"Not In My Backyard"

Removing Barriers to Affordable Housing

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Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing

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Thomas H. Kean, Chairman
Thomas Ludlow Ashley, Vice Chairman

Washington: 1991

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410

July 8, 1991

The President
The White House
Washington, DC 20500

Dear Mr. President:

When you announced your HOPE initiative in November 1989, you asked me to appoint a blue-ribbon commission to study government regulations that drive up housing costs for American families.

Acting on your request, I created an Advisory Commission on Regulatory Barriers to Affordable Housing, composed of 22 leading Americans, from all parts of the country and many different backgrounds. Under the leadership of former Governor Thomas H. Kean of New Jersey as Chairman, and former Representative Thomas L. Ashley of Ohio as Vice Chairman, the Commission has worked diligently over many months to examine the effects of rules, regulations, and red tape at all levels of government on the cost of housing in our Nation.

The Commission's disturbing conclusion is that exclusionary, discriminatory, and unnecessary regulations constitute formidable barriers to affordable housing, raising costs by 20 to 35 percent in some communities. As a result, many lower-income young families cannot find housing near their places of work, and elderly couples cannot afford to live close to their children.

The Commission's report is a call to action—action by Federal agencies, State and local governments, and private citizens that will enable builders, nonprofit groups, and others to create affordable housing. I pledge that the Department of Housing and Urban Development will do its part to reduce regulations and expand housing opportunity for American families.

It is my privilege and honor to transmit to you, Mr. President, the Report of this Commission, entitled "*Not In My Back Yard": Removing Barriers to Affordable Housing*.

Respectfully,

Jack Kemp

Advisory Commission on
Regulatory Barriers to Affordable Housing

U.S. Department of Housing and Urban Development

July 8, 1991

Honorable Jack Kemp
Secretary of Housing and Urban Development
U.S. Department of Housing and Urban Development
Washington, DC 20410

Dear Mr. Secretary:

The American Dream for every family has at its core a comfortable home in a safe neighborhood, a home available to buy or rent at a cost within the family budget, a home reasonably close to the wage earner's place of work. Unfortunately, too many American families today cannot fulfill their version of that dream because they cannot find affordable housing.

The cost of housing is being driven up by an increasingly expensive and time-consuming permit-approval process, by exclusionary zoning, and by well-intentioned laws aimed at protecting the environment and other features of modern-day life. The result is that fewer and fewer young families can afford to buy or rent the home they want.

These were among the concerns, Mr. Secretary, that you expressed when you established the Advisory Commission on Regulatory Barriers to Affordable Housing. In your Charter, you asked this group of distinguished and experienced Americans to explore the effect of the maze of Federal, State, and local laws, regulations, ordinances, codes, and innumerable other measures that act as barriers to the development of affordable housing in appropriate places. You asked the Commission to catalogue the barriers, identify the sources of those barriers, and propose solutions that would help millions of American families to achieve their dream.

Pursuant to your charge, the Commission has prepared a comprehensive Report that identifies regulatory barriers to affordable housing and, just as important, proposes action to lower those barriers. Throughout the Report, the Commission expresses its belief that change is essential if the Nation is to meet its goals of a decent home and suitable living environment for every American family.

In closing, we wish to extend our deep gratitude to members of the Commission, who gave of their time and talent to fashion this Report. On their behalf, we have the honor to transmit to you, Mr. Secretary, pursuant to Section 12 of the Charter, *"Not In My Back Yard": Removing Barriers to Affordable Housing*, the Report of the Advisory Commission on Regulatory Barriers to Affordable Housing.

Respectfully,

Thomas H. Kean, Chairman

Thomas Ludlow Ashley, Vice Chairman

Mandate to the Commission

When she visited the United States, the Russian human rights "activist" Yelena Bonner said to the American people: The people of the world do not want war, they want to own a house. They want to own a home. They want the decency and dignity that goes along with their own home.

The American dream is a universal dream. But all too often this dream of ownership, of decent and affordable housing, is being denied to first-time homebuyers and low- and moderate-income families. Government rules and red tape are regulating the dream out of existence. The challenge to this Commission is to discover and to tell us how to remove those regulatory barriers.

Jack Kemp
Secretary of Housing and Urban Development
First Meeting of the Commission
May 31, 1990

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The Commission wishes to thank the following individuals for their invaluable assistance and contributions to its work: James E. Allen, Director, City of Louisville Department of Housing and Urban Development, Louisville, KY; William C. Myers, Director of State Policy, Free Congress Research and Education Foundation, Washington, DC; and Margaret Howard, Chief of Staff, Office of the President, Drew University, Madison, NJ.

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Preface

The Commission and the Secretary's Mandate

Unnecessary regulations at all levels of government stifle the ability of the private housing industry to meet the increasing demand for affordable housing throughout the country. To address this problem, President George Bush asked Secretary of Housing and Urban Development Jack Kemp to convene an Advisory Commission that could identify regulatory barriers to affordable housing and recommend how these barriers could be removed. The President observed:

> [At] all levels of governments we have got to take a second look at some of the well-intended housing policies that actually decrease our housing supply. I'm talking about the excessive rules, regulations, and red tape that add unnecessarily to the cost of housing—by tens of thousands of dollars—or that create perverse incentives to allow existing housing to deteriorate....

The negative impact of overregulation has caused concern in the affordable housing debate for several decades. In the past 24 years, no fewer than 10 federally sponsored commissions, studies, or task forces have examined the problem, including the President's Commission on Housing in 1981-1982. These study groups have made many thoughtful recommendations, usually to little avail. In the decade since 1981, the regulatory environment has if anything become a greater deterrent to affordable housing: regulatory barriers have become clearly more complex, and apparently more prevalent.

But opponents of regulatory barriers that inhibit affordable housing have scored some successes. Perhaps the greatest success has been the increase in State activism, which has been a primary force behind code reform. Local building codes, widely regarded in the past as barriers to the use of innovative cost-saving technology, have in recent years become less of a problem as States more widely adopt model codes and local governments more systematically update their codes. Some States and a number of localities have adopted policies to promote affordable housing, with impressive results.

Encouraged by the successes and stimulated by the challenge, this Commission eagerly accepted the invitation of President Bush and Secretary Kemp. At their first meeting, the Commissioners voiced strong agreement with the sentiment of Commissioner Roger Glunt: "I don't come with an attitude that we can't do anything. I have not been on a Federal commission before—I have never failed at this before—so I am going to try as hard as I can."

The Commission represents a broad range of citizens with extensive knowledge of and interest in the building regulatory process and its impact upon housing affordability. It includes builders, developers, and heads of nonprofit organizations who have developed affordable housing units; government officials who have promoted reform of housing regulations; appointed State and local officials with responsibility for the regulatory process; recognized policy experts who have analyzed the implications of regulation; and individuals representing interests of low- and moderate-income families.

Goal and Objective

The Commission's goal has been to assess comprehensively prevailing Federal, State, and local regulations governing construction and rehabilitation, and to recommend ways to reduce the barriers to affordable housing these regulations may raise. The year-long review included an examination of Federal housing and environmental regulations and State and local regulations regarding growth controls, zoning, permitting, and building codes. Mindful of previous efforts, the Commission established early the objective of developing implementation strategies for its recommendations. With these strategies as part of this Report, the Commission believes its recommendations are more likely to be adopted, and more likely to be effective.

To guide its deliberations, the Commission developed a definition of the problem of affordable housing. It concluded that, most urgently, there is not enough "affordable housing" when a low- or moderate-income family cannot afford to rent or buy a decent-quality dwelling without spending more than 30 percent of its income on shelter, so much that it cannot afford other necessities of life. With respect to renters, the Commission is particularly concerned about those with incomes below 50 percent of the area median income. In other cases, it also means that a moderate-income family cannot afford to buy a modest home of its own because it cannot come up with the downpayment, or make monthly mortgage payments, without spending more than 30 percent of its income on housing.

The problem of housing affordability touches many Americans: renters who lack savings to afford a downpayment on a house, parents whose children cannot afford to live nearby when they start their own families, low-income households who spend half of their income on housing, and persons who commute long distances because they cannot afford to live near where they work.

The Commission recognizes the influence of many factors and phenomena on housing affordability, ranging from macroeconomic policy to technological change. The Commission's charter specifies, however, that it should focus on regulatory barriers as a particularly important and growing cause of the shortage of affordable housing. The Commission believes that a successful effort to reduce regulatory barriers will benefit many American families, especially young households and low-income families, and will substantially ameliorate the national housing affordability problem.

Executive Summary

Millions of Americans are being priced out of buying or renting the kind of housing they otherwise could afford were it not for a web of government regulations. For them, America—the land of opportunity—has become the land of a frustrating and often unrewarded search for an affordable home:

- Middle-income workers, such as police officers, firefighters, teachers, and other vital workers, often live many miles from the communities they serve, because they cannot find affordable housing there.
- Workers who are forced to live far from their jobs commute long distances by car, which clogs roads and highways, contributes to air pollution, and results in significant losses in productivity.
- Low-income and minority persons have an especially hard time finding suitable housing.
- Elderly people cannot find small apartments to live near their children; young married couples cannot find housing in the community where they grew up.

These people are caught in the affordability squeeze. Contributing to that squeeze is a maze of Federal, State, and local codes, processes, and controls. These are the regulatory barriers that—often but not always intending to do so—delay and drive up the cost of new construction and rehabilitation. These regulatory barriers may even prohibit outright such seemingly innocuous matters as a household converting spare rooms into an accessory apartment.

Government action is essential to any strategy to assist low- and moderate-income families in meeting their housing needs. But government action is also a major contributing factor in denying housing opportunities, raising costs, and restricting supply. Exclusionary, discriminatory, and unnecessary government regulations at all levels substantially restrict the ability of the private housing market to meet the demand for affordable housing, and also limit the efficacy of government housing assistance and subsidy programs.

In community after community across the country, local governments employ zoning and subdivision ordinances, building codes, and permitting procedures to prevent development of affordable housing. "Not In My Back Yard"—the NIMBY syndrome—has become the rallying cry for current residents of these communities. They fear that affordable housing will result in lower land values, more congested streets, and a rising need for new infrastructure such as schools.

What does it mean if there is not enough "affordable housing"? Most urgently, it means that a low- or moderate-income family cannot afford to rent or buy a decent-quality dwelling without spending more than 30 percent of its income on shelter, so much that it cannot afford other necessities of life.[1] With respect to renters, the Commission is particularly concerned about those with incomes below 50 percent of the area median income. In other cases, it also means that a moderate-income family cannot afford to buy a modest home of its own because it cannot come up with the downpayment, or make monthly mortgage payments, without spending more than 30 percent of its income on housing.

Concern about the effects of regulation on housing affordability is not new. Other commissions over the past two decades have examined the causes, framed

[1] For purposes of this Report, the Commission believes that a housing affordability problem exists when a household earning 100 percent or less of area median income cannot afford to rent or buy safe and sanitary housing in the market without spending more than 30 percent of its income.

the issues, and recommended solutions concerning the impact of regulation on housing prices. The fact that the problem remains today should not deter continued efforts to resolve it. This Commission has therefore considered both what should be done and how to make sure that it is done.

Many forces in addition to regulatory barriers affect the problem of affordability of housing. Certainly some aspects of both the housing finance system and the tax structure seem to inhibit the availability of affordable housing. For very low-income households, the root problem is poverty. But even for very low-income households, regulatory barriers make matters worse.

Those other forces are beyond the purview of this Commission's study. What is within its purview is the effect of regulatory barriers on the cost of housing, and that is substantial. The Commission has seen evidence that an increase of 20 to 35 percent in housing prices attributable to excessive regulation is not uncommon in the areas of the country that are most severely affected.

The Basic Problem

Whether the search for housing takes place in rapidly growing suburban areas or older central cities, the basic problem is the same: because of excessive and unnecessary government regulation, housing costs are too often higher than they should and could be. Yet the specific government regulations that add to costs in suburban and high-growth areas tend to differ from those adding to costs in central cities.

Regulatory Barriers in the Suburbs

In the Nation's suburbs, the landscape of the affordability problem reveals a variety of topical features. Exclusionary zoning, reflecting the pervasive NIMBY syndrome, is one of the most prominent. Some suburban areas, intent on preserving their aesthetic and socioeconomic exclusivity, erect impediments such as zoning for very large lots to discourage all but the few privileged households who can afford them. Some exclude, or minimally provide for, multifamily housing, commonly acknowledged to be the most affordable form of housing.

In theory a way of separating "incompatible" land uses to protect health and safety, zoning has become a device for screening new development to ensure that it does not depress community property values. As a result, some suburban communities, consisting mainly of single-family homes on lots of one acre or more, end up as homogeneous enclaves where households such as schoolteachers, firefighters, young families, and the elderly on fixed incomes are all regulated out.

Suburban gatekeepers also invoke gold-plated subdivision controls to make sure that the physical and design characteristics of their communities meet very demanding standards. Many of these communities are requiring that developers provide offsite amenities such as parks, libraries, or recreational facilities that can add substantially to the housing costs of new homebuyers.

> Many communities in suburban Chicago zone out manufactured housing and make use of estate zoning with 5-acre lots as a minimum....Attempts to push homesharing in some of these communities, allowing elderly homeowners to use part of their home as rental units, are prohibited by local zoning codes....
>
> **Suzanne Hayes, Community Development Director**
> *Cook County Department of Policy, Planning, and Development*

> Here...in Mercer County, a major subdivision would receive...11 different reviews from 9 different agencies. Seven of those reviews concern themselves with the adequacy of storm drainage. Jet fighter planes and moon rockets get by with triple redundant control systems. We need seven government agencies to look at whether the storm drainage will drain. It is an important concern, but it is probably not that important.
>
> **William Connolly, Director**
> *Division of Housing and Development*
> *New Jersey Department of Community Affairs*

Communities are increasingly charging large fees to developers who seek the privilege of building housing in them. These fees may bear little resemblance to the actual cost of providing services and facilities that new subdivisions require. Although fee schedules are often driven by fiscal concerns, they have a regressive effect. Fees are generally fixed regardless of how much they affect the cost of a new home. Thus, households that can only afford less expensive houses end up paying a higher proportion of the sales price to cover the cost of fees.

Slow and overly burdensome permitting is another regulatory obstacle. The original rationale for establishing permitting and approval processes is unassailable: to ensure that construction meets established standards related to health, safety, and other important public concerns. But, in many jurisdictions, the process involves multiple, time-consuming steps that add unnecessarily to housing costs. Delays of 2 to 3 years are not uncommon.

The affordability landscape comes most sharply into focus in areas that are experiencing rapid growth. These are the places that attract households seeking opportunities, and the places where growth-controlling regulations can add considerably to the cost of housing. Local residents—concerned about road congestion, overburdened sewer and water systems, overcrowded schools, and strained city budgets—have many ways to limit growth. Households that do not want to forgo the job opportunities in growing areas must often travel far afield to find affordable housing.

A look at some cost data can be very sobering. Land developers in Central Florida, a boom area under intense development pressure, must add a $15,000 surcharge to the price of a $55,000 house to cover the costs of excessive regulation. A $55,000 house becomes a $70,000 house. In Southern California, the cost of fees alone has contributed $20,000 to the price of many new homes, and fees of $30,000 or more are not rare. In New Jersey, developers report that excessive regulation is adding 25 to 35 percent to the cost of a new house. It is clear that the costs of regulation in suburban and high-growth areas are causing large numbers of households to forgo their dreams of homeownership or to make difficult tradeoffs involving very long commutes.

> In Moreno Valley, California, the morning rush hour begins a little after 4:00 a.m. as thousands of sleepy commuters—mostly men—stumble into their cars to begin their 70-mile westward trek to the job centers of Orange County. If they're lucky, they'll slip through the Highway 91-Interstate 15 bottleneck in nearby Corona before 5:00, when the morning traffic jam typically begins. That way, they'll be in Orange County by 6:00, able to catch an extra hour of sleep in their cars before the workday begins.
>
> **William Fulton**
> *"The Long Commute"*
> *Planning*
> *July 1990*

Regulatory Barriers in Cities

Any government regulation that adds to the cost of urban housing is especially significant because of the concentration of low-income households in central cities. Unlike suburban areas where large-scale new subdivision development is taking place, the regulatory problems in cities involve either the rehabilitation of older properties or new infill construction to provide affordable housing for families of limited means. Central-city reinvestment has been further compounded by restrictive and racially discriminatory lending practices.

Chief among the urban regulatory barriers are building codes geared to new construction rather than to the rehabilitation of existing buildings. The codes often require state-of-the-art materials and methods that are inconsistent with those originally used. For example, introducing newer technologies sometimes requires the wholesale replacement of plumbing and electrical systems that are still quite serviceable.

Excessively expensive requirements have also made new infill units in some urban jurisdictions more than 25 percent more expensive than identical units constructed in adjacent suburban localities that allow less costly materials and methods. Despite the pressing need to provide shelter for low-income households, city building codes seldom provide for the construction of "no-frills" affordable housing such as the new single-room-occupancy (SRO) hotels that have recently proved so successful in San Diego. Waivers on code requirements in that city cut the cost of some SRO living units by as much as 60 percent.

> If rehabilitation codes made more sense, and all government offices that support and govern this type of project were to standardize requirements and simplify approvals, about $4,000 would be saved on the average dwelling unit that is undergoing complete rehabilitation.
>
> **Peter Werwath**
> *"The Price of Regulation"*
> *The Enterprise Foundation*
> *Rehab Work Group*
> *1990*

Other regulations that affect the availability of housing, such as rent control, also seem to ignore the plight of the poor. In the long run, the primary beneficiaries of rent control are frequently upper and middle-income groups rather than lower income households who need assistance in obtaining decent homes in safe neighborhoods. By limiting annual rent increases and thus providing incentives for higher income tenants to remain in older but pleasant neighborhoods, rent control hinders upward mobility of low-income families to better housing opportunities.

Urban neighborhoods could benefit substantially from such affordability-enhancing options as manufactured housing, the use of modular units in construction, and the legalization of accessory apartments. But, too often, regulatory barriers completely block or seriously impede the introduction of these options. Manufactured housing is still frequently relegated to rural areas by local zoning ordinances. State highway regulations and local building codes sometimes mandate modifications to modular units that offset the savings these prefabricated units can provide for infill construction. Finally, local zoning regulations often prohibit accessory apartments, which could be a significant source of affordable housing: as many as 3.8 million units could be added to the Nation's rental housing supply through this means alone.

Environmental Protection and Affordable Housing

Exerting considerable influence on both urban and suburban landscapes, otherwise valuable environmental protection regulations seriously restrict the amount of buildable land that is available for development. This effect raises the cost of what land remains open for homebuilding.

Regulations that mandate environmental impact studies increase developers' costs by prolonging the permitting process and thus increasing the carrying charges that they must pay to finance business operations. Costs are also raised by the assessment of special fees and exactions for wilderness and wildlife conservation. In some instances, developers are required to set aside land for preserves, pay mitigation fees, or undertake mitigation projects (such as creating a new wetland) in exchange for the use of property designated as a wetland. Increases in development costs associated with environmental protection are passed along to the consumer and thus have a direct effect on housing affordability.

Regulations for the protection of wetlands have hindered residential development in many areas. Over the past several years, the Federal definition of a wetland has become more expansive. Protection has recently been extended to some areas where the soil is only temporarily saturated with water for short periods each year. Considerable duplication exists between Federal and State regulations, rendering the permitting process for wetlands development unnecessarily lengthy and complicated and therefore unnecessarily expensive. At the Federal level, the jurisdictions of the Environmental Protection Agency (EPA) and the Army Corps of Engineers overlap considerably, at times introducing conflicting expectations and requirements into the permit-approval process.

The Endangered Species Act (ESA) also affects housing affordability. Designed to help ensure the survival and well-being of existing species of plants and animals, the ESA allows the Fish and Wildlife Service (FWS) to ban or severely restrict development in thousands of acres for years at a time, if such land is the habitat of a species judged to be "endangered" or "threatened." The ESA does not take into account the socioeconomic impact of these restrictions on human activity. Construction is allowed after the FWS approves a Habitat Conservation Plan, which usually involves the permanent establishment of preserves for the endangered animal.

These preserves increasingly involve the purchase of private, prime development land. Recently, in Riverside County, California, the initial phases of creating a 30-square-mile system of preserves for the Stevens Kangaroo Rat cost some $100 million. Estimates of the entire protection effort run more than twice that amount. A special impact fee of $1,950 is now levied on each acre of Riverside County that is developed, with new homebuyers bearing the cost. Housing affordability is becoming an inadvertent casualty of environmental protection.

New York State law bars development within a 100-foot radius around a breeding pond of the endangered tiger salamander. Sightings of this animal near a pond, therefore, sometimes result in stoppages of development while it is ascertained if a breeding area is present. A 102-acre subdivision project in the Long Island community of Bridgehampton, including 9 units that had been earmarked as affordable housing, was brought to a halt when a tiger salamander was found on the property. The plan was delayed for more than 1 year until the developer agreed not to build near the pond. The number of affordable units was reduced by almost one-half.

Robin Goldwyn Blumenthal
The Wall Street Journal
April 23, 1990, Page B7

Root Causes and New Directions

There can be little disagreement that government land-use and development regulations are often barriers to affordable housing. Why is this so, and what should be done about it?

Root Causes

Part of the problem involves a classic conflict among competing public policy objectives. Numerous Federal, State, and local regulations that are intended to achieve specific, admirable goals turn out to have negative consequences for affordable housing. The impact on housing costs may not have been considered when the regulations were promulgated.

Another major part of the problem is the fragmented structure of government land-use and development regulation. Not only do many local jurisdictions control land uses and development within each metropolitan area, but multiple levels of government, and a multiplicity of agencies at each level, also have responsibility for one aspect or another of this process. Duplication, uneven standards, and other cost-producing consequences result from this regulatory system. Hence, the cumulative impact goes well beyond the intent of sound and reasonable government oversight responsibilities.

> As a person sometimes ignores mysterious ailments in dread of an operation, so the public ignores the mounting social ills the lack of affordable shelter causes, simply to avoid the pain of its cure. No matter that the reaction is irrational. Emotions follow no logic, and the emotion behind NIMBY is fear.
>
> **June Fletcher**
> *Builder*
> *July 1990*

Perhaps the most potent and, to date, intractable cause of regulatory barriers to affordable housing is NIMBY sentiment at the individual, neighborhood, and community levels. Residents who say "Not In My Back Yard" may be expressing opposition to specific types of housing, to changes in the character of the community, to certain levels of growth, to any and all development, or to economic, racial, or ethnic heterogeneity. In any case, the intention is to exclude, resist change, or inhibit growth.

The personal basis of NIMBY involves fear of change in either the physical environment or composition of a community. It can variously reflect concern about property values, service levels, fiscal impacts, community ambience, the environment, or public health and safety. Its more perverse manifestations reflect racial or ethnic prejudice masquerading under the guise of these other concerns.

NIMBY sentiment—frequently widespread and deeply ingrained—is so powerful because it is easily translatable into government action, given the existing system for regulating land use and development. Current residents and organized neighborhood groups can exert great influence over local electoral and land-development processes, to the exclusion of nonresidents, prospective residents, or, for that matter, all outsiders. Restrictions on affordable housing are the result.

New Directions

The root causes of regulatory barriers to affordable housing have been in place for many years, and the evidence is overwhelming that these barriers are unlikely to disappear, absent significant incentives and effort. All levels of government need to work at removing barriers in conjunction with private interests.

Certainly, the Federal Government needs first to put its own house in order. It should remove or reform existing Federal rules and regulations that have an

adverse effect on housing affordability, and initiate procedures to minimize adverse effects in future regulations. Simply stated, Federal agencies promulgating major rules must account for the impacts of those rules on affordable housing.

Because States delegate authority to local governments to regulate land use and development, States should take the lead in removing regulatory barriers to affordable housing. What each State should do depends upon its own circumstances and situation, but there is no question that State leadership is the only path likely to bring about desired change.

A few States have been substantially involved in attempting to promote affordable housing through the removal of regulatory barriers. Their efforts include recognizing affordable housing as a formal State goal, creating procedures for reconciling local regulations with State goals, eliminating redundant regulations, developing procedures for resolving development disputes, setting statewide standards in support of affordable housing, eliminating discrimination against certain types of affordable housing, and providing State financial incentives for affordable housing and local regulatory reform. Clearly, however, more effort on the part of more States is called for.

Despite the appropriateness and desirability of State action, States are unlikely to play a strong role in the absence of Federal incentives to do so. Therefore, the Federal Government must take appropriate actions to engage the States. Such actions include conditioning Federal housing assistance on the establishment of State and local barrier-removal strategies, relaxing Federal requirements in response to reform efforts, and providing planning grants to assist in barrier removal.

> It is quite consistent with our Federal system...that State governments be quite intrusive in preventing parochial behavior by local governments.
>
> **Robert C. Ellickson**
> *Walter E. Meyer Professor of Property and Urban Law*
> *Yale Law School*

Finally, concerted educational and group actions are needed at the local level to expose the negative consequences of certain government regulations, build coalitions for pursuing regulatory reform, and stimulate local barrier-removal efforts. Such actions are intended to complement and reinforce proposed State and Federal actions. In this way, affordable housing can become a reality for those deprived of it by government regulation.

Commission Recommendations

The Commission has sought to identify the fundamental institutional, political, and structural reasons why regulatory barriers are so pervasive and so resistent to reform. Based on this analysis, the Commission proposes 31 recommendations for Federal, State, and local government and private action. They are intended to be complementary and should be viewed as important elements of a total package of actions necessary for broad-based and effective regulatory reform. If implemented, these recommendations will provide the legislative and administrative tools for a comprehensive program directed at reducing regulatory impediments to affordable housing.

The Federal Role: Stimulating Regulatory Reform

The Commission envisions the Federal Government as a vehicle for stimulating State (as well as local) regulatory reform efforts. The Federal Government must also set an example in regulatory reform by reviewing its own regulatory system to remove or reform those regulations that have an adverse effect upon housing affordability.

Integrating Barrier Removal Into Housing Programs

Federal housing legislation should authorize the U.S. Department of Housing and Urban Development (HUD) to condition assistance to States and localities based upon their barrier-removal strategies. It is inequitable and a waste of taxpayers' money to continue to provide housing assistance to governments that choose to maintain policies that limit housing affordability. Currently, HUD is severely constrained from seeing that reform is carried out. The 1990 National Affordable Housing Act prohibits HUD from conditioning assistance based upon any local policies, no matter how restrictive or burdensome they may be. This legislative prohibition vitiates the requirement for a barrier-removal plan and frustrates the purposes for which this Commission was created. The Commission strongly recommends its prompt removal.

The Commission believes that regulatory barriers will not be diminished substantially unless and until States become strong and vital participants in the regulatory process. Therefore, the Commission proposes that Federal housing assistance flowing directly to States be conditioned upon the existence of State barrier-removal strategies. In addition, the Commission recommends that States review and comment upon the barrier-removal strategies of their localities. To encourage greater involvement in regulatory decisionmaking, States that have barrier-removal strategies should be entitled to waivers of certain Federal regulations that could increase the supply of affordable housing.

Recommendation 6-1

Condition Assistance Upon Barrier-Removal Strategies

The Commission strongly recommends that the Congress amend the National Affordable Housing Act of 1990 to authorize HUD to condition assistance to State and local governments based upon their barrier-removal strategies.

Recommendation 6-2

State Review of Local Barrier-Removal Plans

The Commission recommends that States be offered the opportunity and be encouraged to review and comment upon the local barrier-removal plan of the Comprehensive Housing Assistance Strategy (CHAS) mandated by the National Affordable Housing Act of 1990.

Recommendation 6-3

Federal Housing Assistance to States

The Commission recommends that the Congress make permanent the authority for both mortgage revenue bonds and the Low Income Housing Tax Credit (LIHTC). As part of such legislation, the Commission strongly recommends that the portion of each State's allocation of private-issuance bond authority used for single-family mortgage revenue and multifamily housing bonds, as well as the State allocation of LIHTC authority, be contingent upon the State having an approved barrier-removal plan as part of the Comprehensive Housing Assistance Strategy (CHAS) required by Title I of the National Affordable Housing Act of 1990. States without approved barrier-removal plans would forfeit tax-credit authority, as well as that portion of private-issuance bond authority that is used for housing purposes; and that authority would be redistributed to States with approved plans.

Recommendation 6-4

Regulatory Incentives for States

The Commission recommends that a variety of administrative and regulatory incentives be provided to States that establish and implement satisfactory barrier-removal strategies. Specifically, the Commission recommends that the Administration establish an interagency Affordable Housing Regulatory Review Board to provide, in participating States, waivers of or adjustments to Federal regulations to increase the supply of affordable housing.

Recommendation 6-5

State Barrier-Removal Planning Grants

The Commission recommends that the Congress enact legislation to provide States with funding assistance on a cost-sharing basis for 3 to 5 years to plan and initiate comprehensive programs of barrier removal and reform at both the State and local levels.

Affordable Housing as a Major Federal Concern

As the level of government least affected by NIMBY pressures, the Federal Government can demonstrate to State and local governments how to establish an effective balance between protecting other societal goals and achieving housing affordability. To avoid future regulations that restrict affordability, the Commission proposes that every Federal agency should prepare a Housing Impact Analysis before proposing any major new rule or regulation. The Analysis would examine the projected impact of the proposed rule on affordability and any actions that can be taken to prevent negative impacts.

The Commission proposes other actions with respect to paperwork reduction, the Davis-Bacon Act, and central city investment. With respect to the last issue, the Federal Government should remove all regulatory barriers imposed by racial discrimination and past restrictive lending practices. It has at its disposal powerful authorities—the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), the Community Reinvestment Act (CRA), and the Fair Housing Act—that should be used to ensure affordable housing opportunities in the inner city.

Finally, the Commission notes that Federal environmental regulations that fail effectively to balance environmental protection with other social goals have a direct impact upon the affordability of housing. To avoid such situations, the Commission recommends comprehensive reform of both national wetlands policy and the Endangered Species Act to ensure proper consideration of housing affordability in the development and implementation of environmental protection policy.

Recommendation 6-6

Housing Impact Analysis

The Commission strongly recommends that a Housing Impact Analysis be required of every Federal agency before it promulgates any major rule or rule revision. As an initial step, procedures for the Analysis should be implemented administratively. The Commission also recommends that the Congress enact specific legislation mandating such Analysis as part of the rulemaking process.

Recommendation 6-7

Removal of Barriers to Central City Investment

The Commission recommends that HUD and the Federal financial regulatory agencies develop the means to ensure reinvestment in older urban communities, and protect these communities from racial discrimination in lending and disinvestment. The regulatory agencies should take measures to make conventional mortgages as available as those insured by the Federal Housing Administration (FHA). More specifically: (1) secondary market policy must include a firm, unequivocal commitment to end all forms of discrimination; (2) HUD, as the regulator for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), should maintain and enforce at least its current low- and moderate-income and central city requirements for Fannie Mae, and extend them to Freddie Mac, and should monitor these agencies' compliance with statutory goals for investment in central cities; (3) Fannie Mae and Freddie Mac should monitor and work to ensure the availability of private mortgage insurance on low-downpayment loans of less than $100,000; (4) secondary markets should expand into new kinds of products that serve the affordable housing market and convert affordable housing demonstrations, as they prove

viable, to ongoing programs; (5) the Federal financial regulatory agencies should vigorously enforce the Community Reinvestment Act and the Home Mortgage Disclosure Act; and, (6) HUD and the regulatory agencies should ensure that they are enforcing both the letter and the spirit of current anti-discrimination laws, including the Fair Housing Amendments Act of 1988.

Recommendation 6-8

Amend the Paperwork Reduction Act

The Commission recommends that the Congress amend the Paperwork Reduction Act to clarify that it applies to all Federal paperwork requirements, regardless of whether or not these requirements involve the submission of paper to a government agency.

Recommendation 6-9

Amend the Davis-Bacon Act

The Commission recommends that the Congress amend the Davis-Bacon Act to: (1) raise the threshold of covered projects from the present level of $2,000 to $250,000, and (2) treat lower income multifamily housing as residential rather than commercial property.

Recommendation 6-10

Reform Wetlands Regulations

The Commission recommends a comprehensive assessment of existing wetlands legislation and regulations to eliminate excessive or unnecessary barriers to affordable housing while protecting essential wetlands resources. More specifically, the Administration and the Congress should: (1) develop a wetlands definition, for purposes of regulation, that protects critical environmental resources, streamlines regulation of ecologically low-value wetlands, and allows suitable development therein consistent with a goal of "no net loss"; (2) mandate fair and equitable EPA guidelines that clarify rules on the availability of alternative sites and that also allow for a reasonable period of time in which planning and the search for alternative sites can be undertaken; (3) adopt the use of public and private purchase as well as incentives or compensation to maintain wetlands that are privately owned; (4) develop a clear and explicit long-range strategy defining and implementing the "no net loss" policy; and (5) streamline and simplify Federal regulatory authority and, under appropriate safeguards, delegate Federal regulatory authority to those States that have comparable wetlands regulations.

Recommendation 6-11

Reform the Endangered Species Act and Regulations

The Commission recommends a thorough review of both statutory and administrative provisions regarding protection of endangered species to ensure an adequate balance between protection and other essential social goals. Specifically, the Administration and the Congress should: (1) establish a standardized peer review process for the evaluation of data used in determining which species should be placed on the endangered species list; (2) employ purchase, as well as regulation, with adequate compensation, to protect species habitats; and (3) modify the regulations governing the development of Habitat Conservation Plans (HCPs) so as to ensure that affordable housing and other important societal needs are given full weight in fashioning these agreements and that a mechanism for the impartial arbitration of disagreements between affected parties is included in the HCP process.

Working to Promote Affordable Housing

The Federal Government can undertake a number of administrative and programmatic actions to stimulate regulatory barrier reform. Most importantly, when Federal, State, and local regulations limit fundamental rights and protections, the Federal

Government has the responsibility to protect such rights. The Commission recommends that the Federal Government become an active participant in seeking judicial review of excessive or discriminatory development controls and regulations.

Recommendation 6-12

Legal Review of Regulatory Barriers

The Commission strongly recommends that the executive branch become an active and continuing participant in seeking increased Federal and State judicial review and scrutiny of excessive and discriminatory development controls and regulations through active legal intervention, technical assistance, and participation as a friend of the court.

Recommendation 6-13

Building Support for Regulatory Reform

The Commission recommends that HUD initiate a cooperative program with public-interest organizations, industry groups, and State and local governments to build public support and consensus for regulatory reform.

Recommendation 6-14

Encourage Development of Model Codes and Ordinances

The Commission recommends that HUD assume a leadership role and work with government and private-industry groups, such as the American Bar Association, American Planning Association, National Association of Home Builders, National Governors' Association, League of Cities, State community affairs agencies, and others to develop consensus-based model codes and statutes for use by State and local governments. Specifically, the Commission sees a need for a new model State zoning enabling act with a fair-share component, model-impact fee standards, and a model land-development and subdivision-control ordinance.

Recommendation 6-15

Regulatory Reform Clearinghouse

The Commission recommends that HUD work with and support organizations that currently collect information on State and local regulatory developments, such as the National Association of Home Builders, American Planning Association, and State and local governments, to create a centralized, single-source database and clearinghouse for use by housing advocates, builders, State and local governments, attorneys, researchers, and others interested in regulatory reform and barrier removal.

Recommendation 6-16

Office of Regulatory Reform

The Commission recommends that the Secretary of Housing and Urban Development establish a separate Office of Regulatory Reform funded and staffed to implement the Federal recommendations of this Report and to assist States and localities in initiating comprehensive programs of barrier removal.

Increasing State Responsibility and Leadership

If reform is to be achieved, the States must be involved far more extensively than they are now. All States must assume increased responsibility and oversight for the regulatory decisionmaking processes of their constituent localities.

Housing Affordability as a State Goal

All States should undertake an ongoing action plan, at both the State and local levels, directed at barrier removal. As part of such a strategy, States should thoroughly review their existing zoning and land-planning systems and remove all institutional barriers to affordability. These include limitations or prohibitions constraining the use of various housing affordability options such as accessory apartments,

duplexes, manufactured housing, and single-room-occupancy housing. States should also continue their ongoing efforts directed at building-code reform as well as consolidate and streamline their own regulatory responsibilities.

Foremost among State responsibilities is recognizing affordable housing as a State goal and public purpose for which the police power is delegated to localities. As such, the State has the responsibility to ensure that all localities, as well as the State itself, have comprehensive programs of barrier-removal and zoning reform.

Recommendation 7-1

State Barrier-Removal Plans

The Commission strongly recommends that each State undertake an ongoing action program of regulatory barrier removal and reform at the State and local levels. At a minimum, this program should include a comprehensive assessment of State and local regulations and administrative procedures, as well as State constitutional authority and enabling legislation. States should propose a program of State enabling reform and direct State action, as well as provide for model codes, standards, and technical assistance for local governments that are responsible for enacting and administering development controls.

Recommendation 7-2

State Zoning Reform

The Commission strongly recommends that, as part of their overall barrier-removal strategy, States should thoroughly review and reform their zoning and land-planning systems to remove all institutional barriers to affordability. Reforms that States should consider include: a requirement that each locality have a housing element subject to State review and approval; effective comprehensive planning requirements; modification of zoning-enabling authority to include affordability and housing opportunity as primary objectives; State authority to override local barriers to affordable housing projects; State-established housing targets and fair-share mechanisms; and requirements for a variety of housing types and densities.

State Administrative Reform

States are in a position to ensure greater coherence and rationality in the various administrative reviews that are required. They can simplify the maze of State and local regulations, and they can ensure that regulations meet State goals, with minimum overlap and duplication.

Recommendation 7-3

Encourage or Sponsor Conflict Resolution and Mediation

The Commission recommends that States establish or sponsor neutral third-party conflict-resolution and mediation procedures to resolve conflicts between developers and local governments, and to remove barriers to affordable housing.

Recommendation 7-4

Streamlining State Regulatory Responsibilities

As part of an overall barrier-removal strategy, the Commission recommends that States consolidate and streamline their multiple regulatory responsibilities, for example, by giving authority to a single agency, to shorten and improve both State and local approval processes.

Recommendation 7-5

Time Limits on Processing and Approvals

The Commission recommends that States enact legislation that establishes time limits on building code, zoning, and other approvals and reviews. Such limits should apply to State as well as local development reviews, and should establish a legal presumption of approval. The regulatory body should have the factual burden of clearly demonstrating why the regulatory rejection was

appropriate and in the public interest. Unless the locality made a clear and convincing case, a permit or approval denial would be invalid under the law. If the government did not act within the time established by law, approval would be automatic.

Setting State Standards

States can have a major impact upon the provision of affordable housing by becoming active participants in setting standards and requirements for development regulations. States must also ensure that enabling legislation—the basic authority by which they delegate regulatory powers to localities—guarantees that local regulatory actions address the housing needs of all the citizens of the State and provide for maximum housing choice and opportunity.

Recommendation 7-6

State Subdivision Ordinances and Standards

The Commission recommends that States either enact a statewide subdivision ordinance and mandatory land-development standards or, alternatively, formulate a model land-development code for use by localities. Land-development standards should be based on supportable data and research regarding traffic usage, density, and similar criteria. Standards could either be mandatory or serve as a model ordinance for use by localities.

Recommendation 7-7

Continue Building Code Reform

The Commission recommends that the substantial progress made by State and local governments in reforming the building code regulatory system over the past 20 years continue and be accelerated. More specifically, the Commission recommends that: States adopt either the CABO (Council of American Building Officials) one- and two-family code, or require localities to do so; State and local governments adopt the latest version of the applicable model code without technical modification; States and localities periodically review their codes to eliminate obsolete or unnecessary prescriptive requirements; and States and localities, private organizations, and the Federal Government work to create a nationally recognized building-product evaluation and approval system.

Recommendation 7-8

Modular Code

The Commission recommends that a uniform national regulatory program be established for modular housing. This goal can be accomplished either by an interstate compact or the enactment by the Congress of preemptive legislation.

Recommendation 7-9

Provide Necessary Infrastructure

The Commission recommends that State and local governments develop and implement necessary policy and funding plans to provide and maintain adequate infrastructure in support of affordable housing and growth. The Commission recommends that States and localities employ a range of financing tools to ensure that such infrastructure is available in a timely fashion.

Recommendation 7-10

State Impact Fee Standards

The Commission recommends that States enact legislation establishing mandatory standards and uniform procedures for imposing impact fees. Such legislation should set forth criteria defining the specific types of capital facilities for which localities may consider fees and methodologies to ensure that such fees are related and fairly proportioned to the need for the facilities and services generated by the proposed development. The Commission believes that impact fees should be used to fund only facilities that directly serve or are directly connected to the house or develop-

ment on which these fees are levied. Impact fees to fund general infrastructure improvements are subject to abuse and are less efficient than targeted user fees and broader financing methods.

Recommendation 7-11

Remove Regulatory Barriers to Certain Types of Affordable Housing Options

The Commission strongly recommends that States initiate actions to end discrimination against certain types of affordable housing options, such as amending their zoning enabling acts to: (1) authorize, under appropriate conditions and standards, manufactured housing as a permitted dwelling unit under local zoning, and prohibit local communities from enacting ordinances forbidding manufactured housing; (2) direct that localities permit, under State standards, accessory apartments as of right, not as a "conditional use," in any single-family residential zone within the jurisdiction, subject to appropriate design, density, and other occupancy standards set forth by the State; and (3) require localities to include a range of residential use categories that permit, as of right, duplex, two-family, and triplex housing and adequate land within their jurisdictions for such use. The Commission also strongly recommends that States require all local governments to review and modify their housing and building codes and zoning ordinances to permit, under reasonable State design, health, density, and safety standards, single-room-occupancy housing.

Working Together: Efforts to Educate the Public, Build Coalitions, and Convince Local Policymakers to Dismantle Regulatory Barriers

Ultimately, regulatory reform must occur in the State legislatures, city halls, and county offices responsible for regulating the housing environment. Significant change has succeeded only when effective coalitions of public, private, and nonprofit organizations, employers, and housing activists, recognizing the social and economic benefits that can accrue from affordable housing, find common ground for political action.

Recommendation 8-1

Local Governments Should Undertake Educational Efforts on Affordable Housing

The Commission recommends that local governments undertake educational programs to help the public to become aware of the economic effects of local regulations, of the need for regulatory reform, and of the value of affordable housing.

Recommendation 8-2

Concerned Groups and Citizens Should Build Coalitions for Regulatory Reform

The Commission recommends that government leaders and concerned organizations and individuals build coalitions to support regulatory reform and affordable housing. Professional and civic organizations should examine the consequences of the NIMBY syndrome; private and community foundations should sponsor studies of and debate on regulatory reform; and government officials should join with private citizens to address the implications of NIMBYism. Government, business, nonprofit, and educational leaders should take the lead in forming local coalitions to translate public awareness into support for regulatory reform and affordable housing.

Recommendation 8-3

Employers and Others Who Benefit From an Affordable Housing Supply Should Advocate Regulatory Reform

The Commission recommends that employers and other private industry leaders recognize the

importance of affordable housing and work with housing advocates, local government officials, and others interested in regulatory reform to lower the barriers to affordable housing.

Recommendation 8-4

Local Governments Should Initiate Barrier-Removal Strategies

The Commission believes that significant reform of the existing regulatory system must become a priority of local government if local as well as national housing goals are to be achieved. The Commission recommends that all local governments initiate a strategy of barrier removal. The strategy should include a comprehensive and systematic review of zoning, subdivision ordinances, building codes, and related development-control ordinances and administrative procedures to identify excessive, duplicative, or unnecessary barriers to housing affordability and opportunity. Localities should consider many reforms, including but not limited to: (1) providing adequate land for a variety of housing types and densities; (2) eliminating excessive site-development standards; (3) reforming local property taxes; (4) decontrolling rents at least for higher-income households; (5) developing one-stop permitting; (6) providing for adequate infrastructure to accommodate growth; (7) eliminating obsolete and prescriptive building code requirements; and (8) creating Housing Opportunity Zones.

A Strategy for Implementation

Recommendations for reform are not enough. Because barriers to affordability reflect basic political, institutional, and social priorities that many communities consider important, there is a great need for a strategy for action to effect meaningful reform. Developing and implementing such a strategy are as significant and important as the recommendations themselves.

The Commission proposes a comprehensive approach directed at all levels of government as well as at private organizations. The approach includes Federal incentives to encourage States and localities to begin the job of restructuring their regulatory responsibilities.

Dissemination of Commission Findings and Recommendations

Release of this Report provides an opportunity to present the issue of regulatory barriers directly to the Congress, State and local officials, and activists and advocates for housing affordability. As initial steps in a long-term implementation strategy, the Commission proposes that HUD:

- Immediately undertake a vigorous dissemination and education effort on the Commission findings and recommendations;
- Request Congressional hearings on the Commission Report; and
- Initiate a comprehensive series of public and private meetings with State and local governments, the housing industry, and national organizations to fashion a consensus for regulatory reform.

