S. 39 (1979).

land to private developers.³⁷⁸ The Court's rationale for not extending the URA's benefits to the displaced tenants was that "persons directed to vacate property for a federal program cannot obtain relocation assistance unless the agency also intended at the time of the acquisition to use the property for such a program or project."³⁷⁹ The Court concluded that HUD's intent to dispose of the apartment complex did not constitute the requisite intent to use the property for a federal project.³⁸⁰

This intent requirement clearly narrows the applicability of the URA and draws a distinction that is contrary to the protectionist purposes of the Act. If the housing at issue in *Alexander* had been acquired with federal funds for highway purposes, for example, the evicted tenants would have fallen within the scope of the Act.³⁸¹ Since the evicting federal agency contemplated sale for a nonfederal program use, however, the URA was not applicable. In both instances, though, the evictor is a federal agency using federal monies, and the dislocation is equally harmful to the tenants.

In addition to being inconsistent with the purposes of the URA, *Alexander* has disturbing implications. The "back to the city" movement associated with gentrification may generate pressures to close publicly assisted housing complexes in the central city so that the land on which they are located can be reused. Should changes in use occur, low and moderate income tenants may not be covered by the Act.

The courts have been equally restrictive in applying the URA to other displacing actions that may occur in the gentrification process. Tenants dislocated by private entities for the renovation or construction of federally assisted apartments do not come under the Act because their displacement was ordered by private parties rather than a federal agency, even though the dislocation would not have occurred without federal assistance.³⁸² Thus, these low to moderate income

378. *Id.* at 45.

379. *Id.* at 63.

380. *Id.* at 66. *See also* Blount v. Harris, 593 F.2d 336, 341 (8th Cir. 1979) (URA inapplicable to persons evicted by a federal agency for purposes of liquidating a project acquired through foreclosure of a security interest).

381. *See, e.g.,* La Raza Unida v. Volpe, 488 F.2d 559, 562 (9th Cir. 1973), *cert. denied*, 417 U.S. 968 (1974).

382. *See* Moorer v. HUD, 561 F.2d 175, 183 (8th Cir. 1977). *See also* Dawson v. HUD, 592 F.2d 1292, 1293 (8th Cir. 1979); Conway v. Harris, 586 F.2d 1137, 1140-41 (7th Cir. 1978).

tenants are not entitled to relocation benefits under the URA as a matter of right. Instead, they are protected only to the extent that HUD or another appropriate agency chooses to apply portions of the URA or other anti-displacement measures.³⁸³

Local public-private revitalization programs that are federally assisted may also be outside the URA if the public component receives the federal monies and avoids displacing activities.³⁸⁴ Local programs may be generally exempt if they are federally financed with only revenue-sharing funds.³⁸⁵ In addition, code enforcement has been specifically held to be outside the scope of the URA.³⁸⁶

Thus, the present utility of the URA as a gentrification remedy has been restricted by decisions that limit its coverage. When the URA is applicable, however, its provisions, particularly the "houser of last resort"³⁸⁷ requirements, can brunt the harsh impacts of gentrification.

2. "Houser of Last Resort" Implementation

The URA prohibits displacement because of a federal project unless there is suitable, affordable housing to which displaced households can move.³⁸⁸ If it is not available, as a last resort the agency conducting the project may provide relocation housing, using project funds if necessary.³⁸⁹

If followed both in spirit and by the letter, this "houser of last resort" requirement of the URA should brunt the harsh impact of dislocation. In practice, however, the requirement's effectiveness as a remedy for gentrification has been limited. Agencies may avoid constructing new units by giving governmental displacees priority in public and other assisted housing. While this may expediently aid

383. See *supra* text accompanying notes 232-35.

384. See *Young v. Harris*, 599 F.2d 870, 878 (8th Cir.), *cert. denied*, 444 U.S. 993 (1979) (a quasi-public redevelopment agency, which was armed with eminent domain powers and used CDBG funds only for nondisplacing activities like provision for public improvements, was not subject to the URA in conjunction with its dislocating activities).

385. See *Goolsby v. Blumenthal*, 590 F.2d 1369, 1371 (5th Cir. 1979).

386. *Devines v. Maier*, 665 F.2d 138, 148 (7th Cir. 1981). The court in *Devines* held that there was no federal acquisition, so the URA did not apply. Nevertheless, the termination of the tenants' leases by the city constituted a "taking" requiring payment of just compensation under the fifth amendment. *Id.* at 146.

387. See *infra* notes 388-94 and accompanying text.

388. 42 U.S.C. §§ 4626(b) (1976).