Implementing Federal Recommendations

Particular attention should be paid to ensuring that the Commission's recommendations for Federal action are implemented as soon as possible. To meet this objective, the Commission proposes the following strategy:

- Establish a unit in HUD to monitor implementation;
- Submit draft legislation to the Congress;

- Undertake targeted efforts to educate Federal, State, and local policymakers and the public about the fundamental equity of the proposed Federal reforms; and
- Take specific administrative steps to enable the Federal Government to become an active participant and advocate for regulatory reform.

Implementing State and Local Recommendations

To assist in local regulatory reform efforts, the Commission proposes that HUD provide essential education and technical information to State and local governments. Specifically, HUD should:

- Work with State and local governments, nonprofit organizations, and others wishing to undertake programs of consensus-building and become a continuing resource to local efforts;
- Support local efforts by developing model codes, disseminating information, and organizing workshops, conferences, and other educational activities;
- Work with State governments willing to serve as laboratories to demonstrate innovative solutions to regulatory barriers; and
- Give awards to exemplary local reform efforts, and keep track of regulatory developments and progress in the removal of barriers.

Reform Can Happen

Development controls and regulations have a direct impact upon where people live, how they manage and use their property, what lifestyle and living arrangements they choose, who their neighbors are, and what their residences cost. If those controls and regulations fail to address equitably the needs of all citizens, if they provide benefits to some while limiting housing choice and opportunity for others, they violate the public purpose in whose name they are enacted.

Reform will not come easily, but it has occurred in some places and it can be achieved in many others. The Commission has developed both objectives and a plan for accomplishing them. If Federal, State, and local governments adopt similar goals and plans, the cost of housing will be significantly reduced, to the benefit of millions of low- and middle-income American families.

Although regulatory barriers to affordable housing have proven remarkably resistant to change, this Commission is optimistic that the time is right for comprehensive regulatory reform. Increasingly, national and local policymakers, housing activists, and others recognize that the private housing market is not being allowed to generate its full potential supply of housing. A balanced and comprehensive strategy aimed at meeting national housing needs must include the prompt removal of discriminatory, exclusionary, and unnecessary regulatory barriers to affordable housing.

Part I:

Regulatory Barriers and Affordable Housing

Regulatory Barriers and Affordable Housing

The lack of affordable housing in many communities in the United States constitutes a serious economic and social problem for millions of Americans. It also hampers sound economic development of many metropolitan regions. Part I of this Report examines the reasons behind the lack of affordable housing and focuses on the role of government regulations—at the Federal, State, and local levels—that tend to make housing less affordable than it might otherwise be.

Governments find many reasons to adopt regulations that inhibit development of affordable housing in certain areas. One central and overriding cause is the dislike of both residents and public officials for additional or different kinds of housing in their neighborhoods and communities. This uncommonly powerful political attitude is often referred to as the NIMBY syndrome—Not In My Back Yard.

Chapter 1 explores the NIMBY syndrome, identifies a number of other causes of regulatory barriers to affordable housing, and sets the stage for an exploration of how NIMBY attitudes have become imbedded in regulatory barriers in the suburbs (Chapter 2) and in cities (Chapter 3). Chapters 2 and 3 focus on State and local regulations. The Federal Government administers regulations that are intended to achieve highly important and worthwhile goals—notably environmental protection—but that also contribute to the housing affordability problem; Chapter 4 examines the background and operation of these regulations as they affect housing affordability.

The Commission believes that shortages of affordable housing in key areas around the country stem from macroeconomic factors, the many manifestations of the NIMBY syndrome, and local regulatory barriers of the sort discussed in Chapters 1 through 4. But other forces also affect housing affordability, and Chapter 5 discusses them briefly. These forces include the housing finance and tax systems and Federal programs to assist lower income families by reducing the cost of decent housing. These subjects are beyond the purview of the Commission but are important to the larger context in which this Report should be considered.

The Causes and Regulatory Consequences of the NIMBY Syndrome

Almost every witness who testified before the Commission found occasion to use the increasingly relevant acronym NIMBY—Not In My Back Yard—to describe opposition by residents and public officials alike to additional or different kinds of housing units in their neighborhoods and communities. These witnesses made clear that NIMBY opposition all too often leads to restrictive and excessive government land-use and development regulations that add unnecessarily to the cost of housing. Although costs vary widely, the Commission has seen evidence that increases of 20 to 35 percent in housing prices attributable to excessive regulation are not uncommon in the most severely affected areas of the country.

The NIMBY syndrome is often widespread, deeply ingrained, easily translatable into political actions, and intentionally exclusionary and growth inhibiting. NIMBY sentiment can variously reflect legitimate concerns about property values, service levels, community ambience, the environment, or public health and safety. It can also reflect racial or ethnic prejudice masquerading under the guise of these legitimate concerns. It can manifest itself as opposition to specific types of housing, as general opposition to changes in the character of the community, or as opposition to any and all development.

Personal sentiments intertwine with local governmental and quasi-governmental arrangements for regulating land development to make the NIMBY syndrome a major influence on development policies in many communities. A long and fundamentally sensible tradition in the United States holds that regulations affecting land use should be promulgated at the local level because that is where their effects are most directly felt. Local government regulations for the most part provide sound guidelines for development.

But the zealously guarded local control of land use and development facilitates the translation of NIMBY sentiment into codes and ordinances that effectively burden development and constitute barriers to affordable housing. The results are excessive growth controls, exclusionary zoning ordinances, unnecessarily drawn-out permit and approval processes, and arbitrary restrictions against special types of housing units that combine to make housing less affordable for many households. Through such regulations, the NIMBY syndrome has become institutionalized at the local level. Against the local institutionalization of the NIMBY syndrome, there is little counterpoise from governmental institutions that consider public welfare within a broader perspective.

This is not to say that NIMBY attitudes form the only basis for government regulations that make housing less affordable. Among other causes are:

- An interest in reducing long-term infrastructure maintenance costs (by requiring developers to make costly front-end expenditures);
- An interest in protecting vested local interests (by requiring or excluding the use of certain building materials or construction practices);
- A need to find alternatives to property tax or bond financing of infrastructure (by using various types of fees);
- A lack of awareness by local officials of state-of-the-art building methods or materials (leading to unnecessary or inappropriate building requirements); and
- The fact that multiple agencies and levels of government have similar regulatory responsibilities (often resulting in redundancy, lack of coordination, and inconsistency).

Some of these factors interact with the NIMBY syndrome to strengthen barriers to affordable housing. Overcoming the syndrome will not remove all barriers to affordable housing, but it will be a major step.

The Impact of NIMBY on Affordability

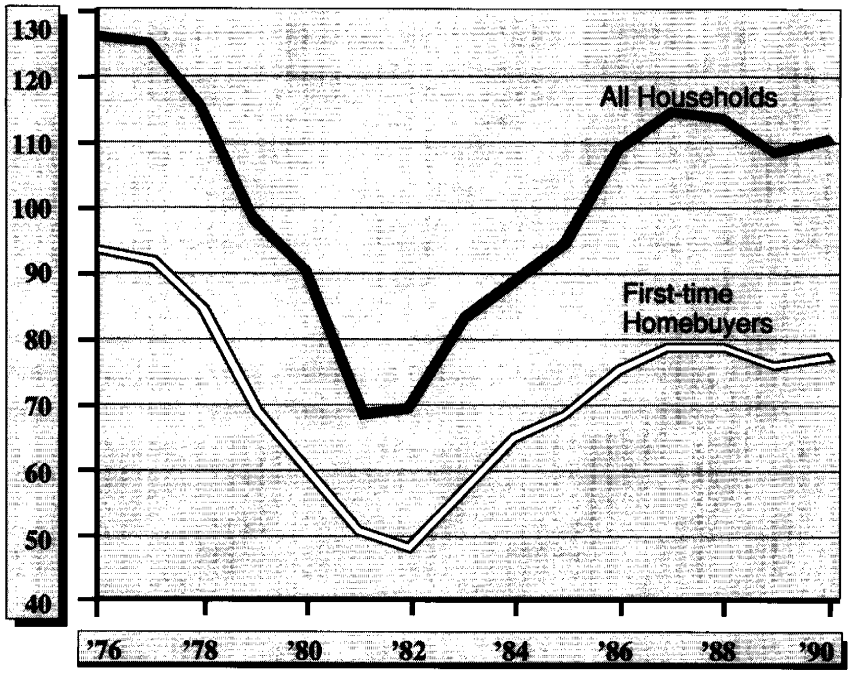
Nationally, affordability for homebuyers has improved in the 1980s, after deteriorating during the 1970s. The improvement has occurred largely because stable macroeconomic policy has reduced inflation and, therefore, mortgage interest rates. Mortgage interest rates were below 9 percent in 1970, rose to 13 percent by 1980, peaked at about 15 percent in 1982, and dropped to 10 percent in 1990.[1] In addition to lower inflation and interest rates, the growth of the economy has pushed up incomes faster than home prices. Both factors are clearly reflected in affordability measures. The homeownership affordability index published by the National Association of Realtors (NAR) had a value of 110 in 1990, meaning that a household at the national median income had 10 percent *more* than the amount needed to qualify to buy the national median-priced existing house (see Exhibit 1-1). This value is below the 1976 value of 126, but well above the 1981 level of 69. The general pattern of affordability for potential first-time buyers is similar to that of all households over the past 14 years, although it has been consistently more difficult for these families to buy homes and become homeowners. The pattern for first-time buyers is not surprising; their resources are more limited and they may have difficulty accumulating a downpayment.[2]

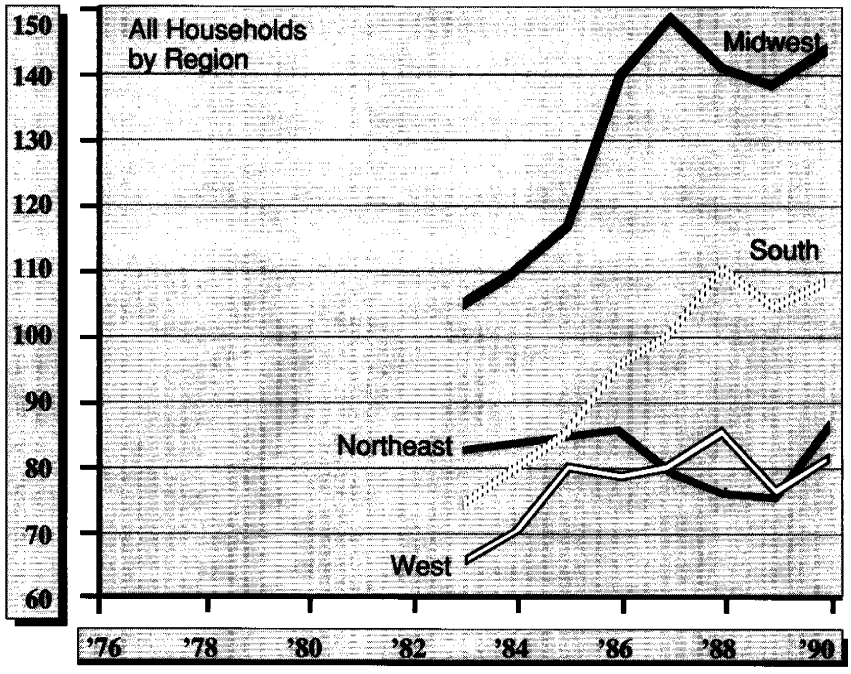
Through the 1980s, however, barriers to homeownership affordability were erected that have countered the basic trend of improving affordability and now threaten to undermine it. Foremost among these barriers are local housing regulations that drive up the cost of building a home and, therefore, the cost of buying it. Such regulatory barriers include high impact fees, time-consuming permitting processes, excessive subdivision controls, and obsolete building codes. Their significance can be seen in the disparities in affordability in different parts of the country. The regional values for the NAR index in December 1990 range from 82 in the West, where regulatory barriers are widely regarded as particularly strong, to 144 in the Midwest. The regional patterns are made up of numerous local diverse housing markets, populations, and housing regulations. Because housing regulations are local, it is not surprising that affordability varies substantially within regions. In the West, for example, the NAR affordability indices range from 43 in Los Angeles to 119 in Denver.[3]

The regional and local NAR indices have been calculated only since 1983. They capture current differences in homeownership affordability, but not long-term trends. Regulatory barriers to affordable housing have been widely recognized as a problem for many years but have become increasingly important in the past decade. The longer-term patterns can be seen in the Census Bureau's price index for new homes, which has measured the cost of building the same house from year to year for more than 2 decades (see Exhibit 1-2). The Census index is perhaps the best indicator of the impact of regulation because regulations most directly affect construction costs and home prices. The Census Bureau reports both national and regional indices. During the 1970s, average sales prices, as estimated for a constant-quality house, rose sharply in the West, which is dominated by California, the western State considered to have the greatest affordability problems. In the 1980s, average sales prices for a constant-quality house rose even more dramatically in the Northeast, while continuing to be high in the West. After 20 years, the differences among the regions are more pronounced than they were in 1970.[4]

Renters have also confronted affordability problems resulting from regulatory barriers. One useful cost measure is rent per square foot. This ratio has increased in real terms during the past 2 decades, from 32 cents in 1971 to 63 cents in 1989 (both figures are in 1989 dollars). Rent per square foot was very similar in the four Census regions in 1971, differing by 2 cents or fewer from the national average. As

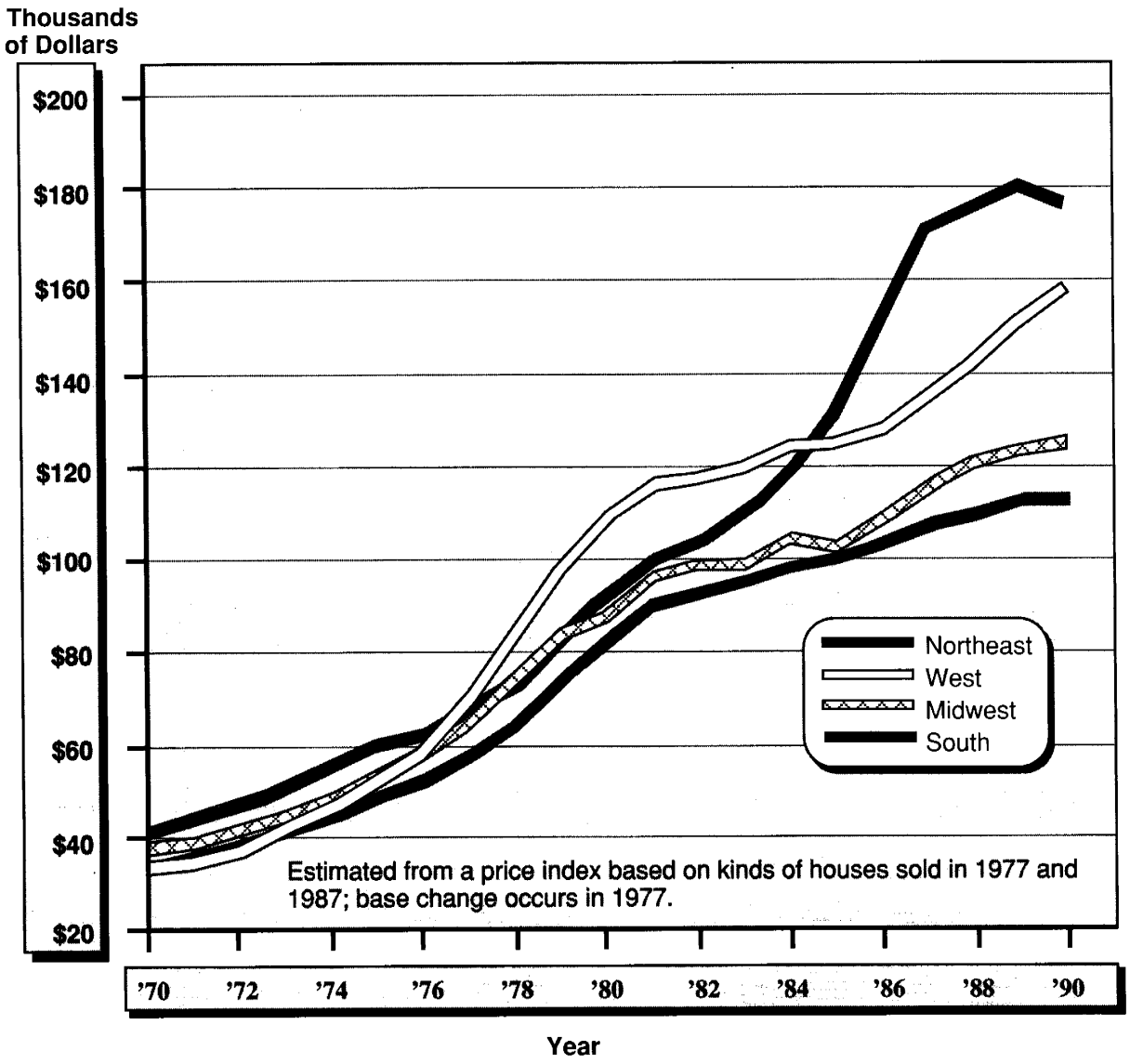
Exhibit 1–1
NAR Affordability Index*





* See endnote 2.
Source: National Association of Realtors.

Exhibit 1–2
Average Sales Price of Constant Quality Houses, by Region



Source: *Current Construction Reports,* U.S. Bureau of the Census, Washington, D.C.

with the new home price index, it then diverged over the next 2 decades, with all regions increasing substantially in real terms. In 1989, the West had the highest value at 72 cents, and the Midwest the lowest at 52 cents.[5]

Rents rose in real terms during the 1980s, by 9 percent nationally, after declining in the 1970s. During the 1980s, substantial regional and local differences also occurred for rents as well as construction costs. Generally, real rents rose most rapidly on the east and west coasts, both regions widely regarded as having particularly serious regulatory barriers. The metropolitan areas of Boston, Los Angeles/Long Beach, and San Francisco/Oakland, for example, all experienced increases in real rents of more than 20 percent during the 1980s, while Chicago, Minneapolis/St.Paul, Miami/Ft. Lauderdale, and Detroit had increases of 10 percent or less (real rents in Miami actually decreased).[6] Within metropolitan areas, disparities are often more extreme, as individual jurisdictions erect barriers to rental housing. Rental affordability has worsened in the North Bay counties of the San Francisco area in the past 4 years, for example, while it has improved in the Central Bay Area.[7]

The rise in housing costs has hurt lower income renter families, particularly in the West. Between 1974 and 1989, the proportion of very low-income renters with severe housing problems rose by 14 percentage points (from 29 to 43 percent) in the West, while it declined in the other three regions. During this period, which coincided with the proliferation of regulatory barriers to affordable housing, the West changed from the region with the lowest proportion of families with severe problems to one with the highest proportion.[8]

Affordability problems are especially acute for poor renters in Western metropolitan areas. The most recent data show that more than 85 percent of poor renters pay more than 35 percent of their income for rent in the Los Angeles, San Francisco, and San Diego areas. For Los Angeles and San Francisco, the proportion has been increasing. Similar problems exist in other areas, such as Detroit, however, that are not widely regarded as having particularly stringent regulatory barriers.[9]

Although regulatory barriers and the NIMBY syndrome do not account for all differences in affordability, they are certainly contributing factors. Diverse housing prices and rental cost patterns across the Nation reflect, in part, differing characteristics of communities with respect to housing and regulatory barriers that limit its availability.

The Personal Basis of NIMBY

The heart of NIMBY lies in fear of change in either the physical environment or population composition of a community. Concerns about upholding property values, preserving community characteristics, maintaining service levels, and reducing fiscal impacts are often involved. Sometimes these expressed concerns are also used as socially acceptable excuses for ethnic and racial prejudices. Whether genuine or used as excuses for other motives, such concerns often generate strict development curbs.

Upholding Property Values

Having a substantial investment in their home, many homeowners fear changes they perceive may lower property values. In neighborhoods of single-family detached homes on large lots, for example, threatening changes include multifamily rental housing, attached single-family housing, manufactured housing, housing on small lots, or accessory apartments developed from unused space in single-family homes. Concomitantly, widespread biases arise against less affluent households, renters, minorities, or simply those who are "different," which often means those who are identified as typical inhabitants of more affordable types of housing. In some cases, NIMBY objections to more affordable housing and its typical inhabitants stem from honest

misconceptions about the effects of new development on property values. Those who express concerns about property values are often unaware of evidence showing that expanding the mix of housing types in an area will not adversely affect property values.[10]

Preserving Community Characteristics

In some instances, NIMBY sentiment involves opposition to development projects even though the projects would markedly raise property values. It is not unusual, for example, for residents of low-density communities to resist the subdivision of vacant land for residential construction, even if the proposed development involves very expensive homes. They fear the destruction of scenic vistas, open space, and the tranquil ambience of their hamlet resulting from the presence of more people, more traffic, and more commercial enterprises. Similarly, residents of well-established neighborhoods, characterized by homes of a particular historical period or architectural design, have battled encroachment from luxury high-rise projects to preserve neighborhood aesthetics, although property values would increase considerably as a result. Those who live in historic districts or in scenic, rural areas have often gravitated to such places precisely because of their unique characteristics, and they fear these characteristics would be irretrievably lost as a consequence of changes brought about by development.

Maintaining Service Levels

NIMBY sentiment sometimes reflects worries about pressure that additional or different kinds of housing put on public or social services in the community. The perceived connection generally elicits strong emotion and response. It may be true that growth and development contribute to well-being by opening up and spreading economic opportunities to large numbers of households, but long-time community residents and public officials responsible for meeting their needs see the negative manifestations of growth on an immediate and concrete level. By contrast, the opportunities that growth brings to those who live in communities under developmental pressure are more distant and less tangible and visible.

What established residents can immediately see is the short-term physical effects of growth. Roads that were previously able to carry their traffic load adequately are now congested. For example, in California the number of lane-miles of congested freeways and highways has been rising 15 percent each year as the road system has used up the excess capacity built into it several decades ago. Speeds have slowed precipitously and daily trips take two or three times as long as they did a few years ago. Residents also note air quality that was previously good is now often poor and harmful to health. The incidence of respiratory ailments rises. Residents worry that water supplies are no longer adequate; they are sometimes forced to ration usage. Water quality suffers; many areas are at or beyond the capacity of their wastewater and sewer systems. Schools that could previously operate on a single session now operate on double and triple sessions. A common response to such deterioration in services and to infrastructure inadequacies is to support regulations that reduce the pressure on infrastructure and services by slowing development.

Reducing Fiscal Impacts

NIMBY sentiment may also reflect taxpayer concern about the fiscal implications of new development, especially with regard to the provision of infrastructure. Furthermore, infrastructure development and other growth-related expenditures sometimes compete for priority with health and welfare responsibilities mandated by Federal as well as State governments. Residents' unwillingness to pay for infrastructure associated with growth has been a major issue in many communities.

Property taxes have traditionally been the largest revenue source for local governments, but rapidly increasing property taxes led to taxpayer revolts in the 1970s and early 1980s and resulted in the passage of State laws specifically restricting local

governments' ability to raise revenue from property taxes. As of 1985, 31 States had imposed property tax rate limits on local governments and 6 States had adjusted either constitutional or statutory limits on the total amount of revenues local governments could collect annually. As a result, property taxes are now down from 36 percent of total local revenues in 1972 to 25 percent throughout the 1980s.

In addition, some sources of financing, including Environmental Protection Agency (EPA) grants for sewer and water treatment facilities, traditionally available to local governments to pay for necessary infrastructure, are no longer available or are available at reduced levels. The Tax Reform Act of 1986 has also restricted the use of municipal bond proceeds for quasi-public projects by imposing ceilings up to allowable limits.

The effect of these changes in fiscal structure should not be overstated. Although local governments' real property tax revenues per capita declined as a result of the tax-limitation movement, total local government revenues have increased significantly. Real per capita local government revenues were 23 percent higher in 1988 than in 1980, and 29 percent higher in 1988 than in 1972. Local governments and local residents have been less willing to pay for infrastructure, but not in general less able to do so.

Preserving Homogeneity

Community residents who are especially concerned about the influx of members of racial and ethnic minority groups sometimes justify their objections on the basis of supposedly objective impacts like lowered property values and increased service costs. For example, they may maintain that more affordable multifamily housing will decrease the value of single-family housing in its vicinity. Such residents are unwilling to admit to prejudice against minority group members and use the subterfuge of these other concerns when making their case. Racial and ethnic prejudice thus is often one root of the NIMBY syndrome, though NIMBY concerns also exist where racial or ethnic differences are not involved.

Institutional Aspects of NIMBY

Personal concerns about property values, the characteristics of new neighbors, service levels, community ambience, the environment, or public health and safety—the NIMBY syndrome—are transformed into regulatory barriers through the electoral process and through public forums where neighborhood groups exert their greatest influence over land-development decisions.

NIMBY and the Local Control of Development

Most of the mechanisms citizens use to influence land development are local, just as most decisions affecting land development and housing affordability are local. Hence, a particular symbiosis exists between NIMBY sentiments and the institutionalization of NIMBY. It is at the local level that officials responding to citizen concerns enact growth controls such as capping the number of building permits issued or imposing moratoria on sewer hookups. It is local zoning commission members who, responding to citizen petitions for the exclusion of certain kinds of housing, regulate density by imposing minimum lot sizes or zoning only for single-family residential uses. It is local policy that requires overly wide streets, excessively elaborate sanitary systems, or large tracts of open space. Local officials also control the permit and approval process where they can fashion around the development process such a tangled skein of red tape it takes years to unravel. As things stand, all of these actions are undertaken by local governments acting with little direction from or oversight by State governments.

Complicated and lengthy permit and approval systems do not always evolve by design, but where NIMBY sentiment is strong and vocal, this system is clearly a leverage point. For example, a community

can use the requirement for environmental impact statements, involving extensive surveys and studies by a developer and reviews by various agencies, to slow the development process intentionally.

Although good arguments support local control over land use and development, the NIMBY syndrome has thrived under opportunities that local control provides. That regulations affecting development tend to institutionalize parochialism, pitting community residents against nonresidents, is not difficult to understand, considering the political geography of development decisions.

Although the complex series of exchanges that constitute the metropolitan economy may be spread out over its entire area, the separate local jurisdictions within the area are the source of most regulations affecting development. Most metropolitan areas consist of many such local jurisdictions, each autonomously making land-development decisions meant to address the concerns of its own constituents.

Because development regulations apply only within jurisdictional bounds, officials tend strongly to fashion them to reap the benefits of development while incurring few of its costs. Local officials have powerful fiscal incentives for externalizing—loading onto somebody else—the costs of population mobility that accompanies regional economic activity. Thus, households coming into the area in pursuit of jobs are viewed as potential drains on a community's tax base because they consume in services more than they pay in taxes. By contrast, employment centers associated with the jobs that attract these households are viewed as tax assets to be encouraged. Unfortunately, such decisionmaking is particularly disadvantageous to outsiders wanting to move into a community. Because communities naturally prefer activities that generate high tax revenues, they place severe restrictions on the development of affordable housing, including housing for those already working there. Despite the fact that the extension of infrastructure and services ultimately benefits the entire economy of the area, it is new homebuyers who find themselves bearing the brunt of its costs through fees and exactions levied by local governments.

The Influence of NIMBY Groups

As established residents of the community, local officials have an interest in ensuring that public benefits of regulation coincide with those of existing homeowners, who vote and pay taxes. Local elected officials are necessarily sensitive to community concerns. In virtually every suburban community there lies the potential for citizens groups rallying behind candidates who run on NIMBY platforms, and many established lawmakers have found themselves turned out of office by maverick candidates who do so. These no-growth candidates promise less crime, less school overcrowding, and less road congestion. No-growth platforms appeal to those who want, beyond all else, to preserve the status quo. Only at their peril will politicians interested in keeping constituents happy discount neighborhood group concerns about preserving the character of the community. Testimony before the Commission suggests that the Not-In-My-Term-Of-Office—NIMTOO—phenomenon is an inevitable offshoot of strongly felt and persuasively expressed NIMBY sentiment.

In addition to lobbying elected officials, NIMBY groups regularly participate in the regulatory process through vocal input at public forums and hearings dealing with land-use and development issues. Unlike the strict rules governing judicial proceedings, many localities have no specific rules regarding who can testify at public hearings or what rules of evidence apply. Participants often represent ad hoc groups that coalesce around a particular development issue. They can be very effective at packing hearing rooms and leaving the impression that public opinion is strongly against whatever project they oppose.

Procedural rules governing participation in the regulatory process are loose in many respects. Yet formidable hurdles discourage nonresidents' partici-

pation in the process, even where their welfare is directly involved. Although public forums are not officially closed to nonresidents, notices of hearings or invitations to testify are often restricted to residents. Nonresidents are, therefore, less likely to hear about such forums, while residents are able to prepare and make their case in force.

The disadvantages of nonresidents in pressing their interests in the face of the NIMBY phenomenon are not just procedural. The nature of the zoning process militates against outsiders' claims and reinforces the claims of established residents. Zoning ordinances subdivide a community into districts or zones to separate incompatible uses, densities, and building types. Thus, property owners' claims—that contiguous uses affect the enjoyment and economic benefits derived from their property—are supported by regulations enforcing compatibility of uses within zones. Those advocating more affordable housing in a community cannot, in the same way, point to a precise location on the map where benefits of affordable housing are being deliberately withheld and particular households are being harmed. What is more, nonresidents may not know exactly where they want to buy or rent; the "harm" to them seems remote, the remedy deferrable.

Checking the Effects of NIMBY and NIMTOO

NIMBY and NIMTOO raise questions about how best to provide for general welfare when it comes to land-use and development decisions. Under the American Federal system, States are the custodians of the welfare of their citizens and, in turn, can delegate police powers to local units of government. Using these powers, local governments can levy fees, issue permits, and carry out zoning and other land-use and development controls. Relatively unfettered local use of these powers can conspire against the interests of outsiders and deprive many households of affordable housing opportunities. But the welfare of a State's citizens need not suffer when these responsibilities devolve upon local government.

Although States have responsibility for the general welfare of their citizens, they have not always delineated officially what such responsibility entails. For example, with a few notable exceptions, most State courts have not clarified the meaning of the general welfare responsibility clause found in State constitutions. And many State constitutions are ambiguous about the fact that the general welfare is ill-served by a local ordinance that constricts the supply of affordable housing. Moreover, the courts often presume the validity of State zoning enabling legislation and local zoning ordinances, and are disinclined to hear challenges to them. Thus, those affected by the NIMBY syndrome are caught in a "Catch-22" situation. They find no relief through the courts because the courts accept zoning as a valid legislative function, and they find no recourse through the legislature because the legislature leaves it to the courts to deal with statutory challenges.

As for the citizens and public officials who exhibit the NIMBY syndrome at the grassroots level, it is clear from their support for more restrictive regulations that they often push aside the compelling need for affordable housing. Instead of dealing with the negative side effects of growth and with infrastructure financing problems, they take the expedient course of declaring their communities off limits to most development. Yet communities where the NIMBY syndrome is entrenched are quick to invite those households seeking affordable housing to search in neighboring jurisdictions. Unfortunately, when many jurisdictions in a metropolitan area all place other concerns before the need for affordable housing, households seeking affordable housing may find themselves shut out of the entire metropolitan area. As a result, everybody suffers in one way or another.

Endnotes

[1] New home mortgage yields, as reported by the Federal Housing Finance Board and defined as the effective rate in the primary mortgage market reflecting fees and charges as well as contract rate and assuming, on the average, repayment at the end of 10 years.

[2] The NAR interprets an index value of 110 in 1990 as showing a family earning the median family income of $35,581 had 110 percent of the income required to qualify marginally for a conventional loan covering 80 percent of the median existing single-family home price of $95,500. First-time buyers are defined as wage-earning renters, aged 25 to 44. The index for them is the ratio of the median income for the group to the minimum income required to qualify for a 90 percent mortgage on a starter house (priced at 85 percent of median of all existing houses for sale). "Home Sales," National Association of Realtors, Feb. 1991.

[3] The NAR affordability index values have been calculated for 22 of the larger metropolitan areas. Only four of these, Denver, Houston, Pittsburgh, and Phoenix, have index values much greater than the region in which they are located. It is therefore evident that the smaller metropolitan areas within each region not separately reported, and the non-metropolitan areas, have higher index values. This pattern is to be expected: anecdotal evidence indicates that affordability problems are most severe in the larger metropolitan areas. In the Northeast, the NAR affordability indices ranged in the fourth quarter of 1990 from 47 in the New York metropolitan area to 90 in Philadelphia. In the Midwest, the indices ranged from 83 in Chicago to 134 in Detroit. The South had a range from 90 in Miami/Hialeah to 149 in Houston.

[4] "Price Index of New One-Family Houses Sold," *Current Construction Reports*, C-27, U.S. Department of Commerce, Bureau of the Census, Mar. 1984 and Mar. 1991.

[5] "Characteristics of New Housing: 1989," *Current Construction Reports*, C-25, and, "Characteristics of Apartments Completed," *Current Housing Reports*, H-131, U.S. Department of Commerce, Bureau of the Census, and U.S. Department of Housing and Urban Development, 1975 and 1989.

[6] "Consumer Price Index Detailed Report," U.S. Bureau of Labor Statistics.

[7] "Housing and Development Report," Bay Area Council, Vol. 4, Feb. 1991, p. 3.

[8] The very low-income renters for whom it is possible to track changes consistently over time are unassisted families and elderly households with incomes below 50 percent of the local median income. Households with severe housing problems spend more than 50 percent of their income on rent and/or live in units that are seriously deficient, lacking basic features such as adequate plumbing.

[9] "Annual Housing Survey: 1974-76, Housing Characteristics for Selected Metropolitan Areas," and "American Housing Survey for (Selected) Metropolitan Area(s) in 1985-87," *Current Housing Reports*, H-170, U.S. Department of Commerce, Bureau of the Census, and U.S. Department of Housing and Urban Development. Note: For 1974-76 data, income categories below $5,000 were used; renters with incomes below the poverty level were used for 1985-87 data.

[10] See discussion titled "Beliefs About Property Values" in Chapter 8, page 2, as well as the reference in Chapter 8, Endnote 1, to "The Effects of Subsidized and Affordable Housing on Property Values: A Survey of Research," Department of Housing and Community Development, State of California, Sacramento, 1990, p. i.

Regulatory Barriers in the Suburbs

> ***"I turn green when I think about the money I have to pay for attorneys. We're damn good at building homes, we're honest and as innovative as regulations allow, but I can't even get out to a job site anymore, I'm so busy dealing with government regulations at the Federal, State, and especially the local levels."***

This sentiment, expressed by veteran Ohio homebuilder Bob Schmitt in response to NIMBY-inspired regulations and the vested bureaucracy that implements them, is echoed from coast to coast. The Commission heard about complicated and redundant permitting procedures, excessively high impact fees, restrictive zoning and subdivision ordinances, counterproductive growth controls, and uncoordinated development approval and permit processes being used with special zeal in suburban and high-growth areas.

Regulatory barriers are of particular concern in suburban areas because they lie in the natural path of development. The purpose of such barriers is to apply a brake to development or to screen development according to some set of preferential criteria often related to maintaining the character of the community. But these barriers interfere with the free movement of households in search of economic and housing opportunities in the very places where such opportunities most frequently arise. Unfortunately, suburbs and high-growth areas are natural breeding grounds for the NIMBY syndrome because they are in the enviable position of being able to impose selective controls. They can count on attracting as much development as they wish, and no more. Growth controls, restrictive zoning, and the burdensome permit and approval process relevant to higher growth and suburban areas are especially onerous because they constrain the housing choices of the many households seeking affordable housing in these areas.

Growth Controls

In response to encroaching development pressures caused by rapid population increases, some communities attempt to secure their borders against newcomers by imposing growth controls. Unfortunately, these controls contribute to escalating land costs and housing prices in preferred locations where developmental pressures are greatest. To some extent, higher land prices are an inevitable consequence of increased competition for scarce land in growing areas. But the effects of natural market forces are compounded by regulatory barriers, driving land and housing prices still higher.

Rationales for Growth Controls

Growth controls are often found in places that have experienced a dramatic population influx within a very short time. In general, as metropolitan areas grow out from their central cities, some suburban areas in the path of growth impose controls that have both exclusionary and cost impacts, creating obstacles for households drawn to those areas but unable to afford housing costs there. Although growth controls are used in all parts of the Nation, they are especially observable in communities that are major growth nodes because of their favorable climate, their attractiveness to certain industries, or their proximity to natural resources or because they have become important debarkation points on major immigration routes.

Nowhere are these trends better exemplified than in California, which is expected to grow twice as fast

as the Nation as a whole in the 1990s. In 1989 alone, the State grew by nearly three-quarters of a million people.[1] Indeed, one-quarter of all growth in the United States during the 1980s occurred in California.[2] Much of this growth is fueled by in-migration from other regions of the country and from Southeast Asia, Latin America, and other parts of the world. Many of the immigrant groups seek economic opportunity and a better standard of living. California is adding jobs faster than any other State in the United States; since 1982, it has created 2.8 million new jobs. The State's $700 billion economy makes it one of the 10 largest in the world, and its location on the Pacific rim guarantees its position within the fastest growing trade zone in the world.[3]

Residents of communities in California and other areas that are at the epicenter of growth are naturally concerned about road congestion, overburdened sewer and water systems, unhealthy air quality, and overcrowded school systems. In many real respects, the quality of life may suffer in communities experiencing rapid growth. Under these circumstances, the tendency to resort to the quick fix of placing restrictive regulations on development is not uncommon. Indeed, in response to these growth pressures, by the end of 1988, 907 local growth-control or management measures had been enacted in the State to slow development.[4] Local decisionmakers are also fearful of their inability to pay for increased infrastructure to support growth because of the loss of revenue sources traditionally used to pay for infrastructure. The Proposition 13 cap on property taxes is not the only reason for local policies to restrict growth; many California communities had adopted restrictive ordinances and regulations before 1978. But limitations on the use of property taxes to pay for infrastructure have forced policymakers either to find new sources of financing or limit growth.

Devices Used to Control Growth

Growth-limiting devices include: downzoning to increase lot size and allow fewer housing units to be built; zoning tracts of land for agricultural use and thus removing land from the residential development inventory; and placing caps on building permits to allow only a fixed number of housing units to be built within a given time. Growth-control measures also include curbs on development brought about by tying growth to the infrastructure needed to support it. Communities using such measures have refused to increase their level of capital spending, even in the face of development pressures, and have used inadequate infrastructure as a justification for slowing growth. In fact, one of the most effective ways of limiting growth is to relate development to the availability of public services.

Some localities intentionally drag their feet during the building permit and approval process, using their ability to delay issuing approvals as an evasive strategy aimed at halting growth. Ad hoc groups opposed to growth are playing an increasingly central role in precipitating such delays.

The California court specifically addressed the question of a city restricting extension of utility service outside its boundaries to achieve growth control when the City of Santa Rosa was challenged by a developer. The trial court upheld the city position that it was not a public utility and, therefore, not required to extend service to non-contiguous development. The court determined that the city's urban development strategy was a valid exercise of police powers.

Julie Hayward Biggs
The Urban Lawyer
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Planning and zoning boards cannot easily dismiss concerns raised by such groups about putative project impacts. Ad hoc groups can stymie development by questioning the appropriateness of projects on any number of grounds. These vocal concerns can sometimes cause long delays in the issuance of project approvals and permits, which can make it infeasible for some projects to go forward and can add significantly to the costs associated with those that do proceed.

The Consequences of Selective Growth Controls

Resorting to such devices as capping building permits and delaying permits and approvals can temporarily alleviate the problems of congestion and air and water quality, and reduce the strain on local facilities and services. But sometimes the controls merely exacerbate the problems that opponents of growth are hoping to contain. For example, when development is forced to leap-frog over jurisdictions that cap building permits, congestion in the region actually worsens because more traffic is generated by the longer trips required.

When a few select communities in a metropolitan area adopt development strategies designed to minimize congestion and avoid what they see as an overuse of their facilities or degradation of their aesthetic environment, they simply shift congestion and other tangible burdens of development onto their neighbors. But no one suburban government can unilaterally reduce the total growth of its metropolitan area by adopting growth-limiting policies within its own borders. All growth-limiting policies adopted by one community simply displace the same amount of growth to other communities. Therefore, all such policies are essentially "beggar-thy-neighbor" policies. They do not solve any problems associated with or caused by growth, but simply move them around within the metropolitan area.

Rather than barring growth altogether, some communities selectively encourage certain kinds of development, while discouraging others in an attempt to benefit from growth without paying for its costs. Although bound to the same metropolitan economy, independent jurisdictions within many metropolitan areas have made separate decisions about how much and what kinds of growth to allow. Some see themselves as exclusive residential enclaves, and use their land-use controls to insulate themselves from all but middle- and upper income households that can afford ample lots and large, single-family homes. Some of these communities see themselves as corporate and employment centers. They may be hospitable to commercial projects such as business parks and shopping centers, but set a cap on permits for residential development. Businesses are generally thought to have favorable ratios of tax payments to service costs; residences are not.

Communities attracting high tax-ratable, primarily commercial development, and discouraging lower

> I have compared the homes that had been sold, in selected pairs of years, before and since the growth control initiative was passed, within the unincorporated portions of Santa Cruz County, with similar sets of homes in nearby areas in overlapping subregional markets....It is safe to say that, after 10 years of growth control, the prices of owner-occupied houses are, across the board, at least 10 percent higher than they would have been in the absence of controls.
>
> **Paul Niebanck**
> *Understanding Growth Management*
> *Growth Controls and the Production of Inequality*
> *The Urban Land Institute*

tax-ratable residential development are attempting to strengthen their local tax base and hold residential service costs to a minimum. Although this strategy may seem rational from their perspective, it contributes to fiscal inequities among communities in a metropolitan area by forcing neighboring jurisdictions that provide housing for persons priced out of the community where they work to bear a disproportionate share of the service costs associated with new development. As it stands now, only a few places, such as the Twin Cities in Minnesota, provide for tax-base or revenue sharing among neighboring jurisdictions to make up for such tax-base discrepancies.

For a time following the adoption of such strategies, the growth-attracting features of the larger metropolitan area may be sufficiently strong to cause new development simply to skip over those jurisdictions where it is discouraged and to concentrate in jurisdictions without regulatory barriers to growth. Over the longer term, however, there is often a bandwagon effect: Neighbors of communities that employ fiscal development strategies and strict growth controls begin to adopt their own growth-limiting strategies, if only as a defense. Ultimately, entire metropolitan areas may become inhospitable to growth or may selectively attract commercial development while discouraging all but high-end residential development.

When the majority of localities in a metropolitan area selectively issue permits for business facilities while denying permits for residential projects, they contribute to one of the most serious consequences of selectively applied growth controls—a metropolitan-wide imbalance between the location of jobs and the location of affordable housing. The imbalance often engenders onerous commuting patterns. Many people are unable to live near where they work because of the lack of affordable housing. Instead, they must seek out communities at the exurban fringe or beyond. Paradoxically, as outlying communities begin to grow in size, new residents are often at the forefront of efforts to adopt growth controls there, forcing residential development even farther from employment and commercial centers.

The widespread strategy of encouraging commercial development in the metropolitan region, while

Livermore, California, is bordered by two jurisdictions that are major job centers but that look to Livermore to create the housing their workers require. Since Livermore does not share in the revenue generated by development in these employment centers, it is now actively encouraging commercial development of its own while placing caps on residential projects.

Cathie Brown, Mayor
Livermore, California

In Moreno Valley, California, the morning rush hour begins a little after 4:00 a.m. as thousands of sleepy commuters—mostly men—stumble into their cars to begin their 70-mile westward trek to the job centers of Orange County. If they're lucky, they'll slip through the Highway 91-Interstate 15 bottleneck in nearby Corona before 5:00, when the morning traffic jam typically begins. That way, they'll be in Orange County by 6:00, able to catch an extra hour of sleep in their cars before the workday begins.

William Fulton
"The Long Commute"
Planning, July 1990

failing to ensure places that provide affordable housing to workers, can backfire. Southern Connecticut, for example, is learning belatedly that providing affordable housing is of paramount importance in preserving the special economic advantages of an area. Although the State experienced an enormous economic boom from relocation of corporations out of Manhattan (Stamford has become the third-largest headquarters city for Fortune 500 companies), some corporations in Connecticut are now concerned about their ability to attract employees because of the prohibitive housing prices in communities that have imposed growth controls. Companies finding it difficult to recruit workers to Connecticut localities with high housing costs are beginning to think twice about expanding or remaining there.