389. *Id.* § 4626(a).

displaced persons, it is hardly fair to those already on the waiting list. Additionally, relocating displacees in existing public housing merely exacerbates the current housing shortage.

Public entities also may avoid providing relocation housing by simply paying the less costly replacement housing payments to displaced tenants.³⁹⁰ For example, HUD's relocation regulations sanction this practice, since payments exceeding prescribed limits are authorized as a means of providing last resort housing other than by construction.³⁹¹

For renters, these differential payments do not provide a satisfactory displacement remedy. The shortage of affordable housing is a basic feature of the urban dislocation problem. The payments are temporary, calculated to provide replacement housing for only four years.³⁹² After that, the household may again be faced with displacement. Protection may not even last for this limited period. Current payment levels were set in 1971 and have not been increased to reflect the subsequent sharp rise in housing costs. Moreover, the rent differential payments are not available to all displaced tenants. In addition to the limited coverage discussed above,³⁹³ payments are restricted to persons who resided at the acquired premises for at least ninety days prior to the initiation of acquisition negotiations.³⁹⁴

Thus, in contrast to rent differential payments, expansively implemented replacement housing requirements would provide permanent relocation housing to all displaced persons regardless of their tenure in the acquired premises. If this housing is provided in or very near the old neighborhood, the harsh effects of displacement could be considerably ameliorated.

3. Relocation Planning

Other HUD actions may substantially undercut federal relocation law and the last resort housing requirements, especially if followed by other federal agencies. By curtailing relocation planning requirements, HUD has obscured the trigger for invoking last resort housing responsibilities. This impedes public or private monitoring and

390. See 24 C.F.R. §§ 42.301-.507 (1983).

391. *Id.* § 42.605(2).

392. See *id.* § 42.453(a).

393. See *supra* text accompanying notes 377-86.

394. 24 C.F.R. § 42.451(a) (1983).

enforcement.³⁹⁵

Formerly, localities receiving HUD funds were required at the outset of a project to prepare a relocation plan for HUD approval. This relocation plan was to assess the needs of potentially displaced persons, and the sufficiency of existing housing to accommodate them. If the plan did not demonstrate that the current housing supply could meet displacees' needs, the agency had to halt the project or provide additional units. After 1979, however, the regulations require only an unsubstantiated "written assurance" that within a reasonable period of time prior to displacement, a sufficient supply of comparable replacement housing units will be available for dislocated persons.³⁹⁶

HUD cited several reasons for issuing the new regulations.³⁹⁷ Limited staff resources could be maximized by focusing on monitoring compliance, rather than pre-project review. In addition, relocation plans can become out of date by the time displacement occurs. Moreover, for many dislocating activities, the extent of displacement is not determined by the time of the application for funding.

These reasons are not compelling, however. After an agency has begun a project, considerable monies have been spent and dislocation may have occurred.³⁹⁸ Later redress for affected households who have moved may be difficult or impossible. More importantly, this reduction in critical relocation planning eliminates the early warning capability of the old approach. A deficit in housing resources identified in the pre-project assessment alerted governmental agencies and the community that "houser of last resort" planning should begin. The new approach reverses the analytical process: *if* it appears necessary to use project funds for the construction of replacement housing, *then* an inventory of displacees' needs and the existing housing supply is required.

One of the keys to effective utilization of relocation laws is accurate planning and analysis. Reliance on unsubstantiated assurances of adequate housing cannot substitute for a careful examination of the overall housing supply. Localities should be required to assess the

395. For an excellent analysis of an adequate relocation planning process, see Kushner & Warner, *Illusory Promises Revisited: Relocation Planning and Judicial Review*, 8 Sw. U.L. REV. 751 (1976).

396. 24 C.F.R. § 42.5(b) (1983).

397. See 44 Fed. Reg. 30,947 (1979).

398. See, e.g., *Tenants & Owners in Opposition to Redev. v. HUD*, 406 F. Supp. 1024 (N.D. Cal. 1973).

dislocating impacts of their programs before they apply for funding and begin committing resources. The assessment should include identification of the variety of circumstances which place seemingly available housing beyond the reach of displaced persons or render it unsuitable as a relocation resource. To the extent that there cannot be a definitive assessment, conditional approval can be given contingent upon later submission of more definite data and plans.

4. The "Right" to Continued Occupancy

The potential of the "houser of last resort" requirement as an effective dislocation remedy is further undercut by the "right" to continue in occupancy. This concept was initially developed in conjunction with the Section 8 substantial rehabilitation program. HUD has now made it generally applicable when displacement is not initially contemplated or will be only temporary.³⁹⁹ Under this concept, displaced tenant households are guaranteed the right to return to the same apartment or project site. While this may be satisfactory for those who effectively exercise the right, it may in the short term exacerbate the lower income housing shortage. Because assisted temporary relocation is permissible,⁴⁰⁰ competition for the limited number of available units will increase and drive rents up further. In addition, households offered the right to continue in occupancy are expressly not considered "displaced persons" under the URA.⁴⁰¹ Thus, last resort housing is not required.

Several other features of the continued occupancy approach further minimizes its impact as an anti-displacement device. The agency, not the tenant facing potential dislocation, decides whether the tenant is given a continued occupancy right.⁴⁰² Rents in the housing are controlled at a fixed percentage of gross income, but the rent controls cease after four years.⁴⁰³ After that point, rents can be raised without limitation. Such raises may be well beyond the means of lower income households, especially when the housing is in a neighborhood that is being revitalized.⁴⁰⁴

399. 24 C.F.R. § 42.207 (1983).

400. *Id.* § 42.207(a)(3).

401. *Id.* § 42.207(a).

402. *Id.*

403. *Id.* § 42.207(a)(2).

404. *See* Appendices.

Thus, as with rent differential payments, the right of continued occupancy will only postpone dislocation and its adverse impact. This approach will not provide a long-term remedy for displacement.

5. Summary

Federal relocation law has the potential to effectively address the problems associated with gentrification. Its promise, however, is far from fruition. The courts have limited the URA to governmental acquisition. Additionally, relocation payments that offset increased rental housing costs generally provide only short-term assistance to displaced persons. These payments fail to address the fundamental issue, namely, the shortage in the low to moderate income housing supply. They also by definition remove the displaced person from the neighborhood and provide space for new, affluent in-movers. This discussion is not meant to argue against relocation payments. Instead, it serves to emphasize the necessity of focusing on another aspect of the URA that has greater long-term promise: the "houser of last resort" responsibility of the agency conducting the project.

VI. CONCLUSION: REMEDYING GENTRIFICATION—LOOKING AHEAD

In the foregoing discussion of the law and gentrification, various remedial steps were identified. The theme emerges throughout the analysis that ample legal authority exists at the federal, state, and local levels to remedy the urban dislocation associated with revitalization. Politics may be a bar, and special interests may dominate the implementation of policy, but the law does not present an insurmountable obstacle.

To fulfill its congressional mandate to minimize displacement, HUD must encourage the effective use of legal tools—at all levels of government—to remedy the problem. Power can be used to minimize conversions of rental units and to discourage speculation. Housing code enforcement and historic preservation can be made more responsive to the basic human need for shelter. The power to tax, a matter of increasing public concern, can be implemented to insure that homeowners and renters are not so excessively burdened that they are driven from their neighborhoods. The taxing power can also be used to curb speculation and to encourage preservation of existing structures. Legal authority can be more creatively employed to regulate land use practices through such devices as inclusionary

zoning techniques and transfer of development rights. Environmental law could be constructively utilized to insure that decent housing is available along with an unpolluted physical environment. Finally, the "houser of last resort" provisions of federal relocation law present opportunities at both the federal and local levels to address the most critical aspect of the displacement problem—the shortage of affordable low and moderate income housing.⁴⁰⁵

While considerable displacement is apparently due to the private market, these forces and their ultimate direction are shaped by gov-

405. During the late 1970's, gentrification received considerable attention from Congress and HUD. In the early 1980's, however, displacement of the poor disappeared from the national spotlight, and federal housing assistance programs were sharply reduced or eliminated. Only recently has interest in displacement begun to reappear at the federal level. As this article went to print, Congress enacted the Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181 (Nov. 30, 1983), which contains several provisions that address dislocation and demonstrate that it is not a dead issue. *See* H.R. 3959, 98th Cong., 2d Sess., 129 CONG. REC. 10,621 (1983). *See also* [Current Developments] 11 HOUS. & DEV. REP. (BNA) 568-76 (Dec. 5, 1983).

The Act focuses on a critical feature of the gentrification issue—the shortage of housing for the poor. It provides for entitlement and competitively awarded grants to states and cities for the construction and rehabilitation of apartments for low income tenants. Displacement of very low income persons by the more affluent is prohibited, and the conversion of apartments to ownership housing is restricted. Assistance is targeted to lower income households, thereby reducing the benefits that may accrue to gentrifying in-movers. Localities receiving funds must submit annual performance reports to HUD, and HUD must report annually to Congress on the effectiveness of the program. Since both the local recipients and HUD must include an analysis of tenant displacement, any dislocating impacts of the program will be subject to scrutiny. HUD is to issue regulations on relocation payments and other responses to displacement, so it remains to be seen whether the agency will take a relatively aggressive anti-displacement posture as it did in the late 1970's, or react indifferently as it did in the early 1980's.