The economy of an entire area can suffer a significant downturn when several industries or businesses come to the common conclusion that an area is inhospitable because affordable housing is not available for their workers. Silicon Valley in California is a good example. Because growth-control policies are so common there, firms have begun to follow household migration patterns and relocate to the Central Valley where housing is more affordable. In a comparison of the ratio of housing units to jobs in large central cities and their suburbs in different regions of the country, suburban San Jose—located in the heart of Silicon Valley—was the only area having more jobs than housing units, with a ratio of 0.74 housing units for every job.[5] Although the clustering of electronics firms that made Silicon Valley world-famous preceded the current affordable housing problem, the subsequent slow-growth policies of its suburban areas have made it more difficult for workers employed in these industries to find suitable housing. Firms are also leaving Orange County and relocating in the more affordable Inland Empire of San Bernardino and Riverside Counties, which has become the fastest growing job market in the United States.

The strategy of tying growth to the availability of infrastructure can backfire. Florida's concurrency policy, which requires that supporting infrastructure be already in place or soon to be put in place before new development can occur, is a good example of how such a linkage has led to unintended consequences. Although the policy was adopted to prevent infrastructure backlogs from developing, it has not had that effect because it did not solve the problems of infrastructure financing. In order for supporting infrastructure to be in place before new development can occur, the revenues to pay for it must be available and earmarked for that purpose. But such revenues have not been earmarked. John DeGrove, the author of the concurrency policy, told the Florida State legislature at the time it was debating the policy, "If you're not willing to pay the bill for concurrency, don't do this." Tallahassee is a case in point, bearing out DeGrove's concern. Like most other communities in the State, it is far behind in expanding its road network to meet the needs of its burgeoning population. Lacking the funding that would be required to expand its road system, the city appears to have little choice under Florida's concurrency policy but to impose moratoriums on development, thereby endangering its economic boom.[6]

Restrictive and Exclusionary Zoning

Local zoning ordinances that prescribe land uses, densities, and building heights are the most powerful and pervasive tools by which localities regulate development. When used in an exclusionary manner, they have a notable impact on residential land costs, especially in preferred suburban locations. Recent studies of the cost impacts of zoning patterns in suburban Washington, D.C., counties, for example, show that restrictive ordinances add about 10 percent to the price of a home beyond what is necessary to ensure health, safety, and welfare.[7] This surcharge is notable because it reflects the price effect of restrictive zoning exclusive of all other costly regulatory barriers, which combine to drive up suburban housing prices even further.

The Rationale for Zoning

Zoning is intended to ensure that contiguous land uses are compatible by requiring that they conform to a preconceived master plan or set of public purposes. Before zoning, the only way to ameliorate adverse impacts from abutting but incompatible land uses was to file an injury claim after the fact. By contrast, the central idea of zoning is the separation of incompatible land uses before they occur, in order to avoid haphazard land-development patterns and the negative externalities they can create. For example, zoning ordinances attempt as a rule to contain the spillover effects—noise, congestion, unhealthy emissions—of commercial and industrial land uses by segregating them from residential uses.

In actual practice, the separation of districts and land uses resulting from the zoning process has not always been guided solely by the compelling considerations of health or safety. No universal standard is accepted by all jurisdictions for determining whether particular land uses are incompatible. In this situation, exclusionary criteria based on community sentiments sometimes prevail. In some places, single-family homes are chosen as the standard for preserving neighborhood homogeneity, and desires for such intangibles as community ambiance influence the zoning process. The more affordable housing types, including multifamily housing, manufactured housing, accessory apartments, and single-room-occupancy dwellings, are often cited as incompatible uses.

To some extent, the bias against more affordable kinds of dwelling units was already apparent in the 1926 *Euclid* v. *Ambler* case, in which the U.S. Supreme Court established zoning as an appropriate use of the police powers that States could delegate to cities. Although such delegation was supposed to promote the general welfare, zoning advocates who argued before the Supreme Court made no attempt to conceal their distaste for multifamily housing. In justifying the exclusion of apartments from areas where single-family housing dominated, the Court in *Euclid* likened their proximity to "a pig in the parlor instead of the barnyard."[8] One amicus curiae brief equated the promotion of public welfare with the enhancement of community property values. Multifamily housing was simply assumed to have a negative effect on single-family property values. *Euclid* still stands as the law today, greatly reinforcing NIMBY opposition to more affordable forms of housing.

Problems With Zoning

Many communities have used their zoning powers to provide suitable land parcels for more affordable housing, including multifamily housing. Unfortunately, in others zoning restrictions are driving up the cost of housing and making it less affordable, without serving any public purpose. Zoning has evolved as a purely local government function, reflecting the values and attitudes of established residents of the community. In drawing up comprehensive plans and making land-use decisions, local agencies and boards have assumed that they need look only within their own borders and meet the needs and serve the desires of the people already living there. This view ignores the fact that many critical activities, including employment and transportation, take place at a metropolitan level, and that intra-metropolitan population mobility is continuous. In States where localities have home rule powers, local control over the process is all the more entrenched. State legislators who come from such localities seldom seem inclined to support legislation that would alter local control over land use. Following the *Euclid* decision, the States exercised their authority to set up the groundrules for local zoning and, with only a few exceptions, have done little to alter the rules since then.

The values and norms regarding community character represented by zoning boards may not be shared by all those affected by their decisions. Board membership generally consists of local residents who have a stake in enhancing property values and preserving the ambience of their community. Their actions, therefore, tend to exclude housing types and households considered less desirable. Not surprisingly, especially in suburban areas, there is often a bias toward single-family detached housing on generous-sized lots.

The bias in favor of single-family housing units may persist in spite of market demand. A witness from Oregon told the Commission that, at one point, one-half of all demand (based on application rates for building permits by developers) for new housing in the Portland area was for multifamily units, while only 7 percent of vacant land for residential use was zoned for multifamily development. In many places even less land is available for multifamily rental housing. For example, in Fairfax County, Virginia, a large suburb of Washington, D.C., out of 211,904 acres zoned for residential use, only 1 percent are zoned for multifamily rental housing. Similarly, alternative housing types, such as modular and manufactured housing and accessory apartments, are also frequently zoned out.

Inclusionary Zoning

The *Euclid* case established the legality of zoning, including the practice of segregating housing types, but this is not all it established. The ruling left open "the possibility of cases where the general public interest would so far outweigh the interest of the

In the Northeast:

In Connecticut, where the home rule principle is jealously guarded, many suburban communities around Bridgeport have an aversion to higher density housing. In these communities, 2-acre zoning prevails. Easton, for example, has exercised its local prerogative of zoning at an even lower density.

Joe McGee, former Vice President
People's Bank, Bridgeport, Connecticut

In the Midwest:

Many communities in suburban Chicago zone out manufactured housing and make use of estate zoning with 5-acre lots as a minimum. In Barrington Hills, for example, homes are very expensive. Attempts to push homesharing in some of these communities, allowing elderly homeowners to use part of their homes as rental units, are prohibited by local zoning codes that may be holdovers from the 1960s and 1970s when, in an attempt to discourage hippie communes, unrelated individuals were prohibited from subdividing the same house.

Suzanne Hayes, Community Development Director
Cook County Department of Policy, Planning, and Development, Cook County, Illinois

In the West:

In King County, Washington, the county where Seattle is located and which recorded the single largest 1-year increase in housing prices among American cities between 1989 and 1990, more than 1,500 square miles of land are zoned to allow only 1 house per 5 acres of land.

Tom McCabe, Executive Vice-President
Building Industries Association of Washington

municipality that the municipality would not be allowed to stand in the way."[9] Thus, the Court envisaged the possibility that the States might have to become involved where local zoning ordinances were extremely prejudicial to the general welfare. For the most part, however, the States have not become involved. Instead, local governments have sometimes counteracted the exclusionary effects of their own zoning ordinances by adopting inclusionary measures to ensure the availability of some affordable housing.

Perhaps the most common way of ensuring the availability of some affordable housing in the face of restrictive zoning is by establishing a quid pro quo: a locality agrees to relax its zoning restrictions on density in return for a developer agreeing to provide moderately priced units. The higher density not absorbed by the moderately priced units becomes a bonus to the developer. By practicing inclusionary zoning on a selective basis, communities are able to appeal to very different constituencies. Because they preserve restrictions on higher density development in the official zoning ordinance, communities reassure those who press for lower densities to preserve their property values. At the same time, those who advocate affordable housing are glad to have gained at least the units created by the inclusionary variance.

Inclusionary zoning used as a remedy to exclusionary practices raises a number of problems, including constitutional challenges based on due process, equal protection, and uncompensated takings. Whenever a developer is constrained from putting landholdings to a reasonable economic use, these considerations may come into play. Communities that practice inclusionary zoning often compensate developers through density bonuses and, in this way, attempt to defuse the constitutional arguments. In the absence of such density bonuses, the developers may raise no legal objection if they are able to increase the price of the market-rate units to compensate for affordable units.

In addition, when the opportunity for inclusionary zoning occurs as a variance to a more restrictive zoning ordinance, its continued use is subject to the inclinations of whoever may be interpreting the ordinance and granting exceptions to it. County councils, zoning board members, and local citizens who come to zoning hearings can always discover objections to a particular project based on the extent to which it encroaches on their own neighborhood, even when they would voice no such objections if the same project were located elsewhere.

Excessive Subdivision Controls

Subdivision ordinances that regulate the physical and design characteristics of new housing, or require onsite and offsite improvements, are now commonplace. Some clearly add unnecessarily to housing costs. For example, extraordinarily wide side-yard setbacks can add to the visual ambience of a community, but they also add to the costs of laying water and sewer lines between houses separated by generously proportioned yards. They can also increase costs because more land per unit is required and land costs are often very high.

Gold-Plated Standards

Many communities require excessive standards to reduce long-term maintenance costs on the infrastructure they will eventually inherit from developers. Because these communities lack sufficient funding sources for infrastructure repair and capital improvements, they want to hold these costs to a minimum. Some communities gold-plate their subdivision ordinances because they know that developers, rather than the local voters, are paying. Other communities attempt to uphold a standard of design and amenity that enhances property values for established residents of the community, without concern for the impact that such design standards will have on the housing costs of new residents. For example, requirements that all streets must be 30 to 36 feet wide—even where narrower, less costly streets would be more appropriate and would not jeopardize

public safety—simply add to the price of new housing. In one Joint Venture for Affordable Housing demonstration project, the cost savings from reducing street and right-of-way width requirements was $705 per lot.[10] Besides adding directly to the sticker price of a house, excessive subdivision controls can also restrict competition among builders. Because only developers with substantial financial resources can meet large up-front cash requirements, such a restricted competitive environment may also raise housing costs.

Inflexible Standards

In other instances, site-improvement standards appear to be relatively inflexible because of the narrow focus of the interests involved in developing them and the difficulties associated with modifying them. Standards and requirements generally reflect input from local civil engineers, public safety officials, insurance companies, professional building code associations, and others; once established, community officials are often reluctant to change them, even when the standards no longer meet the need for which they were intended. Indeed, in some cases they do harm. Wide streets drained by closed storm sewer systems can, for example, lead to runoff and soil erosion after rain storms.

Site-improvement standards can also be excessive in light of contemporary technology. Many new cost-saving site-development methods and techniques are not being fully exploited because of overregulation and inflexible design requirements. For example, the use of curvilinear sewers is still restricted in many places despite the fact that such sewers eliminate the need for costly manholes required wherever a grade or slope changes along a sewer line. Likewise, mountable, rolled curbs are not widely used despite the fact that they eliminate the need for making driveway cuts when streets are laid out before house sites have been identified. Site-improvement regulation is more often the product of local politics and long-held beliefs concerning the role of regulation than the result of technically based studies and current professional expertise.

Varying Standards

Where subdivision ordinances reflect the personal preferences of local elected and volunteer officials, they are likely to differ from community to commu-

Many communities around Columbus, Ohio, require concrete-based streets, even though engineering professionals contend this is too burdensome and far too costly for typical residential traffic. Other communities also use a cul-de-sac radius requirement that can accommodate the largest firefighting equipment—normally a hook-and-ladder—despite the fact that this vehicle is never dispatched to single-family residential neighborhoods.

Gloria M. Snider, Executive Director
Columbus and Franklin County Housing Commission

Orlando, Florida, requires manholes to be placed no more than 200 feet apart and to have changes of direction, which are carry-overs from an era when clean-out capabilities and construction techniques were not as advanced as they are today. Yet, manholes cost $3,800 a piece or $150 a lot.

Tim Leadbetter, President
Timberleaf Associates, Orlando, Florida

nity. Differing, conflicting, and contradictory local ordinances within the same area or State make it difficult and consequently more costly for builders, architects, designers, and civil engineers who must be familiar with the unique requirements of each locality.

Requiring Offsite Improvements

In addition to onsite improvements required of developers by subdivision ordinances, jurisdictions are increasingly extracting offsite improvements as the price of admission—land dedications, recreational facilities, schools, police or fire stations, and libraries. These take the NIMBY syndrome a step farther than onsite improvements. They benefit residents who live outside the boundaries of the new subdivision, but they are paid for by new homeowners.

Still in dispute legally is the extent to which the community at large should be the primary beneficiary of the offsite improvements that only residents of new housing developments have paid for in the form of higher housing costs. Established residents reap part of the benefit but newcomers pay all of the costs. In communities where distinctions between insiders and outsiders are nurtured through growth controls and exclusionary zoning, the demand for off-site improvements is consonant with their general view that new development is a privilege that can just as easily be taken away as granted.

Inequitable Fees on Development

Through various fees and assessments, as well as requirements for offsite improvements, communities can force developers to pay for infrastructure and public services associated with new development. Using their power to regulate land use, localities have gradually shifted the burden of supplying such infrastructure and services from the community at large to developers. Developers pass the costs along to new homebuyers, in some cases adding substantially to the total cost of new housing.

Impact fees are regressive because they are assessed on a per-unit basis, rather than as a percent of the value of the home. Those who depend on affordable

In order for one developer to obtain approvals in a New Jersey housing development that he was constructing, he had to provide, among other items: a 100-unit senior citizen complex, a 250-space parking lot on 7 acres for commuters, a 200-acre park, and 5 miles of water lines to accommodate the development.

Newark Star Ledger
January 11, 1989

The beneficiaries of the offsite improvements that I was compelled to make were clearly not the new residents, although they bore the brunt of the costs. I had to build a 6-mile water main to gain permission to construct the multifamily project even though the new main was not required as a result of the development.

William Stetsen
Beacon Management Company
Boston, Massachusetts

housing are forced to absorb fees that are a substantial percentage of the sales price of any home they purchase. For example, exactions, dedications, and fees account for as much as 30 percent of the cost of housing in New Jersey.[11]

One consequence of high fee schedules is that developers sometimes opt to build housing only for the higher end of the single-family market where fees can be absorbed more easily as a proportion of sales price. Another consequence may be that developers prefer to construct single-family as opposed to multifamily projects. According to a recent Urban Land Institute study, it is easier for developers to pass the fees along to homebuyers than to renters.[12] This preference can have a particularly dampening effect on the development of multifamily housing, and may be partially responsible for the fact that the multifamily share of all housing starts declined by 10 percentage points between 1985 and 1989. Those who depend on more affordable housing are clearly disadvantaged when new development shifts to the upper income, single-family end of the market.

Why Fees?

Fees and offsite improvement requirements have arisen partly from local fiscal concerns. Many local governments are now finding themselves constrained—by State expenditure and taxing limits—from raising money to provide needed infrastructure and facilities, and have turned to fees to close the funding gap. As the pace of development has quickened in suburbs and growth areas of the country, local funding sources, including property taxes, have become insufficient to meet the demand. No longer can it be taken for granted that the community at large will provide and finance offsite infrastructure. With public sources of funding for infrastructure becoming more uncertain, many localities are looking to development fees, special assessments, and exactions from developers to pay for on- and offsite, new, or expanded infrastructure and services, all of which add to the cost of new housing. California is a major example of this shift from public- to developer-financed infrastructure. Localities there have turned almost exclusively to developer fees to fund construction of new infrastructure.

While government infrastructure funding sources have generally declined, State governments have actively worked to install fees as a permanent fixture of local infrastructure financing. A trend has developed toward increased use of State authority to enable or require localities to impose development and impact fees. Although these State actions are not intended to have a negative impact on affordable housing, they often have exactly that effect.

Legal Status

Case law dealing with local government levies on new development generally upholds ordinances that require developer participation in service provision and improvements made within the boundaries of a new development. Courts have considered these levies permissible uses of local police powers. By now, developer and, consequently, consumer financing of onsite infrastructure and public services associated with new development has become an accepted practice. It is only recently, however, that courts have begun to uphold fee systems for offsite infrastructure and service financing. This extension of fees to offsite improvements has been justified by the application of what is called "the rational nexus test." The test, taken from case law precedents, requires that a reasonable "connection" exist between the fee assessed and the benefits derived, and that the fees not exceed the new development's share of the actual cost of the infrastructure needed to serve it. Despite the rational nexus test, however, it is not always clear that fees for offsite improvements are assessed on the basis of the actual benefit of these improvements to the new development.

> Fees in the Bay Area have risen 126 percent since 1981 to a median value of $9,110 in late 1987.
>
> **The Bay Area Council**
> *"Taxing The American Dream: Development Fees and Housing Affordability in the Bay Area"*
> *May 1988*

Impacts

Shifting the burden for financing infrastructure first to developers and then to new homebuyers raises several issues. Among them is whether the facilities and services provided are more than is necessary to serve the needs of new development. Relieved of some of the burden of infrastructure financing, local communities may be requiring more capacity than would be provided if traditional financing mechanisms were still in use, perhaps benefitting some existing residents but almost certainly adding unnecessarily to the cost of new housing.

When the amount, number, and timing of fee payments are negotiated on a project-by-project basis, rather than being based on a known, uniform formula, local inconsistencies and inequities can arise. To the extent that fees reflect the attractiveness of the community as a site for new development and not simply the cost of its supporting infrastructure, those to whom such fees are passed on end up paying a special tax for the privilege of living in the community.

Even if developers are not paying for excess capacity, and even if fee structures are known and consistent, fees still impose a burden on new homebuyers, a burden that earlier generations of homebuyers did not bear. The shift to fees probably increases the overall cost of financing infrastructure: the fees are financed in the mortgage market, whereas infrastructure has traditionally been financed through municipal bonds. The end result is that newer residents are pitted against older ones in the struggle over who pays for infrastructure, and some potential new residents are simply priced out of the housing market.

Burdensome and Uncoordinated Approval and Permitting Systems

Approvals and permits are meant to ensure that construction meets established standards. They must be obtained at every stage of new residential development. Each governing agency with jurisdiction over a development establishes procedures for issuing permits. Collectively, all of them constitute the approval and permitting system.

This system is one of the most frequently criticized of all the regulatory barriers to affordable housing. In many jurisdictions it involves multiple, time-consuming steps that add unnecessarily to housing costs. For example, in Orange County, California, just to obtain a building permit—only one of the several different permits required to complete a project there—development plans must be checked to see if they meet building code standards, State sound attenuation laws, the State energy electrical code, good engineering practices, adequate water and sewage disposal standards, the plumbing code, the uniform mechanical code, and State handicapped person provisions, among others. Plans are also assessed to determine whether special requirements are applicable, such as those set down in homeowners association guidelines. Although costly and time-consuming, this review and approval process demonstrates exceptional diligence. More problematic are approval processes involving open-ended, discretionary review. For example, many suburban communities in Southern California use point systems based on still other criteria to decide whether to approve a project. Just applying this point-rating process can take up to a year. All of these processes and steps are multiplied whenever amendments to the plan are called for as a result of its non-conformity with any one of the multiple standards by which it is judged. It has been estimated that, as of 1989, the cumbersome approval and permit process in Orange County typically adds $20,000 to the cost of a single-family unit.[13]

Multiple Reviews by Overlapping Jurisdictions

In their earliest forms, approval and permitting systems tended to be relatively simple and straightforward, with few levels of government or agencies involved and with few steps in the process. Delays were uncommon. Over the years, local permitting systems have incorporated a growing number of rules, regulations, and new responsibilities, such as environmental protection, at the Federal, State, and local levels. In Mercer County, New Jersey, out of the 11 different reviews a major subdivision must receive, no fewer than 7 concern themselves with the adequacy of storm water drainage. An increasing number of agencies have become part of the typical approval and permit process without attention to coordination, consolidation, or streamlining. In most places, permits and reviews are not logical point-to-point processes, but layers of single-issue reviews, each with decisions made without regard for costs or delays. The result is overlapping jurisdictions with redundant and duplicative regulations.

Some jurisdictions have come to use their approval and permitting systems for additional purposes, such as slowing growth by limiting the number of permits issued or setting prices for the permits as a means of raising revenues for other uses.

The Cost of the Permitting Process

Time is critical in housing development, because financing and profitability depend upon keeping on schedule. Where the expected time required to obtain approvals and permits is not known and cannot be built into the schedule, the risk is higher. This risk, in turn, results in increased carrying costs on developers' construction debt.

Unfortunately, delays are chronic in many permit and approval systems. A 1989 investigative series in the *Newark Star Ledger*, for example, documented a massive bureaucratic maze in some New Jersey communities.[14] What previously required a few months now requires about 3 years. House prices in some developments in New Jersey have increased by as much as 100 percent in 6 years, a rise attributable mainly to permitting and other delays and to cumbersome procedures.[15]

Part of the cost of obtaining all the requisite approvals includes the fees developers must pay to a consultant who has technical expertise in the areas for which permits are required and who knows how to walk a project through the bureaucracy. Besides the lawyers mentioned by Bob Schmitt at the beginning of this chapter, developers now often find it neces-

A housing development on Staten Island, New York, begun in the 1970s, took 12.5 years and 2 different property developers to get approvals and permits from 28 different government agencies.

Joint Venture for Affordable Housing

A builder has spent 16 years trying to obtain the permits necessary to construct a housing development in Old Bridge, New Jersey. The company has spent more than $95 million so far for carrying costs and regulatory costs but has not yet started construction. The total amount of the outlay could add $68,000 to the price of each home once the development is finished.

Newark Star Ledger
January 11, 1989

> Sam Herzog, an East Brunswick, New Jersey, developer, said that before building approvals are given, more and more consultants' reports are required in such areas as traffic, fresh water, sewerage, wetlands, landscaping, noise and sound control, and soil sampling and stream encroachment.
>
> **Herb Jaffe**
> *"Cost of Red Tape Adds up on Home Mortgages"*
> *Newark Star Ledger*
> *January 9, 1989*

sary to retain archaeologists, biologists, and many other kinds of professional consultants to obtain needed development approvals. These consultants provide the necessary technical expertise developers require to ensure that they are not violating some historical preservation, environmental, or other standard they might not even have been aware of when they put together their development plans. The cost of consultant fees adds, ultimately, to the cost of the houses the developer builds.

Endnotes

[1] California Department of Finance, Report 89 E-2, 1990.

[2] "Does California Need a Policy To Manage Urban Growth?" A report from the Senate Urban Growth Policy Project. Prepared by the California Senate Office of Research, Elisabeth Kersten, Director, June 1989.

[3] *The Financial Times Survey*, Oct. 22, 1990.

[4] Madelyn Glickfeld and Ned Levine, "The Relationship Between Local Growth Controls and Production of Affordable Housing: A California Case Study," Feb. 14, 1991. The authors find that growth controls are not a statistically significant factor in the provision of affordable housing. See to the contrary: William A. Fischel, *Do Growth Controls Matter? A Review of the Empirical Evidence on the Effectiveness and Efficiency of Local Government Land Use Regulation,* Lincoln Institute of Land Policy, Cambridge, MA, 1989.

[5] Using HUD's Urban Data System, this statistic was taken from a survey of the five Standard Metropolitan Statistical Areas with the largest central cities in each of the four census regions.

[6] John Koenig, "Down to the Wire in Florida," *Planning*, Oct. 1990.

[7] Henry Pollakowski and Susan Wachter, "The Effects of Land-Use Constraints on Housing Prices," *Land Economics*, August 1990, Vol. 66, No. 3, pp. 315-324. Also, Man Cho and Susan Wachter, "Interjurisdictional Price Effects of Land Use Controls," *Journal of Urban and Contemporary Law*, Vol. 40, forthcoming 1991. The 10 percent price effect attributed to restrictive zoning is regarded by Dr. Wachter as minimal because Montgomery County, Maryland, one of the jurisdictions studied, has many inclusionary programs that would tend to moderate the price effects of its zoning ordinance.

[8] *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

[9] *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 384-385 (1926).

[10] For a description of the Joint Venture for Affordable Housing, see Chapter 8.

[11] *The Newark Star Ledger*, Jan. 11, 1989.

[12] Bruce W. Ferguson, "How Impact Fees Affect Residential Development," Jan. 1991. Prepared for The Urban Land Institute. Draft.

[13] Philip Bettencourt, The Preview Company, Orange County, California.

[14] *The Newark Star Ledger,* Jan. 11, 1989.

[15] *Ibid.*

Regulatory Barriers in Cities

Cities are the locus of much of the economic and cultural resources of their metropolitan area. But cities also contain large concentrations of low- and moderate-income families who find it difficult to acquire affordable housing. Even under the most favorable conditions, these households have the fewest options to rent a house or apartment or buy a house. They face regulatory barriers, but they face financial and other barriers as well.

Barriers affecting affordable housing for both suburbs and central cities must be removed. But in doing so, it would be unfortunate to undermine the vitality of cities and create new barriers for their current residents and those who want to move there. Steps must be taken to ensure that mortgage-lending resources are available to inner-city, minority residents. In addition, builders should be encouraged to build new housing and rehabilitate existing housing in urban neighborhoods.

Removing urban regulatory barriers that disproportionately affect the poor and minorities is an especially daunting challenge. The building codes of America's older cities sometimes contain archaic regulations that are inapplicable to the contemporary realities of providing affordable housing. Virtually all of the construction work in these cities consists of infill and rehabilitation rather than large tracts of new homes built on open land, necessitating that city officials rethink their regulations. Sometimes, however, city officials' efforts toward barrier removal are slowed by NIMBY pressure against infill from the residents of old, established neighborhoods of single-family homes. The NIMBY opposition to new construction may be intensified by the tightly packed nature of urban housing, making it harder to ignore unwanted neighbors. This NIMBY sentiment can work against granting special concessions to developers of affordable housing who need this assistance from local government to hold down costs and thus remain able to function. Too often the efforts of these housing providers are stymied by local officials who are reluctant to accept newer and more innovative solutions, and who rely instead on more costly traditional building materials and methods. Mortgage lending is the lifeblood of all housing markets. In many city neighborhoods, however, overly restrictive and inflexible practices by lending institutions—savings and loans, banks, private mortgage insurers, and secondary market agencies—have denied urban families the funds needed to make available decent, affordable housing.

Restrictions on Urban Rehabilitation and Infill

Modern municipal government is necessarily a complicated business, and nowhere is it more complicated than in the oldest and largest cities. While affordable housing is in short supply, a great many opportunities typically exist for rehabilitation and infill. The exploitation of these opportunities by developers, however, requires the cooperation of local government. Public officials may sometimes fear that innovative approaches will prove to be unsatisfactory, and adopt the NIMTOO approach as a political precaution; sometimes, the governmental machinery is simply tradition-bound and inflexible.

Although population densities have been declining in many of America's urban centers, typically these centers are still densely populated, and housing is often at a premium. Some of the strategies intended to enhance housing affordability for low- and moderate-income, inner-city households include constructing moderately priced multifamily housing,

rehabilitating existing multifamily housing, and rehabilitating single-room-occupancy (SRO) hotels. In addition, nonprofit organizations sponsor homeownership programs for low- and moderate-income families. The viability of these innovative approaches depends, in part, on the strong support of local officials in lowering regulatory barriers, if only on a case-by-case basis.

Rehabilitation of Existing Properties

Many cities contain neglected or abandoned apartment buildings the city has acquired for nonpayment of taxes. They also contain older SRO hotels that are being lost through deterioration or conversion to other uses. Recognizing that these are important affordable housing resources for low-income households, nonprofit groups and local government agencies in numerous cities have attempted to save and rehabilitate them as inner-city multifamily housing for low-income families. Under some arrangements, sponsoring groups receive ownership of acquired properties from the city in exchange for repairing the building and turning it into low-income housing.

Delays in Acquisition

When owners abandon multifamily dwellings in relatively good condition, the dwellings should become available to would-be rehabilitators as soon as possible so that the buildings do not further deteriorate or fall prey to vandalism. In many cities, however, because of cumbersome regulations governing initial transfer of title to the city, the process of selling or giving away such properties can take years. Besides putting the buildings at risk of additional damage, delays slow down the whole rehabilitation process, add to costs, and prevent some nonprofit organizations, which tend to have extremely tight budgets, from taking advantage of opportunities. These factors discourage such developers and restrict the supply of affordable housing for the people who need it most.

> I support State legislation that would provide for "quick-take" action by municipalities, permitting a city to take quick title to abandoned properties. Currently, in Chicago, the process to take title can last as long as 5 to 6 years. With the quick take, it could be shortened to 4 months.
>
> **Mary Nelson, President**
> *Bethel New Life*
> *Chicago, IL*

> If rehabilitation codes made more sense, and all government offices that support and govern this type of project were to standardize requirements and simplify approvals, about $4,000 would be saved on the average dwelling unit that is undergoing complete rehabilitation.
>
> **Peter Werwath**
> *"The Price of Regulation"*
> *Enterprise Foundation Rehab Work Group, 1990*

Historic Preservation

Regulations governing the preservation of buildings judged to be of historic value can also block rehabilitation of older structures. A project may be slowed while a determination is made as to whether an old elementary school or hotel is of historic significance. If the building is labeled as historic, then the planned rehabilitation is sometimes subject to lengthy and costly approval processes to ensure authenticity of appearance. In other cases, where a building is in a historic district or has been individually designated as historic, energy-efficient enhancements such as replacement of windows and doors or drilling of holes into side walls for the injection of insulation may be blocked on the basis of strict

adherence to preservation standards. The high heating bills that result are particularly disadvantageous to continued occupancy by low- and moderate-income families.

Problems Resulting From Codes

Building codes are sometimes barriers to the rehabilitation of multifamily rental housing, especially when they are written only with new construction in mind. To take advantage of improvements in technology, codes are usually amended annually, with new additions typically being published every 3 years. Updated codes that do not contain provisions for the rehabilitation of older buildings, however, may require extensive, expensive, and unnecessary modifications. For example, mandating state-of-the-art electrical materials in all construction may require the costly rewiring of an entire apartment building undergoing rehabilitation, when only limited repairs might be necessary. These added costs raise the price of housing, driving it further and further beyond the reach of low- and moderate-income households.

New Rental Construction

Local building codes are often not geared to supporting cost-effective construction of affordable housing. They sometimes generate excessive costs by requir-

An 18th century roadbed ran under the area 8 to 12 feet below grade, below the street. To comply with the National and State Historic Preservation Acts, an archeological test was required all along the roadbed, which covers about 20 blocks, to study whether any significant garbage was deposited there. There is no legal objective standard of archeological significance, so we have to rely for this determination on an archeologist who will presumably have a scientific and financial stake in further study. The only predictable way to avoid an extended and expensive academic exercise is to try and buy ourselves a friendly archeologist.

Kathryn Wylde, Senior Vice-President
New York City Housing Partnership

I wanted to rehabilitate and convert three homes in a lovely, older, but badly deteriorated neighborhood of the city....Approval of the plans was delayed when both State and local landmarks groups had to review them because the neighborhood was subject to historic preservation. Disagreements as to the nature of the preservation to be accomplished led to the involvement of local HUD and the Washington-based Landmarks Commission (Department of the Interior)....The basis of the conflict at the Federal level is that the regulations covering renovation of historic properties often are at odds with those that govern rehabilitation techniques and materials that must be used to produce housing opportunities affordable to moderate- and low-income households....The dispute consumed about $20,000 more than I originally planned, in increased carrying costs and lost time, and added considerably to the price of the finished product.

Roger Allen, President
A.P.T.S. Property Management Company
Louisville, KY

ing unnecessarily expensive materials, unnecessary safety features, unnecessary building code requirements, or outmoded construction techniques.

Codes can create serious problems for those in need of housing—the poor and the homeless. The City of San Diego provides a vivid example of how excessive code-related costs can be virtually eliminated. In the late 1980s, that city's public officials supported the construction of "no-frills" SRO hotels in a successful effort to deal with the local homeless problem.

Traditionally, this type of housing has served extremely poor one-person households, so construction costs had to be kept to a minimum to keep rents low. The actual savings that resulted from code waivers in San Diego were considerable and led directly to the creation of exceptionally affordable housing. The construction costs for an SRO room amounted to some $20,000, as against $50,000 for a studio apartment in San Diego. Low construction costs allowed monthly rents for rooms in these San Diego hotels to range from about $220 to $390, well below the $500 charged for the cheapest studio apartments in that city.[1] The design innovations engendered by the original project proved so successful in terms of profitability and renter satisfaction that hundreds of units were subsequently constructed in the area on the same plan, using waivers of code requirements. (The public policy process by which San Diego's Single Room Occupancy hotel program functioned is further described in Chapter 8.)

New Single-Family Construction

Aside from occasional condominium conversions, vacant lots left by the demolition of uninhabitable buildings present the most common opportunities for creating new homeownership in the inner city. With the help of local governments, nonprofit groups in some communities are building single-family homes on such lots specifically for purchase by low- and moderate-income households. In attempting to reduce construction costs as much as possible, they face the same kinds of regulatory barriers that hamper the construction and rehabilitation of multifamily dwellings.

The City of San Diego was able to facilitate the cost-effective construction of SRO hotels and thus foster the production of affordable housing by actively working to waive a number of building code requirements. For example, prior to San Diego's SRO revolution, builders were required to provide a 1:1 ratio of parking spaces to living units. Local officials realized that this requirement was irrelevant to SRO hotels where residents are hardly likely to own cars. Since parking spaces cost as much as $20,000 each, a waiver of the 1:1 requirement and subsequent construction of fewer spaces resulted in considerable savings. In addition, fewer required showers, fewer required fire exits (replaced by a sprinkler system instead), and a reduction in the overall size of the units from the State-mandated 220 square feet to an average of less than 150 square feet helped to significantly lower construction costs. Yet, these well-designed units contained a standardized built-in wall unit with a lavatory, water closet, refrigerator, microwave oven, and television.

"The City of San Diego's Single Room Occupancy Residential Hotel Program"
Strategic Planning and Research Division
City of San Diego Planning Department
October 1989

Builders sometimes face an additional consideration—environmental protection regulations—not usually associated with cities. (See Chapter 4 for a detailed discussion of these regulations.) In recent years, environmental protection concerns have led many municipal governments to mandate reviews of the potential impact of proposed projects on the environment. These often lengthy reviews may be required even for urban infill projects.

Rent Control

More than 10 million Americans in 6 States and the District of Columbia live in communities that have rent control ordinances. Advocates of rent control maintain that this form of regulation helps the disadvantaged by holding down the cost of housing and the proportion of their incomes consumed by rent. In the short run, rent control does benefit some low-income people. During inflationary periods, these regulations prevent rents from rising as rapidly as they otherwise would. Furthermore, even in non-inflationary periods, rent control helps low-income households by allowing them to remain in desirable locations, close to jobs and services. In this connection, advocates of rent control contend that these ordinances slow the gentrification process that diminishes the supply of affordable housing.

As a means of redistributing income to the poor, however, rent control is extraordinarily inefficient, if not counterproductive. A large body of research indicates that much of the benefit goes to middle-income and even upper income households.[2] Indeed, it is an open question whether these groups benefit *more* than the poor. Research has consistently demonstrated that rent control is a barrier to residential mobility. Middle- and upper income renters derive considerable advantage from choosing not to move. Most rent-control ordinances permit rent increases to the market rate only when a unit turns over—a form of "vacancy decontrol." Rent control therefore mostly benefits those families—rich and poor—who live in the apartments when rent control is imposed. New residents will have to pay higher rent and, perhaps also "key money" to move in. Unlike refundable security deposits and legitimate fees that renters are routinely asked to pay, key money is an illegal cash payment the landlord or rental agent extracts from new tenants simply for being chosen to fill a vacancy, usually when housing is in short supply or an apartment is particularly desirable.

The effects of rent control on mobility tend to benefit the wealthy and hurt the poor. As the well-to-do stay in their rent-controlled apartments for longer and longer periods, they enjoy greater and greater savings, and thus become less and less willing to move to a comparable rental unit elsewhere, where as new tenants they would have to pay a market rent. The slow turnover at the high end of the rental market adversely affects renters in less comfortable circumstances because it chokes off their opportunities for upward mobility. Furthermore, rent control restricts the range of housing choices for low-income households perhaps more than those of any other group. In a situation where income from an already decaying property is tightly controlled but fuel prices and other costs are freely rising, landlords

> A plan to build 51 two-family houses in the Williamsburg section of Brooklyn took 22 months to gain environmental approval, even though a full environmental impact statement was not needed....
>
> **Jason DeParle**
> *"Report on New York Deplores Slowness of Environmental Reviews"*
> *The New York Times*
> *April 23, 1990*

are not inclined to maintain or repair rental units. Rent-control ordinances exert economic pressure on the poor to remain in decaying housing in unsafe neighborhoods.

Rent control transfers income and wealth from owners to renters in what amounts to an unlegislated subsidy. It may be desirable to redistribute income to a greater extent than at present, but rent control is an unfair, inefficient method of doing so. It transfers income only from owners of rental housing. No other type of asset ownership is penalized in this way. Furthermore, the stereotype of the "rich landlord" does not match well with reality. Studies in New York City have shown that a substantial fraction of the landlords who own rent-controlled properties have lower incomes than the tenants living in such properties. Historically, ownership of rental property has enabled emigrants in America to achieve upward socioeconomic mobility. This is no less true today; more than one-half the landlords in New York City are foreign-born.[3] More equitable and efficient methods of redistributing income to the poor are available.

For these reasons, many analysts favor abolition of rent control. Because rent control holds rents below the market and therefore benefits tenants in the short-run, however, full and immediate decontrol would almost certainly have an adverse impact, particularly on lower income households. This potential adverse impact has been a major policy concern.

There are ways to mitigate the harm from decontrol to those low-income households who live in controlled units. One possibility is to decontrol apartments occupied by better-off households. The income eligibility limit for Federal mortgage revenue bonds is 115 percent of area median income; households above this income should not need the benefits of a special housing subsidy. This proposal need not add to the administrative burden of rent control. Tenants seeking to maintain a controlled rent could simply present their tax return to the landlord or the administrative agency.

Restrictions on Low-Cost Housing

The basic purpose of building codes has not changed since the Code of Hammurabi: to protect public health and safety against the faulty design and construction of buildings. The earliest building codes in America were developed to protect against fire. As cities and towns adopted their own codes, the building industry was faced with conflicting and diverse requirements.

Since the early 1900s, when the insurance industry promulgated the first national building code, significant steps have been taken in the development of uniform standards. But code problems continue. Major problem areas include antiquated codes, poor administration, and duplicate and conflicting regulations.

Building and housing codes often represent major barriers to housing affordability that occur in both urban and suburban areas, but they tend to have a greater impact on the availability of affordable housing in more densely populated areas where space is most limited. Not only can codes raise costs within a given jurisdiction, but differences among jurisdictions within a metropolitan area can also create frustrating problems for architects and builders. Sometimes, in the patchwork of jurisdictions spawned by urban sprawl, public officials simply disagree on how best to ensure safe, sanitary housing, and the result is a maze of costly regulations.

The comprehensive nature of building codes, coupled with the broad discretion customarily possessed by local officials charged with code administration and enforcement, sometimes turns the codes into regulatory barriers. In some instances, local building codes reflect the suspicions of officials that new technologies are somehow inferior to traditional methods and materials. The effect of such suspicions may also be compounded by pressure from local labor unions whose leaders fear that innovations in

construction techniques will cost jobs. The NIMBY syndrome is also evident here, manifesting itself in local opposition to certain kinds of housing that may bring "undesirable" types of people into the neighborhood and lower property values.

Existing Codes and Conflicts

The building industry and local code officials have established regional associations of building officials that recommend model codes for use by governments in their regions. These groups periodically update the model codes. A model code becomes a local regulation only if adopted by an appropriate governmental agency. Most communities rely on one of the model codes. Only a few of the largest cities have promulgated their own unique codes, but even they appear to be increasingly adopting model code provisions. Typically, communities that adopt a model code also modify it to incorporate special considerations. In some cases, communities have modified building code language to encourage the use of a particular material, industry, or construction practice or to discourage the use of competitive materials.

When building codes promote local interests, they can have an impact on the cost of housing by, among other ways, prohibiting the use of more cost-effective materials or methods of construction. For example, building trades unions may resist the introduction of labor-saving synthetic and prefabricated construction materials. Also, jurisdictions with heavy employment in building materials industries, such as those producing steel, sometimes mandate the use of such materials instead of using less expensive, synthetic products such as plastic.

All model codes permit local building officials to accept alternative materials or methods arising from new technology. Many officials are reluctant to allow the introduction of such innovations, however, because there is likely no advantage in doing so. Rather, officials may be subject to public and professional criticism for the consequences of failure of building materials and methods. Consequently, officials infrequently waive existing rules or permit the use of new building technologies.

Furthermore, when model codes are revised to take advantage of the benefits of emerging technologies, local officials are still sometimes reluctant to incorporate the changes into their jurisdiction's building code. This resistance to change may be based on bad experiences with earlier versions of the new material or method. For example, some local building officials still recommend against allowing plastic pipe in their communities because the first commercial plastic pipes did not compare favorably with iron and copper pipe. Many people in the plumbing industry now believe that plastic pipe can be superior to metal pipe, and several model building codes permit its use. Despite the successful widespread use

> **Bethel New Life, a nonprofit agency that produces homes for low-income people, made a precise breakdown of the code's impact on single-family townhouses. Contractors working on the $60,000 units Bethel was building on Chicago's West Side were doing identical homes in the suburbs for $48,000.**
>
> **The difference was the old-fashioned, expensive materials and outdated construction methods kept in Chicago's code at the insistence of leaders of the building trades unions and their City Hall protectors.**
>
> *Editorial*
> *Chicago Tribune*
> *December 4, 1989*

of such innovations as plastic conduits for electrical wiring in other jurisdictions, however, many municipalities, including Chicago, still prohibit the use of this innovative material on almost all residential construction. This prohibition adds to the cost of both material and labor.

Cleveland's plumbing code is another example. Plumbing systems require air vents to prevent build-ups of vacuum or air pressure and to ensure that material can be quickly carried into and out of the network of pipes. The Cleveland building code requires that plumbing installed during rehabilitation must be vented using actual vent pipes running through the structure. In contrast, the use of existing mechanical venting valves in the plumbing system itself is much cheaper and easier to install in Cleveland's older, solidly built homes where installing the code-mandated vent pipes through walls and ceilings results in much unnecessary work and expense, sometimes as much as doubling the plumbing costs.

Although State and local governments have made great progress in the reform of local codes, considerable confusion results from differences among governments in the manner in which they adopt and amend model codes and the degree to which localities modify or amend them. Most States have no systematic process for amending or updating building codes. As a result, neighboring communities may use substantially different versions of the same code. Even though these jurisdictions may all start out using the same code, specific provisions may differ considerably or actually conflict with respect to the placement, capacity, or kind of building material required in plumbing or electrical systems. Similarly, because enforcement rests with local building offices, differing interpretations of what constitutes acceptable compliance may also differ, even where statewide codes are in effect. In a few instances, State and local codes such as those dealing with fire prevention conflict with respect to stringency in either specific provisions or in interpretation by inspectors. Differing codes in jurisdictions in the same region can drive up builders' costs by denying them the economies of buying materials in bulk at a discount.

> Fire codes are another problem in Ohio, as they are in most other States. Fire codes are usually enforced by local authorities, and many times conflict can exist between the State and the local code. The whole process can be a Tower of Babel.
>
> **Bob Schmitt, Builder**
> *Cleveland, OH*

Disincentives in Land and Property Taxes

In most places, the real property tax is a tax imposed on the combined market value and improvements of both land and buildings. The tax, however, discourages land development and rehabilitation, because they increase the value of the property and the tax that must be paid.

An alternative solution for communities is to impose low tax rates on structures and high tax rates on land. This approach will raise the cost of holding land vacant (or leaving structures on the land unrehabilitated), will not penalize land development, and can result in more efficient land use, including increased affordable housing opportunities.

Adopting a two-tiered approach to property taxes is controversial. It is likely, for example, to create windfall profits for some and windfall losses for others. Communities also need to consider what net changes in revenue would occur as a result of property tax reform so that their planning processes can be appropriately adjusted. Therefore, communities that choose to reform their property tax systems should do so over some period of time rather than all at once.

The two-tiered approach to property taxation is in place in some American communities, although it is much more common in other parts of the world. Pittsburgh, for example, is one of 22 Pennsylvania communities that employ a tax system that does not

reward holding undeveloped land and does not penalize land development.

Regulatory Restrictions on Certain Types of Housing

The NIMBY syndrome often manifests itself in urban areas in the form of prohibitions against types of housing that are "different." Examples include factory-built homes—that is, manufactured and modular housing—and accessory housing. These products are widely recognized as important components of a complete affordable housing strategy. Efforts to make them available, however, often encounter regulatory roadblocks. NIMBY attitudes can stem from two sources: the housing itself may be viewed as unattractive, and the people who live in it may be regarded as undesirable neighbors. These attitudes account in large part for the fact that manufactured and accessory housing have yet to make a clear impact on the availability of affordable housing in urban areas.