In addition to the above provisions, the Act tightens the lower income targeting and monitoring requirements in the Community Development Block Grant program (CDBG). This reduces the likelihood that these funds will be used for activities that benefit affluent urban pioneers. At least 51% of the CDBG monies must be used to support activities that benefit persons of low and moderate income. Housing constructed or rehabilitated with block grant funds must actually be occupied by low or moderate income households. Other CDBG-funded activities must be located in low-moderate income neighborhoods and support essential services for area residents. Alternatively, a majority of jobs created by CDBG-funded activities must be for low or moderate income people.

Thus, while the Act does not adopt an all-out attack on gentrification, it does direct governmental attention to the displacement problem. This ensures that the low and moderate income persons who are adversely affected by gentrification will not be forgotten.

ernment action or inaction. HUD programs such as block and urban action grants are among the most direct public inputs. HUD must fully exercise its authority to insure that localities attempt to remedy both governmental and related private displacement.

Thus, the legal tools are available to combat the displacement problem. Fiscal, political, and policy considerations will ultimately determine whether "revitalization" becomes synonymous with "second generation urban renewal." Whether those least able to bear the brunt of this process—the urban poor and minorities—feel the harsh effects of social change will be determined by the steps taken by HUD and local governments in neighborhoods across the country.

APPENDIX I

North University Park: The Beginning of Gentrification

Gentrification is in its nascent stages in the North University Park area of central Los Angeles. The area is located adjacent to and immediately north of the University of Southern California campus. Because of the presence of spacious and architecturally unique turn-of-the-century Victorian homes, sections of North University Park are ripe for historic preservation, a major engine of displacement.

A preliminary analysis of the area indicated a wide population fluctuation since the 1970 census. At that time, the population figure for the area was 39,072. Population decreased to 36,316 in 1973, but it had increased again to 38,356 by 1977. The apparent reason for this fluctuation is the outward movement of white and black populations from the area, combined with noticeable increases in the Spanish-speaking and Asian communities toward the end of the decade. As determined by the Community Analysis Bureau of the City of Los Angeles, the changes in the ethnic composition of North University Park are illustrated below.

| | 1970 | | 1977 | |
|---------|--------|-------|--------|-------|
| | Number | % | Number | % |
| White | 8,616 | 22.1 | 4,638 | 12.1 |
| Black | 19,997 | 51.2 | 18,109 | 47.2 |
| Spanish | 8,465 | 21.6 | 11,645 | 30.4 |
| Asian | 1,994 | 5.1 | 3,964 | 10.3 |
| Total | 39,072 | 100.0 | 38,356 | 100.0 |

Economically, the North University Park area is dominated by a low income group with a high percentage minority population. In 1970, the average income for the twelve census tracts in the area was \$6,275. According to data from a city-wide survey taken by the Community Analysis Bureau, the average income in the area had increased to \$7,662 in 1977. For the City of Los Angeles as a whole, however, average income had increased from \$10,535 in 1970 to \$14,030 in 1977. Thus, in 1977 the average income of North University Park was only 54.6% of the average for the entire city.

Ironically, though the average income in the area has not risen as fast as the average income city-wide, housing values in North University Park increased dramatically during the 1970's. The Community Analysis Bureau of the City of Los Angeles has collected information on both the number of housing sales and the mean sales value by census tract since 1970. The twelve census tracts that comprise the North University Park area were analyzed on both variables. In 1970, the total housing sales in the area was forty-six. Sales in 1977, however, numbered 119. In 1970, the sales value of single-family units averaged \$13,239. By 1977, the average sales value had risen to \$32,242. This represented a 144% increase in average unit value over a seven-year period.

Some of the increase in housing values in the area is undoubtedly due to the increase in housing values throughout Los Angeles and in Southern California generally. Without doubt, speculation is fueling the explosion in housing prices. The University of Southern California and the Los Angeles Coliseum, immediately south of the University, comprise one major staging area for the 1984 Summer Olympics. Foreseeing the financial impact of the Olympics, speculators are beginning to have an effect on the housing values in the community.

Concern has been expressed for tenants in both the residential and commercial sectors who will be under extreme pressure to move on and allow higher rent tenants to take over the space. Two relocation problems could occur: 1) residential areas could be razed to facilitate construction of either expanded business districts or greater density, moderate to high income condominiums or apartments, and 2) current business tenants will be forced out in the same manner as low income residential tenants. A complex interplay could develop in the area—low income residents would not, and indeed could not, patronize businesses aimed at affluent Olympic-goers. At the same time, the existing businesses would not attract Olympic clientele and would find the reduced number of low income customers insufficient to sustain their businesses.

Another factor that has contributed to the increase in housing values in North University Park has been the increasing interest in the preservation of the older homes in the area. The district has a culturally and architecturally rich history. Only very recently has the awareness of this heritage created any community consciousness. A loosely-knit group of property owners known as the Citizens' Committee for the Preservation of the University District was formed around 1977. From all indications, the group consists largely of white middle-class professional people who recently purchased homes in the area. The group has two main concerns: speculators will be purchasing older homes either to raze them for new apartment or condominium construction, or to convert the homes into rental units in a typical absentee-landlord arrangement. The committee feels both of these scenarios are harmful to the preservation of historically significant structures and also impinge upon their desire to make the area once again a "neighborhood" with a cohesive community feeling.

Community groups with a minority population membership are also becoming well organized and visible. For example, the 29th Street Block Association was formed as a black neighborhood group. The Greater University Parish, which draws its constituency predominantly from local churches, is an umbrella organization that has been able to retain its influence by emphasizing the common denominator among all groups. Unfortunately, none of the existing organizations are representative of the entire community. In particular, none of the groups seem to speak for the Hispanic and Asian segments of the area's population.

Whether gentrification triumphs in North University Park obviously depends on coordination and cooperation between the various interest groups in the neighborhood. The intervention strategies of the City of Los Angeles will also be important. Because gentrification is in its early stages in North University Park, the City has the opportunity to preserve low income housing and at the same time maintain the social and ethnic diversity as well as the architectural heritage of the area.

APPENDIX II

Pasadena: Gentrification in Process

Adjoining Los Angeles to the northeast, Pasadena is a city where federal and local governmental activity has played a prominent role in the process of gentrification. A study of Pasadena illustrates the hand and glove relationship between the private sector and the government.

In 1979 Pasadena had approximately 108,000 residents. The racial breakdown was 60% white, 19% black, 17% Spanish surname, and 4% other. Pasadena's black popu-

lation increased from 12.5% of the total population in 1960, to 16.6% in 1970. The greatest increase in black population occurred in the census tracts located in the northwest section of the city.

The minority presence in Pasadena is given additional significance in light of the fact that nearly 46% of the city's households fall into the low income category—having less than \$10,000 annual income for a family of three. On the average, black families in Pasadena receive less income than families in the remainder of the population. According to 1970 census data, 16.2% of black families in Pasadena had an income less than \$3,000, 41.7% had income less than \$6,000, and 72.4% had incomes less than \$10,000. These figures compare unfavorably with those for all Pasadena families, of which 7.8% had incomes less than \$3,000, 22.2% had incomes less than \$6,000, and 45.7% had incomes less than \$10,000.

In recent years, Pasadena has been grappling with an acute housing shortage. At the time of this study, the overall vacancy rate for both owner and rental units stood at 1%, a figure far below the 5% vacancy rate that is generally accepted as desirable. The housing situation for blacks in Pasadena was characterized by a significant amount of overcrowding (defined as an average of more than 1.0 persons per room). The 1970 census reported that there were 791 black housing units, 13.0% of the total, which were overcrowded. This figure represented a greater level of overcrowding than that for the overall Pasadena population (4.8%), but it was a lower level than that for blacks in the entire Los Angeles County (15.5%).

Pasadena's history suggests that housing—or a lack of it—played a major role in the city's development. In the period between 1940 and 1960, the city's population burgeoned from 81,864 to 116,407. At the same time, there was increased momentum to create a strong industrial base in Pasadena and the surrounding area. This industrialization required space. Development of the commercial sector systematically forced families out of low income housing tracts.

Associated development, especially during the 1960's, caused additional displacement. The northwest section of the city, which contains the highest concentration of Pasadena's black population, was drastically altered by freeway construction and redevelopment projects. In 1959, the Pasadena Redevelopment Agency (PRA) was created as a guarantor of the Pasadena Comprehensive General Housing Plan to maintain a viable and healthy community. One of the first major PRA activities was the Pepper Redevelopment Area in the northwest section of the city. In 1960, the area's population was 1,500, 93% of which was black. A survey of the area prior to redevelopment disclosed that 37% of the residents owned their homes. Two-thirds of the residents had lived in the area for ten or more years. The survey indicated that most of the homeowners were satisfied with their dwellings. Subsequent redevelopment of the Pepper area by the PRA displaced 440 families. According to figures compiled by the PRA, 307 families remained in Pasadena, and the rest moved elsewhere. Of the 110 small businesses displaced, 55 remained, 25 moved out of the city, and 29 were dissolved.