Manufactured Housing

More than 12.5 million Americans live in manufactured housing.[4] As defined in the Federal Mobile Home Construction and Safety Standards Act of 1974, a manufactured home is a dwelling unit fabricated on a permanent chassis at an offsite manufacturing facility for installation at the building site, and bearing a label certifying it as built in compliance with the Act's Federal Manufactured Housing Construction and Safety Standards. These homes are built in a factory and shipped as virtually complete houses or in sections that can be quickly assembled with minimal labor. Before 1980, these dwellings, now officially known as "manufactured housing," were termed "mobile homes," a name that is still widely used today. The Standards have come to be called the HUD Code, because HUD administers the Act. The HUD Code regulates design, construction, strength and durability, fire resistance, energy efficiency, installation, and performance of internal systems essential for health and personal comfort.

Many contemporary configurations in which manufactured housing is now being marketed are larger than many of the conventional homes built in the years immediately after World War II. Although most units are less expensive, manufactured housing can cost as much as $70,000 or more. In 1989, the year for which the most recent data are available, the average price for a multisection manufactured home, which is the largest type of unit sold, was $34,800. Multisection homes have approximately 70 percent of the square footage (living space) of the average conventional stick-built home.[5]

> Government officials in Northern Virginia, suburban Maryland, and elsewhere are reluctant to allow expansion of mobile home parks and construction of new ones. There is widespread opposition to mobile homes from owners of more conventional houses.
>
> People just don't want mobile homes around, said an Arlington planning official who asked not to be identified. Local governments don't want to address them as affordable housing because they would be forced to see what a sage move it would be to support them.
>
> **Avis Thomas-Lester**
> *"Affordable But Unwelcome"*
> *The Washington Post*
> *October 7, 1990*

Because manufactured homes are often less expensive than traditional stick-built homes of comparable size, they are a valuable affordable housing resource. But zoning boards in many localities still ban them completely or allow them only in specially designated mobile home parks or in agricultural areas where the absence of infrastructure can make siting expensive or simply impractical. Such discrimination is partially responsible for relegating two out of every three manufactured housing units to rural areas. Fewer than 10 percent are found in central cities. Yet these units have worked well in urban infill projects. Manufactured housing can be a relatively inexpensive way for low- and middle-income households to become homeowners.

Although the HUD Code preempts the need for building code approval by State and local governments, many local regulators dissuade would-be consumers by publicly questioning the quality of construction in manufactured housing. Such attempts to disparage the quality of manufactured housing occur despite the fact that the HUD Code home is the only form of housing routinely inspected for building code compliance prior to occupancy. Furthermore, despite preemptive Federal legislation, local regulators—in an effort to block the use of manufactured housing in their jurisdictions—sometimes create building code requirements they know mass-produced, factory-built housing cannot routinely meet. For example, some local codes require that the pitch or slope of a roof be sharper and therefore higher than standard manufactured housing roofs. Houses with steeper roofs are more difficult to transport to the site because of limited height clearances of highway underpasses. Even if suitable transportation can be arranged, modifying the homes, such as by using hinged roofs, raises their cost and renders them less affordable.

Modular Housing

Modular or industrialized housing is factory-built housing that is certified as meeting the State or local building code. For purposes of building code approval, modular housing is equivalent to stick-built housing. In fact, some builders of conventional housing use factory-built modular units in constructing homes that appear identical to the conventional product. Included in this category are panelized and log homes. Modular units can be used to construct single- and multifamily homes ranging from small, relatively inexpensive houses with a single level to large, elaborately designed, multistory structures.

Modular technology has some advantages in the construction of affordable housing in urban areas. It is easily adaptable to its site. Also, in many large cities, periodic shortages of skilled craftspeople such as carpenters can slow down projects that use more conventional building technologies. Modular units arrive at the construction site with nearly all of the

> There are transportation nightmares [with respect to modular housing units] that you cannot believe because of individual State regulations and now U.S. Department of Transportation mandates. Manufacturers have been faced with being stopped at a State line and mandated by officers of the law literally to use acetylene torches to cut carriers in order to comply with that particular State's length requirements. There is a set crew awaiting arrival of that unit, with a crane, and when the transportation becomes impeded the costs of the housing just increased $2,500 to $5,000 without any allowances for such an increase.
>
> **James W. Shields, Executive Director**
> *Industrialized Housing Manufacturers Association*
> *Harrisburg, PA*

carpentry work completed. In urban settings, modular construction has been found to yield cost savings of approximately 15 percent.[6]

Some builders wishing to use modular technology have encountered regulatory barriers. Because the market for a particular manufacturer's product typically crosses State boundaries, compliance with State building codes and associated procedures is required. Compliance requires a good deal of duplication of permit applications on a State-by-State basis and is time-consuming and costly. Furthermore, local building inspectors sometimes require that modular units be dismantled for inspection. Analogous to the situation mentioned above with building codes, inspectors sometimes insist on the use of expensive and unnecessary materials that, in the case of modular housing, makes for costly onsite alterations. In addition, modular manufacturers must deal with differing transportation regulations that cover actual shipping of the structures themselves. It has been estimated that interstate reciprocity on code approval and transportation regulations could reduce the cost of modular housing by 10 to 15 percent, in addition to savings achieved by their use in construction.

Accessory Housing

Accessory housing is another way to enlarge the pool of affordable rental units. Most often, accessory housing takes the form of an apartment developed from unused space in single-family houses. It may involve the renovation of a building, such as a garage or shed, adjoining a single-family house. Accessory units may also be small, factory-built dwellings, sometimes called "granny flats," sited on the property adjacent to a single-family home.

Typically, accessory apartments cost much less to produce than conventional apartments and consequently are usually much less expensive to rent as well. Recent research findings indicate they can be constructed, on average, for one-third the cost of conventional rental units.[7] These savings are passed on to the consumer. In Montgomery County, Maryland—an affluent suburb of Washington, D.C.—the average monthly rent for licensed accessory apartments, occupied by tenants unrelated to the owner, was $140 less than the average rent for the same-sized conventional apartments in that county.[8] These self-contained units, however, yield benefits beyond adding to the existing affordable rental stock. They can provide single-family households, especially the elderly, with much-needed additional income. They can contribute to neighborhood stability because they allow elderly homeowners to remain in their homes when their current housing arrangements are no longer appropriate or affordable. The creation of these apartments also improves the local tax base because the new capacity to generate income increases the value of property.

The proposed introduction of accessory apartments into what has always been a neighborhood of single-family homes sometimes gives rise to local opposition. In what might be viewed as a classic display of NIMBY sentiments, neighbors often express concerns about added traffic and noise that renters might bring. Neighbors also worry that their property values might be lowered as a result of this change in density. As with a great many NIMBY notions that turn out to be incorrect, recent research suggests that neither quality of life nor property values suffer from the presence of accessory housing.[9] Local taxpayers may also see potential costs to the community in added service and infrastructure needs.

> According to the Long Island Regional Planning Board, "[t]he estimated 90,000 illegal apartments on Long Island should be legalized by town and village governments as the only way to cope with an affordable housing crunch expected to continue to the year 2010...."
>
> **Dallas Gatewood**
> *"Booming Demand Seen in Housing for Elderly"*
> *Newsday*
> *December 8, 1989*

As a strategy for increasing the amount of affordable housing, however, accessory apartments offer an easily attainable and relatively inexpensive option. For example, in suburban Long Island, New York, localities where housing is in short supply and single-family homes predominate, regional planners have estimated that from 10 percent to 20 percent of existing homes have illegal accessory apartments. In one Long Island jurisdiction where accessory apartments have been legal for more than 2 decades and where single-family homes account for more than 95 percent of the dwelling units, a fifth of the homes contain an accessory apartment. If 1 in every 10 of America's owner-occupied single-family homes built before 1975 were to devote space to an accessory unit, 3.8 million rental units would be generated, increasing the supply of rental housing by about 10 percent.[10]

Barriers to accessory housing can take several forms. Single-family zoning usually precludes accessory apartments and thus is an automatic barrier. In addition, the process of converting a single-family home's surplus living space to a self-contained apartment may require rehabilitation. As with the rehabilitation of existing housing, compliance with conventional building codes oriented to new construction can make the creation of an accessory apartment unnecessarily expensive, causing additional financial strain on precisely those homeowners whose precarious economic circumstances have caused them to favor accessory apartments in the first place.

Reinvestment in Older Urban Neighborhoods

The problems discussed thus far affect housing affordability for low- and moderate-income families throughout the country. But additional regulatory issues affect lower income families living in inner-city neighborhoods. Removing existing regulatory barriers contained in building codes, rehabilitation requirements, and restrictions on certain types of housing would solve only some of the problems these families face in their search for decent, safe, and affordable housing. The barriers imposed by racial discrimination, unnecessarily restrictive credit lending practices, and operations of the secondary market institutions would remain.

Redlining and Disinvestment

Sources of mortgage credit differ for homebuyers in suburban and inner-city neighborhoods. Conventional lenders generally finance housing in stable, predominantly white, communities, and the Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA) finance housing in minority and transitional inner-city communities. FHA's liberalized underwriting policies have made mortgage lending accessible to inner-city minority families. In the past, however, FHA-insured loans have been made to many families who had no reasonable prospects of repaying them. Whole neighborhoods were ruined as a result of defaults and foreclosures on FHA mortgages. As a result of these experiences, conventional lenders looked elsewhere to make loans. All of this experience reinforced redlining activities, the process by which lenders discriminate by denying commercial or residential credit to certain (usually poorer and/or minority) neighborhoods. Ironically, financial institutions continued to seek and accept deposits from these neighborhoods; they just stopped lending there.

Past Efforts to Stem Redlining

To maintain healthy neighborhoods, housing markets must provide all types of mortgage credit. In 1975, Congress passed the Home Mortgage Disclosure Act (HMDA) as a first step in addressing the problem. Although HMDA did not regulate lenders, it gave consumers a powerful tool—information about lending activities. The theory behind HMDA was that consumers ought to be able to make informed judgments about where they bank.

HMDA data could be used to show which lenders were not meeting their community responsibilities; depositors could choose not to patronize lenders who were unwilling to lend to them. But HMDA provided only the raw data—it offered no means to force lenders to meet their responsibilities. To add teeth to HMDA, Congress enacted the Community Reinvestment Act (CRA). CRA reinforced the responsibilities of lenders to serve both the depository and credit needs of their local communities, and of the Federal regulators—the Federal Home Loan Bank Board (replaced by the Office of Thrift Supervision in late 1989), the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve Board—to ensure they do so. CRA required that each time an institution applied for a new branch, merger, or other structural change, it had to demonstrate it was meeting both the depository and credit needs of its current local communities.

CRA permitted community organizations to challenge these applications. As a result of these challenges, lenders have agreed to commit additional funds to mortgages in urban neighborhoods. Through 1990, there have been at least 195 CRA agreements in 63 different cities and metropolitan areas and in 10 States that have at least 1 statewide agreement.[11] These activities have produced more than $8 billion in private investment. Roughly 80 percent of these agreements have been negotiated since 1984. The Boatman's Bank in St. Louis is one of a number of lenders exceeding its original CRA commitment. It had agreed to make $50 million available, but actually loaned out $68 million, as of 1989. In Chicago, the Neighborhood Lending Programs initially agreed to a 5-year commitment of $153 million, but increased it by $200 million for 1988 and 1989.

These agreements have been obtained only through the tenacity of community groups that bring the challenges. The regulatory agencies still remain passive players, too often waiting for community-group action.

The Influence of Secondary Market Practices

CRA and HMDA provided an incomplete set of tools to eliminate redlining, because they were not relevant to the secondary market. Unless lenders were able to sell their loans quickly on the secondary market to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), they would not have the liquidity to make new loans.

Fannie Mae's and Freddie Mac's underwriting standards are oriented towards "plain vanilla" mortgages. The standards encourage lending in suburban, growing, homogenous, and higher income areas, where housing and zoning requirements result in the production of "cookie cutter" new homes in uniformly single-family neighborhoods. These standards work against more diverse building types and mixed-use neighborhoods, which are more difficult to assess and to underwrite.

Fannie Mae and Freddie Mac have had anti-discrimination and anti-redlining guidelines, but have not consistently followed them. The Commission understands that these agencies have strengthened these guidelines and are promoting them. In addition, Fannie Mae and Freddie Mac have developed pilot programs to purchase mortgages in inner-city, minority neighborhoods. For example, these agencies are working with the National Training and Information Center on a $1-billion, 13-city demonstration. Even though these pilot programs have been successful, Fannie Mae, Freddie Mac, and lenders still view them as "special programs" and have not incorporated them into standard underwriting processes.

The charters of Fannie Mae and Freddie Mac require that a reasonable portion of their mortgage purchases support the national goal of providing adequate housing for low- and moderate-income families. In addition, as a result of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA),

HUD has been given authority to regulate both agencies. HUD's regulations require that 30 percent of Fannie Mae's investment benefit low- and moderate-income households and 30 percent be in central cities, although these are not mutually exclusive. Regulations are now in preparation for Freddie Mac and are being revised for Fannie Mae.

Endnotes

[1] "Low Cost Housing 'Niche' Spreads Nationally," *California Builder*, Oct.-Nov. 1988, p. 7.

[2] In 1988 in New York City, some 45 percent of the economic benefits of rent control accrued to 14 percent of the households in rent-regulated apartments—a group with incomes greater than $40,000. "A Financial Analysis of Rent Control Regulation in New York City: Costs and Opportunities," KPMG Peat Marwick, Peat, Marwick, Main & Company, New York, 1988, p. 16.

[3] Arthur D. Little Inc., "The Owners of New York's Rental Housing: A Profile," May 1985, p. 4.

[4] "Quick Facts About the Manufactured Housing Industry—1990/91," The Manufactured Housing Institute, Arlington, Va.

[5] *Ibid.*

[6] Kathryn Wylde, "Affordable Housing and the Urban Environment," A paper for the One Earth Series, New York City Partnership Inc., Apr. 1990, p. 7.

[7] Patrick H. Hare, "Installations of Accessory Units in Communities Where They Are Legal," *Planning and Design*, Washington, D.C., Apr. 1990.

[8] H. Jane Lehman, "One Solution to Affordability Crunch," *The Washington Post*, June 23, 1990.

[9] Results of a study commissioned by the Ontario Ministry of Housing. Reported in *Urban Outlook*, Jan. 15, 1991, p. 1.

[10] American Housing Survey for the United States, 1987: Introductory Characteristics—All Housing Units, Table 1A-1, p. 1, U.S. Department of Commerce and U.S. Department of Housing and Urban Development, Washington, D.C.

[11] Calvin Bradford, "Draft Report to The Ford Foundation on the Present State of CRA Activities," 1991.

Environmental Protection Regulation and Affordable Housing

Preservation of the environment is unquestionably and properly a high priority in America. Sometimes, however, efforts to protect the environment have the unintended consequence of preventing development of affordable housing. In many parts of the United States, environmental protection regulations act as barriers to the availability of affordable housing by significantly diminishing the supply of land for residential development and, thereby, raising the cost of land and housing. The Nation needs to find a better balance between the objectives of protecting the environment and ensuring its citizens an adequate supply of affordable housing.

The search for reasonable trade-offs between these two objectives is complicated by the actions of NIMBY groups. The impact of environmental regulation on the availability of affordable housing is substantially amplified by the widespread use of environmental protection as a stalking-horse for NIMBY groups bent on opposing unwanted development. Often, environmental concerns raised against the development of multifamily or low- and moderate-income housing really constitute attempts at exclusionary zoning. Court challenges to environmentally based building permit denials have been mounted on these grounds, but they have generally not succeeded.

How Environmental Regulations Affect Housing Affordability

Environmental protection regulations can become barriers to affordable housing in three ways. First, and most directly, they may raise the cost of housing through a variety of requirements. Second, and more subtly, they often interject costly delays into the building permit review process. Third, regulations lead to delays that are frequently exacerbated by the overlapping jurisdictions of Federal, State, and local agencies charged with environmental protection responsibilities.

> Their [the South Coast Air Quality Management District's] charter is clear air, which is, of course, important. But houses do not emit pollutants, they are being used simply as a proxy. Instead of regulating the things that do emit, like cars, we are talking about regulating houses. I don't believe we will get cleaner air as a result of this [proposed limitation on housing starts], but we will get more expensive houses.
>
> **Donald E. Moe, Senior Vice-President for Marketing and Consumer Affairs**
> *Santa Margarita Company*
> *Rancho Santa Margarita, CA*

Direct Costs and Limitations on Development

In pursuit of environmental protection, governments at all levels have fashioned statutes and ordinances that limit or otherwise control the quantity, type, and configuration of housing and its associated infrastructure. These statutes and ordinances go well beyond longstanding sanitary engineering regulations that deal with sewage disposal and storm drainage. Environmental restrictions on development can extend to complete prohibitions on the construction of housing in certain areas. The overall effect is to limit the amount of land available for residential construction, thus raising the price of buildable land and, in turn, making the housing that is finally built on that land more costly.

In addition, environmental statutes may require certain dedications, payments of fees, or other actions by developers. In some localities, for example, permission to engage in land development in environmentally sensitive areas is contingent upon setting aside a portion of the land as open space or as a wildlife and forest preserve, or upon reclaiming a specified acreage of wetlands or some other ecologically significant land, or upon paying a special impact fee. These business expenses are passed along to the consumer as higher housing prices.

Review Delays

In the vast majority of municipalities, consideration of the potential environmental impact of proposed development projects is now a standard part of the building permit process. Many jurisdictions will not grant building permits without the submission of a formal environmental impact statement (EIS). EIS studies of proposed projects can add more than a year to the permitting process, requiring the would-be builder to pay carrying charges on loans for long periods of time.[1]

Because environmental review is now a legitimate and routine component of the permitting process, developers normally plan for reasonable expenses associated with such reviews, and tend to build them into project schedules and budgets. Sometimes, however, NIMBY groups exploit the delays in the

> Those opponents have the ability to use—or to misuse—the approval process and the process of judicial review to delay development to the point where the developer loses the financing, the land, or the will to go forward.
>
> **Kenneth B. Bley, Esq.**
> *Cox, Castle & Nicholson*
> *Los Angeles, CA*

> New York State law bars development within a 100-foot radius around a breeding pond of the endangered tiger salamander. Sightings of this animal near a pond, therefore, sometimes result in stoppages of development while it is ascertained if a breeding area is present. A 102-acre subdivision project in the Long Island community of Bridgehampton, including 9 units that had been earmarked as affordable housing, was brought to a halt when a tiger salamander was found on the property. The plan was delayed for more than 1 year until the developer agreed not to build near the pond. The number of affordable units was reduced by almost one-half.
>
> **Robin Goldwyn Blumenthal**
> *The Wall Street Journal*
> *April 23, 1990, p. B7B*

permitting process occasioned by these reviews. A typical tactic involves the insistence on indepth investigations of the potential adverse impact of proposed development, causing additional costly delays of many months, and sometimes years. If such investigations fail to halt unwanted development, NIMBY groups sometimes initiate legal actions that generate costly delays of such length as to threaten the viability of the development entity itself.

Overlapping Jurisdictions

When more than one government agency regulates a critical activity, such as the development of residential housing, administrative difficulties often surface. Although the basic reason for overlapping jurisdictions—the different missions of agencies—is readily understandable, such a situation can easily give rise to conflicts among various agencies and to ambiguity with respect to what constitutes compliance with regulations. This problem arises in relation to the preservation of wetlands, protection of endangered species, and, sometimes, sanitary codes and other health concerns.

Federal, State, and local agencies' respective environmental regulations often involve time-consuming administrative requirements and potentially large expenses. Furthermore, because conservation is a high priority at all levels of government, rules are very often duplicative, making compliance more burdensome and costly but adding little in the way of environmental protection.

Moreover, duplicative regulations can be administered inconsistently across levels of government, so that project approval by one level does not guarantee concurrence at another. When project review standards differ across agencies, builders and developers can find it difficult to know their compliance responsibilities. Even if they manage to work their way through the regulatory maze, they generally pass the cost of administrative delays on to the renter or homebuyer.

Wetlands and Affordable Housing

The growth of America's cities and farms during the past 2 centuries has consumed more than half of the Nation's original wetlands. The remaining wetlands serve important economic and environmental functions, such as flood control and the provision of wildlife habitat, and need to be protected. However, environmental protection legislation and associated regulations dealing with wetlands often unnecessarily raise the cost of housing. The definition of wetlands, as well as Federal and State

> [The regulatory] systems in Anne Arundel [County, MD] can be borrowed and the concerns Anne Arundel has about watershed management can be utilized in Howard County, instead of having to recreate and redo all of those together, so that the development community can look at all of this and plan on a larger scheme. The wetlands issue is sometimes monitored by the Corps of Engineers, the State, and other times by the [Washington Suburban Sanitary Commission]. A lot of our time goes into processing paperwork and trying to figure out what's the next step instead of spending more time on more livable communities, more workable work environments.
>
> *Corridor Today*
> *October 27, 1989*

administrative procedures for regulating their use, lead to adverse impacts on housing affordability.

Definitional Problems in Wetlands Regulations

Most people think of wetlands in commonsense terms: ponds, swamps, bogs, marshy coastal areas, or bottomland forests. In reality, the scientific definition is highly technical and is based on hydrology, soil condition, and specific types of water-loving vegetation. Wetlands are often identified by the presence of plants found in soil that is, at a minimum, periodically saturated or covered with water. In terms of their physical appearance, however, wetlands are as varied as America's geography.

Because the protection of wetlands has resulted in widespread restrictions on residential development, advocates of affordable housing have long sought to modify the definition of wetlands to exclude a number of naturally occurring soil conditions that are largely unrelated to water quality and, thus, not within the purview of Section 404 of the Clean Water Act (CWA). In 1989, the four Federal agencies that regulate the use of wetlands—the Environmental Protection Agency (EPA), the Army Corps of Engineers (the Corps), the Soil Conservation Service, and the Fish and Wildlife Service (FWS)—joined to produce *The Federal Manual for Identifying and Delineating Jurisdictional Wetlands.* Instead of narrowing the definition of wetlands, this manual takes an even more inclusive view: to be defined as a wetland, the soil need be only temporarily saturated with water, in some instances. The effect of this expanded definition is that more private, buildable land—land that is totally dry nearly all of the time—can be declared a wetland, and its use for development denied.

> Federal permits for wetlands activities are increasingly difficult to get. In the San Francisco District of the Corps of Engineers, for example, the Bay Planning Coalition has compiled statistics from the Government showing that, in a recent 5-year period, only two "major" wetland permits have been issued by the Corps....
>
> **Robert Briscoe, Land Use Attorney**
> *San Francisco, CA*

In general, wetlands statutes tend not to take land-use issues into account. Typically, existing statutes do not differentiate between critical and ecologically low-value wetlands. If the statutes were to make this distinction, then the development of a low-value wetlands might be permitted for some important public purpose. Similarly, most environmental protection statutes that deal with wetlands do not effectively differentiate between publicly and privately owned land.

The problems that arise as a result of the lack of land-use distinctions in wetlands regulations are exemplified by the predicament that builders of a Juneau, Alaska, homeless shelter faced. In May 1989, the St. Vincent de Paul Society, a public charity, began planning for the construction of a six-unit homeless shelter for families in downtown Juneau. To meet a city requirement that parking spaces be available at the shelter, the Society purchased a vacant lot that adjoined the shelter property and applied to the Corps for a permit to pave. Because this quarter-acre lot was designated a "wetland," however, the Corps would not issue the permit. Without the permit, there could be no parking lot, and, without the parking lot, the city would not issue a building permit for the shelter. It took more than a year of administrative maneuvering before the Corps and the city issued the necessary permits and construction could begin on both parking lot and shelter. Had the wetlands permitting regulations recognized distinctions with respect to the public benefit to be derived from the intended land use, considerable time and money would have

been saved, and homeless families could have been sheltered much sooner.

Jurisdictional Problems With the Federal Wetlands Regulation

The Clean Water Act has a number of important functions pertaining to the "waters of the United States," including protecting navigation, water quality, and wetlands. Congress entrusted this statute's complex and wide-ranging mission principally to the EPA and the Corps. Section 404 of the CWA is the legislative focal point of current Federal wetlands protection efforts. It authorizes the Corps to issue permits for filling and subsequent development of wetlands, and requires the Corps to follow EPA guidelines when issuing these permits. It also authorizes EPA to veto any Corps decision to issue a permit for use of wetlands.

Their overlapping jurisdictions occasionally produce conflicts between EPA and the Corps. Resolving these interagency conflicts can prove time-consuming and expensive for applicants. Sometimes, such conflicts lead to extensive litigation, such as the 1987 Attleboro Mall case, which upheld the EPA's broad authority to oversee, and even veto, the Corps' permit approvals.[2] Even without interagency conflict, overlapping jurisdictions render the permitting process unnecessarily complicated and lengthy, obliging applicants to negotiate with both Federal agencies in hopes for a speedy, positive result. In addition, the FWS, the Soil Conservation Service, and the National Marine Fisheries Service are sometimes consulted on matters pertaining to individual permit applications. The need to obtain both State and Federal permits often complicates the situation.

The Complexity of the Federal Permitting Process

Although concerns about keeping the Nation's water supply clean are by no means new, environmental protection became a clear national priority with the passage of the National Environmental Protection Act (NEPA) of 1969. NEPA introduced the environmental impact statement into the Federal regulatory process by requiring assessments of the potential impact of federally financed projects on the environment. These assessments have become a time-consuming and costly adjunct to the Federal wetlands permitting process.

Designed to ensure adequate protection of aquatic ecosystems, the Federal permitting process for developing a wetland is often arduous and costly

In 1986, a Wareham, Massachusetts, businessman wished to expand his sales and storage facilities onto adjacent property. Since a portion of the proposed building site contained wetlands, he consulted the local conservation commission, hired environmental engineers, and applied for Federal, State, and local permits. Four years and $173,100 later, construction had not begun on the planned building annex. Much of the time and money was consumed in efforts to meet differing requirements of the EPA and the Corps.

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and does not take into account any public benefit, such as a stronger local economy, that a proposed development might produce. Section 404(b)(1) of the CWA requires that applicants for wetland development permits avoid adverse environmental impacts to the maximum extent practicable. An important consideration is whether the proposed development needs to be located near water, thus making crucial its placement on wetlands. If no alternative site can be found, the applicant must devise a plan to minimize adverse impacts to the site's wetland ecology. If the proposed development cannot occur without seriously damaging the wetland, the applicant must provide appropriate and practical compensatory mitigation that, in essence, involves creating a comparable wetland at another location. The permit application process is structured to encourage applicants to meet the requirement of avoiding adverse environmental impacts by finding an alternative site that features an "upland" rather than a wetland.

The Attleboro Mall decision significantly increased the difficulty of getting a permit to develop wetlands. The case began in December 1983 with the purchase by a shopping center development company of an 82-acre tract that was known to contain a 50-acre swamp. The purchase was made after an indication that State environmental protection agency approvals of the project might be forthcoming. The approvals were, in fact, soon obtained, along with local authorization. In its permit application to the Corps, the developer indicated that a nearby alternative site was unavailable and infeasible for its project.[3] This application was approved by the Corps. After receiving the required formal notification from the Corps of its intent to issue a permit, however, EPA vetoed the project, stating that an alternative site was available when the applicant began looking for property to develop. The developer challenged EPA in court, and the case turned on when the developer's search for an alternative site began. The developer said that it had begun to search in September 1983; EPA contended that the search had begun in the spring of 1983. Central to this dispute was a competitor's purchase in July 1983 of an option on the alternative site identified as "unavailable" by the developer. It was the developer's contention that, because the alternative site was unavailable in July 1984, when its application to the Corps was made, the timing of the original search was not relevant. EPA argued successfully that the developer's entry into the real estate market, and the search for alternative sites, begin at the same time (the "market entry" theory).

The Attleboro Mall case injected new uncertainties into the already arduous wetlands permitting process. No explicit guidance exists as to precisely when the search for an alternative site has begun or what was an acceptable alternative at that time. As the law now stands, developers can be faulted after the fact for not investing in property—perhaps no longer available—that EPA judges would have been suitable.

The mitigation stage of the permitting process, while more straightforward and generally conceded to be much less of a problem, can also be lengthy and frequently involves prolonged negotiations. The applicant must convince the Corps, EPA, the FWS, and, occasionally, the National Marine Fisheries Service that a proposed replacement project will satisfy their respective requirements to establish a suitable wetland. Disagreements among these agencies on what constitutes a satisfactory mitigation in a specific instance do occur. With few specific guidelines available on the mitigation process, applicants sometimes face a difficult task in pleasing all the Federal agencies involved. A developer can be virtually assured, however, that the mitigation process will be expensive. Estimates of the actual cost of creating an acre of wetland range from $50,000 to $250,000, with ongoing monitoring and maintenance charges amounting to as much as $150,000 per year.[4] In addition, the prolonged, often complex negotiations extend the builder's loans for acquisition, development, and construction.

Compensating Landowners for Wetlands

Efforts to protect wetlands consistently deny landowners permission to develop their property.

Sometimes, all use of a wetland is prohibited. In other situations, development judged not to have an adverse impact is allowed. Hence, to varying degrees, the protection of wetlands causes landowners economic loss, and even though a government agency does not really take possession of a wetland, its restriction of profitable uses of private property can amount to a "taking."

The issue of takings has prompted a good deal of litigation, because the Fifth Amendment forbids the government from taking property without equitable compensation. To date, the courts have been inclined to rule against landowners where a taking was alleged to have occurred, but where some economic use of their property was still possible. Similarly, where a complete taking has not occurred, the issue of compensation for partial economic loss has been largely unaddressed. In situations where a taking has been judged to have occurred, there is little clearcut guidance on the issue of compensation, which here involves the purchase of property by a government agency.

In 1988, President Reagan issued Executive Order No. 12630, "Government Actions and Interference with Constitutionally Protected Property Rights." It directed Federal agencies to assess the implications of their actions so as to prevent unnecessary takings. As yet, however, no measures have been put into effect to ensure that the order is carried out.

Planning for the Future: Increasing the State Role

In fashioning a long-range strategy for the implementation of the Administration's "no net loss" policy for the Nation's wetlands, the amount of responsibility to be given to States in overseeing environmental protection becomes an important question. Most States already have some form of wetlands protection legislation. A number of them, (such as California, Florida, Massachusetts, Michigan, New Jersey, and Oregon) are acknowledged to have particularly comprehensive wetlands protection programs.[5]

An increased State role in wetlands regulation represents a simple broadening of existing land-use responsibilities. In addition, because most State environmental protection statutes were patterned on Federal legislation, there is already, as noted above, considerable duplication of regulations that could profitably be eliminated by a lessening of Federal activity. In 1977, Congress directed EPA to allow the States to assume responsibility for portions of the Federal Government's permit program for Section 404. However, the assumption of some of the program's operational expenses, without a significant diminution of EPA oversight, plus the absence of incentives, have conjoined to entice few States to participate.[6] To date, only Michigan has become involved. Yet the groundwork for a better integration of Federal and State wetlands responsibility has been laid, and could serve as the basis for a long-range no-net-loss strategy.

The Endangered Species Act and Its Effect on Housing

Originally passed in 1973, the Endangered Species Act (ESA) is designed to help ensure the survival and well-being of existing species of plants and animals. The ESA makes it illegal to "take" a plant or animal that is designated as "threatened" or "endangered." "Take" means engage in any activity that is thought to harm the protected plant or animal. The basis upon which the determination is made that a species is threatened or endangered is rather broad, and includes destruction, modification, or curtailment of its habitat, as well as disease and predation. Therefore, besides barring activity that directly causes death or injury to individual members of protected species, the law prohibits significant modification or degradation of the habitat used for breeding, feeding, or sheltering the species in general.

> The bottom line is that humans have reached the limit in how far they can intrude on the environment, said Nancy Kaufman, field supervisor for the Fish and Wildlife office that oversees Riverside County. She said that it is unfortunate that newcomers are being penalized for a problem created by all residents, but her job is to enforce the Endangered Species Act by requiring the county to solve a problem its sprawling growth created.
>
> "How they do it? As long as it's legal, Fish and Wildlife doesn't care how they come up with it," Kaufman said. "I'm not required by law to analyze the housing price aspect for the average Californian."
>
> **Kirstin Downey**
> *"Rare Rat Gains Ground in Turf War"*
> *The Washington Post*
> *February 23, 1989*

At the direction of the Secretary of the Interior, FWS adds plants and animals to the lists of "threatened" and "endangered" species. When a species is added to either list, FWS can take steps to protect it, one of which is to curtail human activities in geographic areas that are believed essential to its continued viability, such as known breeding grounds. State agencies can also restrict human activity in areas they judge essential to the viability of a species. It is not unusual for development to be severely restricted, in areas containing thousands of acres, for years at a time.

When environmental protection agencies curtail development and limit other human activity thought to be detrimental to the survival of a species, surrounding buildable land becomes more scarce and, therefore, more expensive, thereby diminishing prospects for affordable housing in the area. Both the ESA and the manner in which the FWS administers it could be modified to lessen significantly the Act's impact on the creation of affordable housing, without diminishing its ability to preserve the natural world.

Problems With the Administration of the ESA

In the ESA, Congress prohibited consideration of socioeconomic factors in listing a species as threatened or endangered. The absence of this constraint on the listing process has, in part, led to the ESA imposing some of the most stringent restrictions on the use of private property of any existing Federal environmental statute. Because actions that adversely alter habitat can be interpreted as a taking (in the sense of taking possession of fish or game), legally equivalent to directly harming individual members of an endangered species, a listing can effectively cause a stoppage of all development on lands judged to be critical habitat, often to the detriment of housing affordability.

The Act states that critical habitat—that is, land essential to ensuring the protection and recovery of an endangered species—should be identified at the time of listing. However, the designation of an endangered species' critical habitat is not always made so quickly. The destruction of critical habitat carries substantial penalties. When the designation of critical habitat is delayed, developers are often confused about the location of land where human activity is restricted. The efforts of developers to avoid damaging critical habitats tend to exacerbate the economic impact of the listing by extending the limits of the ban further than necessary and sometimes by completely halting construction in a particular region or jurisdiction.

The Act does, however, provide for the drafting of a Habitat Conservation Plan (HCP), which represents a mechanism for resolving the land-use issues that typically arise from a listing. The HCP gives all "affected parties," such as landowners, developers,

State and local public officials, environmentalists, and other public interest groups, the opportunity to craft an amicable solution to ensuring the continued survival of the endangered species. Typically, an HCP includes the setting aside of buildable land as preserves for the endangered species and also the payment of mitigation fees.

Although HCPs have been successfully drafted to meet both human needs as well as those of endangered species, problems arise with the FWS' administration of this process. The process tends to be lengthy, sometimes taking years. The failure of the FWS clearly to define criteria for an acceptable HCP has contributed to the time-consuming and expensive nature of the process. Furthermore, the FWS is both the official protector for the endangered species and the judge of what constitutes an acceptable HCP. Given the amorphous state of the HCP process, plus the absence of a procedure for arbitrating disagreements between participants, the consortium of local public officials, landowners, and business people who represent their community in HCP negotiations with environmentalists has relatively little influence over the outcome.

From the beginning of the HCP negotiations, pressure exists to restrict development voluntarily, so that direct FWS intervention with more drastic curtailment of development can be staved off. These stoppages cost the local business community money, because loans on buildable land must continue to be serviced and construction projects are delayed, with a concomitant loss of opportunities to sell goods and services. The implicit threat that development might be restricted, perhaps on short notice through an emergency listing, also generates pressure to fashion an acceptable HCP. Furthermore, the direct costs involved in designing an HCP can be high (a recently completed Orange County, California, study of existing wildlife habitats cost some $300,000), because consultants are sometimes needed to do the requisite research, write the resultant reports, and, ultimately, prepare the draft HCP. A substantial proportion of the costs engendered by the HCP process itself are initially borne by developers and builders and, as costs of doing business, are added to the price of new homes.

> The California gnatcatcher, a rare bird found mostly in Orange County and nearby counties, has moved a step closer to being declared endangered, a status that could affect proposed south county tollways, several large housing developments, and numerous smaller projects.
>
> **Frank Mickadelt**
> *"Rare Bird Threatens Projects"*
> *The Orange County Register*
> *February 5, 1991*

Obtaining Valid Information for Implementation of the ESA

Under the provisions of the ESA, the Federal Government is supposed to use the "best scientific and commercial data" available in determining whether a species is endangered or threatened. The FWS does not, however, have minimum standards and criteria to establish what constitutes the best data, nor is there a formalized peer review process for evaluating the data. As a consequence, decisions affecting the economic destiny of whole regions, and costing both public and private interests hundreds of millions of dollars, can be made on the basis of relatively little information. For example, a single study on the Golden-Cheeked Warbler, the methodology of which was subsequently criticized by an acknowledged authority on the bird,[7] was used by FWS as the basis for a decision to order the emergency listing of this bird as endangered. This listing resulted in severely restricting development in thousands of acres in Travis County, Texas, with localities around the City of Austin being especially hard hit. The Travis County appraiser estimated that the value of the land affected by the listing would be reduced from $335.7 million to $15.1 million, and

the annual tax levy would be reduced from $6.7 million to $0.3 million.[8] Negotiations are currently underway on obtaining funding for an HCP that will establish preserves covering an area of more than 60,000 acres at a cost of more than $100 million.[9]

Although the ESA does not allow the consideration of economic issues in the actual decision to declare a species endangered, the fact that huge expenditures of both public and private funds almost inevitably follow argues for a reasonable level of prudence. The FWS could have reviewed a number of studies and obtained expert opinions in conjunction with the review. The FWS was not required to take these steps, however, and chose not to do so.

Bearing the Costs Engendered by the ESA

Although it is not unusual for the drafting of HCPs to cost local governments hundreds of thousands of dollars, the plans themselves led to the creation of preserves that are more and more often being fashioned from privately held land once considered prime development property. As the list of endangered species grows, the question is increasingly arising of who will pay for their protection. The October 1988 listing of Stevens Kangaroo Rat as an endangered species proved costly to both current and future citizens of Riverside County, California, located some 75 miles east of Los Angeles.

Curtailment of development in the western part of Riverside County was agreed to in an HCP. The construction stoppage encompasses private as well as public land. The HCP calls for a 30-square-mile system of rat preserves, and requires Riverside County to raise an initial $103 million to pay for the creation of habitats. Although no one knows precisely how much the HCP will eventually cost, estimates have run as high as $350 million.[10] The magnitude of the cost stems from the fact that the bulk of the affected lands are privately owned, rather than State or Federal property, and therefore have to be purchased at market rates. In November 1988, county supervisors levied a special impact fee of $1,950 on each acre of land to be developed, ultimately affecting perhaps as many as 100,000 homesites. Hence, for years to come, people buying new homes in Riverside County will be paying for the Stevens Kangaroo Rat's preserves. While environmental protection efforts frequently raise the cost of land and housing, few instances provide as

> By imposing costs indirectly through regulation, rather than directly through taxes, massive expenditures are being made on environmental protection, but the expenditures and revenues are "off budget," shielded from the usual public scrutiny.
>
> *Pacific Legal Foundation*
> *Written comments to the Commission*
> *September 12, 1990*

> Loudoun County [Virginia] voters soundly rejected a $5 million bond issue yesterday that would have financed the purchase of endangered plant and animal habitats....
>
> **Steve Bates**
> *"Loudoun Rejects Bond Issue for Habitat Purchase"*
> *The Washington Post*
> *March 13, 1991*

clear a picture of the process as this Riverside County situation.

Timber Production and Housing Affordability

The vast majority of new single-family houses in the United States are of wood-frame construction. Wood products account for approximately 15 percent of the average construction cost of a new single-family house. The price of timber, therefore, plays an important role in housing affordability. Especially significant in this connection is the influence that environmental protection regulations exert on timber production.

> The timber industry is critical to the American economy, a backbone of our housing industry. Affordable lumber is part of affordable housing. The builders in Florida have a stake in the Pacific Northwest as surely as those of us who drink orange juice feel the effects of a drought in Florida.
>
> **The Reverend Jesse L. Jackson**
> *Press Release from the National Rainbow Coalition Inc.*
> *February 28, 1991*

Environmental protection regulations directly affect forest management. Forests are habitats for endangered or threatened species, such as the Northern Spotted Owl, which lives in the forests of the Pacific Northwest. To protect endangered or threatened species, large set-asides of Federal land are often advocated. A proposed Federal conservation strategy to preserve the owl would set aside 8 million acres of forestland in California, Oregon, and Washington. Timber harvesting would cease, with a resultant loss of about a quarter of the Nation's annual softwood lumber and plywood production capacity. The supply of timber from private lands is also affected by State regulations issued in response to Federal guidelines for preserving endangered or threatened species.

Timber supply is also affected by other federally mandated environmental regulations, including wetlands policies. Although the Clean Water Act exempts "normal" forestry activities on wetlands from permitting requirements, the exemption is being increasingly challenged and reviewed in court and by some Federal agencies. The new Federal manual on wetlands, mentioned earlier, will extend Federal review of forestry activities to millions of acres not traditionally considered to be wetlands, thus potentially further restricting forest management and harvesting activities on private lands.

In addition to serving as critical habitat for hundreds of species of plants and animals and, therefore, falling indirectly under the purview of environmental regulations, the forests themselves are important natural resources to be protected and conserved. Years before concern for protecting endangered species became a central issue in charting the future of the Nation's forests, there was a debate about the size of the annual timber harvest, much of which comes from Federal lands. Timber harvesting first became the subject of national debate after most of the virgin forests on private lands were cut. The demand for wood products and the impact of associated market forces on housing affordability have continued to focus attention on the management of timber supplies on public lands and, as a consequence, on Federal policies for achieving a balance between forest conservation and timber production. With the relatively recent entry of broader environmental protection issues into the regulatory equation, recognizing the relationship between housing affordability and timber production has become even more critical.

Endnotes

[1]A 1990 study, entitled "From Schools to Skyscrapers," by the New York City Housing Partnership, a nonprofit developer of affordable housing, found that environmental impact reviews of development projects in that city took an average of 19 months.

[2]*Bersoni* v. *EPA*, 674 F. Supp. 405 [N.D.N.Y. 1987].

[3]William H. Ethier, "Adverse Decision Will Not Be Reviewed by the U.S. Supreme Court," National Association of Home Builders, Washington, D.C., 1989, p. 5.

[4]Abigail Fair, "Wetlands Save You Money," *ANJEC Report* (Associations of New Jersey Environmental Commissions), Fall 1990, p. 10.

[5]David Salvesen, "Wetlands: Mitigating and Regulating Development Impacts," The Urban Land Institute, 1990, pp. 50-55.

[6]*Ibid.*, pp. 43-44.

[7]The critique was presented in a July 24, 1990, letter to the Honorable Manuel Lujan, Secretary of the Interior, from Professor Warren M. Pulich of the University of Dallas. The letter was included in "Report of the National Association of Home Builders to Secretary of the Interior Manuel Lujan on Problems with the Endangered Species Act," Aug. 6, 1990.

[8]*Ibid.*, Part B, Aug. 1990, p. 2.

[9]Prior to the emergency placement of the warbler on the endangered species list, work was underway in Travis County on a multi-species HCP for the preservation of another bird native to the region, the Black-Capped Vireo, and five species of invertebrates found in local caverns (karsts). The development community had already voluntarily modified its operation to assist in preserving the vireo's habitat, but development was not seriously affected. The emergency listing of the Golden-Cheeked Warbler led to widespread restrictions on development in Travis County, consistent with the intent of the ESA to ensure a listed species' survival. Efforts by a consortium of public and private interests to protect the warbler led to the formulation of a new multispecies HCP that included the six species upon which attention had already been focused.

[10]Kirstin Downey, "Rare Rat Gains in Turf War," *The Washington Post*, Feb. 23, 1989.

Other Factors Affecting Housing Affordability

Affordability problems arise, in large measure, from the macroeconomic considerations, the many manifestations of the NIMBY syndrome, and the local regulatory barriers discussed in Chapters 1 through 4. But these factors are by no means the only ones that affect housing affordability. For low- and very low-income households, poverty is the primary reason that affordability problems exist. For them, regulatory barriers merely exacerbate an already difficult task of obtaining shelter. The housing finance system and Federal tax laws are also extremely important components of the process by which housing is provided in the United States, and both have changed dramatically during the past decade. So also have the programs that provide housing subsidies for the poorest families in America. This chapter discusses the relationship between poverty and housing affordability, and also aspects of the housing delivery system that, although beyond the Commission's purview, provide a broader perspective and context within which Federal, State, and local regulatory barriers affect housing markets. Finally, this chapter describes Federal efforts that focus on serving the needs of households most susceptible to housing affordability problems.