Similar redevelopment activity by the PRA followed closely on the heels of Pepper. Known as the Orange Grove Redevelopment Project, the activity displaced 112 families, of whom 50% were black and 20% had Spanish surnames. Removal of the homes in this area resulted in construction of 175 condominium units, now known as Orange Grove Village.

Another PRA activity that sparked considerable controversy was the Villa Parke condominium development project. Since it involved the use of community development block grant funds, the project illustrated the interrelationship between private reinvestment practices and public policy.

The Villa Parke project was initially launched in 1972. There were approximately 2,500 persons in the project area—roughly one-third Anglo, one-third Black, and one-third Hispanic. A 1975 survey of the area conducted by the California State Department of Finance Special Census found that more than 42% of those households responding had incomes of under \$3,000. An added 16.6% had incomes under \$5,000. Of all Villa Parke households, 90% were renters.

The PRA plan called for construction of 114 condominium units on 6.6 acres of land. Sale prices were to range as follows: 24 units at \$51,000, 43 units at \$65,000, and 47 units at \$77,000. There was a memorandum of understanding between Wilshire Diversified, the builder, and PRA that called for the developer to construct 20 Section 8 rental income units. Displacees would be given priority in those replacement units, even though there were hundreds of persons already on the waiting list for Section 8 housing.

The Villa Parke project was widely criticized by residents and community organizations. In 1978, El Centro de Acción and the Western Center on Law and Poverty challenged the Villa Parke project plan on grounds of its failure to satisfy HUD environmental review requirements. The group charged:

1. Reliance on unsupported assumptions and a lack of quantified data by which it can be evaluated.
2. The federal standard of what constitutes a significant environmental impact was not applied throughout the document.
3. The conclusion that the expenditure of federal funds for the project would not constitute a major federal action was contrary to fact and not supported by available data.
4. There were a number of potentially adverse effects upon the human environment of the Villa Parke neighborhood which were completely overlooked or inadequately addressed.
5. Several aspects of the proposed project contravened requirements of the Housing and Community Redevelopment Act of 1974, as amended, and federal civil rights law.
6. The proposed plan did not adequately develop the possible alternatives to the project nor modifications to minimize its adverse effects.

In asking the PRA either to redo its assessment in compliance with federal law, or change its finding to one of significant adverse effect and undertake the preparation of a full Environmental Impact Statement, the groups expressed concern about the project's potential impact on housing and rent structures in Villa Parke. Ultimately, they argued, there would be a ripple effect on the residents of the peripheral neighborhoods and the availability of lower income housing in Pasadena as a whole.

Among the principal concerns of the opposition was the fear that the Villa Parke condominium development would be the catalyst accelerating the gentrification process. It was argued that if the development attracted the middle and upper income families it was targeted to serve, the surrounding neighborhood would also become more attractive, especially in view of the relatively low rental and property prices in the area. This would encourage wholly private redevelopment of the neighborhood without government assistance, and, therefore, without government-imposed safeguards. In turn, the increased demand for middle income housing would lead to increased rents and property values. The result of this process would be the permanent displacement of existing low and moderate income residents with no effective remedy to mitigate their plight.

To avoid gentrification, the groups urged that the city and the PRA be required to identify and predict the extent of direct and indirect displacement that would result,

with a view toward considering alternative methods of minimizing or, if possible, eliminating such displacement. The groups suggested such alternatives as neighborhood rent control or stabilization plans, other types of rehabilitation loans and grants then originally contemplated, relocation benefits for indirect displacees, rezoning to foster stability, anti-speculation measures, and the development of Section 8 rental units.

The situation was temporarily resolved when the city amended its relocation plan for Villa Parke to allow for a revision of the project definition of low-moderate income. For a family of four, the top income limit was lowered from \$20,300 to \$17,400. This scaled-down figure, however, did not accommodate the majority of the households with the lowest incomes. Moreover, the developer abandoned plans for low to moderate income housing in the Villa Parke area, and the PRA stated it would take no responsibility for displacement of tenants by the private developer. The result was a classic case of gentrification abetted by governmental action or, perhaps more accurately, governmental inaction.