Poverty and Housing Affordability

The problem of affordable housing is closely related to the problem of poverty. More than one-half of poor families, both owners and renters, have affordability problems, as the Commission has defined them. Moreover, until 1983, the majority of families with affordability problems were poor; the number of poor families has declined since 1983, while the number of nonpoor families with affordability problems has increased.

Congress has specified that renters with severe affordability problems—those paying more than 50 percent of income for housing—should receive priority for admission to HUD's major rental assistance programs. Using this measure, almost three-fourths of the families with affordability problems are poor.

The number of poor renter families with affordability problems rose from 2.2 million to 3.7 million between 1974 and 1985, and then decreased to 3.2 million by 1989 (see Exhibit 5-1). These trends parallel changes in the total number of poor renters, which grew from 4.1 million in 1974 to 6.7 million in 1985 before dropping to 6.2 million by 1989. The proportion of poor renters with affordability problems has been basically stable since 1974, with about 55 percent paying more than 30 percent of their income for rent. However, this apparent stability masks increases in affordability problems among unassisted poor renters. While the proportion of poor renters who received housing assistance increased from 20 to 34 percent between 1974 and 1989, the share of unassisted poor renters with affordability problems rose from 66 to 79 percent, and the share of those paying more than 50 percent of income for housing rose from 40 to 59 percent.

Poverty is not a completely reliable measure of income for purposes of examining housing affordability among the lowest income households, because the poverty level is the same across the country while the cost of housing varies dramatically from place to place. Congress has therefore preferred to determine housing needs in terms of income levels in particular housing markets. Most rental assistance is directed at renters with very low

incomes, which is defined as income below 50 percent of the median family income in an area. (For comparison, the poverty line is around 40 percent of the national median family income.) Unassisted very low-income renters who are not poor have about the same incidence of affordability problems as poor renters, but they are only half as likely to pay more than half of their income for rent. Affordability problems are much less common for renters above 50 percent of median income. Indeed, three-fifths of those with any affordability problems, and more than 90 percent of those with severe affordability problems, have very low incomes.

Because either rent burdens above 50 percent of income or severely substandard housing are the conditions qualifying households for preference in admission to rental assistance, such "worst-case" problems among very low-income renters have been studied in some detail. Between 1974 and 1989, increases in the number of households with worst-case problems were attributable to worsening affordability problems alone, because both the number and proportion of income-eligible renters with severely inadequate housing declined. Analysis of worst-case problems over time has also shown that growth in unmet needs was greatest in the West, and that it was concentrated among families, especially families with children. Between 1975 and 1989, the number of elderly with worst-case problems remained near 1.1 million, while the number of families with severe problems grew from 1.1 million to 2.1 million.

Exhibit 5–1
Affordability Problems Among Very Low-Income Family and Elderly Renters, by Income, 1974-1989
(Households in Millions)

Family Income	1974	1980	1985	1989
Below Poverty	4.1	5.6	6.7	6.2
Receiving Housing Assistance	0.9	1.4	2.1	2.1
Unassisted:				
Rent Burden > 30% of Income	2.2	3.1	3.7	3.2
Rent Burden > 50% of Income	1.4	2.1	3.0	2.4
Not Poor, Very Low Income	3.3	3.5	3.1	4.1
Receiving Housing Assistance	0.5	0.7	3.1	4.1
Unassisted:				
Rent Burden > 30% of Income	1.5	1.7	1.7	2.3
Rent Burden > 50% of Income	0.4	0.5	0.8	1.0

Source: Annual and American Housing Surveys, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Washington, D.C.

The Housing Finance System

During the 1980s, the housing finance system was radically transformed in response to the inflation of the preceding decade and to the new computer and communications technologies. The roles of major actors in the system have changed, both quantitatively and qualitatively.

Savings and loan associations (S&Ls), long the major source of funds for home mortgages, now play a less important role in the mortgage market, for several reasons. Tax advantages that used to accrue to S&Ls and other thrift institutions for investing a large proportion of their portfolios in mortgages or mortgage-backed securities were eroded substantially through the 1980s, and eliminated entirely by the Tax Reform Act of 1986. Concomitantly, thrifts were allowed to diversify their lending activities during the early 1980s, although the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) partially reversed the liberalization in 1989.[1] Technological changes have also affected the role of S&Ls by fostering the separation of mortgage origination and servicing from mortgage lending. Where traditional thrift institutions originated mortgages to hold in their own portfolios, now many S&Ls typically originate mortgages and sell them to other investors.

As the importance of the S&Ls has declined, other institutions have become more prominent. Mortgage bankers and commercial banks are as adept as the thrifts at originating mortgages; commercial banks originated more home mortgages than thrifts for the first time in 1989, and have maintained their new prominence since then. Pension funds and life insurance companies invest in mortgages to a greater extent than they did a decade ago.

As the strength of the S&Ls has eroded, the secondary mortgage market has become more important. The changes in the secondary market have provided the impetus and the vehicles for many other institutions to increase their involvement in the mortgage market. A much larger share of home mortgages is now purchased by the secondary market institutions (62.1 percent in the 3rd quarter of 1990, compared with 30.7 percent in 1980 and 20.3 percent in 1970),[2] and the institutions themselves have increasingly functioned as mortgage market intermediaries rather than investors in mortgages. They now convert mortgages into mortgage-backed securities, instead of holding them as assets in their own portfolios.

Mortgage-backed securities were developed in the 1970s and refined in the 1980s. The Government National Mortgage Association (Ginnie Mae) introduced the mortgage-backed security in 1970; today it securitizes virtually all Federal Housing Administration (FHA) and Department of Veterans Affairs (VA) originations, which are about 16 percent of all originations. The Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) securitize another substantial fraction of annual mortgage originations. The market influence of Freddie Mac and Fannie Mae extends well beyond the number of loans they buy or securitize; their underwriting standards for primary loans are widely adopted and amount to national underwriting standards for a substantial fraction of all mortgage credit.

In addition, the securities markets now seldom leave mortgage-backed securities in their original form. Typically, the markets turn them into securities with multiple maturity classes, so that investors can reduce the risk that prepayment will occur at an inconvenient time, particularly when interest rates fall. The first such securities, collateralized mortgage obligations, were issued in the early 1980s. Roughly 90 percent of the mortgage-backed securities created by Freddie Mac and Fannie Mae are now immediately repackaged into Real Estate Mortgage Investment Conduits (REMICs) to reduce the prepayment risk.

Some relatively new and smaller entities are now participating in the secondary market. These institutions focus almost exclusively on affordable housing needs. For example, the federally chartered

Neighborhood Reinvestment Corporation (NRC) receives annual congressional appropriations so that its Neighborhood Housing Services of America can purchase loans to assist otherwise "unbankable" persons or households. Likewise, the private, non-profit Local Initiatives Support Corporation (LISC), through its Local Initiatives Managed Assets Corporation (LIMAC) subsidiary, maintains a secondary market fund designed to increase the flow of investment funds into neighborhoods. It does so by purchasing some of the loans made by LISC and other organizations.[3]

Whether the accumulated changes in the secondary market have raised or lowered the price of mortgage credit in general is not clear. The net effect is probably not large, in either direction. The widespread concern of a decade ago—that other lenders would not "fill the gap" if the S&Ls diversified and held fewer mortgages—now appears to have been overstated; other investors have moved into the mortgage market to supply funds for housing.

Technological progress and the growth of the secondary market have also replaced the former local or regional mortgage markets with a national mortgage market. Geographic differentials in mortgage rates have effectively disappeared. This change has improved affordability in areas that have traditionally suffered an imbalance between mortgage demand and the supply of funds, notably rural areas and rapidly growing regions such as California.

The transition to a new housing finance system is imposing costs and creating problems in certain respects. FIRREA limits the amount an S&L can lend to any one borrower, relative to the S&L's capital. This restriction is forcibly changing the borrowing practices of some builders, requiring them to develop new relationships with new lenders. At the same time, financial regulators have forced some S&Ls and banks to adopt stricter underwriting criteria for real estate loans. The disruption of traditional lending relationships and the stricter lending rules are major factors contributing to a credit crunch over the past year. At least in some markets for some period of time, as developers compete for loanable funds, the new rules are likely to make housing less affordable.

The Tax System

The Federal tax system helps to determine the price of housing by influencing both total investment in housing and the division of that investment between owner-occupied and rental properties. The tax system can favor or discourage housing in general as compared with other forms of investment. It can also favor or discourage homeownership or renting by providing special tax benefits for one or the other.

The Federal tax system changed fundamentally in the 1980s, and the changes increased the costs of housing as compared with other investments. Both the 1981 and 1986 tax law changes lowered marginal income tax rates and raised personal exemptions and standard deductions. While these changes were desirable in themselves, they reduced the relative tax advantages of investment in homeownership by reducing the value of the mortgage interest and property tax deductions. The marginal, after-tax cost of homeownership for a family of three earning $40,000 is 8.2 percent higher under the Tax Reform Act of 1986 than under prior law.[4] It is not likely, however, that these changes have substantially affected affordability for first-time homebuyers.

The tax law changes in the 1980s also had important effects on rental housing. The 1981 changes allowed for accelerated depreciation on multifamily housing investment, contributing to a rental housing construction boom in the early 1980s. The Tax Reform Act of 1986 sharply reversed course. It eliminated accelerated depreciation, increased the depreciation period for all real estate to 27.5 years, ended the deductibility of construction-period interest and taxes in the year they were incurred, and restricted the deduction of passive losses. These changes increased the cost of investment in rental housing. The National Association of Home Builders has estimated that, as a consequence, rents would have

to increase by between 15 and 20 percent to maintain the same rate of return on rental housing investments.[5]

In addition, the Tax Reform Act of 1986 limited the amount of "private-purpose" tax-exempt bonds that State and local governments could issue, including both industrial development bonds for rental housing and mortgage revenue bonds for homeownership. It also tightened the income and rent restrictions for families eligible to benefit from these bond programs. These changes potentially increase the cost of housing as compared with all other investments.

The new tax laws dramatically affected multifamily housing production in the 1980s. The 1981 Act generated a boom in apartment production, and concomitantly high rental vacancy rates. Since the 1986 Act was passed, construction has been dropping steadily. Neither Act has had a clearly discernible effect on affordability, however, if only because neither was in force long enough for rents to adjust fully.

The tax reforms of the 1980s have so far had more adverse impact on the after-tax cost of homeownership than on the cost of renting, but ultimately renters will be affected more adversely. The major tax benefit of homeownership is the exclusion of the rental value of the home from the owner's income; this benefit did not change as a part of the reforms, although its value declined as tax rates were reduced. Both owning and renting housing became more expensive, but there appears to be little change in their cost relative to each other.

Actions to Address Affordability Problems

Besides these broad changes in public policy, the Federal Government has undertaken specific efforts to help families and neighborhoods for whom, and where, affordability is most pressing. To some extent, these efforts mitigate adverse consequences for housing affordability resulting from the fundamental changes during the past decade, typically by bringing down the mortgage interest rate paid by homeowners or rental property owners. These efforts attempt to increase the role of the private sector in providing affordable housing, either by incentives or requirements. Many of them focus on the neighborhoods in which low- and moderate-income families live.

Community Reinvestment

As discussed in Chapter 3, one of the important tools that has been used to stimulate the flow of resources to American cities is the Community Reinvestment Act (CRA), which requires that lenders make affirmative efforts to lend in low-income neighborhoods.[6] It has been in existence since 1977 and was strengthened by FIRREA in 1989.

Many of the early agreements reached pursuant to CRA obligations focused solely on mortgages for single-family housing. More recent agreements have increasingly concerned both multifamily and commercial lending in poorer neighborhoods. In addition, banks have found that taking equity positions in neighborhood housing developments allows them to use Low Income Housing Tax Credits, which both improves their rates of return on the investments and contributes to satisfying CRA requirements.

The need to comply with CRA requirements and the availability of secondary market purchasers (especially Fannie Mae and Freddie Mac) have induced some lenders, including mortgage bankers, to become active in inner-city lending. In New York, for example, one mortgage banker, Norstar Mortgage Company, originated about $100 million in subsidized, single-family loans between mid-1988 and mid-1990.[7] Other activities, some of which may be attributable to actual or expected CRA challenges, include a commitment by California banks to provide almost $8.5 billion for community lending beginning in 1990 and a similar agreement by Massachusetts banks to commit between $5 billion and $6 billion.[8]

Federal Housing Finance Board Programs

Another effort to encourage investment in housing for low-income families is contained in the 1989 FIRREA legislation. A Federal Housing Finance Board (FHFB) was created to be the new regulator of the Federal Home Loan Banks; the Federal Home Loan Banks borrow in the capital markets and make advances to S&Ls that belong to the Federal Home Loan Bank System, providing an alternate source of funds. FIRREA established two programs under FHFB intended to answer criticisms that the lending industry was not doing enough to reduce the housing affordability problem.[9] The first, the Community Investment Program, provides special cash advances from the Home Loan Banks to S&Ls to undertake community-oriented lending. The loans are intended for housing for homeowners or renters whose income does not exceed 115 percent of area median income, and for commercial and economic development activities that benefit low- and moderate-income families or are located in low- and moderate-income neighborhoods. Mortgages for which there are no readily available secondary markets receive priority.

The advances to fund these community-oriented projects are provided at the Home Loan Banks' cost of funds plus administrative expenses. During 1990, the Banks provided $500 million to fund 10,257 single-family homes and 5,909 rental units. The advances were priced between 25 and 35 basis points below the normal cost of funds.

FIRREA also requires each Federal Home Loan Bank to create an Affordable Housing Program. This program encourages member institutions to originate loans for low- and moderate-income housing at below-market rates of interest. Each Bank provides subsidized advances to members willing to use the money to reduce the interest rate on long-term loans to finance home purchases or rehabilitation by families with incomes at or below 80 percent of median. Members also qualify for advances to finance the purchase, construction, or rehabilitation of rental housing in which at least 20 percent of the units will be occupied by, and affordable to, households with incomes at or below 50 percent of area median income for the remaining useful life of the property or the mortgage term. Priority is given to loans for homeownership and for the purchase or rehabilitation of housing held by the Federal Government and housing sponsored by any nonprofit organization, State, housing authority, or State housing finance agency.

The funds for this program are provided by each Federal Home Loan Bank as a fraction of its net income, subject to statutory minimums for the whole system. In 1990, the Federal Home Loan Banks made available $80 million, which helped to finance $1.2 billion in affordable housing. As a result of this program, more than 24,000 single- and multifamily units will be created.

Mortgage Revenue Bond Financing

Mortgage revenue bonds (MRBs) are one category of "private-purpose" tax-exempt bonds issued by State and local governments for single-family housing. Other categories of private-purpose tax-exempt bonds include small-issue industrial development bonds and rental housing bonds. Bond volume is restricted to $50 per capita per year, or a maximum of $150 million for each State for all private-purpose issues.

Mortgage revenue bonds have been the primary financial vehicle by which States, through their housing finance agencies, have provided below-market-rate loans to homebuyers, thus addressing statewide housing affordability problems for some residents. Proceeds from MRBs have been used by moderate-income, first-time homebuyers to purchase homes with prices less than 90 percent of the average area purchase price. According to the National Council of State Housing Finance Agencies, States participated in a total of $4.5 billion in new money issues in 1989, generating more than 94,000 loans.[10] Approximately $70 billion in MRBs have been issued since their inception.

States have been authorized to issue mortgage credit certificates (MCCs) in lieu of MRBs because the bonds are relatively inefficient subsidies to first-time homebuyers. MCCs entitle homebuyers to income tax credits for a specified percentage of the interest on qualified mortgage loans. In this way, the entire amount of the subsidy flows directly to the homebuyer without being partly diverted to financial middlemen or bondholders.

Federal Property Disposition

The Federal Government has an inventory of vacant housing units from defaults and foreclosures on federally insured home mortgages and failed S&Ls. Some of these properties may be used to provide affordable housing for low- and moderate-income households. HUD has developed three initiatives for disposing of its foreclosure-acquired properties in ways that promote housing affordability. The first is the direct sale program under which HUD offers single-family homes that it acquires to qualified homeless providers at a discount of normally 10 percent below market value before HUD lists the homes for sale to the general public. The second is a lease program, with option to purchase, under which HUD offers HUD-owned homes to homeless providers at a cost of $1 per year. There is also a demonstration program under which HUD provides assistance to governmental entities and private, nonprofit organizations to provide housing and supportive services for the homeless. If an applicant is interested in purchasing HUD-owned homes in connection with this program, HUD will enter into a 6-month lease-purchase option with a public housing authority or other governmental entity under which the property is effectively held off the market while the applicant applies for acquisition assistance.

The Resolution Trust Corporation (RTC), the second major holder of foreclosed properties, has two programs to increase housing available for low- and moderate-income families. The Affordable Housing Disposition program allows only moderate-, low-, and very low-income families, nonprofit organizations, and State and local governments to buy eligible single- and multifamily properties for the first 90 days that the property is for sale. The RTC had sold almost 2,700 homes to poor families by December 30, 1990.

The RTC may also transfer properties with no reasonable recovery value to Federal agencies, State or local government agencies, or nonprofit organizations for public use. This use includes housing for the homeless, day care centers for children of low- and moderate-income families, and other public uses designated by the Secretary of Housing and Urban Development. By early 1991, eight of these properties had been given to nonprofit entities. More are expected to be placed in this program in the near future.

The Affordability Problems of Low-Income Renters

The Commission does not expect that the removal of regulatory barriers to affordable housing will solve all the affordability problems faced by the poor, most of whom are renters. Reducing barriers will ease their problems, but reducing barriers alone will not suffice. Their affordability problems are too severe. Clearly, there is a need for direct housing assistance for the poor.

Federal Rental Assistance

The Federal Government has provided rental housing assistance to low-income families for more than 50 years, and these programs have made decent housing available to many of the poorest families in America. Originally, the housing problems of the poor were regarded as primarily physical problems, and housing needs were defined in terms of housing quality. Gradually, however, as housing conditions improved, affordability concerns have become more important in public policy. In the 1980s, Congress redefined the priority needs for housing assistance to include affordability—paying more than half of

income for rent and utilities—as well as housing without structural adequacy and functioning plumbing and heating systems. Affordability has increasingly become the major, and for many the only, housing problem. In 1989, such excessive rent burdens were the only housing problem for almost three-fourths of the 5 million very low-income renters with priority "worst-case" housing problems.[11]

To respond to these needs, Federal housing assistance during the 1980s shifted to vouchers and certificates for use in the existing stock, thus assisting more families for given levels of expenditure than would be possible with new construction or substantial rehabilitation. In addition, light rehabilitation of the existing stock has received more attention.

Between 1980 and 1990, the number of renter households receiving assistance rose from 3 million to 4.4 million,[12] with more than half of the increase in certificates and vouchers, and rental assistance was more narrowly targeted to the poorest, most needy families. More than 80 percent of the additional subsidies went to families with incomes below 50 percent of area median income.

The National Affordable Housing Act of 1990 established new programs to complement further increases in certificates and vouchers and to preserve existing assisted units in the affordable stock. The HOME Investment Partnership program will provide funds through which States and localities can expand affordable rental housing opportunities for low- and very low-income families, especially through the rehabilitation of substandard rental housing.[13] Homeownership and Opportunity for People Everywhere (HOPE), also created by the Act, provides grants to resident management groups, nonprofit organizations, and local agencies to promote homeownership of public and Indian housing projects and federally acquired single- and multifamily properties.[14]

Prepayment of Federally Subsidized Mortgages

According to the original terms of their contracts with the Federal Government, private owners of 360,000 federally assisted low-income multifamily housing units become eligible to prepay their mortgages over the next 15 years and convert their properties to market-rate rental housing or other purposes. In so doing, they would terminate their HUD-controlled and subsidized rent levels. Several witnesses who testified before the Commission were concerned about the near-term effects of this development on affordable housing opportunities, because the majority of these properties were built in the early 1970s and are, therefore, eligible for prepayment in the early 1990s.

Legislation passed in 1987 placed a temporary moratorium on prepayments, severely limiting the rights of property owners, and left tenants uncertain as to their position after the moratorium expired. The 1990 National Affordable Housing Act created prepayment provisions, based on recommendations made by Secretary Kemp as part of the HOPE initiative, to ensure that lower income households would continue to have access to most of this affordable housing, in some cases through homeownership programs. The prepayment provisions attempt to compensate, on a fair basis, owners who are seeking to prepay their mortgages, but only if the units remain part of the affordable housing stock. In exchange for retaining affordability restrictions for the remaining useful life of the housing, owners will be offered additional financial benefits, based on the current market value of their properties. The major incentives are an increased annual rate of return on owners' revalued equity, an equity take-out loan, or both. These incentives are supported through increases in allowable rents, and Section 8 assistance is provided to lower income families to ensure that their rent burdens do not increase above 30 percent of their income. The incentives package cannot exceed an amount equivalent to rents at 120 percent of the Fair Market Rents for the local market area under the Section 8 Existing program.

If owners decide to pursue prepayment, they will be required to provide a right of first offer to the tenants, to allow them to purchase the property for resident homeownership, and also to other entities that are willing to retain affordability restrictions for the remaining useful life of the housing. Owners are free to prepay mortgages if they receive no bona fide offer.

The prepayment provisions also assist tenants in the purchase of properties with grants to resident councils to cover the costs of acquisition and for rehabilitation, technical assistance, and other expenses. Nonprofits and State and local public agencies acquiring properties for continued use as affordable rental housing will also be eligible to receive grants to cover the purchase price as well as other incentives. For-profit entities will be eligible for mortgage insurance for an acquisition loan and other incentives to ensure the property remains affordable to low-income households. Although most owners are expected to accept the incentive package or sell properties for continued use by low-income households, existing tenants are still protected when these events do occur. Eligible tenants can receive Section 8 vouchers or certificates, special-needs tenants and households in low-vacancy areas are guaranteed continued occupancy at affordable rents for 3 years, and all tenants who choose to move can receive relocation assistance. The National Affordable Housing Act authorized more than $1 billion over 2 years to preserve these units, encourage resident homeownership, and protect tenants affected by prepayments.

Low Income Housing Tax Credit

One feature of the Tax Reform Act of 1986, the Low Income Housing Tax Credit (LIHTC), was designed specifically to foster production of rental housing for low-income families, replacing the tax benefits of the prior law such as accelerated depreciation, favorable capital gains treatment, and the ability to use passive losses to shelter income from any source.[15] The value of the tax credits is not subject to marginal tax rates, that is, the credits are not deducted from before-tax income, as were many of the pre-1986 investment incentives, and they can shelter both passive and non-passive income (up to the maximum limits). The LIHTC is a significant improvement over previous tax incentives for rental housing and is a major source of assistance, administered by States, for those with housing affordability problems. Because the credit goes only to units occupied by low-income families, it creates a direct incentive to serve these households. The statute defines low income and sets limits on allowable rents, to ensure that low-income families benefit from the credit. In addition, States are given the authority to allocate credits to their most important needs, and the program encourages the participation of nonprofits.

In 1989, the States allocated $307 million in housing credits. This amount is the equivalent of more than $3 billion in budget authority for housing assistance. In its first 3 years, the credit supported the construction of 111,000 units and the rehabilitation of another 95,000 units. A HUD evaluation found that the LIHTC has been able to serve a fairly wide range of markets. The typical household has an income well below the allowable program maximum, set at 60 percent of the local median family income: 68 percent of all households receiving credits had incomes below 50 percent of the local median. Investors earned an internal rate of return that averaged between 17 and 19 percent, after taxes, for the typical tax credit unit.

Although the LIHTC was originally authorized for only 3 years, Congress has extended it at least through 1991. Bills have been introduced in both Houses of the 102nd Congress for a permanent extension. In some cases, the bills would also extend application of the LIHTC to other activities, such as rehabilitation for certain lower income families. While the credit has been fully utilized since 1989, low-income housing could be provided more efficiently if the credit were made permanent, so that housing producers would not be faced with annual uncertainty over whether the credit would be continued.

Conclusion

Regulatory barriers are not the only factors affecting housing affordability, and removing regulatory barriers will not resolve all the housing affordability problems in the United States. Significant and substantial problems would remain for the poorest families in society. At the same time, however, the regulatory barriers that now exist are exacerbating the problems of the poor. The Commission believes that a serious effort to reduce regulatory barriers is an essential component of an overall strategy to promote housing affordability.

Part II of this Report establishes the appropriate policy environment in which reform can occur and proposes solutions for effective removal of regulatory barriers.

Endnotes

[1] The Financial Institutions Reform, Recovery, and Enforcement Act, Public Law 101-73, Aug. 9, 1989.

[2] "Annual Gross Flows of Long-Term Mortgage Loans," U.S Department of Housing and Urban Development, Office of Financial Management, Dec. 8, 1988, Aug. 15, 1989, and March 28, 1991. These data cover one- to four-family mortgages purchased by either Federal credit agencies or those creating mortgage pools. The vast majority of the purchases are by Fannie Mae, Freddie Mac, and Ginnie Mae.

[3] As reported in a LISC news release (undated), LIMAC is to become the first nonprofit group to offer market-rate securities backed by pools of community development loans.

[4] *Home Building After Tax Reform: A Builder's Guide*, The National Association of Home Builders, Washington, D.C., Nov. 1986, p. 7.

[5] *Ibid.*, p. 17.

[6] CRA, along with the Home Mortgage Disclosure Act (HMDA) of 1975, was intended to stop redlining, the process by which lenders deny commercial or residential credit to certain (usually poorer and/or minority) areas. CRA's original language contained the requirement for financial institutions that were federally insured to "serve the convenience and needs" of their local communities. Some critics of the original CRA suggest that many banks extended only deposit services to meet this requirement. Permission for banks to establish Community Development Corporations (CDCs) was also expected to play a role in addressing redlining. The Federal Reserve Board has supported CDCs, for the institutions it regulates, since 1971. In some places, through the efforts of well-organized community organizations, CRA has been implemented quite effectively. The National Training and Information Center in Chicago, and the Local Initiatives Support Corporation (LISC) headquartered in New York City, are among the locally based organizations that pioneered the use of the CRA challenge provisions to leverage investment.

[7] Jane Moss Snow, "The Community Reinvestment Act Business," *Mortgage Banking*, Vol. 50, No. 8, May 1990, p. 75.

[8] Data provided by the Center for Community Change, Washington, D.C.

[9] The Financial Institutions Reform, Recovery, and Enforcement Act, P.L. 101-73, Section 721, Aug. 9, 1989.

[10] *1989 HFA Homeownership Survey*, National Council of State Housing Agencies, Washington, D.C.

[11] The "worst-case" or priority needs identified by Congress include living in substandard housing, paying more than half of income for rent and utilities, or having been involuntarily displaced. The estimates are based on 1989 American Housing Survey data.

[12] HUD budget data.

[13] Grants will be made available to participating jurisdictions following submission to HUD of a Comprehensive Housing Affordability Strategy (CHAS) that identifies both housing needs and regulatory barriers to affordable housing. Ironically, however, the 1990 Housing Act expressly prohibits HUD from allocating or denying HOME grants to communities based on any local policies or regulatory barrier considerations.

[14] The 1990 Act authorized $1 billion over the next 2 years for implementation and planning grants for this program.

[15] The tax credits are allocated to States and flow to project owners. Investors in qualified projects receive a dollar-for-dollar reduction in tax liability, up to a maximum of $7,000 per year for the 10-year life of the credit subject to certain limitations and exceptions. States are responsible for developing their own allocation and project approval mechanisms, subject to relatively strict targeting requirements contained in the 1986 Act.

Part II:

Commission Recommendations and Implementation Strategy

Commission Recommendations and Implementation Strategy

Part II of this Report presents the Commission's recommendations. The Commission proposes 31 recommendations for Federal, State, local, and private action. These recommendations, if implemented, would provide the legislative and administrative tools for a comprehensive program directed at reducing regulatory impediments to affordable housing. Chapter 6 (Federal recommendations), Chapter 7 (State recommendations), and Chapter 8 (local and private-sector recommendations) present Commission proposals that are intended to be complementary and should be viewed as important elements of a total package of actions necessary for broad-based regulatory reform. The Commission believes that some of these proposals are so essential to any effective regulatory effort that it highlights them below for particular consideration.

If reform is to be achieved, States must be involved more extensively. The Commission envisions the Federal Government as a vehicle for stimulating State (as well as local) regulatory reform efforts. Federal housing legislation should allow HUD to condition assistance to States and localities based upon their barrier-removal strategies. It is inequitable and a waste of taxpayers' money to continue to provide housing assistance to governments that maintain policies limiting housing affordability. Similarly, because States have an especially important role to play, the Commission proposes that Federal housing assistance flowing directly to States be conditioned upon the existence of acceptable State barrier-removal strategies. In addition, States should review and comment upon the barrier-removal plans of their localities. To encourage greater involvement in regulatory decisionmaking and increase the supply of affordable housing, the Federal Government should waive regulations for States that have barrier-removal strategies.

The Federal Government must also set an example in regulatory reform by reviewing its own regulatory system to remove or reform those regulations that have an adverse effect upon housing affordability. To avoid future regulations that restrict affordability, the Commission proposes that every Federal agency prepare a Housing Impact Analysis before proposing any major new rule or regulation. The Analysis would discuss the projected impact of the proposed rule on affordability and any actions that could prevent negative impacts. Federal environmental regulations that fail effectively to balance environmental protection with other social goals can and often do directly drive up the cost of housing. To avoid such outcomes, the Commission recommends comprehensive reform of both national wetlands policy and the Endangered Species Act to ensure proper consideration of housing affordability in the development and implementation of environmental protection policy.

The Commission also believes that many Federal, State, and local regulations limit fundamental rights and protections. The Federal Government has the responsibility to protect such rights, and the Commission recommends that the Federal Government become an active participant in seeking judicial review of excessive or discriminatory development controls and regulations.

All States must assume increased responsibility and oversight for the regulatory decisionmaking processes of their constituent localities. Specifically, the Commission strongly believes that all States should undertake an ongoing action plan, at both the State and local levels, directed at barrier removal. As part of such a strategy, all States should thoroughly review their existing zoning and land-planning systems to remove all institutional barriers to affordability, including limitations or prohibitions constraining the use of housing affordability options such as accessory apartments, duplexes, manufactured housing, and single-room occupancy. States should also continue their ongoing efforts directed at building-code reform, and should consolidate and streamline their own regulatory responsibilities.

Developing and implementing a strategy for acting on these recommendations is, in the view of the Commission, as significant and important as the recommendations themselves. Chapter 9 presents such a strategy, which consists of a widespread effort to educate the public about the price that is being paid for pursuing parochial interests, and details actions that Federal, State, and local governments and private interests should undertake to achieve regulatory reform.

The Federal Role: Stimulating Regulatory Reform

Housing and building regulations and ordinances have traditionally been primarily local responsibilities, for good reason: housing markets are local markets. Many basic phenomena that affect the building process, such as soil conditions or climate, are local. Preferences of local residents should be taken into account, and are best expressed to and through local government. The existing local regulatory system offers choice, flexibility, and community participation that are unique. The importance of these considerations strongly supports the tradition of local responsibility, and implies that development controls will continue to remain primarily within the purview of local government for the foreseeable future.

But local regulation can become parochial regulation. The prevalence of the NIMBY syndrome, combined with the multiplicity of jurisdictions within most metropolitan areas, has resulted in regulatory processes that leave out of account legitimate interests of people who live outside a given community, but who are affected by that community's decisions. Typically in American metropolitan areas, the affected outsiders are less well off than are current residents; sometimes they are members of racial or ethnic minorities. If NIMBY pressure dictates regulatory policy in most or all of the jurisdictions in a market area, then the availability of housing will be lower, the cost of housing will be higher, and middle- and moderate-income families throughout the area will be less well-housed than they would like, and could afford.

Overcoming the NIMBY syndrome therefore requires levels of government beyond the locality to be involved in the building regulatory process, in the interests of all citizens who are affected by the policies of local governments. Those levels include the Federal Government. Historically, the Federal Government has had a small role in regulating housing; for that matter, the Federal role has sometimes been counterproductive.

Federal Initiatives

The Commission believes the Federal Government should foster actions by the States as well as local governments to reduce regulatory barriers, and should especially encourage States to take a broader role in working with their localities to implement reform. This approach does not mean replacing local regulation with Federal regulation. Rather, the Federal Government should encourage, assist, and provide incentives for the removal of existing regulatory barriers and the local and State adoption of policies that promote housing affordability. The Federal Government should undertake actions that inspire the States as well as local governments to reform housing-related regulations.

To initiate and stimulate reform, the Federal Government can incorporate into Federal programs incentives for State and local regulatory reform. It can begin by getting its own house in order, by establishing affordable housing as a higher priority than it is now, and by ensuring that Federal regulations and programs do not inadvertently raise barriers to affordable housing. In addition, the Federal Government can remove those special regulatory barriers that limit housing investment in central cities. And it can work actively with other levels of government and with private individuals and organizations, providing them with information and bringing them together to develop a better understanding of issues and concerns, so they can resolve their differences.

Integrating Barrier Removal Into Housing Programs

To stimulate regulatory reform, Federal housing programs should incorporate incentives for State and local barrier-removal efforts.

Barrier-Removal Strategies

The National Affordable Housing Act of 1990, for the first time, requires States and localities to begin to address the issue of regulatory barriers. As a condition of receiving assistance under 13 HUD programs, including the new housing block grant (HOME), HOPE Homeownership programs, and Community Development Block Grants (CDBG), the 1990 Act requires States and localities to prepare and to obtain HUD approval of a Comprehensive Housing Affordability Strategy (CHAS). The strategy must explain, among other things, whether public policy affects the cost of housing or the development and rehabilitation of affordable housing in the jurisdiction, or results in economic or racial discrimination.

A number of factors are particularly relevant for the development of that portion of the CHAS associated with regulatory barriers to affordable housing: tax policies, land-use controls, zoning ordinances, building codes, fees, charges, and growth limits. The CHAS must describe the jurisdiction's strategy to remove or ameliorate the negative effects, if any, of such regulatory barriers. The State CHAS is especially important now that a major HUD housing program (HOME) is providing funds to the States for their direct use and allocation. In the past, Federal housing funds most often have been sent directly to localities or to States to pass on to localities. Not only does this new requirement represent an attempt by the Federal Government to encourage more affordable housing in urban America, but the structure of the CHAS itself also emphasizes the importance of removing regulatory barriers to affordable housing.

Although the 1990 Act requires States and localities to begin to address the issue of regulatory barriers, HUD is severely constrained in seeing that reform is actually carried out. The Act specifies that HUD may not disapprove the CHAS or condition financial assistance based upon such policies, no matter how burdensome or costly the barriers may be. In fact, *HUD is expressly prohibited from allocating or denying assistance based upon any local policies, regulations, or barrier considerations. This legislative prohibition vitiates the requirement for a barrier-removal plan and frustrates the purposes for which this Commission was created. Moreover, Section 108 denies judicial review of a CHAS in terms of local governments' treatment of public policies.*

It is both inequitable and contrary to public policy to provide Federal housing assistance to States and localities that choose policies that raise the cost of housing, limit affordability, or result in racial discrimination. Conditioning Federal assistance upon

> Voluntary local compliance with any set of recommendations by this Commission is unlikely for practical as well as political reasons. State action is only slightly less unlikely....Two types of Federal initiatives might provide the necessary impetus. First, changes in the operations, programs, and policies of the Federal Government to set the example....Second,...create incentives...sufficient to alter their decisionmaking behavior.
>
> **Neal Barber, Immediate Past President**
> *Council of State Community Affairs Agencies*

barrier-removal actions is not an inappropriate intrusion into State and local affairs. Historically, one of the most fundamental responsibilities of the Federal Government has been to prevent State and local administrators from abusing the rights of citizens. Conditioning Federal assistance will not supplant State and local administration but, rather, will be a tool to constrain abuse.

The Congress should permit HUD to review the barriers portion of the larger CHAS, and to disapprove the jurisdiction's plan to remove the identified barriers if the plan is unsatisfactory. Disapproval should result in rendering the jurisdiction ineligible for assistance. Although States as well as localities should also be required to submit a barrier-removal strategy as a condition of receiving housing assistance, disapproval of a State strategy should result in denial of housing assistance only to the State, not to localities that otherwise had an acceptable plan.

Recommendation 6-1

Condition Assistance Upon Barrier-Removal Strategies

The Commission strongly recommends that the Congress amend the National Affordable Housing Act of 1990 to allow HUD to condition assistance to State and local governments based upon their barrier-removal strategies.

Expanding the Role of States

The intransigence of local governments that adopt regulatory barriers tied to the NIMBY syndrome will not be substantially loosened until States become strong and vital participants in the regulatory process. The Federal Government should encourage them to do so. Although all regulatory power emanates from the State and is delegated to localities, only a few States have chosen to assume oversight responsibility to ensure that this delegation is exercised for the general welfare of all its citizens. Chapter 7 discusses, in detail, the Commission's views on the State role and presents a comprehensive series of recommendations for State action.

State Review

As all localities are creatures of the State, the State should be encouraged to review and comment on the barrier-removal plan required of localities as part of the CHAS. A few States already review local regulations as part of a housing element or comprehensive planning requirement. To encourage State review of local barrier-removal plans, HUD should, as part of the CHAS approval process, give particular consideration to any comments and recommendations offered by the States. In addition, where States require localities to submit barrier-removal plans to meet State housing or planning goals, Federal law should be modified to permit HUD to accept, if substantially equivalent, the same barrier-removal submission required by the State for use by the Federal government in its own CHAS review process. Such an approach would reduce the paperwork burden placed upon localities and give additional significance to State barrier-removal requirements and reviews.

Recommendation 6-2

State Review of Local Barrier-Removal Plans

The Commission recommends that States be offered the opportunity and be encouraged to review and comment upon the local barrier-removal plan of the Comprehensive Housing Assistance Strategy (CHAS) mandated by the National Affordable Housing Act of 1990.

Federal Housing Assistance to States

The limited role most States have chosen for themselves in the area of regulatory barriers evidences the strong need for the Federal Government to employ creatively its housing assistance programs to encourage expanded State action. Because few HUD housing and community development funds flow directly to the States, however, HUD can currently exercise little direct leverage to stimulate State barrier-removal actions. Even if the Congress were to permit HUD to condition housing assistance upon acceptable barrier-removal strategies, as proposed by

Commission Recommendation 6-1, the effect would be minimal. Making additional resources available for State housing activities that would be contingent on their housing strategies would increase incentives for State action.

The Federal Government does have, however, two highly significant State housing programs that are not administered by HUD but are, rather, created by Federal tax law and are administered by the Treasury Department—housing bonds, which are either mortgage revenue bonds (MRBs) for single-family homeownership or industrial revenue bonds for multifamily housing, and the Low Income Housing Tax Credit (LIHTC).

Mortgage revenue bonds, now known as qualified mortgage bonds, are tax-exempt bonds issued primarily by State housing finance agencies to provide mortgages at below-market interest rates to first-time homebuyers. About $80 billion of such bonds have been issued, most since 1980, to finance about 1.3 million housing units. States also issue multifamily bonds for rental projects for low- and moderate-income families. The Tax Reform Act of 1986 set total issuance ceilings for all private-purpose bonds, not just MRBs, based upon each State's population.

The Tax Reform Act of 1986 also created the Low Income Housing Tax Credit. In place of previously available tax preferences, the 1986 Act provides for 10-year tax credits to support the development and rehabilitation of low-income rental housing. As with MRBs, the legislation sets State LIHTC ceilings based upon State population. To receive an allocation from the State's credit authority, a project owner or developer must apply to the designated State allocation agency.

Authority both for the issuance of MRBs and for the LIHTC expires at the end of fiscal year 1991. The Commission believes that the Congress should make such authority permanent.

While these two programs have made the States major players in the provision of low- and moderate-income housing, States are not currently required to participate actively in removing or reforming regulatory barriers that raise the cost of housing, thereby reducing the effectiveness of Federal housing subsidies.

The Commission believes that it is both counterproductive and a waste of taxpayers' money for the Federal Government to provide substantial housing subsidies, without requiring a commensurate effort to reduce governmentally created barriers to affordability. If States receive these substantial Federal housing assistance subsidies, they should be subject to the same CHAS requirements for barrier removal to expand the availability of affordable housing that the Commission recommends should be required of HUD programs.

Chapter 7 details those barrier-removal actions the Commission believes should condition Federal housing assistance to States. At a minimum, all States should have comprehensive barrier-removal plans that provide for State as well as local reform, including new enabling legislation, direct State action, and model codes and standards (Recommendation 7-1); plans for comprehensive zoning and land-planning reform (Recommendation 7-2); reform of subdivision ordinances, building codes, and impact fees (Recommendations 7-6, 7-7, and 7-10); and a strategy for eliminating regulations that discriminate or prohibit a variety of housing types and densities that can improve affordability (Recommendation 7-11).

Recommendation 6-3

Federal Housing Assistance to States

The Commission recommends that the Congress make permanent the authority for both mortgage revenue bonds and the Low Income Housing Tax Credit (LIHTC). As part of such legislation, the Commission strongly recommends that the portion of each State's allocation of private-issuance bond authority used for single-family mortgage revenue and multifamily housing bonds, as well as the State allocation of LIHTC authority, be contingent upon the State having an approved barrier-removal plan as part of the Comprehensive Housing Assistance Strategy (CHAS) required by Title I of the National Affordable Housing Act of 1990. States without

approved barrier-removal plans would forfeit tax-credit authority, as well as that portion of private-issuance bond authority that is used for housing purposes; and that authority would be redistributed to States with approved plans.

State Incentives

A balanced program directed at stimulating increased State responsibility for regulatory reform should also include carefully selected incentives.

Regulatory Flexibility

Relaxing various Federal requirements might encourage States to press for reform. Added flexibility at State and local levels in using Federal program funds and conducting reviews has been suggested in Commission testimony as such "carrots."

One model that would provide added flexibility would create an interagency Affordable Housing Regulatory Review Board (AHRRB) as a mechanism to expedite the granting of waivers of or adjustments to Federal regulations, that could increase the supply of affordable housing in States with barrier-removal programs.

The AHRRB would review major regulatory problem areas and develop promising alternatives. It could evaluate proposals for waivers according to each agency's rules and criteria. It would also be desirable to monitor whether such waivers do, in fact, appreciably reduce the cost of housing. A number of actions, particularly in the environmental area, could be taken. For example, participating States could be delegated responsibility for enforcing wetlands regulations under the Clean Water Act.

Recommendation 6-4

Regulatory Incentives for States

The Commission recommends that a variety of administrative and regulatory incentives be provided to States that establish and implement satisfactory barrier-removal strategies. Specifically, the Commission recommends that the Administration establish an interagency Affordable Housing Regulatory Review Board to provide, in participating States, waivers of or adjustments to Federal regulations to increase the supply of affordable housing.

State Planning Grants

No State currently exercises anything approaching the oversight of, and review responsibilities for, its constituent jurisdictions to the level envisioned by the Commission. Except in the areas of environmental regulation and building codes, only a handful of States exercise any direct authority or responsibility over development regulation. Implementation of the Commission's recommendations would impose administrative and programmatic burdens for which many States will be unprepared. Because the proper exercise and delegation of the police power make this an appropriate State responsibility, the Commission recognizes that most States will initially find it difficult to assume this new role.

The Federal Government can provide limited financial assistance to States in developing the capacity and expertise to initiate barrier-removal programs. Previous HUD efforts that provided assistance to States and localities in comprehensive planning were instrumental in developing effective local planning and community-development capacity. Other Federal agencies, such as the Departments of Energy and of Health and Human Services, currently provide funds to develop State energy and health planning functions.

Recommendation 6-5

State Barrier-Removal Planning Grants

The Commission recommends that the Congress enact legislation to provide States with funding assistance on a cost-sharing basis for 3 to 5 years to plan and initiate comprehensive programs of barrier removal and reform at both the State and local levels.

Recognizing Affordable Housing as a Major Federal Concern

Many Federal rules and regulations have a substantial impact upon the cost of housing. If regulatory reform is to be achieved, the Federal Government must take a leadership role by getting its own house in order. As the level of government least affected by the NIMBY syndrome, the Federal Government has the responsibility to demonstrate to State and local governments that an effective balance can be found between the protection of other societal goals and housing affordability.

Too often, Federal agencies promulgate regulations without due consideration of costs, especially when the goal is to protect health and safety. Inadequate attention is paid to exploring less burdensome alternatives. If at all possible, Federal agencies should seek marketplace solutions rather than highly regulatory approaches. When considering regulation, cost-effectiveness should be the yardstick for evaluating the acceptability of regulatory solutions.

At the Federal level, housing is regulated by upwards of 20 Cabinet departments and independent agencies, creating a regulatory maze. Three or four different agencies may be involved in administering a single regulatory issue such as wetlands. Although the causes of overlapping jurisdictions are understandable, given the different missions of agencies, zealous pursuit by these agencies of their own agendas easily gives rise to confusion and conflict. When an agency that does not perceive itself as having housing responsibilities advances a regulation that has an effect on housing costs, the agency's regulatory analysis does not generally consider the effects on housing.

The Federal Government as Example

To set its own house in order, the Federal Government should first review existing rules and regulations that adversely affect housing affordability, and initiate procedures to minimize these effects in future regulations. Agencies promulgating major rules should have to account for the impacts of those rules on housing affordability.

Housing Impact Analysis

For every major rule, the promulgating Federal agency should prepare a Housing Impact Analysis. This Analysis should discuss, indepth, the projected impact of the rule on housing and land costs, supply, and demand; alternatives that were considered; and possible actions the agency could take to ameliorate any negative impacts. Unlike Environmental Impact Statements, the Analysis should be limited to administrative rules and regulations, and would not cover individual projects. A Federal Housing Impact Analysis could also serve as a model for State and local governments.

> It is time for government, industry, and the public-interest sectors to learn to work together on regulatory matters....HUD, as the leading housing agency, and other agencies involved with housing regulations should make use of negotiated rulemaking....While not all issues are susceptible to negotiations, more could be resolved in this way....[B]etter rules emerge from the give-and-take of negotiations.
>
> **Kent W. Colton, Executive Vice President**
> *National Association of Home Builders*

HUD could develop the criteria and format for the Analysis and be assigned responsibility within the executive branch for review and comment. Initially, this Analysis should be included as part of the broader regulatory impact analysis currently required by Executive Order No. 12291. Because decisions made pursuant to an Executive order are not subject to judicial review, the Congress should also enact legislation specifically mandating a Housing Impact Analysis that would be subject to such review.

In addition to considering the impact on housing affordability of individual new rules, the cumulative effect of numerous regulations should be addressed. No system is in place for monitoring the aggregate effects of all rules on the cost and availability of housing. As part of any new legislation, therefore, the Congress should require that each Federal agency conduct a biennial review of all existing regulations to assess their cumulative effect on housing cost and affordability.

HUD's own regulations and procedures regarding the design, construction, or rehabilitation of housing should be subject to the same rigorous review and analysis required of other agencies. The Department should remove all unnecessary, excessive, or duplicative standards that are not demonstrably required to protect health and safety. HUD has made great progress in this area by accepting State and local codes and standards in lieu of the Department's own often unnecessary and excessive requirements. HUD should continue, expand, and accelerate this approach.

Recommendation 6-6

Housing Impact Analysis

The Commission strongly recommends that a Housing Impact Analysis be required of every Federal agency before it promulgates any major rule or rule revision. As an initial step, procedures for the Analysis should be implemented administratively. The Commission also recommends that the Congress enact specific legislation mandating such Analysis as part of the rulemaking process.

Barriers to Central-City Investment

The Federal Government should adopt policies that remove regulatory barriers imposed by racial discrimination, past restrictive lending practices, and the operations of secondary market institutions. Policies should be developed to make inner-city lending part of the lenders' regular, conventional business and not just special demonstration programs. Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) has created new opportunities for HUD regulation of the Federal secondary market institutions and for the expansion of Community Reinvestment Act (CRA)-related activities. The Fair Housing Amendments Act of 1988 has significantly expanded HUD's ability to enforce antidiscrimination laws. These new powers should be energetically embraced.

Recommendation 6-7

Removal of Barriers to Central-City Investment

The Commission recommends that HUD and the Federal financial regulatory agencies develop the means to ensure reinvestment in older urban communities, and protect these communities from racial discrimination in lending and disinvestment. The regulatory agencies should take measures to make conventional mortgages as available as those insured by the Federal Housing Administration (FHA). More specifically: (1) secondary market policy must include a firm, unequivocal commitment to end all forms of discrimination; (2) HUD, as the regulator for Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac), should maintain and enforce at least its current low- and moderate-income and central-city requirements for Fannie Mae, and extend them to Freddie Mac, and should monitor these agencies' compliance with statutory goals for investment in central cities; (3) Fannie Mae and Freddie Mac should monitor and work to ensure the availability of private mortgage insurance on low-downpayment loans of less than $100,000; (4) secondary markets should expand into new kinds of products that

serve the affordable housing market and convert affordable housing demonstrations, as they prove viable, to ongoing programs; (5) the Federal financial regulatory agencies should vigorously enforce the Community Reinvestment Act and the Home Mortgage Disclosure Act; and, (6) HUD and the regulatory agencies should ensure that they are enforcing both the letter and the spirit of current anti-discrimination laws, including the Fair Housing Amendments Act of 1988.

Other Federal Regulations

Other actions are available to the Federal Government to remove barriers to affordable housing. Among them are these three.

Paperwork Reduction

The Office of Management and Budget (OMB) is the regulatory watchdog over all Federal regulations. Much of this authority emanates from the Paperwork Reduction Act, which requires OMB to ensure that most Federal regulations do not mandate unnecessary paperwork. For many years, OMB's authority was considerable and widely respected. Its work shortened and simplified many Federal forms. Last year, however, the U.S. Supreme Court ruled that OMB's authority covers only paperwork *submissions* to the Federal Government, and does not extend to rules that require industry to generate and simply *maintain* paper. Thus, a Federal tax form, such as Form 1040, would be subject to OMB review while one required to be maintained in the workplace, such as a Form W-4, would not.

The housing industry is subject to extensive disclosure and data-collection requirements affecting costs (truth-in-lending, wetlands, endangered species, etc.) that, as a result of this decision, currently do not undergo OMB review. The Congress has the power to amend the Paperwork Reduction Act to restore such OMB review, and the Commission recommends that it do so.

Recommendation 6-8

Amend the Paperwork Reduction Act

The Commission recommends that the Congress amend the Paperwork Reduction Act to clarify that it applies to all Federal paperwork requirements, regardless of whether or not these requirements involve the submission of paper to a government agency.

Accessibility

In fulfilling the requirements of the Fair Housing Amendments Act of 1988, HUD recently promulgated accessibility guidelines for the design and construction of multifamily housing. These guidelines were developed after many months of debate and are just becoming fully effective. The Commission urges HUD to be sensitive to their cost implications, and to recommend any needed change, after carefully monitoring and evaluating their impact on the cost of multifamily housing.

Davis-Bacon Act

The Commission heard extensive testimony regarding the impact of the Davis-Bacon Act on small builders and developers. The purpose of the legislation is to protect the wage rate of workers against reductions arising from competition among bidders for Federal contracts. Since its passage in 1931, the statute has never been adjusted for inflation. Consequently, it covers projects as small as $2,000, which imposes "prevailing wage" rates and extensive data-collection and reporting requirements on the smallest builders and projects.

This costly regulatory burden can be relieved by raising the threshold of covered projects. If the threshold were raised to $250,000, it is estimated that more than 50 percent of all contracts would be removed from the Act's requirements. At the same time, only 15 percent of the dollar value of all contracts would be so excluded.

Davis-Bacon wage rates for residential construction are substantially lower than for commercial construction. Multifamily construction, however, is considered commercial construction under the Act. In order to expand the affordability of federally assisted projects, all lower income multifamily projects covered by the Davis-Bacon Act should be made subject to residential wage rates.

Recommendation 6-9

Amend the Davis-Bacon Act

The Commission recommends that the Congress amend the Davis-Bacon Act to: (1) raise the threshold of covered projects from the present level of $2,000 to $250,000, and (2) treat lower income multifamily housing as residential rather than commercial property.

Environmental Regulations

Beginning with the National Environmental Protection Act of 1969, Federal legislation on air and water quality necessitated that public officials at all levels of government give environmental protection high priority. Prior to NEPA, land-use regulation was exclusively a responsibility of State and local government. As a result of increased awareness of and concern for environmental protection over the past two decades, however, the Federal Government has become an ever more active participant in directly regulating the use of land, and Federal regulations have come increasingly to affect the cost of housing.

Wetlands

Federal regulation of land use is particularly heavy in the area of wetlands protection. Preserving this vital natural resource for future generations is an essential responsibility that must continue and be expanded, but this national objective can be achieved in a less expensive and more systematic manner than is now the case, and at far less cost to affordable housing.

Federal wetlands regulations evolved haphazardly from earlier pollution-control programs and legislation regarding the dredging of rivers and harbors. As additional Federal responsibilities and programs have been added to existing legislation, administrative guidelines have increasingly become a confusing hodge-podge of contradictions. As a result, administrative procedures fail to balance equitably the protection of wetlands resources with the need for affordable housing.

Wetlands regulation is an extremely complex system involving at least six Federal agencies. Although the Army Corps of Engineers is the primary permit issuing agency, it must operate under policy guidelines developed by the Environmental Protection Agency (EPA). As a result of ever-expanding definitions of wetlands to include drained agricultural lands, moist tundra, slightly moist soils, etc., vast acreage is now classified as wetlands. To date, little effort has been made to differentiate between critical and marginal wetlands.

Chapter 4 discussed a number of problems with current policy and procedures the Commission believes should be addressed. EPA policy requires the Corps to deny a permit if "practical alternatives" exist. This provision often means that, as applied to housing, a permit can be denied if the landowner, or some other developer, can theoretically buy another site in the area. Although it is Administration policy that there be "no net loss" of additional wetlands, no clear and explicit long-range strategy states how this objective will be fairly and equitably achieved.

Current policy also fails to differentiate effectively between publicly and privately owned land. It may be in the public interest that privately owned lands remain substantially undeveloped to protect critical environmental resources; if so, the government should purchase such lands, or provide incentives for private owners to maintain them as wetlands. If instead the use of regulatory power seriously diminishes the ability of landowners to receive an adequate return on property, provision should be made for fair and equitable public compensation resulting from a regulatory taking of property.

The existing system also requires duplicative permit applications to both Federal and State agencies. A critical review of all existing wetlands laws and regulations could help to eliminate such administrative complexity, reduce uncertainties about whether lands are to be protected, and balance wetlands protection and the provision of affordable housing. As the advocate of affordable housing within the Administration, HUD should actively participate in the environmental rulemaking and legislative process to ensure a balance between housing and environmental concerns.

Recommendation 6-10

Reform Wetlands Regulations

The Commission recommends a comprehensive assessment of existing wetlands legislation and regulations to eliminate excessive or unnecessary barriers to affordable housing while protecting essential wetlands resources. More specifically, the Administration and the Congress should: (1) develop a wetlands definition, for purposes of regulation, that protects critical environmental resources, streamlines regulation of ecologically low-value wetlands, and allows suitable development therein consistent with a goal of "no net loss"; (2) mandate fair and equitable EPA guidelines that clarify rules on the availability of alternative sites and that also allow for a reasonable period of time in which planning and the search for alternative sites can be undertaken; (3) adopt the use of public and private purchase as well as incentives or compensation to maintain wetlands that are privately owned; (4) develop a clear and explicit long-range strategy defining and implementing the "no net loss" policy; and (5) streamline and simplify Federal regulatory authority and, under appropriate safeguards, delegate Federal regulatory authority to those States that have comparable wetlands regulations.

Endangered Species Act

Society now places great importance on the preservation of species and their habitats. The Endangered Species Act imposes stringent restrictions on the use of private property, however, and has a great impact on the availability and cost of land in high-growth urbanizing areas. The restrictions regarding habitat modification can result in severe limitations, if not outright prohibitions of development activity, on vast areas of private property. When such limitations occur where land is in great demand, the impact upon the cost of land can be very significant.

The Act currently requires the decision as to whether a species is "endangered," and therefore listed for protection, be based on "the best scientific and commercial data available," but no formal standards presently exist as to how available data are evaluated. A standardized review process should be put into place for the evaluation of data in this critical decisionmaking process.

When a species is listed as endangered, the Act provides that a Habitat Conservation Plan (HCP) be developed to ensure effective protection of the species under study. The HCP is a useful tool in reconciling land-use and endangered-species issues, serving as a mechanism that enables "affected parties" such as members of the local business community to examine options for complying with the ESA. Housing affordability and other important societal needs should be carefully considered in the HCP process. The guidelines for the drafting of HCP should clearly provide for giving these factors full weight. In addition, the HCP process should contain provisions for the impartial arbitration of disagreements among participating interest groups, because currently a single Federal agency serves as both the advocate of the endangered species as well as judge of the agreement's acceptability.

It is essential that habitats of endangered species be protected for future generations. As with wetlands protection, however, a comprehensive strategy that severely limits the use of private lands to protect these essential habitats should go beyond the use of police power regulation and include purchase as well as fair and equitable compensation of landowners for excessive regulatory takings.

Recommendation 6-11

Reform the Endangered Species Act and Regulations

The Commission recommends a thorough review of both statutory and administrative provisions regarding protection of endangered species to ensure an adequate balance between protection and other essential social goals. Specifically, the Administration and the Congress should: (1) establish a standardized peer review process for the evaluation of data used in determining which species should be placed on the endangered species list; (2) employ purchase, as well as regulation, with adequate compensation, to protect species habitats; and (3) modify the regulations governing the development of Habitat Conservation Plans (HCPs) so as to ensure that affordable housing and other important societal needs are given full weight in fashioning these agreements and that a mechanism for the impartial arbitration of disagreements between affected parties is included in the HCP process.

Actively Working to Promote Affordable Housing

The Federal Government can take a number of additional programmatic and administrative options to stimulate reform efforts.

Legal Initiatives

Development controls and regulations have a broad and pervasive impact upon many aspects of Americans' daily lives. They affect where people live, how they manage and use their property, what lifestyle and living arrangements they choose, who their neighbors are, and what their residence costs. Yet surprisingly, courts have for the most part been reluctant to intervene and review this exercise of public regulatory power. The Federal Government has an appropriate and necessary role to play as an active resource as well as a participant in litigation regarding development controls and regulations that raise significant constitutional and related legal issues.

Many State and local—as well as Federal—statutes and regulations pose significant statutory and constitutional issues that should receive more intense judicial review and scrutiny than is now the case. A number of legal scholars have raised the distinct possibility that excessive or discriminatory regulations may involve important legal issues. Regulations that do not have a valid public purpose may violate the Due Process Clause of the Constitution. Excessive regulations may amount to a "taking" without compensation; other regulations may violate the Equal Protection Clause barring racial and other forms of discrimination.

State constitutions and enabling legislation often offer similar but broader protections. Many State laws that establish standards of accountability and requirements regarding the "general welfare" of all the citizens of the State may well be violated by exclusionary and restrictive local regulations.

The Federal Government has a constitutional responsibility to protect the rights of individuals, and this protection can arguably be extended to individuals who are harmed by regulations governing the kinds of housing that can be built, where it can be built, and how much of it can be built. HUD and the Justice Department could undertake a joint program to identify cases of excessive or exclusionary regulations in which a favorable resolution would have a significant impact upon removal of regulatory barriers. In some cases, the Federal role might be limited to technical and legal assistance to participants in local litigation. Where significant constitutional issues are at stake, however, it may well be appropriate for the Federal Government to initiate an action or formally participate as a friend of the court.

Recommendation 6-12

Legal Review of Regulatory Barriers

The Commission strongly recommends that the executive branch become an active and continuing participant in seeking increased Federal and State judicial review and scrutiny of excessive and discriminatory development controls and regulations through active legal intervention, technical assistance, and participation as a friend of the court.

Consensus-Building

Any strategy for the implementation of regulatory reform must recognize that regulatory barriers are, to a great extent, the result of a failure of the political process to accommodate and adapt adequately to the housing needs of the have-nots.

The Federal Government can take a leadership role by serving as an honest broker, bringing together groups with differing points of view so that regulatory decisions would be based on a better understanding of the issues from each other's perspective. Both Chapter 8 (Education and Coalition-Building) and Chapter 9 (Implementation) discuss the importance of consensus-building in achieving regulatory reform. As part of any over-all strategy, HUD should work with national and local organizations with an interest in affordable housing to encourage them to reach agreements and to implement these agreements through their respective organizations.

Recommendation 6-13

Building Support for Regulatory Reform

The Commission recommends that HUD initiate a cooperative program with public-interest organizations, industry groups, and State and local governments to build public support and consensus for regulatory reform.

Technical Assistance

State and local government reform efforts benefit from an aggressive Federal program of technical assistance and information dissemination.

Model Codes, Ordinances, and Standards

A comprehensive Federal regulatory implementation strategy must encourage the development of badly needed model codes in areas that present the most severe regulatory problems. Much of the progress that has been achieved over the past 20 years in building code reform has been the result of the development of consensus-based model codes.

Model building codes are widely available, but the value of standardized, up-to-date codes is not always acknowledged or appreciated. Where they are in place, model building codes are of great help to both the building industry and housing consumers.

Progress in the land-use area has been less successful, in part because of uncertainty as to which organizations and which level of State and local government should take the lead in the reform of land-use law and impact-fee standards. Any effective model codes in the land-use area must be consensus-based and developed primarily by those industry, nonprofit, and governmental organizations that work with or regulate land use. The Federal Government has an appropriate and necessary leadership role, however, in stimulating and brokering the process of consensus-based model codes and in disseminating them to State and local governments.

Model statutes for State use are needed particularly in three areas: new zoning enabling legislation containing a fair-share component, model impact-fee standards, and a model land-development and subdivision ordinance. These model codes can be invaluable tools for those States beginning the process of reforming their building-regulatory system.

HUD has extensive experience in facilitating the development of model codes and their application. In 1980, HUD developed model rehabilitation codes in an eight-volume set of guidelines. In 1983, it published another document designed to enhance uniformity of interpretation and application of the provisions of the Council of American Building Officials (CABO) One and Two Family Dwelling Code. Each effort had the assistance of more than a dozen national organizations, including State and local officials and organizations in the building industry. A similar effort is now needed in the area of model codes for land-use and impact-fee reform.

Recommendation 6-14

Encourage Development of Model Codes and Ordinances

The Commission recommends that HUD assume a leadership role and work with government and private-industry groups, such as the American Bar Association, American Planning Association, National Association of Home Builders, National Governors' Association, League of Cities, State community affairs agencies, and others to develop consensus-based model codes and statutes for use by State and local governments. Specifically, the Commission sees a need for a new model State zoning enabling act with a fair-share component, model-impact fee standards, and a model land-development and subdivision-control ordinance.

Information

States and localities also need basic information that would be helpful in reaching out to the public. Getting the right information to the right people was seen by many Commission witnesses as an important step in gaining support for regulatory reform. The principle to follow is simply one of efficiency and effectiveness: good ideas and successful approaches should be shared and disseminated.

One way to do this is through national clearinghouses. Many organizations would be interested in data on the prevalence of regulatory barriers and the effects on availability of affordable housing; new and innovative approaches to the design, construction, and siting of affordable housing units; and regulatory issues facing other communities, as well as successful local regulatory reform efforts. Builders, planners, government agencies, housing advocates, regulatory reformers, attorneys, and many other individuals and groups would benefit by being able to look to centralized sources and databases for written materials, abstracts, and other information on related events.

Recommendation 6-15

Regulatory Reform Clearinghouse

The Commission recommends that HUD work with and support organizations that currently collect information on State and local regulatory developments, such as the National Association of Home Builders, American Planning Association, and State and local governments, to create a centralized, single-source database and clearinghouse for use by housing advocates, builders, State and local governments, attorneys, researchers, and others interested in regulatory reform and barrier removal.

HUD Office of Regulatory Reform

Effective implementation of the many recommendations made by this Commission will require both a concerted effort and long-term commitment by HUD. Development of barrier-reform legislation, review of housing impact analysis, initiation of legal intervention actions, development of model codes and standards, review of State and local barrier-removal strategies, negotiation with other Federal agencies, consensus-building, facilitation, and educational and technical assistance to State and local governments are among the many actions that the Commission envisions will become ongoing responsibilities of HUD.

If regulatory reform for affordability is to have the attention and resources that are warranted, HUD

should establish a separate, adequately funded Office of Regulatory Reform charged with the responsibility of implementing the Commission's recommendations.

Recommendation 6-16

Office of Regulatory Reform

The Commission recommends that the Secretary of Housing and Urban Development establish a separate Office of Regulatory Reform funded and staffed to implement the Federal recommendations of this Report and to assist States and localities in initiating comprehensive programs of barrier removal.

Increasing State Responsibility and Leadership

Recognizing that most regulations affecting housing costs are promulgated at the local level, the Commission believes that local governments should exercise their authority over land use and development in ways that promote affordable housing. Where they do not, or where State actions unnecessarily add to housing costs, the States should exert leadership to resist NIMBY pressures and remove regulatory barriers. States are better positioned than either the Federal Government or local governments to do so. Because no single model exists for accomplishing this task, however, States should have the flexibility to determine how best to respond within their boundaries. This call for State leadership is in the best tradition of the American Federal system, where the States serve as laboratories for democracy and government administration.

> [I]t is quite consistent with our Federal system...that State governments be quite intrusive in preventing parochial behavior by local governments. The decisions by local governments on transportation, education, and housing do affect larger regions.
>
> **Robert C. Ellickson, Walter E. Meyer Professor of Property and Urban Law**
> *Yale Law School*

> Generally, the key actors are the States and you should focus on the structural relationship between the States and local government, in ensuring that a State or regional interest...is reflected in local land-use decisionmaking, where that interest is justified. Stronger involvement of States in matters of greater than local impact may result in greater standards of fairness, more predictability, and less diffusion in regulatory standards.
>
> **Stuart Meck, AICP, Past President**
> *The American Planning Association*

Rationale for Looking to the States

Removal of regulatory barriers to affordable housing can best be accomplished at the State level. Although it is essential that the Federal Government actively promote—and provide strong incentives for—reform, housing markets are simply too diverse to be regulated at the Federal level. Likewise, although most regulation of land use and development occurs at the local level, many local governments are unlikely, for reasons discussed in Chapter 1, to undertake the kinds of regulatory reform that would create a meaningful number of affordable-housing opportunities.

States are in a unique position, for both constitutional and practical reasons, to deal with regulatory barriers to affordable housing. Constitutionally, all authority exercised by units of local government

Increasing State Responsibility

> The State presence in the regulatory area is essential for perhaps two major reasons. First, as the repository of the sovereignty of its citizens, the State is charged with providing for the common good. Building and land-use regulations affect some of the most basic aspects of the life of the citizenry. Therefore, the Commonwealth must assure that the effects of these regulations are what they were intended to be. Second, while we cherish the considerable degree of local autonomy our forms of government provide, parochial local interests may work against the broader purposes for which the regulatory interests were created... Decisions are frequently made by purely local bodies that materially affect the lives and choices of others outside the community. These individuals will themselves have no effective voice in the process used to reach that decision. For the State, the tough choice lies in setting up rules of the game that afford enough latitude to accommodate reasonable local preferences while assuring that those preferences are not made at the expense of the common good.
>
> *States and Regulatory Reform: Avenues to Affordable Housing*
> *Department of Housing and Community Development*
> *Commonwealth of Virginia, Richmond, April 1990, p. 9*

> While no single organization or entity can address the large and diverse affordable housing agenda, the State, with its ability to allocate resources, as well as to influence the regulatory environment, can have a major impact on addressing the affordable housing needs of...people.
>
> *Affordable Housing for the Emerging Maine*
> *The Report of the Governor's Task Force on Affordable Housing*
> *Augusta, September 1988, p. 7*

over land use and development derives wholly from the State. The power to regulate—the police power—is delegated to localities by the State. Thus, even though many regulatory barriers do not result directly from State action, the State clearly has the leverage to influence the primary setting in which they exist. Although the Commission does not advocate direct State involvement in specific development decisions traditionally made by localities, and does not advocate the creation of unnecessary levels of State bureaucracy and review, it does believe that the State has the duty to ensure that local police powers are exercised for the common good for which such delegation is made.

Just as important, however, are practical concerns. Because the State stands in an intermediary position between the Federal and local levels of government, it can see beyond the boundaries of a single jurisdiction while being aware of, and sensitive to, local variations. Such a perspective allows the interests of the entire State population to be represented and served, including those excluded from some communities as a result of regulatory barriers. The State is,

therefore, uniquely situated to undertake reform of the collage of local regulations, as well as the State requirements that overlay them.

Despite the appropriateness of State action, many States are unlikely to remove regulatory barriers to affordable housing in the absence of strong incentives for doing so. For this reason, the Commission recommends Federal incentives for both bringing about reform at the State level and encouraging State action to effect change at the local level. It should be clear that the Commission's objective in promoting State leadership and responsibility is to remove regulatory barriers to affordable housing, and not to produce a net increase in regulatory burden resulting from State actions.

State Initiatives to Remove Local Regulatory Barriers

States can effect the reform of local regulatory barriers to affordable housing in many ways. Some possibilities include legislative action that mandates specific performance, judicial intervention also mandating performance, administrative procedures, inducements for local voluntary action, and combinations of these. Clearly, the conditions, the affordability problems, and the political climate in a State will dictate how that State chooses to expand its leadership and responsibility for regulatory reform.

The actions taken by Massachusetts and New Jersey, although somewhat controversial, illustrate just two of the different ways in which a State interest in promoting affordable housing led to institutionalized systems for removing certain regulatory barriers. In Massachusetts, advocacy for affordable housing began in the Commonwealth's legislature and was later augmented by an executive order of the Governor. In New Jersey, advocacy began with litigation in the State courts and was later institutionalized through legislation. Although no consensus exists that either approach is better, these cases are noteworthy because they represent extraordinary State actions intended to produce significant change at the local level by imposing a process that leads, in some cases, to overriding local decisionmaking.

The Case of Massachusetts

The Commonwealth of Massachusetts became concerned about the impact of local zoning decisions when its program to encourage developers to build affordable housing encountered resistance from localities in the form of building permit denials. In response, the Massachusetts Legislature in 1969 enacted Chapter 774, known as the "anti-snob zoning law." The goal of the law is to ensure that at least 10 percent of a community's housing stock is within the price range of low-income households. The mechanism for accomplishing this goal is to allow redress to builders who have been refused permits to construct locally unpopular types of affordable housing if less than 10 percent of the jurisdiction's housing stock is classified as

> The statute, which was Chapter 774 of the Act of 1969, struck at two evils...regulatory barriers and built-in delays. So well has this program worked in Massachusetts over the past 20 years that I can point to 20,000 units of affordable housing that are presently built and occupied...strictly because of this program.
>
> **Murray Corman, Chairman, Housing Appeals Committee**
> *Commonwealth of Massachusetts*

affordable. The Massachusetts Housing Appeals Committee can override local permit refusals by issuing a comprehensive permit when evidence indicates that the 10 percent goal has not been achieved. Recently adopted amendments to the anti-snob act allow communities that have not met the 10 percent standard, but have demonstrated their commitment to its goal, to have their performance certified by a State-created Review Board. State-certified performance makes it more difficult for developers to win approval of disputed projects from the Housing Appeals Committee, because the burden of proof then lies with the developers.

To provide additional incentives for the provision of affordable housing, the Governor issued Executive Order 215 in 1982. It instructed all State agencies to withhold development assistance awards from communities that were found to be "unreasonably restrictive of housing growth," with special consideration given to a municipality's "efforts to facilitate the development of housing for low- and moderate-income families."

Both the 1969 legislation and the executive order have encouraged localities to allow the construction of affordable housing. Although local zoning ordinances have not actually undergone wholesale change in Massachusetts, vigorous advocacy of affordable housing by the Commonwealth government has helped to weaken their strength as regulatory barriers.

Until recently, the development of housing affordable to low- and moderate-income households and the removal of regulatory barriers impeding such development has come mainly through the State's override powers provided in the anti-snob law. Through the recently enacted Local Initiatives Program, however, localities are being encouraged to take the initiative by removing regulatory impediments and encouraging the production of affordable housing on their own. The State provides the incentive by agreeing to count affordable units so produced toward the 10 percent affordable housing threshold that the anti-snob statute established. When localities reach the threshold, they are exempt from developer appeals to the State. Instead, they are able to retain control over future development within their borders. Local units that are counted toward the 10 percent threshold must have use restrictions that limit the rent or sales prices of the housing to ensure long-term affordability. The Local Initiatives Program is viewed as a way for localities to gain greater control over their development while complying with the State's affordable housing requirements.

The Case of New Jersey

The impetus for reform in New Jersey came from court action filed by civil rights organizations that saw the face of racial and class discrimination in existing one-half-acre zoning laws and in the denial of building permits for higher density housing. In response, the New Jersey courts in the 1970s established the requirement that localities use their zoning powers to ensure that affordable housing for low- and moderate-income households be built.

In the initial case, *South Burlington County NAACP* v. *Township of Mount Laurel*, the New Jersey Supreme Court imposed a mandatory, regional concept of providing affordable housing by ruling that every developing community had a constitutional obligation to contribute its fair share toward meeting its region's low- and moderate-income housing need. The court interpreted the State Constitution to mean that the power to regulate use of property must be exercised in accordance with the general welfare. This regionally based fair-share approach became known as the *Mount Laurel* doctrine.

Subsequent *Mount Laurel* cases expanded the ruling to every community in New Jersey, not just to developing places. The court appointed a three-judge panel to develop fair-share formulas and to implement the decision, in part by seeing that builders who successfully challenged permit denials were allowed to proceed with their projects. To be successful, a challenge had to show that a community was not meeting its fair-share obligations.

In 1985, the State legislature enacted a State Planning Act and the Fair Housing Act; the latter created

a Council on Affordable Housing (COAH), and the courts subsequently transferred responsibility for implementing the *Mount Laurel* decision from the judicial to this new agency of the executive branch. COAH works with municipalities to determine quantitative targets for the amount of low- and moderate-income housing that represents their fair-share contribution to their region's housing stock, and it established both a quasi-judicial administrative law procedure and an informal mediation alternative for overseeing progress toward meeting fair share requirements. In addition, COAH is attempting to develop a clearinghouse that would assist low- and moderate-income households to locate available affordable units and that would offer homebuyer and homeownership counseling.

The courts retain jurisdiction over disputes that arise between developers and communities that have not chosen to be covered by COAH rules. In these cases, the courts can issue, and have issued, builders' remedies that, for all intents and purposes, provide a developer with a blanket permit to undertake a project that includes affordable housing units, but has been denied approval by the community.

What States Can Do, Are Doing, and Should Do

The Commission encourages all States to continue to find ways to remove regulatory barriers to affordable housing. This section presents recommendations for achieving that end. It is inappropriate, however, for the Commission or the Federal Government to mandate a single approach to achieving regulatory reform. Instead, States should have the flexibility to devise their own strategies and solutions, building on existing policies and practices in those States that have already begun to take action. In addition, witnesses offered a variety of suggestions that should stimulate further reform.

These suggestions and examples can be grouped as follows: recognizing affordable housing as a State goal; creating procedures for reconciling local regulations with State goals, eliminating redundant regulations, and resolving development disputes; setting statewide standards in support of affordable housing; eliminating discrimination against certain types of affordable housing options; and providing State financial incentives for affordable housing and local regulatory reform.

Recognizing Affordable Housing as a State Goal

States are in a unique position to promote affordable housing as an official goal. Under the Federal system, States assume primary responsibility for the general welfare of their citizenry and, therefore, it falls to them to consider what factors are most essential to the well-being of the population. Given evidence of unmet housing need or distress resulting from a lack of affordable housing, some States have promoted affordable housing as a welfare goal. A few, such as New York, have written it into their constitution.

Along with identifying affordable housing as essential to the general welfare, States can promote it. Initially, they can require localities to assess, and thus acknowledge, their affordable housing needs. They can also require localities to identify regulatory impediments to affordable housing and encourage their removal. Finally, if localities continue to maintain barriers and subvert State goals and priorities, States can withdraw local authority to zone, enact subdivision controls, impose impact fees, promulgate building and housing codes, and issue land-use and development permits.

Housing Needs Assessments

To promote affordable housing, a number of States require local governments to assess their housing needs and to focus on the extent to which affordable housing is lacking. In many cases, these needs assessments are part of a comprehensive planning process and are often referred to as the housing element of the plan. States that require them include

California, Florida, Maine, New Jersey, Oregon, and Vermont. Housing elements are intended to ensure that localities specifically address housing affordability problems. In Florida, for example, a locality must inventory its housing relative to type, tenure, age, rent, value, monthly cost, and ratio of rent or cost to income. In addition, each locality must project the housing needs of anticipated populations, separately estimating the needs of rural and farmworker households by number, type, cost or rent, tenure, and required land. Failure to comply with the State requirements can result in loss of highway funding and other infrastructure support. Singling out housing needs in this way is important in that it raises the priority of housing in relation to other statewide goals.

In New Jersey, the housing element serves an additional and somewhat different role—as a critical component of the fair-share plans that localities submit to the State's Council on Affordable Housing, mentioned above, when they choose to be covered by that agency's rules.[1] The enforcement of fair-share obligations can be quite varied in New Jersey, depending upon whether communities choose to file a housing element with the Council. If a locality does not choose coverage, the courts will hear appeals and often rule against it to implement the *Mount Laurel* doctrine.

Identifying Regulatory Barriers

Several States—California, Florida, Maine, Oregon, Vermont, and Washington among them—require local governments to identify barriers, including regulatory barriers, to affordable housing. This identification is often preliminary to adopting a barrier-removal strategy, but the adoption of such a strategy does not always guarantee its implementation.[2] California is an example of the former. California law requires localities to identify potential and actual governmental and non-governmental constraints on the maintenance, improvement, or development of housing for all income levels. Localities are also required to determine whether their land-use regulations are keeping new residential construction below the levels required to meet the housing need. After identifying barriers, California law requires localities to adopt programs to remove or overcome them. However, there are no effective implementation methods or strong incentives for local governments fully to follow their housing element or to implement the programs in them.

Review of Enabling Authority

To promote affordable housing aggressively, a few States have taken control over certain aspects of land development (such as permitting systems and zoning) because they were not satisfied with the way localities were using their delegated land-use and development authorities. One of the earliest efforts was in Massachusetts. When a locality is not living up to its Commonwealth-established affordable housing goal, the Commonwealth issues a comprehensive permit that supersedes a number of the permitting requirements imposed at the local level. It does so on a case-by-case basis. Oregon, in contrast, has assumed responsibility for reviewing and approving local plans and ordinances, leaving specific land-use decisions in the province of local government. In this way, the State promotes its affordable housing goals. California has also recently amended its land-use laws to provide State review and opinion of final local plans. Furthermore, under certain circumstances, low- and moderate-income housing developments can override local zoning if the locally adopted housing element is not in compliance with State law. If such a project is denied approval or restrictions are placed on it that adversely affect its viability or affordability, and the decision is challenged in a court action, the burden of proof is placed on the locality to justify the denial.

Recommendation 7-1

State Barrier-Removal Plans

The Commission strongly recommends that each State undertake an ongoing action program of regulatory barrier removal and reform at the State and local levels. At a minimum, this program should include a comprehensive assessment of State and local regulations and

administrative procedures, as well as State constitutional authority and enabling legislation. States should propose a program of State enabling reform and direct State action, as well as provide for model codes, standards, and technical assistance for local governments that are responsible for enacting and administering development controls.

> It is within the province of comprehensive plans that States could mandate the local provision of affordable housing...
>
> **Kirk Emerson, Director, County-wide Planning**
> *Bucks County, PA*

Reconciling Local Regulations With State Goals, Eliminating Redundant Regulations, and Resolving Development Disputes

Because the development of housing is so regulated, the process of carrying forward a project from idea to finished product is very complex. States have ultimate control over several regulatory layers that shape this process and are in a better position than individual localities to introduce coherency and rationality into it. For example, they can establish procedures for simplifying and ensuring that the maze of State and local regulations cohere with State goals and for minimizing redundancy and overlap. To these ends, some States have established comprehensive planning requirements and single coordinating agencies.

The development of housing can be a contentious enterprise, affecting the competing interests of local governments, the development community, and households at various income levels. States are appropriately concerned not only with harmonizing these interests, but also with promoting State welfare responsibilities that may include the provision of affordable housing. To achieve these ends, a number of States have created dispute-resolution and mediation processes.

Comprehensive Planning

More and more, States are requiring localities to prepare comprehensive plans in which local governments must explain how their land-development controls are consistent with certain State-established goals and priorities. A number of States—such as Florida, Georgia, Maine, New Jersey, Oregon, Vermont, and Washington—use comprehensive planning to ensure that land-development regulations are consistent with the goal of providing affordable housing.

Oregon's comprehensive planning statute, enacted in 1969, is among the oldest in the Nation. Among other things, it requires cities and counties to adopt plans consistent with State goals. In addition, it requires localities to review local zoning ordinances to ensure that they do not permit residential development projects to be rejected merely because interest groups are concerned about their value or characteristics. It also requires localities to ensure that permit and approval processes do not add unnecessary costs or delays inconsistent with promoting affordable housing. Local compliance with comprehensive planning requirements is mandatory; the statute is enforced by State agencies and, if necessary, the State courts. The Oregon Act has been modified several times in the past 20 years, primarily to strengthen State policies that place high priority on affordable housing and discourage regulatory barriers preventing production, and has served as a model for implementation of planning acts in other States.

Florida's comprehensive planning approach (contained in its 1985 Growth Management Act) requires localities to show how they intend to use their land-development controls to satisfy housing needs. Compliance with the Act is mandatory.

Maine and Vermont have also recently enacted comprehensive planning legislation in which affordable housing is used as one benchmark, among others, for evaluating the appropriateness of local plans and land-development controls. Compliance is not, however, strictly mandatory.[3]

States that undertake comprehensive planning should make housing affordability and availability central goals of that planning. Zoning reform and barrier removal should be parts of the implementation mechanism.

Recommendation 7-2

State Zoning Reform

The Commission strongly recommends that, as part of their overall barrier-removal strategy, States should thoroughly review and reform their zoning and land-planning systems to remove all institutional barriers to affordability. Reforms that States should consider include: a requirement that each locality have a housing element subject to State review and approval; effective comprehensive planning requirements; modification of zoning-enabling authority to include affordability and housing opportunity as primary objectives; State authority to override local barriers to affordable housing projects; State-established housing targets and fair-share mechanisms; and requirements for a variety of housing types and densities.

Appeals and Mediation

Several States have created formal processes, or less formal adjudication procedures, for resolving land-development disputes involving local governments, developers, and, sometimes, advocacy groups. In some cases, these procedures have the force of law, while in others they lead to voluntary agreements among the disputants.

Often at issue in the more formal appeals processes is the question of whether localities are facilitating or subverting the goal of promoting affordable housing. Such processes resemble official court hearings, with imposed outcomes. In Massachusetts, as noted above, an appeals process provides developers of proposed affordable housing projects the opportunity to petition the Commonwealth directly for comprehensive permits when they are turned down by localities not acting in good faith to fulfill the Commonwealth's affordable-housing goal. New Jersey and Oregon, which have State affordable-housing goals, also have their own appeals processes.

As an alternative to quasi-judicial appeals processes, some States have established less formal mediation procedures for resolving development disputes. These procedures enable developers and localities to reconcile differences through compromise. In Massachusetts and New Jersey, both the more formal appeals process and the less formal mediation procedure exist. Oregon is establishing an informal procedure. These States seem to recognize that outcomes satisfying all parties are more likely to result from informal mediation than from more formal appeals processes.

A State can sponsor informal, non-binding mediation procedures even when it has not adopted the promotion of affordable housing as an official State goal. For example, in Connecticut, where the promotion of affordable housing is encouraged but not required, the State sponsors an informal mediation procedure aimed at getting localities within the same region to assume some share of the responsibility for housing low- and moderate-income households. This procedure aims at helping the mediation partners to find solutions tailored to each community's special character and resources.

Recommendation 7-3

Encourage or Sponsor Conflict Resolution and Mediation

The Commission recommends that States establish or sponsor neutral third-party conflict-resolution and mediation procedures to resolve conflicts between developers and local governments, and to remove barriers to affordable housing.

State Administrative Reform

Extraordinary processing and time delays are a major element in housing costs. As discussed in Chapter 2, for example, delays are estimated to add $20,000 to the cost of a single-family house in Orange County, California. Government agencies often have no incentive to review applications by builders in a timely manner and, in many instances, use delays as a mechanism to extract desired concessions from developers.

States are in a position to review the entire matrix of land-use and development regulations to reduce overlap and duplication across both agencies and levels of government. One approach is to consolidate multiple regulatory entities into a single agency to streamline, shorten, and improve both State and local permit and approval processes. New Jersey illustrates how the single-agency model can operate. Prior to recent reforms, building code permits were issued at both the State and local levels. Likewise, both State and regional commissions issued environmental permits and reviewed comprehensive plans and housing elements. Such regulatory overlap resulted in an average waiting period of approximately 3 years from first application to groundbreaking. In response to such a lengthy procedure, the State has taken steps to coordinate its environmental reviews and has consolidated some of the agencies that have environmental approval and permitting responsibilities.[4]

Some States have imposed limits on the amount of time government agencies can take in the approval and permit process. In practice, these limits have, at times, been circumvented by government agencies that threaten to deny a permit within the allowable period unless the applicant "voluntarily" agrees to an extension. Other steps being taken to simplify the regulatory process include establishing one-stop permit centers and development-approval processes that fast-track projects providing affordable housing, preparing catalogs of required permits and approvals, and sponsoring periodic pre-development conferences. In the last case, public officials and representatives of the development community identify the steps necessary to secure permits and approvals to determine where delays occur and how they might be eliminated. Pre-application meetings can also be held to inform specific developers about what to expect and how to prepare plans and applications.

Recommendation 7-4

Streamlining State Regulatory Responsibilities

As part of an overall barrier-removal strategy, the Commission recommends that States consolidate and streamline their multiple regulatory responsibilities, for example, by giving authority to a single agency, to shorten and improve both State and local approval processes.

Recommendation 7-5

Time Limits on Processing and Approvals

The Commission recommends that States enact legislation that establishes time limits on building code, zoning, and other approvals and reviews. Such limits should apply to State as well as local development reviews, and should establish a legal presumption of approval. The regulatory body should have the factual burden of clearly demonstrating why the regulatory rejection was appropriate and in the public interest. Unless the locality made a clear and convincing case, a permit or approval denial would be invalid under the law. If the government did not act within the time established by law, approval would be automatic.

Setting Standards in Support of Affordable Housing

States can implement the goal of affordable housing by inducing greater uniformity among jurisdictions in building codes and development fees designed to provide infrastructure financing. Such standardization promotes affordable housing by eliminating specific local building code prohibitions against some more affordable housing types, including manufactured and modular housing. Standardization

also promotes affordable housing by encouraging economies of scale in building practices. Builders are in a better position to hold down costs when they do not have to keep altering their materials and methods of construction to meet the disparate code requirements of separate jurisdictions where they build. Finally, State promotion of development standards allows for consideration of a broader general welfare than if standards were set locality by locality, yet localities still maintain the flexibility to account for local needs and objectives. In this respect, the State could establish minimum or maximum standards to guide local government and prevent the adoption of standards detrimental to housing affordability.

Building Codes and Subdivision Standards

Some States have adopted statewide building codes and subdivision standards to address the problem, identified in Chapter 3, of the plethora of local codes and standards that can exacerbate the housing affordability problem. The Virginia Uniform Statewide Building Code, effective since 1973 and based on the Building Officials Code Administrators (BOCA) Code, is a prime example of a mandatory, performance-based, statewide building code intended to eliminate local and intra-regional differences. It is also intended to eliminate costs generated by the self-interests frequently perpetuated by local codes. New Jersey created a single, State-level agency responsible for implementing and administering some components of that State's building code. The extent of uniformity generated among localities, however, does not yet approach that existing in Virginia.

Although great progress has been made by State and local governments in the reform of local codes, considerable confusion results from differences among governments in the manner in which they adopt model codes, and in the degree to which localities modify or amend them. Most States have no systematic process for amending or updating building codes. As a result, neighboring communities may have substantially different versions of the same model code. More importantly, many communities amend their local codes to restrict particular building products and systems. A number of States have begun to increase their oversight responsibilities over codes and standards. Just as in planning, zoning, and other regulations, the States need to ensure that localities obey and implement State laws in the promulgation and administration of building codes.

Many communities also impose subdivision requirements that have little basis in demonstrated health or safety needs. Through both prescription and negotiation, for example, they impose excessive requirements with respect to such things as street widths, sidewalks, and open space. Localities also use land-development and subdivision ordinances to exact additional concessions and amenities from

> There should be uniform, statewide codes based on national performance codes. There should be no State amendments to these codes and there should be no local amendments to these codes, and those codes, being performance based, should readily accept the introduction of new technology....Now [in New Jersey] there is one code and one State agency [responsible for it], and one plan review....If you can do it with building codes, you can do it with land-development regulation without compromising or eliminating the necessary local control of land use.
>
> **William M. Connolly, Director, Division of Housing**
> *New Jersey Department of Community Affairs*

developers who often have no choice but to agree to these demands. Such costs are generally passed on to the housing consumer in the form of higher house prices.

Finally, the current regulatory system does not adequately encourage new building products, research, and technical innovation. Manufacturers of new or innovative building products or systems often find it extremely difficult to obtain regulatory approval. One solution is for the Federal Government to work with private industry to develop a simple and comprehensive system for the review and approval of innovative, cost-saving housing technologies.