APPENDIX III

Venice: Gentrified

Venice, a seaside community of Los Angeles, reflects the problem of gentrification from its incipient stages to its triumph. Located within and adjacent to the real estate hot-spot known as the Coastal Zone area, Venice today is the only beach-front low income area in California and probably the entire West Coast. It was not until the completion of the Marina del Rey small craft harbor that Venice became an attractive place to live. Through the 1940's, sewage and oil drilling equipment made it an unsanitary and unsightly place. The building of the Marina from 1957 to 1965 also created an environment of construction noise and air pollution. It was an area attractive only to those who, because of income or race, could not afford to live elsewhere. It was a place for Blacks, Chicanos, artists, students, and senior citizens. It is this socio-economic and racial diversity that is threatened by gentrification.

There are multiple causes of gentrification in Venice. Chief among them is a bleak housing picture in the Los Angeles area. The housing shortage in Southern California is well documented and is responsible for the enormous increases in housing costs. Whereas average new home costs were \$56,000 in 1976 and \$65,000 in 1977, by 1979 the median figure had risen above \$100,000. The lack and cost of housing in Los Angeles is making it increasingly difficult for middle income people to buy or rent. Some units in Venice are still relatively affordable for people in these income brackets. Thus, people who may have wanted to live in traditionally affluent areas such as Malibu or the Palisades buy in Venice instead.

Some young professionals and other affluent people are buying in Venice not just to find a nice place to live, but because investment in property is considered preferable to higher risk investments such as the stock market. Venice is a "neighborhood in transition"—just the kind of place that books on investment and articles in real estate magazines recommend for potential investors.

Besides financial considerations, Venice has become increasingly attractive to people of all economic levels for other reasons. As the environmental quality worsens in Los Angeles, more people want to move to this seaside town, regardless of whether they can profit financially from the move. In addition, Venice is a place where di-

verse communities meet. The socio-economic heterogeneity has great appeal to many in-movers.

Venice consists of eleven contiguous census tracts. The census data for these tracts reflect some of the changes caused by gentrification.

1. The Peninsula Tract

The Peninsula tract is considered the high income area from which gentrification obtained its impetus in Venice. In 1977 the Peninsula's predominance of white population (95.5%) exceeded Venice's average (55.1%) and also the average of the City of Los Angeles as a whole (51.6%). See COMMUNITY ANALYSIS UNIT, COMMUNITY DEVELOPMENT DEP'T, CITY OF LOS ANGELES, ESTIMATE OF POPULATION BY RACE 5 (1977). The age group that dominates is 24-59 years of age, constituting 68% of its population. This is the highest concentration of any one age group for all of Venice's census tracts.

The median family income of the Peninsula is also far higher than any other tract in Venice. This tract also experienced the greatest appreciation in single-family dwelling price of all tracts from 1960 to 1970. It was in this tract that a two-bedroom, one bath, one garage cottage sold for \$325,000 in 1979. Local Coastal Program, City Planning Dep't, City of Los Angeles, Multiple Service Survey of Housing Prices (1979) (unpublished survey). In 1970, the Peninsula exhibited the lowest ownership rate of all of Venice, as well as the fewest number of single-family dwellings.

The building of the small craft Marina del Rey harbor appears to have changed the Peninsula from an area where low income whites once existed to one where rather wealthy whites reside today. The change appears to have taken place in ten years. By 1970, this area could no longer be considered as going through the process of gentrification. This area is now the home of an almost completely white, older, high income population with few children. The residents primarily rent multiple-family housing. However, the condominium growth of recent years will no doubt cause a rise in the rate of ownership, if not a rise in the number of single-family dwellings.

2. Canal and South Venice Tracts

The building of the Marina del Rey small craft harbor did not have an immediate impact on the Canal and South Venice tracts. Location and population factors appear to have played a role in forestalling development of upper income neighborhoods in these tracts. The Canal tract contains the historic canals that had been neglected for years and until very recently were eyesores despite efforts to partially resurrect them from their state of deterioration. The South Venice tracts have the disadvantage of being farther away from the beach. In terms of population, by 1970 the Canal tract had 15% Hispanics. The South Venice tracts housed an even higher percentage of Hispanics, 20% in 1960 and 33% in 1970. In comparison, the Peninsula tract contained only 4% Hispanics in both 1960 and 1970.

The census data for 1970 for particular categories indicated that the Canal and South Venice tracts would soon follow the Peninsula's development lead. The white populations of the Canal tract and South Venice tract No. 2741 increased. These two tracts showed gains in the 24-59 age group. The median family income in these two tracts appeared slightly above the city's overall median in 1970. The median value of single-family dwellings appeared slightly below the city's median, but the rents in the Canal and South Venice tracts appeared higher than the city's median. While the percentage of owner-occupied homes remained high in both South Venice tracts, the Canal tract appeared to have an ownership rate similar to that of the Peninsula.