Recommendation 7-6

State Subdivision Ordinances and Standards

The Commission recommends that States either enact a statewide subdivision ordinance and mandatory land-development standards or, alternatively, formulate a model land-development code for use by localities. Land-development standards should be based on supportable data and research regarding traffic usage, density, and similar criteria. Standards could either be mandatory or serve as a model ordinance for use by localities.

Recommendation 7-7

Continue Building Code Reform

The Commission recommends that the substantial progress made by State and local governments in reforming the building code regulatory system over the past 20 years continue and be accelerated. More specifically, the Commission recommends that: States adopt either the CABO (Council of American Building Officials) one- and two-family code, or require localities to do so; State and local governments adopt the latest version of the applicable model code without technical modification; States and localities periodically review their codes to eliminate obsolete or unnecessary prescriptive requirements; and States and localities, private organizations, and the Federal Government work to create a nationally recognized building-product evaluation and approval system.

Modular Housing Standards

Over the past 20 years, 36 States have attempted to streamline their regulatory processes to enforce preemptive statewide standards for the design and construction of modular housing. Nonetheless, the lack of uniformity in administrative procedures among the States still imposes costly and duplicative regulatory burdens on the manufacturers of the units, as discussed in Chapter 3. Moreover, in spite of many attempts during the 1980s to create interstate uniformity, few States have actually passed legislation establishing reciprocity on building codes for modular housing. To accelerate building code reform, a number of States are exploring the possibility of entering into a compact for a voluntary national code on modular housing. Such a national code would go a long way toward removing regulatory impediments to developing an industrialized housing industry that has potential for significant cost savings.

Recommendation 7-8

Modular Code

The Commission recommends that a uniform national regulatory program be established for modular housing. This goal can be accomplished either by an interstate compact or the enactment by Congress of preemptive legislation.

Infrastructure Financing and Impact Fee Standards

As discussed in Chapters 1 and 2, many regulatory barriers are the direct result of the difficulties localities have in responding to growth pressures and in providing adequate infrastructure to accommodate affordable housing. The charging of fees, which originated in growth States such as California,

Colorado, and Florida, is now common practice nationwide as a way to shift development costs from the public at large to builders and, then, to homebuyers. Inadequate roads, schools, and water and sewer facilities often result in slow-growth policies or fiscal zoning in which only high-ratable development is sought. In many areas, fees exceed 10 percent of the purchase price of a home and have a significant impact on housing affordability.

Much recent research on the appropriateness and equity of impact fees suggests that, too often, local governments desire to load up builders, and the ultimate homebuyer, with fees for infrastructure and facilities only marginally affected by, or related to, the proposed development. Given budget constraints, the trend toward increased use of impact fees will, in some form, probably continue. While targeted, user-based impact fees can be an appropriate mechanism for financing certain public facilities, fees not directly benefiting the proposed development, as well as other exactions, should not be substitutes for broader financing mechanisms to fund public infrastructure. Therefore, standards and criteria to prevent misapplication and abuse of impact fees are needed.

Recommendation 7-9

Provide Necessary Infrastructure

The Commission recommends that State and local governments develop and implement necessary policy and funding plans to provide and maintain adequate infrastructure in support of affordable housing and growth. The Commission recommends that States and localities employ a range of financing tools to ensure that such infrastructure is available in a timely fashion.

Recommendation 7-10

State Impact Fee Standards

The Commission recommends that States enact legislation establishing mandatory standards and uniform procedures for imposing impact fees. Such legislation should set forth criteria defining the specific types of capital facilities for which localities may consider fees and methodologies to ensure that such fees are related and fairly proportioned to the need for the facilities and services generated by the proposed development. The Commission believes that impact fees should be used to fund only facilities that directly serve or are directly connected to the house or development on which these fees are levied. Impact fees to fund general infrastructure improvements are subject to abuse and are less efficient than targeted user fees and broader financing methods.

Eliminating Discrimination Against Affordable Housing Options

Local ordinances often discriminate against certain types of affordable housing options such as manufactured housing, accessory units, duplex and triplex housing, and single-room-occupancy (SRO) housing, as discussed in Chapter 3. Some States and localities have tried to eliminate such discrimination, however, and the Commission strongly encourages more such actions.

Manufactured Housing

Localities are generally able to exclude manufactured housing from most residential zones by considering it not to be a dwelling unit under local zoning. Under most zoning ordinances, only housing built under the local code is a permitted use in residential districts. If it is permitted at all, manufactured housing is generally relegated to mobile home parks or outlying, undesirable areas within the community, despite the fact that its construction is covered by a Federal preemptive building code. Even in the 16 States that explicitly bar localities from discriminating against manufactured housing, some localities have sought to limit its use through zoning or building codes. In addition, in some localities, officials have sought to undermine State

laws by attempting to convince would-be purchasers not to buy manufactured homes on the grounds that they are somehow inferior.

Accessory Units

Accessory apartments are another potential source of affordable housing. Data from HUD's American Housing Survey indicate that 32 percent of all homes with five or more rooms are occupied by one- or two-person households. Accessory apartments utilize the existing dwelling, land, and infrastructure, and can be made available at a much lower cost than newly built housing units. Accessory apartments are generally illegal under most zoning ordinances, and only a few communities have legalized them. Where allowed, they are generally permitted as "conditional" or "special-permit" uses. Such a permit, under locally developed criteria and standards, is often difficult to obtain.

Duplex and Triplex Housing

Duplex and triplex housing can also increase the stock of affordable housing. These dwellings are designed to be occupied by an owner with an additional one or two rental units, and are common in many older urban areas. Most were built in the early years of this century, and were a great source of entry-level housing for many lower and middle-income immigrant families. This type of housing could again be a resource for a new generation of families currently priced out of the market, offering affordable housing opportunities to both owner and renter.

SROs

Single-room-occupancy units play an important role in housing lower income, homeless, or transient populations. Unfortunately, because of redevelopment, inappropriate enforcement of local regulations, and changing demographics, much of this housing has been lost in many cities. Most local development controls do not contemplate, and therefore cannot easily accommodate, SRO housing. For example, most zoning ordinances limit density by dwelling units per acre. Such limits can make SROs, which require higher densities, unfeasible. Also, many zoning and building codes consider an SRO to be a commercial, rather than residential, use. Such a classification excludes them from many areas, and often results in the application of costly, inappropriate building code requirements intended for commercial structures.

Recommendation 7-11

Remove Regulatory Barriers to Certain Types of Affordable Housing Options

The Commission strongly recommends that States initiate actions to end discrimination against certain types of affordable housing options, such as amending their zoning enabling acts to: (1) authorize, under appropriate conditions and standards, manufactured housing as a permitted dwelling unit under local zoning, and prohibit local communities from enacting ordinances forbidding manufactured housing; (2) direct that localities permit, under State standards, accessory apartments as of right, not as a "conditional use," in any single-family residential zone within the jurisdiction, subject to appropriate design, density, and other occupancy standards set forth by the State; and (3) require localities to include a range of residential use categories that permit, as of right, duplex, two-family, and triplex housing and adequate land within their jurisdictions for such use. The Commission also strongly recommends that States require all local governments to review and modify their housing and building codes and zoning ordinances to permit, under reasonable State design, health, density, and safety standards, single-room-occupancy housing.

Providing State Financial Incentives for Affordable Housing and Local Regulatory Reform

A number of States offer to local governments financial incentives linked to the provision of affordable housing. Some of these efforts are financed in innovative ways and represent new ideas and opportunities for providing affordable housing. Financial incentives could also stimulate barrier removal and regulatory reform.

Housing Trust Funds

Since the mid-1980s, States have used housing trust funds to promote the construction of low- and moderate-income housing. To date, more than 20 States have developed trust funds. Most make loans or grants to municipalities or to nonprofit organizations to support the construction or rehabilitation of rental properties. The vast majority of these properties are in cities rather than suburbs.

A variety of sources are drawn upon to support these funds. New York and Vermont, for example, make annual appropriations from general revenues. Connecticut has used general obligation bonds. Other States use such special funding mechanisms, sometimes in combination, as off-shore oil taxes (California), the interest earnings on real estate earnest money and a one-time capitalization appropriation (Washington), and reserve funds from previous State housing finance agency activities (Virginia). The Housing Opportunity for Maine (HOME) Trust Fund has used more than $22 million in State appropriations between 1982 and 1987 and, since 1986, proceeds from real estate transfer taxes on sellers, to finance or supplement directly projects that include single-family home purchases, rental rehabilitation, and new rental development.

Housing trust funds could potentially generate incentives for regulatory reform in two ways. First, considerable discretion could be allowed in the manner in which municipalities employ the grants or loans in exchange for undertaking specific regulatory reforms. Second, the number and size of such grant and loan packages could be made contingent upon regulatory reform, with the most cooperative municipalities receiving the most help.

State Grants as a Stimulus for Change

Another way to encourage change at the local level is for States to include regulatory reform in their comprehensive planning requirements and then to use State grants to reward municipalities for implementing appropriate regulatory reforms. For example, localities in Maine that enact local growth-management programs consistent with the State's comprehensive planning goals, including an affordable housing goal, are eligible for State grants that support implementation of such programs. Connecticut also offers grants for infrastructure to reward localities that build affordable housing. This program is most attractive to the State's less wealthy communities that need financial help, but it could reward regulatory reform anywhere.

Endnotes

[1] Although the State's planning law requires each locality to prepare a housing element, the more critical concern, with respect to meeting housing need, may be whether a community has filed its housing element with the Council on Affordable Housing and, therefore, has agreed to be bound by the rules of that agency. When communities do so, the ground rules under which affordable housing efforts are evaluated and disputes resolved differ significantly from those that emerge when the courts are asked to rule on the merits of rejected development proposals after developers challenge the rejection. In the latter case, the courts have been disposed to rule against localities (in keeping with the *Mount Laurel* doctrine) and to provide builders with remedies that render local zoning decisions moot. Under COAH's rules, communities obtain a bar against zoning law suits for a specified period. COAH offers a mediation alternative to the administrative law proceedings that would otherwise occur under the Fair Housing Act.

[2] It is likely that the kinds of regulatory barriers so identified, as well as the interactions of regulatory barriers among regions, will vary from State to State and from region to region within a State. This likelihood provides a compelling argument in favor of State leadership and responsibility for regulatory reform and for oversight of land-use and development regulations. In fact, many States have taken the first step in this process by establishing task forces and study commissions to review a wide range of issues related to regulatory barriers and affordable housing.

[3] Although planning requirements may not be mandatory, there are consequences for non-compliance, including loss of participation in some funding programs and automatic adoption of regional plans if conflicts arise between local and regional priorities.

[4] Many regulatory problems associated with land use and development in New Jersey are documented in the State of New Jersey's *Report of the Study Commission on Regulatory Efficiency*, Trenton, NJ, Sept. 1988.

Working Together: Efforts to Educate the Public, Build Coalitions, and Convince Local Policymakers to Dismantle Regulatory Barriers

In many communities across the country, the NIMBY syndrome is widespread and deeply ingrained. As this Report makes clear, residents believe that restrictive regulatory barriers keep tax rates down, land prices up, and "undesirables" out; and locally elected officials act on these beliefs through ordinances, regulations, and procedures. Communities impose growth-inhibiting, exclusionary, and ostensibly protective regulations in the expectation that the people who live and vote there will benefit from them. To help overcome these impositions, the Commission has addressed its recommendations primarily to the Federal Government and the States, urging them to act on behalf of those who are harmed by local NIMBY policies without having a voice in establishing the policies.

The self-interest of local residents, however, is not always served by barring affordable housing from the community. Some of the expected benefits of regulatory barriers turn out to be overstated. The barriers can also have undesirable consequences—for residents' own communities, for nonresidents who would like to live there, and for surrounding communities as well.

Concerted educational and group actions can, therefore, expose the negative consequences of the NIMBY syndrome and can counter NIMBY forces at the grassroots level. Despite some successes, however, the track record in this regard has not been particularly impressive to date. Regulatory reform—resulting from a recognition by local citizens and officials that there are severe affordability and economic consequences to regulatory barriers—has been piecemeal. To improve this record, the Commission believes that the costs of NIMBY policies should be made known to the public and to local decisionmakers, and that successful local efforts to create affordable housing should be identified and analyzed so that they can be replicated wherever possible.

> Why do we have exclusionary zoning?...[F]ear of outsiders, based on prejudice, or the belief that new residents will somehow be different, with threatening lifestyles, or will display criminal behavior, simply because they have less money. Part of this fear...is due to homeowners believing that, if lower income persons move nearby, the existing homeowners' status will be lowered. To suburban city councils, lower income persons are outsiders, and, more important, persons without votes.
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> **Stuart Meck, AICP, Past President**
> *American Planning Association*

Common Misunderstandings About Regulatory Barriers

Those who support regulatory barriers to affordable housing and growth in their communities often have a narrow perspective and are misinformed about the impacts of such barriers. For example, many people mistakenly believe that affordable housing has detrimental effects on property values. Many others fail to consider the adverse effects that such regulations can have on their area's economic growth and well-being, especially in the longer term. These beliefs need to be reexamined in light of the available evidence.

Beliefs About Property Values

Local advocates of NIMBY policies frequently argue that the presence of affordable housing will result in decreased property values. Available evidence indicates, however, this outcome is not likely to occur. A survey of relevant research finds that 14 out of 15 studies "reached the conclusion that there are no significant negative effects from locating subsidized, special-purpose or manufactured housing near market-rate developments. Some, in fact, reported positive property value effects after locating subsidized units in the neighborhood."[1] The communities included in these 15 studies are large and small, suburban and urban, and located in all parts of the country. The kinds of affordable housing discussed in the studies include several subsidized housing efforts, units produced through State housing programs, and, in a few cases, public housing units.

Beliefs About Economic Well-Being

Most local residents and public officials frequently do not understand that local regulations precluding affordable housing opportunities, such as fiscal zoning or growth-control ordinances, do not stop growth in the near-term. When individual jurisdictions use these devices, they simply cause the growth to occur elsewhere in the metropolitan area. All that they have accomplished is to pass on the burdens of growth to their neighbors.

In the longer term, fiscal zoning or growth-control ordinances can undermine the well-being of entire metropolitan areas. As discussed in Chapter 2, growth-controlling communities are often joined by their neighbors and, eventually, entire metropolitan areas are cut off from growth. When this happens, individual communities no longer benefit from employing selective strategies. What these communities have failed to recognize is that their economic health is inextricably tied to the economy of the metropolitan area as a whole. Independent regulations, leading cumulatively to myopic strategies, produce a regional economic effect having negative consequences for all local economies. Some of the long-term economic consequences are regional imbalances between job and housing opportunities, regional infrastructure backlogs, commercial and industrial relocation caused by inadequate workforces or land availability, increased road congestion and maintenance costs resulting from

> There is no easy solution for [overcoming NIMBY]...it takes a lot of hard work and a lot of meetings to begin to put a dent in that. With respect to people opposing affordable housing, it was suggested that what we have to do is take them and show them what we mean by affordable housing...[examples of which are] as well-designed as...market-rate...units.
>
> **Brad Paul, Deputy Mayor For Housing**
> *City of San Francisco*

lengthier commutes, and the inability of children who grew up in a community to afford to live there as adults. The net effects on a community can include increases in taxes and locally borne costs, as well as a reduction in local economic viability and the creation of a totally inhospitable climate for future growth within an entire metropolitan area.

Beliefs About Cost Impacts

As discussed in Chapter 2, many communities practice some form of fiscal zoning, seeking to expand their base of tax ratables while restricting some forms of residential development, including affordable housing. Often, this approach is a local response to restrictions on property tax collections or local spending, as exemplified by Proposition 13, which did the former, and Proposition 4, which did the latter, in California. Infrastructure spending may then be a candidate for reduction, along with growth controls to mitigate the short-term consequences. But such actions are short-sighted and eventually exacerbate the problems created by inadequate infrastructure. Infrastructure is necessary to support the current population and expected future growth. Infrastructure backlogs weaken vital intraregional dependencies and undermine the economic vitality of metropolitan economies.

Raising Awareness and Educating the Public

To complement the actions the Commission recommends for the Federal and State governments in Chapters 6 and 7, local governments can play an important role in educating the public about affordable housing. They have several possible ways to address residents' concerns and provide information to counteract the NIMBY syndrome. Some ways already exist, either as a result of State requirements or local initiatives. One example, an assessment of local attitudes and concerns expressed through surveys, public meetings, etc., provides information

> I think that we've failed in our public relations and public information efforts more than we have in our pile-up of regulatory abuses.
>
> **Judith Lenthall, President**
> *HomeAid*

that enables the targeting of educational efforts focused on the specific fears of particular segments of the community. When this kind of assessment is combined with housing inventory data contained in locally prepared housing elements,[2] communities can gain a complete picture of what concerns need to be addressed and what types of housing need to be provided.

Other approaches have not been tried, as far as the Commission is aware. One would be a socioeconomic analysis of people living outside the community who could be expected to move in, if affordable housing became available. Such information might well show, in some instances, that many of the potential new members of the community are not, in fact, very different from existing residents.

Local governments can also systematically collect information on the local and regional effects that land-use and development regulations have on housing costs. Such information would be useful in meeting State requirements (where imposed) and would be essential to efforts aimed at enlightening both local public officials and the general public as to the effects of local regulation, especially those that are NIMBY-driven. In the absence of information, both the public and policymakers have limited awareness and understanding of the consequences of government actions on housing affordability.

Other groups besides the general public—local officials, developers, and other public and private decisionmakers—would benefit from education about affordable housing. They, too, should know the critical need for, and value of, affordable housing

within the community. If they are to change their outlook, they should know about innovative approaches to providing housing that can fit into the existing community and still be affordable, if regulatory barriers are removed. There are several ways of disseminating this information. Some of them represent true educational effort while others are extensions of the technical assistance role often played by governments; any of these educational and assistance efforts could be a useful part of a comprehensive local strategy for dealing with regulatory reform. They include showcasing existing affordable units, working with a local university to demonstrate affordable housing, and working with Federal and State governments to implement education and information initiatives.

Recommendation 8-1

Local Governments Should Undertake Educational Efforts on Affordable Housing

The Commission recommends that local governments undertake educational programs to help the public to become aware of the economic effects of local regulations, of the need for regulatory reform, and of the value of affordable housing.

A wide range of local leaders are affected by regulation reform. These include local builders, merchants, realtors, and bankers, among others, in the private sector, and public-sector officials, such as local government staff. Last but not least, neighborhood residents clearly have a stake. Public and private leaders all need to be involved in a regulation reform effort to...ensure that the changes meet the community's needs.

Stuart S. Hershey and Carolyn Garmise
Streamlining Local Regulations: A Handbook for Reducing Housing and Development Costs
Management Information Service Special Report, No. 11
International City Managers Association, Washington, D.C., May 1983

The Need for Collective Action

The Commission believes that understanding the consequences of regulation, and educating residents and public officials with the expectation of raising the priority of affordable housing as a policy issue, are not enough. Concerted and collective action by groups that have an interest in affordable housing is also needed. This action will help overcome NIMBY attitudes that frequently result in opposition to affordable housing, opposition that is outwardly based on concerns about how affordable housing units will look and how well they conform to existing units and lots. Where collective actions have already been taken, such groups include nonprofit development organizations, labor unions, organizations that advocate on behalf of low- and moderate-income persons, the building industry, community associations, and government agencies. In many cases, however, some of these groups are neither informed about the issues nor organized to promote the removal of regulatory barriers to affordable housing. In the absence of such an informed and organized approach, the likelihood that appropriate officials will take action is considerably diminished.

The Joint Venture for Affordable Housing

The Joint Venture for Affordable Housing (JVAH) is an example of how local, collective efforts overcame local NIMBY-driven restrictions, albeit on a demonstration basis. JVAH showed that affordable housing consistent with community standards can be built if local developers, community interest groups, and local government officials strongly support such housing. JVAH was a HUD-sponsored effort with a large number of public- and private-sector groups participating in the demonstrations. The purpose of JVAH was to assess the impacts of land-use and development regulations on the cost of housing and to demonstrate that housing costs could be reduced as a result of regulatory reform. Projects were undertaken in 27 communities in 24 States, and housing units were produced at costs lower than would have been the case in the absence of the relaxation of local rules and regulations prompted by the demonstration. Twenty-two of these projects involved relaxation of some subdivision rules, while 5 demonstrated cost savings associated with infill projects. Builders obtained partial or complete waivers of some regulations, fees, subdivision ordinances, site-design standards, and building-code requirements in many of the participating communities across the country. Savings ranged from a few hundred dollars per unit for minor changes in local practice or regulation, to several thousand dollars per unit for projects that involved multiple changes in usual practice and several waivers of local fees.

Coalition-Building in Pursuit of Regulatory Reform

Relatively permanent forms of collective action to counter the NIMBY syndrome, such as those involving coalition-building, have succeeded in a number of other cases, as the Commission found in the course of its hearings. In communities across the country, coalitions of interested groups have effectively encouraged public officials to consider the impacts of their regulations on housing affordability, and to find appropriate remedies. Such coalitions have proven to be at least a partial antidote to the NIMBY syndrome that often undergirds the regulations. Just as NIMBY issues can unite a community's residents against affordable housing, so too can common interests unite concerned citizens, public interest groups, private developers, and business people in support of reforming regulatory barriers to affordable housing. Three examples are the BRIDGE Housing Corporation (headquartered in San Francisco), the process begun in San Diego that led to the construction and rehabilitation of many single-room-occupancy hotels for lower-wage workers and the homeless, and the New York City Housing Partnership.

> Among the many ways to save building costs that were demonstrated by the Joint Venture for Affordable Housing, one of the most effective was increased density. For single-family housing, higher densities mean more units per acre and this causes fears among many current homeowners. JVAH projects did not just cram more units in per acre, however. Developers used innovative siting to create pleasant-looking neighborhoods. Cost-saving techniques, such as those in JVAH, can both illustrate workable ideas for reducing costs and help to convince opposition to regulatory reform that affordable housing does not mean slum conditions are sure to follow development.
>
> **E. Lee Fisher, Project Manager of the JVAH Demonstration**
> *National Association of Home Builders Research Center*
> *Upper Marlboro, MD*

The BRIDGE Housing Corporation

BRIDGE, a nonprofit California corporation specializing in building affordable housing through the creation of strong, local coalitions, has worked to fashion sound, ongoing working relationships with local communities. BRIDGE is not the only successful such entity; the Enterprise Foundation, the Local Initiatives Support Corporation, and the quasi-governmental Neighborhood Reinvestment Corporation are also dedicated to serving low- and moderate-income households through similar coalition-building approaches. BRIDGE illustrates the activities of successful organizations.

According to the Corporation:

> BRIDGE works closely with surrounding neighbors, local sponsors, government officials, and financial institutions, as well as with private developers, environmentalists, businesses, architects, and engineers, to create financially feasible and broadly supported projects. An essential part of the BRIDGE development process includes informal community meetings and official public hearings....In several situations, BRIDGE has enlisted the support of neighborhoods that had bitterly opposed previous or similar developments....BRIDGE also enters into partnerships with neighborhood and community organizations.[3]

The cornerstone of BRIDGE operations is its development trust fund that generates 8 to 10 times its face amount in value added to property. The fund operates as a revolving source of working capital that generates earnings (to form the basis of BRIDGE project subsidies) while the invested capital is recaptured through project operations (sometimes on a deferred basis).[4] The fund provides venture and equity capital and extends affordability through the provision of subsidies.[5] In addition, BRIDGE secures Low Income Housing Tax Credits for corporate investors in its projects; arranges long- and short-term tax-exempt debt financing from State, county, and local governments; and cooperates with private and nonprofit sponsors to obtain community approvals for affordable housing projects.[6]

These efforts draw on BRIDGE's community relations expertise to reduce risk and generate time and money savings.

Between 1983 and mid-1990, BRIDGE projects yielded construction of 2,241 units (of which 1,283 were offered at below-market prices or rents), 700 units under construction (of which 484 were to be offered at below-market prices or rents), and 1,408 units in various stages of project approval.[7] The combined value of all BRIDGE projects is more than $350 million, with about 60 percent of all completed and planned units affordable to low- and very low-income families. One BRIDGE project combined development by BRIDGE and a private-sector builder with tax credits purchased by a large oil company, which allowed very low rent levels. The project also benefitted from voter-approved exemption from the local growth-control ordinance (including overwhelming voter approval by those in the immediate neighborhood of the project).[8] Other BRIDGE coalition-created projects include land donations, density bonuses, tax-exempt bond financing, local rental assistance programs coordi-

> The obstacles to regulatory reform are significant, but it is a hopeful sign that there do exist some prominent examples of successful efforts to improve housing and land-use regulation. Though different in many respects, many of these efforts have succeeded as a result of their ability to develop a political coalition in support of affordable housing and of a process capable of resolving the many conflicts inherent in the land-use and housing development process.
>
> **William C. Apgar, Jr.,**
> **Associate Professor of City and Regional Planning**
> *Harvard University*

nated and implemented by BRIDGE, and other features.

SROs in San Diego

Single-room-occupancy (SROs) hotels have generally been thought of as run-down, seedy places that are best done away with through urban redevelopment. Prior to 1986, building a new downtown SRO for the homeless and the working poor was unthinkable in San Diego, where tourism was important to the local economy and where downtown revitalization was a top priority for local officials. Between 1975 and 1985, many large cities lost a substantial portion of their SROs to demolition or conversion to other uses. In San Diego, this loss amounted to approximately one-third of all SROs.[9]

Faced with a decreasing ability to provide this type of housing, the city in 1986 created an SRO Task Force composed of representatives from both the public and private sectors, including nonprofit organizations and those representing households who would occupy affordable housing. The Task Force's working solution to the problem was to preserve and rehabilitate older SROs and build new ones.[10] It set out to accomplish several objectives simultaneously: passage of an SRO-preservation ordinance, adoption by the city of an SRO program, and creation of a constituency for SRO housing so that it would become politically acceptable for the City Council to issue necessary waivers and approvals.

Concomitantly, the Task Force worked with a private developer who proposed to build the Baltic Inn because he believed that it was profitable to construct a new SRO hotel. The developer understood that the plan had to be sold to both the business community and public officials, from whom wide-ranging assistance with zoning variances and cost-cutting waivers of building, plumbing, and electrical codes would be needed if the project were to be profitable. The Task Force helped to create the appropriate environment. NIMBY opposition was mollified somewhat by Task Force efforts to inform neighbors that the likely occupants of the Baltic were largely people who could pay their way if given the opportunity to live in safe, affordable housing. Furthermore, low-wage workers could live within walking distance of downtown businesses, which would bolster the dwindling supply of these workers. These efforts created the constituency for downtown SRO construction and rehabilitation leading to an acceptable political climate within which the San Diego City Council approved zoning variances and other waivers.

> You have to insulate them in some sense against the tyranny of the NIMBYs who can pack a meeting hall. How many times have you seen in an evening here, the developer, his attorney, and architect go in and there are 3 of them against 500 people sitting in the audience screaming for blood, who basically tell every one of the elected officials up in front of them that there will be recall petitions circulated in the morning if this thing is passed tonight.
>
> **I. Don Terner, President**
> *BRIDGE Housing Corporation*
> *San Francisco, CA*

The Baltic Inn was completed in early 1987. In July of that year, San Diego adopted an SRO Program, which promoted the construction of more SROs and, in November, passed an SRO Preservation ordinance. The latter contained a "supply-threshold" formula that prevents further demolitions when the supply of SRO units drops below the threshold.[11] The coalition that came together as a result of the Task Force was instrumental in passing the SRO Program and in reclassifying SROs as commercial hotels, which brought tax advantages favoring affordable housing and the relaxation of, or change in, several components of the local building and fire codes (see Chapter 3 for the details of some of these

waivers and changes).[12] For its part, the city provided builders with financial incentives, including reduced water and sewer connection and capacity charges, and low-interest rate loans to underwrite rents for very low-income occupants.[13] Subsequently, plans for a number of other SROs were approved and built, and San Diego became an active advocate for new SRO construction both in California and across the Nation. From April 1987 through the end of 1990, San Diego builders added a total of nearly 2,000 SRO rooms to downtown San Diego.[14]

The New York City Housing Partnership

The New York City Housing Partnership is a local initiative undertaken by business and civic leaders to work with local government to create affordable homeownership opportunities for local households. One of its primary objectives is to foster public-private cooperation to achieve reductions in government red tape as they affect the production of affordable housing. In many cases, Partnership projects involve for-profit builders and private-sector financing. In fact, 80 percent of all financing for Partnership projects since 1983 (which amounts to more than $500 million) has been through private-sector loans.[15]

The Partnership process is built around what it sees as its intermediary role; that is, it serves as a buffer between homebuilders, lenders, and other private-sector organizations and the public sector. The Partnership induces builders and lenders to undertake affordable housing projects by assuming all responsibility for dealing with government agencies. This responsibility includes obtaining government funds, where appropriate, and all necessary approvals from local government agencies before any applications for permits are filed. The Partnership guarantees that it will fast-track all approvals and that builders will not incur any costs associated with delays in approvals. In essence, the Partnership removes the political risk that can accompany affordable housing development. Finally, the Partnership arranges for community-based nonprofit organizations to take on the marketing and selling functions of its affordable housing projects.

Since 1983, the Partnership has been involved with projects that produced more than 7,000 homes and apartments in more than 40 neighborhoods in all 5 boroughs of New York City. Successes include gaining acceptance by city officials and trade unions of modular housing, and reducing permit and approval waiting times. According to the president of the Partnership, the success of the coalition-building approach "is reflected in the fact that Long Island and other areas throughout the State and around the country have mounted initiatives modeled on our New York City program."[16]

The Commission believes that political support to redirect NIMBY energies must be built at all levels. The BRIDGE Corporation, the SRO construction in San Diego, and the New York City Housing Partnership are examples of how this support can be fashioned. They show that strong, local coalitions can be significant adjuncts to a continuing process of deliberations and interactions that are necessary prerequisites for meaningful local reform. Education and coalition-building go hand-in-hand, enabling the private, public, and public-interest sectors to work together to allow for nonadversarial procedures for decisionmaking vis-a-vis regulatory reform.

Recommendation 8-2

Concerned Groups and Citizens Should Build Coalitions for Regulatory Reform

The Commission recommends that government leaders and concerned organizations and individuals build coalitions to support regulatory reform and affordable housing. Professional and civic organizations should examine the consequences of the NIMBY syndrome; private and community foundations should sponsor studies of and debate on regulatory reform; and government officials should join with private citizens to address the implications of NIMBYism. Government, business, nonprofit, and educational leaders should take the lead in forming local

coalitions to translate public awareness into support for regulatory reform and affordable housing.

The Role of Employers

Employers are usually the missing element in coalitions that are addressing affordable housing needs. Their absence deprives coalitions of a valuable partner and the employers themselves of a useful vehicle for improving employment conditions. Workers who cannot find affordable housing reasonably close to their job must absorb the costs of longer travel time; these workers will eventually demand higher pay and will suffer morale problems. Younger workers will not be attracted to jobs in such locations. The employer may have to relocate the facility to be nearer the workers.

Some employers recognize this situation. In San Francisco, the Bay Area Council is an association of business leaders and major employers who have become instrumental in educating citizens and local government officials on the need for regulatory reform. The Council advocates a wide range of reforms to ensure affordable housing in the Bay Area. Employers in other metropolitan areas can do likewise.

Another role that employers are playing, to reduce the burden of long commutes, reduced productivity, dwindling labor pools, and other problems, is as a provider of housing assistance benefits. Some employers are providing downpayment assistance, rental subsidies, reduced sales prices on homes built by employers, mortgage guaranties, and land donations. Employers are also increasingly providing debt or equity capital for real estate developments that provide housing that employees may occupy.[17] While this important development should not be regarded as a substitute for removing regulatory barriers to affordable housing, it can be a complement to efforts at barrier removal.

Recommendation 8-3

Employers and Others Who Benefit From an Affordable Housing Supply Should Advocate Regulatory Reform

The Commission recommends that employers and other private industry leaders recognize the importance of affordable housing and work with housing advocates, local government officials, and others interested in regulatory reform to lower the barriers to affordable housing.

Initiating Local Barrier-Removal Strategies

The Commission strongly believes that local government should, and will, continue to have central responsibility for the regulation of housing and the built environment. It is the Commission's hope and expectation, therefore, that individual communities will be willing to take steps, without unnecessary delay, to reduce the regulatory barriers to affordable housing in their jurisdictions. The educational and coalition-building activities recommended by the Commission will form the framework around which reform can occur.

As the general public and local officials learn more about the damaging effects of the NIMBY syndrome, pressures to maintain NIMBY-driven regulations should subside and significant regulatory barrier reform should become a reality. The Commission believes that the removal of regulatory barriers to affordable housing is sound public policy. The nature of the needed reforms is well-known. The Commission restates them here in confidence that political leaders of good will and vision will take heed.

The Commission recognizes, however, that many communities around the country will continue to believe that it is in their self-interest to perpetuate barriers raised as NIMBY defenses.

These communities should reconsider where their long-range, genuine self-interest lies, and they should reexamine their policies toward the exclusion or inclusion of affordable housing in their economy.

The Commission proposes that localities place particular emphasis on local reform of zoning. Communities need to provide for a variety of housing types and densities, including mixed-use zoning, SROs, manufactured housing, duplex housing, and accessory and rental housing. The Commission also takes note of the great importance of decontrolling rents in ensuring the availability of a sound and vital housing stock.

As part of an overall strategy of barrier removal, the Commission also proposes that localities review their property tax systems. As discussed in Chapter 3, the typical existing system encourages land price inflation, by encouraging land holding and speculation. It also penalizes investment that would improve and maintain existing housing, by imposing relatively high property tax rates on land improvements. The existing property tax system might be replaced with a two-tier approach in which the tax rate on land would be significantly higher than the rate on structures. The Commission recommends that localities consider this approach as part of any overall effort to remove barriers to affordable housing.

The Commission also urges localities to embrace the concept of Housing Opportunity Zones, which would offer incentives to barrier removal within designated areas. Such zones can serve as important laboratories for regulatory reform and stimulate the development or rehabilitation of affordable housing in areas that would otherwise be bypassed by developers or nonprofit providers of housing.

Recommendation 8-4

Local Governments Should Initiate Barrier-Removal Strategies

The Commission believes that significant reform of the existing regulatory system must become a priority of local government if local as well as national housing goals are to be achieved. The Commission recommends that all local governments initiate a strategy of barrier removal. The strategy should include a comprehensive and systematic review of zoning, subdivision ordinances, building codes, and related development-control ordinances and administrative procedures to identify excessive, duplicative, or unnecessary barriers to housing affordability and opportunity. Localities should consider many reforms, including but not limited to: (1) providing adequate land for a variety of housing types and densities; (2) eliminating excessive site-development standards; (3) reforming local property taxes; (4) decontrolling rents at least for higher-income households; (5) developing one-stop permitting; (6) providing for adequate infrastructure to accommodate growth; (7) eliminating obsolete and prescriptive building code requirements; and (8) creating Housing Opportunity Zones.

Endnotes

[1] "The Effects of Subsidized and Affordable Housing on Property Values: A Survey of Research," Department of Housing and Community Development, State of California, Sacramento, 1990, p. i. The 15 studies reviewed in this piece are: Hugh O. Nourse, "The Effects of Public Housing on Property Values in St. Louis: 1938-1960," St. Louis, MO, 1963; Robert Schafer, "The Effect of BMIR Housing on Property Values: 1958-1970," in the San Fernando Valley, CA, 1972; William A. Rabiega, Ta-Win Lin, and Linda Robinson, "The Property Value Impacts of Public Housing Projects in Low and Moderate Density Residential Neighborhoods: 1963-1978," in Portland OR, 1984; Joseph DeSalvo, "Neighborhood Upgrading Effects of Middle-Income Housing Projects in New York City: 1964-1969," 1974; Carol E. Babb, Louis G. Pol, and Rebecca F. Guy, "The Impact of Federally Assisted Housing on Single Family Sales: 1970-1980," in Memphis, TN, 1984; Elizabeth Warren, Robert M. Aduddell, and Raymond Tatalovich, "The Impact of Subsidized Housing on Property Values: A Two-pronged Analysis of Chicago and Cook County Suburbs: 1970-1980," 1983; Donald C. Guy, John L. Hysom, and Stephen R. Ruth, "The Effect of Subsidized Housing on Values of Adjacent Housing: 1972-1980," in Fairfax County, VA, 1985; Linda Saunders and Michael J. Woodford, "The Effect of a Federally Assisted Housing Project on Property Values: 1973-1978," in Jefferson County, CO, 1979; Edward Hicks, "MHs Do Not Depreciate Conventional Neighbors: 1973-1981," in San Jose, CA, 1982; Jeffrey C. Baird, "The Effects of Federally Subsidized Low Income Housing on Residential Property Values in Suburban Neighborhoods: 1975-1979," in Fairfax County, VA, 1980; Lynn Sedway and Associates, "Impact of Affordable Housing on Property Values: 1975-1982," in Marin County, CA, 1983; Torrey and Torrey, Inc. and Haley-Leslie Appraisal Co., "EIR for Corte Madera Homes: 1975-1983," in Marin County, CA, 1983; Stephen Farber, "Market Segmentation and the Effects of Group Homes for the Handicapped on Residential Property Values: 1979-1983," in Shreveport-Bossier City, LA, 1986; Kenneth J. Gruber, Gladys G. Shelton, and Ann R. Hiatt, "The Impact of the Presence of Manufactured Housing on Residential Property Values: A Comparative Study of Residential Property Transfers in Selected Residential Areas of Guilford County, NC: 1980-1986," 1986; and Thomas E. Nutt-Powell, David Hoaglin, and Jonathan Layzer, "Residential Property Value and Mobile/Manufactured Homes: A Case Study of Belmont, NH: 1981-1983," 1986.

[2] A housing element is an inventory of existing housing units, by various groupings, and estimates of housing need, also by various groupings. A housing element is a common part of the requirements of State comprehensive planning acts. See Chapter 7 for a discussion of housing elements.

[3] *BRIDGE 1989-1990 Annual Report*, BRIDGE Housing Corporation, San Francisco, CA, 1989, p. 10.

[4] Ibid., p. 8.

[5] Ibid.

[6] Ibid., p. 6.

[7] Ibid., p. 14.

[8] Ibid., p. 20.

[9] "The City of San Diego's Single Room Occupancy Residential Hotel Program," Planning Department, City of San Diego, Oct. 1988, p. 3.

[10] Ibid., p. 4.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] "Affordable Housing Guidelines and Standards," a report prepared by the National Association of Home Builders Research Center, Upper Marlboro, MD, under HUD Contract HC-5789, Dec. 1990, p. 160.

[15] Testimony before the Commission of Kathy Wylde, President, New York City Housing Partnership, New York City Partnership, Inc., in Trenton, NJ, July 11, 1990.

[16] Ibid.

[17] David C. Schwartz and Daniel Hoffman, "Employers Help With Housing," *The Journal of Real Estate Development*, Vol. 5, No. 1, Summer 1989, pp. 18-22.

A Strategy for Implementation

Beginning with the Douglas Commission more than 2 decades ago, no fewer than 10 Federal studies, commissions, and task forces have addressed the issues of exclusionary, discriminatory, or excessive housing development regulations. (See box.) Although these groups differed in emphasis, they displayed remarkable consistency regarding findings and proposed actions governments should take to remove barriers to housing choice and affordability. Despite this consensus of experts, policymakers, and public officials, however, little has changed. If anything, the situation has deteriorated. Many of these recommendations remain as applicable today as when they were originally made.

Because State and local governments make most regulatory decisions affecting development, federally established commissions and studies generally exert limited influence over local policymakers, legislators, and administrators who must undertake reforms. More important, as local regulations reflect the policies and priorities the community considers desirable, barriers to affordability are extraordinarily resistant to reform.

To address these basic attitudinal and structural impediments supporting exclusionary and parochial development regulations, the Commission decided to focus on developing a strategy for action that can effect meaningful regulatory reform. *Developing and implementing such a strategy is, in the view of the Commission, as significant and important as the recommendations themselves.* A specific plan of action is necessary if the substantive recommendations are to become reality.

The Commission strategy is a comprehensive approach directed at all levels of government as well as at private individuals and organizations. This report goes beyond just recommending reform. The Commission proposes Federal incentives to encourage States and localities to begin the job of reforming and restructuring their regulatory responsibilities, and it proposes specific steps to increase the likelihood of implementation. The Commission believes that only such an approach will loosen the pervasive grip of NIMBY.

Dissemination of Commission Findings and Recommendations

This Report provides a unique opportunity to bring the issue of regulatory barriers to affordability directly into the forefront of national policy debate on housing policy. The Commission's findings and recommendations provide an agenda for reform that should be forcefully presented to the Congress, State and local elected officials, local administrators, and activists and advocates for affordable housing.

The Commission expects that, concurrent with the release of this Report, HUD will immediately undertake a major effort of education and information dissemination as a first step of a longer term implementation strategy. Initially, the Department should undertake a large-scale effort to distribute the Report to the Congress, Governors, leaders of State legislatures, mayors and other local officials, national associations, the building industry, and housing advocates. The mass as well as industry media should also be made fully aware of this major social issue and the Commission's proposals for reform through a sophisticated education effort.

Efforts of Previous Studies to Address Regulatory Barriers

From 1967 through 1989, 10 major federally sponsored task forces and conferences addressed, in whole or in part, regulatory barriers to affordable housing:

In 1967, the National Commission on Urban Problems, known as the Douglas Commission, was established by President Lyndon Johnson to review zoning, housing and building codes, taxation, and development standards.

Also in 1967, President Johnson established the President's Committee on Urban Housing, whose mandate included regulatory reform to increase the production and rehabilitation of decent housing for the poor.

In 1973, HUD Secretary James T. Lynn instituted the National Housing Policy Review to evaluate existing housing programs and develop recommendations for future housing policy. Regulatory barriers were part of this policy review.

In 1977, HUD Secretary Patricia Roberts Harris created the Task Force on Housing Costs to study how to reduce or stabilize housing costs.

In 1978, a U.S. General Accounting Office Report to Congress found that local land and construction regulations contribute to higher housing costs.

In 1979, following the publication of the *Report of the Task Force on Housing Costs* in 1978, HUD held a National Conference on Housing Costs.

In 1980, the Council on Development Choices for the 80s was initiated by HUD and organized by the Urban Land Institute. The Council addressed the impact of regulations on affordable housing.

In 1981, President Ronald Reagan established the President's Commission on Housing, which addressed how Federal, State, and local regulations could be simplified, as part of a broad review of housing policy and the housing finance system.

In 1987, the National Housing Task Force, known as the Rouse-Maxwell Task Force, was privately funded at the behest of Senators Alan Cranston and Alphonse D'Amato to help set a new national housing agenda. Regulatory barriers were a part of the overall mandate of the Task Force.

In 1988, the U.S. General Accounting Office convened a housing conference to discuss the availability of low-income housing and the need for homeownership assistance. Building and zoning code problems were addressed at the Conference.

This initial education effort should be only the first step of a larger and *continuing* program to raise the issue of regulatory barriers in the public consciousness. The Commission hopes that the Congress would, early on, conduct general hearings on the Commission's findings and the rationale for reform. Other necessary actions include meetings and briefings with affected public interest groups and trade associations and conferences with State and local officials.

Finally, the Commission's findings and reform proposals must be creatively presented to interested governments, private individuals, national organizations, and the housing industry with the hope that a national as well as local consensus can be generated in favor of comprehensive reform. Local forums, town hall meetings, and briefings should be conducted over an extended period.

Broad-based education and dissemination of the Report's findings and recommendations, as well as a followup strategy to ensure implementation of the specific proposals for Federal action, will require a continuing and forceful HUD presence and capability in the area of regulatory reform. The Commission, therefore, recommends the creation, within HUD, of an Office of Regulatory Reform specifically charged with implementing the Commission's recommendations.

Strategy for Implementing Federal Recommendations

As a Federal entity appointed by the Secretary of Housing and Urban Development at the request of the President, this Commission also has a special responsibility to propose a strategy to ensure that the Commission's recommendations for Federal action are implemented. If implemented, these recommendations will have a significant impact on reform efforts at all levels of government and will place affordable housing and regulatory reform prominently and convincingly on the national policy agenda.

From its earliest deliberations, the Commission has been heartened by Secretary Kemp's enthusiastic commitment to implementation. The Commission is confident this commitment will take the form of legislative proposals and administrative actions to ensure rapid implementation. The Congress has also shown significant interest in implementing reform. Section 105(f) of the 1990 National Affordable Housing Act directs the Secretary, not later than 4 months after submission of this Report, to submit a written report outlining his recommendations for legislative and administrative actions to facilitate the removal or modification of excessive, duplicative, or unnecessary regulations or other requirements of Federal, State, or local governments.

Legislative Actions

The first step in implementation requires a legislative strategy to ensure enactment of the Commission's major legislative recommendations, particularly the proposals to condition Federal housing assistance to States and localities upon barrier-removal strategies and the proposal for a Housing Impact Analysis for all major Federal regulations. The Commission urges the Administration to submit to the Congress, as soon as possible, draft legislation for these changes, and urges the Congress to conduct legislative hearings on these recommended initiatives.

The Commission is very much aware that it will be difficult to enact legislation to allocate housing assistance based upon acceptable State and local barrier-removal strategies without broad-based public support. A broad consensus must be developed that will recognize the wisdom of these proposed reforms. States and localities must come to recognize that removal of regulatory barriers is in their own, as well as the national, interest; major employers must become advocates for reform; and housing activists need to understand that removal of regulatory barriers is an essential element of any

comprehensive strategy for meeting housing needs. To achieve these reforms, the Commission hopes the same consensus among representatives of differing economic and political philosophies, all levels of governments, and many varied interest groups that has coalesced within this Commission can be developed within the larger body politic.

Education and Information Actions

Generation of support for Federal action will require a concentrated effort that should include meetings with representatives of various interest groups, leaders in the Congress, State and local officials, and heads of professional organizations; focused conferences and workshops with all levels of governments; and an information and publicity effort to explain to the general public the affordability problem as well as the wisdom of the proposed Federal actions. The Commission urges HUD to undertake, subsequent to the general education and information effort accompanying release of this Report, a targeted program to educate State and local policymakers, housing advocates, private industry, and others as to the importance and fundamental equity of the proposed Federal reforms. HUD should convene a group of interested organizations to develop a specific strategy for moving forward together toward reform.

All these efforts must emphasize that the recommendations do not propose inappropriate Federal intrusion into State and local decisionmaking. Rather, if implemented, these proposals will protect and expand basic rights, expand housing opportunities for millions of households, enhance equity, and encourage and strengthen emerging State and local efforts at removing artificial barriers to affordability.

Several members of this Commission have made a commitment to work with HUD, as private citizens after this Commission's work is completed, to explain the recommendations to interested organizations and to assist in getting these recommendations adopted. The Commission believes that there is a growing awareness of the importance of this issue and that the time is right for an effective campaign to crystallize this emerging consensus.

Administrative Actions

The Commission's Federal recommendations include administrative actions that involve a number of Federal agencies. An Affordable Housing Regulatory Review Board would be created to expedite waivers of Federal regulations as well as to encourage negotiations for reform of various environmental rules and regulations. In addition, a Housing Impact Analysis would be required prior to the promulgation of any major rule or regulation. The Commission recognizes the difficulties in seeing these administrative changes through to implementation. The Commission is confident, however, that HUD will be a forceful advocate for regulatory reform within the Administration and will assign implementation of these administrative actions the highest priority.

The Commission recommends that the executive branch become an active participant in seeking increased judicial review of excessive and discriminatory Federal, State, and local development controls and regulations. The Commission urges HUD's Office of General Counsel to assume leadership in this area and work with the Justice Department to identify litigation opportunities to address the most intransigent discriminatory regulatory barriers to affordable housing.

Finally, the Commission recommends program initiatives for HUD, including developing model codes and standards and the establishment of a regulatory reform information clearinghouse. These initiatives are not costly. The Commission believes, however, that they will have a significant impact on stimulating regulatory change at all levels of government. The Commission recommends that HUD provide for these efforts in its budget planning.

Strategy for Implementing State and Local Recommendations

Ultimately, long-lasting reform must occur in the State legislatures, county offices, and city halls responsible for regulating the housing environment. Even proposals for Federal action cannot succeed without a willingness at the State and local levels to remove barriers to affordability and to offer housing choice to all Americans.

Significant change has already occurred at the local level. Generally, these efforts have succeeded when effective coalitions of public, private, and nonprofit organizations, recognizing the social and economic benefits that can accrue from affordable housing, find common ground for political action. The Commission does, however, offer a general strategy for HUD's implementation of its State and local recommendations.

Technical Aid

As part of any State or local implementation strategy, policymakers must identify and better understand the processes by which effective change has occurred and develop approaches and methodologies for broad replication. Although the Federal Government has no direct role in stimulating local political support for regulatory reform, HUD can provide essential educational and technical information to assist local regulatory reform efforts. Through the development of model codes, technical information, conferences, and education, the Department can become a critical focal point for broad-based local reform efforts. The Commission strongly encourages HUD to work with State and local governments, nonprofit organizations, builders, employers, and others wishing to undertake programs of consensus-building. The Department should become a continuing resource to emerging State and local regulatory-reform coalitions.

State Responsibility

For both legal and practical reasons, much of the responsibility for regulatory reform must rest with the State. All authority exercised by local governments for land-use and development controls derives constitutionally from the police power of the State. As such the State has the duty to ensure that the delegated local use of this power is exercised for the common good of all the citizens of the State. More practically, the State responds to a broader constituency and is less likely to be subject to the immediate pressures of parochial interest and NIMBY.

The Commission does not believe, however, that States should be involved in specific development decisions normally made by localities. Rather, it is the responsibility of the State to establish fair and equitable rules of the game that afford sufficient latitude to accommodate local preferences and variations while ensuring that these preferences are not exercised at the expense of the "general welfare." The State can also serve as an essential forum for balancing competing local interests and in setting a larger strategy for meeting the needs of economic growth and affordable housing.

The Commission also urges not only HUD but also the Administration to challenge the States as well as every local jurisdiction to undertake reform. It may also be extremely useful for the Administration to recognize officially those States and localities that have been willing to initiate reform by providing well-publicized awards for exemplary efforts.

It is important to note that a number of States have already begun to undertake reform programs. The Commission's recommendations in this area are not radically new. Rather, they reflect and validate a growing trend in the pattern of State and local regulatory responsibility over development. HUD should encourage this emerging State role through a concerted effort of technical assistance and support for the development of model State standards and enabling legislation.

Because of the powerful presence of NIMBY, the Commission believes that, for the short term, reform efforts should particularly concentrate on increasing the role of the States in overseeing and reviewing the regulatory systems of their constituent jurisdictions. HUD should consider identifying a select number of individual States with a Governor and legislature exhibiting a willingness to consider innovative solutions to regulatory barriers that can serve as "laboratories" to initiate reform. In these States, the Administration can test the viability of waivers of Federal regulations and provide concentrated technical assistance and support.

Local Responsibility

At best, State reform efforts can only establish more equitable rules of the game by which localities make decisions. In the long term, localities will continue to bear most of the responsibility for regulating the housing environment. If regulatory reform is to succeed, it must be institutionalized within the decisionmaking process of local government. The Commission believes that implementation of its recommendations for Federal and State action will make this outcome far more likely.

For regulatory reform to succeed, it is absolutely critical that concerned groups and individuals support State and local reform efforts. Local governments and civic organizations must examine the economic and social consequences of the NIMBY syndrome and make the public aware of the value and need for reform. Employers and other private industry leaders should recognize that they, too, have an interest in affordable housing, and they should work with housing advocates and other interested parties to eliminate regulatory barriers.

Finally, implementation requires a continuing need to keep track of regulatory developments and progress in the removal of barriers. Throughout its deliberations, the Commission has been struck by the lack of available data on the nature and impact of regulations upon affordability. The Commission therefore proposes that communities report regularly on progress in reforming their regulatory system and that the Federal Government establish a clearinghouse and encourage the development of cooperative strategies. In these ways, the Commission hopes that useful information can be provided to local agencies so that a regulatory system can eventually be established to ensure the availability of housing choice and housing affordability for all Americans.

Appendices

Advisory Commission on Regulatory Barriers to Affordable Housing

Commission Hearings and Witnesses

TRENTON, NEW JERSEY, HEARING JULY 11, 1990

Panel I:

Overview of Affordable Housing Trends and Barriers

William C. Apgar, Jr.
Associate Professor of City and Regional Planning
Kennedy School of Government, and Joint Center for Housing Studies
Harvard University
Cambridge, MA

Robert C. Ellickson
Professor of Property and Urban Law
Yale University Law School
New Haven, CT

Panel II:

The Impacts of Regulation

William M. Connolly
Director
Division of Housing and Development
New Jersey Department of Community Affairs
Trenton, NJ

Ara K. Hovnanian
President
K. Hovnanian Enterprises, Inc.
Red Bank, NJ

James W. Shields
Executive Director
Industrialized Housing Manufacturers Association
Harrisburg, PA

Kathryn Wylde
President
New York City Housing Partnership
New York, NY

Panel III:

Issues of Special Interest to the Northeast and Mid-Atlantic States

Subpanel III-A:

Rent Control

John Atlas
President
National Housing Institute
Director
Passaic County Legal Aid Society
Montclair, NJ

Jacque Eaker
Executive Vice President
New Jersey Council of the Multi-Housing Industry
East Brunswick, NJ

Subpanel III-B:

Environmental Regulation

Andrew L. Strauss
Project Manager
New Jersey Field Office of the Trust for Public Land
Morristown, NJ

Robert A. Weiboldt
Executive Vice President
New York State Builders Association, Inc.
Albany, NY

Subpanel III-C:

Fair Share

Paul J. Matacera
Vice President
New Jersey League of Municipalities
Mayor
North Brunswick, NJ

Douglas V. Opalski
Executive Director
New Jersey Council on Affordable Housing
Trenton, NJ

John M. Payne
Associate Dean and Professor of Law
Rutgers University School of Law
Newark, NJ

Michael Wheeler
Director of Research
Center for Real Estate Development
Visiting Professor of Law
Massachusetts Institute of Technology
Cambridge, MA

Panel IV:

State Activities and Initiatives

Murray Corman
Chairman
Housing Appeals Committee
Massachusetts Executive Office of
Communities and Development
Boston, MA

Bob Franks
Assemblyman
New Jersey State Assembly
New Providence, NJ

Panel V:

Local Activities and Initiatives

Norman L. Christeller
President
Montgomery Housing Partnership, Inc.
Silver Spring, MD

Kirk Emerson
Director of Countywide Planning
Bucks County Planning Commission
Doylestown, PA

Joseph J. McGee
Vice President
People's Bank of Bridgeport
Bridgeport, CT

Public Witness

Frank A. Willis
Executive Director
Housing Opportunities Fund
Trenton, NJ

CHICAGO, ILLINOIS, HEARING JULY 31 and AUGUST 1, 1990

Panel I:

Overview of the Affordable Housing Regulatory Environment in the Midwest

Edwin S. Mills
Professor of Real Estate and Finance
Kellogg School of Management
Northwestern University
Evanston, IL

George Tolley
Professor of Economics
University of Chicago
Chicago, IL

Panel II:

Community and Neighborhood Perspectives: The Case of Chicago

Subpanel II-A:

Overview

Michael F. Schubert
Commissioner of Housing
City of Chicago
Chicago, IL

Barbara Shaw
Staff Director
Mayor's Task Force on Housing Affordability
Chicago, IL

Subpanel II-B:

Financing Affordable Housing

Richard C. Hartnack
Executive Vice President
First Chicago Corporation
Chicago, IL

Peter Lennon
Deputy Director
Illinois Housing Development Authority
Chicago, IL

Subpanel II-C:

Housing Rehabilitation

Anthony L. Austin
Vice President for Housing
Bethel New Life, Inc.
Chicago, IL

Bruce A. Gottschall
Executive Director
Neighborhood Housing Services of Chicago
Chicago, IL

Michael C. Rohrbeck
Executive Director
PRIDE
Chicago, IL

Subpanel II-D:

Neighborhood Reinvestment

Michael Freedberg
Coordinator
Campaign for Responsible Ownership
Center for Neighborhood Technology
Chicago, IL

Clifford Gatewood
Assistant to the President
The Neighborhood Institute
Chicago, IL

Harry N. Gottlieb
Deputy Director
Leadership Council for Metropolitan Open Communities
Chicago, IL

Subpanel II-E:

Housing Programs

Josh Hoyt
Executive Director
Organization of the Northeast
Chicago, IL

Otis Monroe
Housing Organizer
Southwest Community Congress
Chicago, IL

Anne Rich
Director
Lakeview Tenants Organization
Chicago, IL

Panel III:

The Impacts of Regulation

Subpanel III-A:

Single Family

Norman M. Hassinger, Jr.
Chairman
The Hassinger Companies
President, Hoffman Homes
Itasca, IL

David K. Hill, Jr.
President
Kimball Hill, Inc.
Rolling Meadows, IL

Dean P. McFarland
President
MH Construction Management, Inc.
Whiteland, IN

Subpanel III-B:

Multifamily

Kelly A. Bergstrom
Chairman
National Multi-Housing Council
President and CEO, JMB Properties
Chicago, IL

Panel IV:

Building Codes and Rehabilitation

William E. Farnsel
Executive Director
Neighborhood Housing
Services of Toledo, Inc.
Toledo, OH

Salvatore Ferrera
President
Metropolitan Housing Development Corp.
Chicago, IL

Panel V:

State and Local Initiatives

Joseph E. Gilessner
Executive Director
New Directions Housing Corp.
Louisville, KY

Eugene W. Kuthy
Commissioner
Michigan Department of Commerce
Financial Institutions Bureau
Lansing, MI

Robert Weisenborn
Senior Vice President, Public Affairs
Ohio Association of Realtors
Columbus, OH

Panel VI:

Modular and Manufactured Housing

Richard A. Brooks
Director
Minnesota Office of State
Building Codes and Standards
St. Paul, MN

Constance S. Moore
Director, Manufactured Housing and
Government Affairs
Indiana Manufactured Housing
Association, Inc.
Indianapolis, IN

Public Witnesses

George Allen
GFA Management
Greenwood, IN

Michael J. Brown
Builders, Inc.
Westfield, IN

Edwin Kwiat
Vice President
United Mobile Homeowners
Justice, IL

Thomas Lenz
Local Initiatives Support Corporation
Chicago, IL

Lawrence A. Meyer
Southwood of Greenwood, Inc.
Greenwood, IN

Gloria M. Snider
Executive Director
Columbus and Franklin County
Housing Commission
Columbus, OH

Len Wehrman
National Foundation of
Manufactured Home Owners
Daly City, CA

SAN FRANCISCO, CALIFORNIA, HEARING SEPTEMBER 12 and 13, 1990

Introduction

Brad Paul
Deputy Mayor for Housing
San Francisco, CA

Panel I:

Regulatory Barriers in Growth Markets

Sanford R. Goodkin
Executive Director
KPMG Peat Marwick
Goodkin Real Estate Consulting Group
San Diego, CA

Panel II:

Growth Management

Subpanel II-A

Impacts on Housing Affordability

John D. Landis
Assistant Professor of City
and Regional Planning
University of California at Berkeley
Berkeley, CA

Henry R. Richmond
Executive Director
1000 Friends of Oregon
Portland, OR

Angelo Siracusa
President
Bay Area Council
San Francisco, CA

Subpanel II-B:

Public Perspective

Cathie Brown
Mayor
City of Livermore
Livermore, CA

Carol G. Whiteside
Mayor
City of Modesto
Modesto, CA

Panel III:

Environmental Regulation

John Briscoe
Partner
Washburn, Briscoe & McCarthy
Chairman
San Francisco Bay Planning Commission
San Francisco, CA

Lawrence C. Hart
Chairman and President
Fibreboard Corp.
Concord, CA

Pat Nemeth
Deputy Executive Officer of Planning and Rules
South Coast Air Quality Management District
El Monte, CA

Robin L. Rivett
Chief, Environmental Law Section
Pacific Legal Foundation
Sacramento, CA

Panel IV:

State Initiatives

Marian Bergeson
Chairman, Senate Committee
on Local Government
California State Senate
Sacramento, CA

Chuck Clarke
Director
Washington State Department
of Community Development
Olympia, WA

Edward J. Sullivan
Preston, Thorgrimson, Shidler, Gates & Ellis
Portland, OR

Panel V:

Local Initiatives

Judith F. Lenthall
President
HomeAid
Diamond Bar, CA

Mark A. Pisano
Executive Director
Southern California
Association of Governments
Los Angeles, CA

I. Donald Terner
President
BRIDGE Housing Corp.
San Francisco, CA

Panel VI:

Regulations Impacting Low-Income Families

Stephen E. Carlson
Executive Director
California Housing Council
Sacramento, CA

Aleta G. Fowler
Principal
Shawangunk Company
Menlo Park, CA

Panel VII:

Impact Fees/Infrastructure Financing

Bart Doyle
General Counsel
Building Industry Association
of Southern California
Diamond Bar, CA

Monica Florian
Vice President
The Irvine Company
Newport Beach, CA

Donald E. Moe
Senior Vice President
Santa Margarita Company
Rancho Santa Margarita, CA

Panel VIII:

Permit and Approval Process

Kenneth B. Bley
Cox, Castle & Nicholson
Los Angeles, CA

Brian Catalde
Vice President
Paragon Homes
Santa Monica, CA

Noel W. Lane III
President
Melody Homes
Westminster, CO

Public Witnesses

Gerald D. Eid
President
Eid-Co Buildings, Inc.
Fargo, ND

David Hennessy
President
State Mobile Homeowners League
San Jose, CA

Cathe Smeland
Henry George School
of Northern California
San Francisco, CA

WASHINGTON, DC, HEARING SEPTEMBER 25 and 26, 1990

American Forest Resource Alliance
Washington, DC
Mark E. Rey
Executive Director

American Planning Association
Chicago, IL
Stuart Meck
Assistant City Manager/Planning Director
City of Oxford
Oxford, OH

California State Building Standards Commission
Sacramento, CA
Richard T. Conrad
Executive Director

Commonwealth of Pennsylvania
Harrisburg, PA
Karen A. Miller
Secretary
Department of Community Affairs

Council of American Building Officials
Falls Church, VA
Richard P. Kuchnicki
President

Council of State Community Affairs Agencies
Washington, DC
Neal J. Barber
Immediate Past President and Director
Virginia Department of Housing and Community Development
Richmond, VA

Housing Roundtable
Robert K. Burgess
Co-Chair and President
Pulte Home Corporation
Bloomfield Hills, MI

Weston E. Edwards
Chairman and President
Weston Edwards & Associates
Dallas, TX

John D. Lusk
Director and Chairman
The Lusk Company
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Manufactured Housing Institute
Arlington, VA
Jerry C. Connors
President

National Association of Counties
Washington, DC
John P. Thomas
Executive Director

National Association of Home Builders
Washington, DC
Kent W. Colton
Executive Vice President

National Association of Realtors
Washington, DC
Robert H. Elrod
President
Elrod Realty, Inc.
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Washington, DC
John T. McEvoy
Executive Director

National Foundation for Affordable Housing Solutions
Rockville, MD
Martin Schwartzberg
Chairman

National Governors' Association
Washington, DC
Timothy Masanz
Director
Committee on Economic Development and Technological Innovation

National Housing Conference
Washington, DC
John Simon
President

David M. Koss
Director of Legislation

National League of Cities
Washington, DC
Walter Webdale, Director
Fairfax County (VA) Department of
Housing and Community Development

National Low Income Housing Coalition
Washington, DC
Barry Zigas
President

The Urban Land Institute
Washington, DC
Frederick A. Kober
Trustee and President
The Christopher Companies
Vienna, VA

U.S. Conference of Mayors
Washington, DC
Charles Box
Mayor, City of Rockford
Rockford, IL

U.S. House of Representatives
Washington, DC
Honorable Patricia Saiki
Representative from the First
District of Hawaii

World Wildlife Fund and
The Conservation Foundation
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Douglas P. Wheeler
Executive Vice President

Public Witnesses

John J. Gilbert III
President
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New York City, Inc.
New York, NY

J.L. Lach
President
Mineral Insulation Manufacturers Association
Alexandria, VA

George W. Liebmann, PA
Baltimore, MD

William R. Prindle
Program Manager
Alliance to Save Energy
Washington, DC

Walter Rybeck
Director
Center for Public Dialogue
Kensington, MD

Robert Seaman
Chairman, Housing Committee
American Society of Civil Engineers
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Daniel Sullivan
Vice President
Center for the Study of Economics
Pittsburgh, PA

SUBMITTED PAPERS

Mike Crozier
State Senator, State of Hawaii
Honolulu, HI

William B. Dunn
Immediate Past Chairman
Special Committee on Affordable Housing
American Bar Association
Chicago, IL

Edward J. Hussey
Chairman
Government Relations Committee
Association for Regulatory Reform
Washington, DC

John F. Kelly III
Chairman
Housing Development Committee
Association of General Contractors
Washington, DC

Biographies of Commissioners

Thomas H. Kean, *Chairman*

Thomas H. Kean, Governor of New Jersey from 1982 to 1990, was ranked as one of the five most effective State chief executives in the United States in a 1986 *Newsweek* poll. Governor Kean—now president of Drew University in Madison, New Jersey—is a former teacher, businessman, and State Assembly Representative. While serving two terms in New Jersey's highest office, his accomplishments included revitalizing education programs, cleaning up the State's natural resources, transforming the State's business climate, reducing unemployment, and putting in place the Nation's toughest drug laws. He also launched a nationally recognized welfare reform program and an urban Enterprise Zone program that created more than 40,000 jobs in inner cities. Governor Kean's autobiography, *The Politics of Inclusion*, was published in 1988. Governor Kean was inaugurated as the 10th president of Drew University on April 27, 1990. Governor Kean is a graduate of Princeton University and received a master's degree from Columbia University Teachers College. He has received honorary doctorates from Columbia University, Rutgers University, and 18 other institutions.

Thomas Ludlow "Lud" Ashley, *Vice Chairman*

Thomas Ludlow "Lud" Ashley, president of the Association of Bank Holding Companies, was a Democratic Member of the U.S. House of Representatives from the Ninth District of Ohio for 26 years. A member of the House leadership, he was Deputy Whip and served on the Banking, Finance and Urban Affairs Committee, chairing its Urban Growth Subcommittee and the Housing and Community Development Subcommittee. He has served as a consultant and lobbyist specializing in urban affairs, banking, financial services, insurance, and secondary mortgage market legislation. His background includes private law practice. A native of Toledo, Ohio, Mr. Ashley received a B.A. from Yale University and a law degree from Ohio State University.

Jerry E. Abramson

Jerry E. Abramson has been Mayor of Louisville, Kentucky, since 1985 and was the first mayor of Louisville ever to be elected to two 4-year terms. He established several programs to open the doors of city hall to the citizens of Louisville, making city services more accessible to all and expanding Louisville's Enterprise Zone to create 9,000 new jobs. He has received national recognition for his innovative programs to increase the supply of affordable housing in Louisville, and was named in 1987 as one of the top 20 mayors in the United States by *U.S. News and World Report*. The Mayor was general counsel to former Kentucky Governor John Y. Brown, Jr. President of the Kentucky League of Cities and a member of the Board of Trustees of the U.S. Conference of Mayors, Mayor Abramson is the recipient of the Richard Strauss Award of the National Conference of Christians and Jews for significant humanitarian contributions to his community. He received a bachelor's degree from Indiana University and a law degree from Georgetown University.

Larry P. Arnn

Larry P. Arnn is president of the Claremont Institute for the Study of Statesmanship and Political Philosophy and executive director of the Aequus Institute. Dr. Arnn has published numerous articles on political science, economics, and public policy, including a recent study on the California no-growth movement and its effect on transportation. A noted speaker and participant in a number of national and international panels examining political theories, Dr. Arnn received a Ph.D. in government at the Claremont Graduate School.

Robert J. "Jay" Buchert

Robert J. "Jay" Buchert is vice president and treasurer of the 160,000-member National Association of Home Builders and president of his own construction

and development corporation. A Cincinnati-area native, Mr. Buchert has held every leadership position with the Greater Cincinnati Home Builders Association and is a member of the Ohio Home Builders Association. He has testified before the U.S. House of Representatives and the U.S. Senate on issues vital to housing and the building industry. He also served on President Reagan's Private Sector Initiative Committee, the Small Business Administration's National Advisory Council, and the Federal Home Loan Bank Board's Affordable Housing Study Group. He was appointed by Ohio's Governor to serve on the State's Housing Finance Agency and the Governor's Commission on Housing, and has been an active participant in local regulatory reform. Mr. Buchert is a member of the board of directors of the Housing America Foundation and Home Owners of America, Inc.

Stuart M. Butler

Stuart M. Butler is a noted British-born economist, author, and speaker on Federal social program reform and policies. His numerous publications and articles focus on health and welfare policy and the privatization of government services. He is credited with bringing the idea of Enterprise Zones to the United States, and in 1980 was included in the *National Journal's* list of the 150 individuals outside of government with the greatest influence on decisions in Washington. He is currently director of Domestic and Economic Policy Studies for The Heritage Foundation and an adjunct fellow at the National Center for Neighborhood Enterprise. Dr. Butler received his bachelor of science in physics and mathematics, his master's degree in economics, and his Ph.D. in American economic history from St. Andrew's University in Scotland.

Barbara M. Carey

Barbara M. Carey, Ed.D., has worked and lived in Dade County, Florida, as a school administrator and realtor for more than 20 years. Dr. Carey is an educational specialist and consultant and served as a member of the Metro-Dade County Board of Commissioners until 1990. The Board has broad powers to set policy in such areas as zoning, parks use, building code enforcement, land use, environmental regulations, and fire and police protection. Her appointment to the Board by Governor Bob Graham in 1979 made her the first black woman to serve in this capacity. She earned postgraduate degrees from Ohio State University, the University of Miami, and the University of Florida.*

Gale Cincotta

Gale Cincotta, co-founder and executive director of the National Training and Information Center (NTIC), works as an agent for change to revitalize neighborhoods. She is nationally known for having spearheaded the neighborhood movement, and has received several public service awards for her efforts to end poverty, including *Ms.* magazine's 1985 Woman of the Year award for "providing a model of community power for the whole nation." Under her leadership, NTIC has developed affordable housing programs with secondary mortgage markets and private mortgage insurers and coordinated the NTIC/Aetna Neighborhood Investment Program, providing more than $100 million in loans for rehabilitation or construction of affordable housing units in 14 urban neighborhoods. Ms. Cincotta serves as chairperson of National People's Action, a coalition of more than 300 community organizations throughout the country. She is a board member of Chicago's Neighborhood Housing Services as well as a member of the Federal Home Loan Bank of Chicago's Community Investment Advisory Council and serves on the review boards of the lending programs of several Chicago banks.

Joanne M. Collins

Joanne M. Collins is an assistant vice president with the United Missouri Bank of Kansas City, where her community and civic involvement extends from local concerns to posts with the Republican National Committee and the Mid-America Regional Council. She was a member of the Kansas City (Missouri) City Council from 1974 to 1990, and also served as

* Ms. Carey resigned from the Commission in October 1990.

chairperson of the Missouri State Advisory Committee to the U.S. Commission on Civil Rights and on the advisory council of the National League of Cities. She is the former president of the board of directors of Women in Municipal Government and former national co-chair of the National Black Republicans Council. Ms. Collins holds a B.A. in political science and history from the University of Kansas and is a master's candidate at Baker University.

Thomas B. Cook

Thomas B. Cook is Chief of the Housing Policy Development Division of the California Department of Housing and Community Development. As director of the San Francisco Bay Area Council's Housing and Land Use Program from 1987 to 1991, serving as Council vice president for housing and land use in 1991, he promoted local land-use plans and policies that increased the supply of affordable housing. Mr. Cook has written several studies for the Council on rental housing, development fees, and regional growth. Formerly an urban planner with the City of Pleasanton, California, he has a master's degree in city and regional planning from the University of California at Berkeley and an undergraduate degree in geography from Dartmouth College.

Anthony Downs

Anthony Downs, a senior fellow at the Brookings Institution in Washington, D.C., has written and coauthored 15 books and more than 300 articles, including his recent evaluation of residential rent control and *The Revolution in Real Estate Finance.* He is a frequent speaker and consultant on real estate economics, housing, urban politics, and other topics. For 18 years, he was a member and chairman of Real Estate Research Corporation, a national consulting firm advising private and public decisionmakers on real estate investment, housing policies, and urban affairs. He is a member of the board of directors of the Urban Land Institute and the Urban Institute, the American Economic Association, the American Real Estate and Urban Economics Association, and the National Academy of Public Administration. Dr. Downs has a bachelor's degree from Carleton College and an M.A. and Ph.D. in economics from Stanford University.

J. Roger Glunt

J. Roger Glunt is founder and president of Glunt Building Co., Inc., of Pittsburgh, Pennsylvania. He is a member of the National Association of Home Builders (NAHB) and served the organization as a national representative, national vice president, and member of the executive committee. He is a leader in regulatory reform, chairing NAHB's Regulatory Reform Task Force and Regulatory Reform Coordinating Committee. Also a member of the Builders Association of Metropolitan Pittsburgh and the Pennsylvania Builders Association, he has won both organizations' Builder of the Year awards. He has served on the board of the Pennsylvania Housing Finance Agency since 1985, is vice president of the Churchill Borough Council, and is past president of the Westinghouse Valley Chamber of Commerce. Mr. Glunt is a graduate of the University of Pittsburgh's School of Business.

Kimi O. Gray

Kimi O. Gray, chairperson of the Kenilworth/Parkside Resident Management Corporation, created a national model for efficient resident management when she organized the purchase of the Kenilworth/Parkside public housing development in Washington, D.C.—the first sale of public housing property to residents in the United States. Among her successes, Ms. Gray increased rent collections for the 464-unit development, created more than 120 jobs through various commercial ventures within the development, and assisted more than 600 students living in public housing through the "College, Here We Come" program. Ms. Gray also serves as chairperson of the National Association of Resident Management Corporations and the District of Columbia Resident Advisory Board. Her efforts have been recognized with the President's Volunteer Action Award, the Jefferson Award, *Washingtonian* magazine's Washingtonian of the Year award, Catholic University's President's Medal, and the Public Citizen of the Year award from the National Association of Social Workers.

Greenlaw "Fritz" Grupe, Jr.

Greenlaw "Fritz" Grupe, Jr., is chairman, chief executive officer, and founder of The Grupe Company, a real estate development firm headquartered in Stockton, California, with annual sales of $250 million. Mr. Grupe has developed 50 residential communities in 8 States and is now planning 3 large-scale, master-planned communities in California. He is immediate past president of the Urban Land Institute, former president of the Stockton Chamber of Commerce and Stockton Board of Realtors, and a member of the Advisory Board of the Center for Real Estate and Urban Economics at the University of California at Berkeley. He is a graduate of the University of California at Berkeley.

Maureen Higgins

Maureen Higgins is California Governor Pete Wilson's chief deputy legislative secretary. From 1989 to 1991, she was Director of the California State Department of Housing and Community Development, where she administered various loan and grant programs intended to develop and construct affordable housing throughout the State. Ms. Higgins also served as former Governor George Deukmejian's chief deputy legislative secretary and was responsible for coordinating housing, criminal justice, and education legislation. Ms. Higgins received her bachelor's degree from Washington State University and her J.D. from McGeorge School of Law.

John T. Maldonado

John T. Maldonado is former director of the Colorado Division of Housing. He was responsible for all State housing activities, including code enforcement, regulatory authority, and Federal housing programs for low-income and homeless persons. Mr. Maldonado recently served as president of the National Conference of States on Building Codes and Standards, and is on the board of the National Rural Housing Coalition. He received the Colorado Association of Local Housing Authorities Award and the Adolph Coors Company Hispanic of the '80s award. In previous capacities, he assisted local governments and communities in planning and developing housing for low-income households. Mr. Maldonado serves on the Council of State Community Affairs Agencies Housing Committee, and is a member of the National Association of Housing and Redevelopment Officials. He has a master's degree in Urban and Regional Planning and Community Development from the University of Colorado.

Richard E. Mandell

Richard E. Mandell, vice president of The Greater Construction Corporation of Altamonte, Florida, acts as the liaison between the company's buyers and the mortgage industry and the government agencies regulating tract building. As co-chairman of the Orange County, Florida, Affordable Housing Task Force, he was responsible for examining the needs, potential solutions, and long-term implications of affordable housing issues facing central Florida. Mr. Mandell also serves as a member of the U.S. Department of Housing and Urban Development's Florida Field Advisory Council, the Orange County Housing Finance Agency's Advisory Committee, and the National Association of Home Builders' National Task Force on Affordable Housing. He received a bachelor's degree in political science from American University and a J.D. from the University of Florida.

James C. Miller III

James C. Miller III is chairman of the board of Citizens for a Sound Economy and John M. Olin Distinguished Fellow at the Center for the Study of Public Choice at George Mason University. Dr. Miller, who was President Reagan's director of the Office of Management and Budget from 1985 to 1988, is a former chairman of the Federal Trade Commission, former assistant director for government operations and research with the Council on Wage and Price Stability, and resident scholar and co-director of the Center for the Study of Government Regulation at the American Enterprise Institute. He has written a number of articles and books on economics, regulatory reform, transportation, industrial policy, and other topics. Dr. Miller has a Ph.D. in economics from the University of Virginia.

Sue Myrick

Sue Myrick has been Mayor of Charlotte, North Carolina, since 1987 and is president and chief executive officer of Myrick Advertising, Marketing & Public Relations. She is a member of the Advisory Board of the U.S. Conference of Mayors and serves on the Conference Task Force on Hunger and Homelessness. Ms. Myrick is president of the National Conference of Republican Mayors, a member of the Republican National Committee, and a member of the board of directors of the North Carolina Institute of Politics. Her civic involvement includes membership on the advisory board of a local homeless shelter and task force. The Mayor also serves on the U.S. Department of Housing and Urban Development's Regional Advisory Council.

Robert B. O'Brien, Jr.

Robert B. O'Brien, Jr., is chairman and chief executive officer of Carteret Bancorp, Inc., the second-largest savings institution in New Jersey, with offices in New Jersey, Florida, Maryland, Virginia, and Washington, D.C. In 1989, Mr. O'Brien was elected vice chairman of the U.S. League of Savings Institutions, and is the current chairman of the Housing Opportunities Foundation, established by the League to provide leadership on affordable housing issues for the thrift industry. Mr. O'Brien serves as chairman of the League's Housing Policy Committee. He is also a member of the Thrift Institution Advisory Council of the Federal Reserve Bank of New York, a director of the Federal Home Loan Bank of New York, and a former director of the Federal Savings and Loan Insurance Corporation. Mr. O'Brien is the current national chairman of Neighborhood Housing Services of America and a director of the Palm Beach County, Florida, Housing Partnership, Inc., which works with public- and private-sector leaders to develop low- and moderate-income housing. He also directs the New Jersey Urban Lending Program, which has committed more than $115 million for low- and moderate-income housing projects. Mr. O'Brien has a B.A. from Lehigh University.

Paul M. Weyrich

Paul M. Weyrich, president of the Free Congress Research and Education Foundation and founding president of The Heritage Foundation, is a prominent conservative publisher and commentator with extensive experience in politics, public policy, and the print and broadcast media. Mr. Weyrich heads a number of public policy and media organizations and serves on the boards of several others. He is a member of the board of directors of Amtrak, vice-chairman of the Committee for Effective State Government, and publisher of a number of journals, including *Family, Law and Democracy Report.*

Robert L. Woodson

Robert L. Woodson is president of the National Center for Neighborhood Enterprise, a research, demonstration, and development organization, and chairman of the Council for a Black Economic Agenda. Formerly a resident fellow and director of the American Enterprise Institute's Neighborhood Revitalization Project, he directed national and local community development programs, including a pioneering program encouraging resident management and ownership of public housing. Mr. Woodson has published a variety of articles on economic issues for national publications. He received a B.S. from Cheyney State College and a master's degree in social work from the University of Pennsylvania.

Charter of the Secretary's Advisory Commission on Regulatory Barriers to Affordable Housing

Section 1. Purpose

This document establishes a charter for a Secretary's Advisory Commission on Regulatory Barriers to Affordable Housing under the provisions of the Federal Advisory Committee Act (FACA) of 1972, as amended, P.L. 92-463, 5 U.S.C. App.

Section 2. Authority

The Commission is established by the Secretary pursuant to Title V of the Housing and Urban Development Act of 1970 (P.L. 91-609; 84 Stat. 1784; 12 U.S.C. 1701Z-1) and implements the determination of the Secretary of Housing and Urban Development to establish an Advisory Commission pursuant to the Federal Advisory Committee Act (FACA) of 1972, as amended, P.L. 92-463, 5 U.S.C. App.

Section 3. Objectives, Scope of Activities, and Duties

Construction of housing is governed by a broad range of Federal, State, and local statutes, ordinances, and regulations. Although most are enacted for valid public purposes, in many instances, duplication and excessive standards and requirements needlessly inflate the costs of construction and rehabilitation, thereby excluding many moderate- and low-income families from homeownership and rental housing. In some instances, regulatory requirements are also used as a mechanism for economic and racial discrimination.

The Commission shall undertake a comprehensive assessment of the nature and status of prevailing State and local regulations governing construction and rehabilitation as well as applicable Federal regulations. This review shall include, but not be limited to: zoning, impact fees, subdivision ordinances, standards, processing and permitting, rental control, codes and innovation, and environmental requirements.

The Commission shall prepare a report to the Secretary which presents its findings on the degree to which regulations increase housing costs including recommendations as to appropriate State, local, and Federal actions that the Commission recommends should be taken to remove or modify excessive, duplicative, or unnecessary regulations and requirements.

Section 4. Membership

The Commission shall be composed of no more than 22 members and shall consist of individuals with extensive knowledge or interest in the building regulatory process and its impact upon the affordability of housing. The Commission, appointed by the Secretary to assure a balanced representation, shall consist of: elected and appointed officials with responsibility for the regulatory process; recognized experts, homebuilders, and developers with extensive knowledge of residential construction and regulation; and individuals with a concern for or representing the interests of low- and moderate-income families.

Section 5. Appointments

The Commission members shall be appointed by the Secretary to serve a term of 12 months from the effective date of the Charter. Members shall serve at the pleasure of the Secretary.

Section 6. Chairperson

The Chairperson shall be appointed by the Secretary and shall be responsible for:

a. Establishing the informal organization of the Commission and appointing any subcommittees as are deemed necessary;

b. Developing, with the advice and consent of the Commission, procedures for its effective and efficient operations;

c. Ensuring that procedures for public participation in Commission meetings are established in accordance with FACA; and

d. Taking such other actions as may be required to facilitate the discharge of Commission duties.

Section 7. Commission Organization

The organization and agenda of the Commission shall be established at the first full meeting of the Commission on Regulatory Barriers to Affordable Housing. Once established, the organization of the Commission may be modified when deemed appropriate by the Chairperson. Any subcommittees appointed by the Chairperson shall be subordinate and advisory to the full Commission. Such subcommittees may meet at such time and places as the subcommittee Chairperson has approved for the performance of Commission business. The results of all subcommittee meetings shall be reported to the full Committee for its review.

Section 8. Meetings

The Commission will meet at least once every 3 months for its duration. If the Chairperson deems it necessary, additional meetings and/or hearings may be convened at any location which is advantageous to the business of the Commission. All meetings and hearings of the Commission and any of its subcommittees shall convene under the following conditions:

a. A notice of each Commission or subcommittee meeting or hearing shall be published in the *Federal Register* at least 15 days in advance of the meeting. Shorter notice is permissible in cases of emergency, but the reason for such emergency must be reported in the notice.

b. Detailed minutes of each meeting or hearing of the Commission shall be kept, and their accuracy certified to by the Commission Chairperson and submitted to the Secretary of HUD and filed with the Departmental Committee Management Officer. The minutes shall include:

   1. The time and place of the meeting or hearing;
   2. A list of Commission members and staff and agency employees at the meeting or hearing;
   3. A complete summary of matters discussed and the conclusions reached;
   4. Copies of all reports received, issued, or approved by the Commission;
   5. A description of the extent to which the meeting was open to the public; and
   6. A description of public participation, including a list of members of the public who attended the meeting or hearing.

c. An employee designated by the Secretary, or his designee, will attend every meeting of the Commission. The designated employee, or his designee, must call, or approve, each meeting and is authorized to adjourn any Commission meeting whenever he determines that adjournment is in the public interest.

Section 9. Support Services

The Assistant Secretary for Policy Development and Research, to the extent permitted by law and subject to the availability of funds, shall provide the Commission with administrative services, funds, facilities, staff, and other support as may be necessary for the effective performance of its functions.

Section 10. Estimated Support and Cost

The Department estimates that the operating cost of the Commission will not exceed $200,000. This does not include staff support costs, which are estimated to be 10 staff years.

Section 11. Travel and Compensation

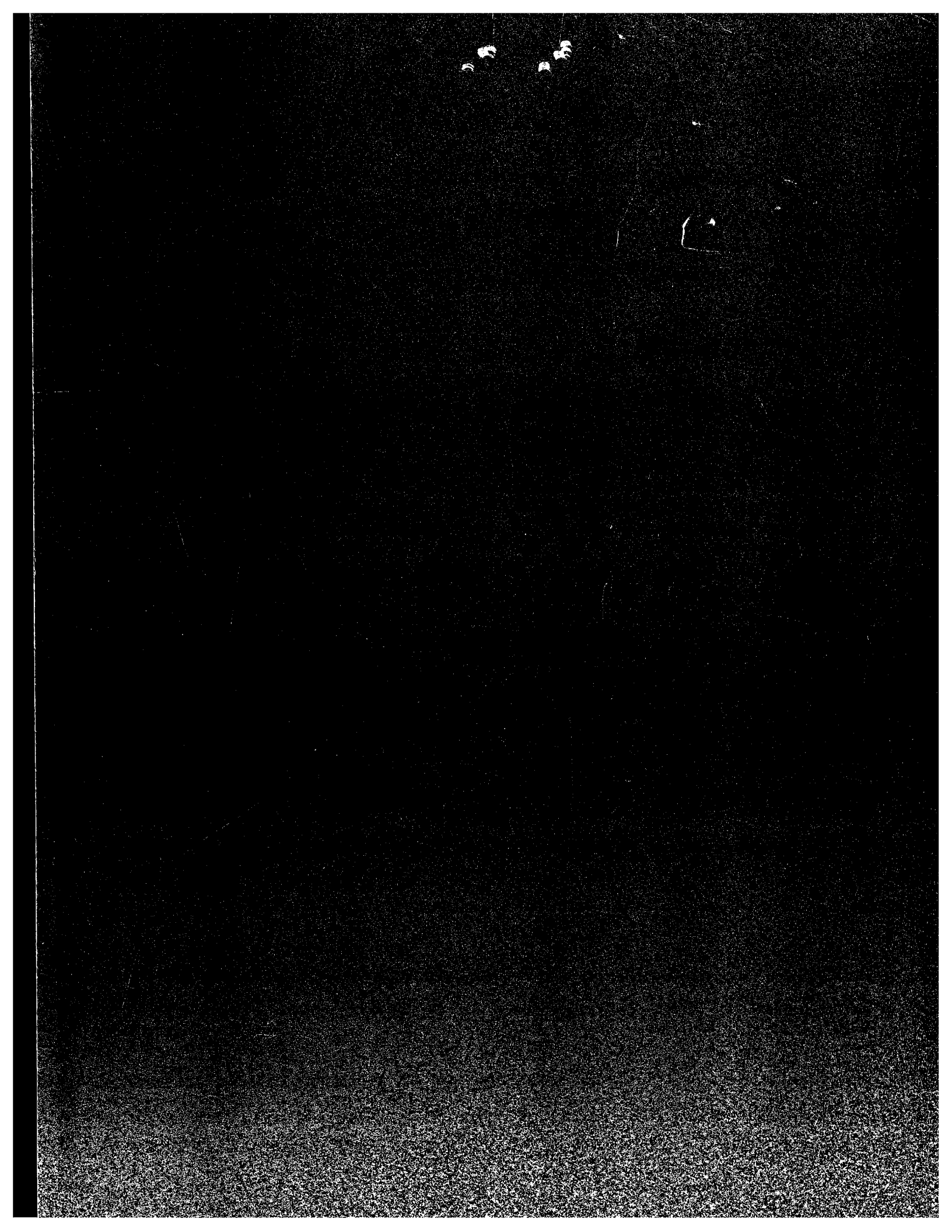
Members of the Commission will serve without compensation, but are entitled to be paid for travel and subsistence in the performance of duties on an actual expense basis, as authorized by 5 U.S.C. 5703(b).

Section 12. Reports

The Commission shall submit to the Secretary a final written Report. This Report shall describe the findings of the Commission as to the nature and extent to which Federal, State, and local legislation and regulations governing the construction, rehabilitation, or management of housing are excessive, duplicative, or unnecessary and shall also include recommendations for any legislative, judicial, or administrative actions which the Commission believes can relieve the regulatory burden upon housing construction, reduce costs, and expand affordability. The final Report shall also include a description of the Commission's membership, functions, and other actions prior to its termination. From time to time the Commission may submit other additional reports which are deemed necessary to carry out its functions and responsibilities.

Section 13. Expiration

The Commission, established under this Charter, shall terminate 12 months after the charter is filed unless sooner extended.

Original Charter Approved: December 15, 1989
Filed: March 14, 1990
Amended: July 27, 1990

Jack Kemp
Secretary of Housing
and Urban Development