The proximity of these census tracts to the Marina del Rey small craft harbor, the increasing white population, the increase in the 24-59 age group, the slightly higher median family income, and the higher median rent in the Canal and South Venice tracts point to the increasing resemblance of these areas to the Peninsula. The lower median value for single-family dwellings show the unusual strength of land values in these areas through the early 1970's. The less impacted ownership patterns suggest that the dominance of single-family dwellings will in this respect differentiate it from the multiple housing patterns of the Peninsula. This will probably continue to hold true until the legal and financial obstacles to massive condominium development in the Peninsula tract are resolved.

3. Walgrove Tracts

Walgrove is an area in which the impact of the Marina del Rey harbor has been difficult to discern. The emergence of the Marina led to a dramatic change in perception of the Canal and South Venice areas. The Walgrove tracts, on the other hand, were the desirable areas for purchase prior to the building of the small craft harbor. The 1960 census shows a population which was predominantly white with a median family income that was higher than the income levels of the South Venice, Canal, and Peninsula tracts.

By 1970, the Walgrove tracts had become much more Hispanic. Almost one-third of the residents were Hispanic. Blacks also had managed to make some inroads. Both Walgrove tracts had lost population in the 24-59 age group, although tract No. 2731 had made gains in the elderly group. The median family income had increased, and the median home values in the Walgrove tracts were second only to those in the Peninsula tract. Both Walgrove tracts show dominant ownership patterns of single-family dwellings. The soundness of the housing structures appears to have been maintained from 1960 to 1970.

Although Walgrove is not as conveniently located as the Canal and South Venice tracts, its relatively long history of home ownership and the soundness of its housing have made it an attractive place in which to locate. The real estate values appear to have remained competitive with the Canal and South Venice tracts.

4. North Beach and Milwood Tracts

In 1960, the high percentages of residents aged 60 and over, the low median family incomes, and the high levels of unsound housing in the North Beach tracts made it appear to be an area that was not very appealing to anyone but the very poor. By 1970, North Beach had posted losses in its elderly group while recognizing gains in its 0-24 age group. The shift from the elderly toward those 24 years of age or younger suggests that North Beach became increasingly populated by students. This was corroborated by the still depressed median family income found in 1970.

Both North Beach and Milwood experienced declines in their white populations by 1970. Although Milwood appeared to exhibit a higher median family income and a higher median home value than any of the North Beach tracts, both areas lagged behind the Canal, South Venice, and Walgrove tracts. The North Beach tracts had the highest density of all of Venice's census tracts, no doubt because of its proximity to the beach. It is only a subject of speculation why North Beach exhibited lower real estate values than tracts located further inland. A glance at today's real estate values, however, makes it obvious that the real estate in North Beach is now regarded as fungible with property in the Peninsula. The obvious advantage of being on the

beach has been clarified in today's view of real estate. As a result, the North Beach tracts have left Milwood far behind in terms of property values.

5. Oakwood Tracts

In 1960 less than half of the Oakwood area was white. One of its two tracts was dominated by blacks, and blacks comprised nearly a third of the other tract. The black populations had increased by 1970. By 1977, however, Hispanics came to dominate one tract and they significantly affected the other. Blacks had lost close to 10% of its population in one tract and 13% in the other.

The age group with the greatest gains in both Oakwood tracts was the elderly. The 24-59 age group decreased significantly. The median family income in 1977 appeared slightly higher than the North Beach tracts, which were the lowest for all of Venice. Median rents were slightly higher than North Beach, while median home values resembled the lowest of those in North Beach and Milwood. The Oakwood tracts posted the greatest losses of single-family dwellings of all of Venice's census tracts. The rate of unsound housing was high for both tracts in 1960. It appeared to have improved, but it was still worse than both of the North Beach tracts combined. Change is starting to penetrate Oakwood, as is evidenced by the opening of several restaurants, art galleries, and antique stores along the western boundary of the tracts.

Overall, it appears that in the Peninsula, Canal, South Venice, North Beach, and Walgrove tracts, those persons being displaced by the growing real estate values within and without Venice were low income whites. The relatively lower real estate values in Oakwood and some parts of Milwood are probably the reasons for the increase of Hispanics in these tracts. Hispanics are directly impacting the indigenous black population in Oakwood, causing it to fragment. Thus, Hispanics are being used as the cutting edge of the acquisition of land by the gentry.