

December 2020

Unveiling the “Trojan Horses” of Gentrification: Studies of Legal Strategies to Combat Environmental Gentrification in Washington, D.C. and New York, N.Y.

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Recommended Citation

Sarena Malsin, *Unveiling the “Trojan Horses” of Gentrification: Studies of Legal Strategies to Combat Environmental Gentrification in Washington, D.C. and New York, N.Y.*, 38 Pace Envtl. L. Rev. 147 (2020)

DOI: <https://doi.org/10.58948/0738-6206.1846>

Available at: <https://digitalcommons.pace.edu/pelr/vol38/iss1/4>

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NOTE

**Unveiling the “Trojan Horses” of
Gentrification: Studies of Legal Strategies to
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Sarena Malsin*

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I. INTRODUCTION

Gentrification is generally considered to be the result of urban development intended to increase the economic value and productivity of an area.¹ Development projects in economically underperforming areas cause displacement of existing residents and leads to their replacement with more affluent residents and upscale businesses.² In the United States, gentrification is often marked by the replacement of neighborhoods with high populations of people of color, immigrants, and ethnic minorities with more affluent white populations.³ While it is well understood that gentrification in the form of business development and housing redevelopment causes a sharp increase in surrounding property values, thereby resulting in displacement, less understood is the fact that environmentally-oriented development projects have this same impact.⁴ Social researchers have termed this phenomenon “environmental gentrification.”⁵

This paper will demonstrate how environmental gentrification follows from environmental development projects and how environmental development or cleanup projects can greatly exacerbate gentrification in areas where it has already begun.⁶ It will then examine the various legal attempts to combat gentrification in Washington, D.C. (D.C.) and New York, N.Y. (N.Y.) and measure the success of these attempts against conclusions of legal scholars on the issue. This concept is relatively new and minimally recognized; however, legal and sociological scholarship explicitly addressing environmental gentrification has emphasized the effectiveness of preemptive measures taken in the planning stages of environmental remediation projects and the importance of public discussion to achieve these preemptive solutions.⁷

1. See Sarah Fox, *Environmental Gentrification*, 90 U. COLO. L. REV. 803, 805 (2019).

2. Juliana A. Maantay & Andrew R. Maroko, *Brownfields to Greenfields: Environmental Justice Versus Environmental Gentrification*, 15 INT’L J. ENV’T RSCH. & PUB. HEALTH 2233, 2234 (2018).

3. *Id.*

4. Fox, *supra* note 1, at 806.

5. *Id.* at 811.

6. Trina Hamilton & Winifred Curran, *Can we Green Cities Without Causing Gentrification?*, GREENBIZ (Mar. 26, 2018), <https://www.greenbiz.com/article/can-we-green-cities-without-causing-gentrification> [<https://perma.cc/Z44E-N36D>].

7. Fox, *supra* note 1, at 859.

Litigation on gentrification issues has rarely been successful thus far. Caselaw in D.C. and N.Y. primarily addresses gentrification in general, not environmental gentrification, and indicates that litigation has been unsuccessful in curbing the potential harmful socioeconomic effects of development projects.⁸ The majority of cases have failed both due to difficulties proving the impacts of gentrification in court as well as the high level of deference toward administrative bodies reviewing planning decisions.⁹ Additionally, administrative legal solutions through changes to zoning and land use laws have proven to be both inefficient and arduous in both cities.¹⁰

Environmental legal scholars have concluded that public education on the issues associated with gentrification and community involvement is essential in the planning stages of environmental remediation projects.¹¹ Taking preemptive legal measures and putting legal tools in place ahead of development are viewed as more salient and impactful legal solutions that can be used to target environmental gentrification.¹² This paper argues that preemptive measures taken by developers and communities, such as establishing community land trusts or involving community-oriented initiatives in the development process, pose a better legal solution to environmental gentrification in D.C. and N.Y. than litigation efforts on the issue. This paper also serves as a call to action to build awareness among environmental lawyers advocating for “green” improvement projects that legal solutions to the adverse socioeconomic impacts of those projects are necessary to assess as well.

II. A BRIEF OVERVIEW OF GENTRIFICATION

The term “gentrification” was coined in 1963 by a British sociologist to describe the events taking place in central London at the time: the displacement of working-class residents with middle class residents and a change in the social character of the community

8. *See infra* Part IV.

9. *Id.*

10. *See infra* Part V.A.

11. Fox, *supra* note 1, at 859.

12. *Id.* (“Given the amount of work that goes into the planning process ahead of time . . . the planning process itself could make a meaningful difference in dictating whether and how displacement results from environmental improvements.”).

as a whole.¹³ The root of the objective to “gentrify” a neighborhood is to transform it from low to high value, not to displace residents. Yet, displacement inevitably follows from efforts to increase the value of a neighborhood.¹⁴ While developers are often agents of gentrification, they are not the catalysts. Developers are profit-motivated, merely intending to capitalize on existing trends from the public or directives from a municipality.¹⁵ For this reason, their role in the gentrification process is central to the discussion on how to abate environmental gentrification, and their cooperation with existing communities on *ex ante* legal strategies is essential to prevent their damning presence as litigation opponents.

A. History of Gentrification in Washington, D.C.

Gentrification is prevalent in Washington, D.C. in particular, making it an important location in which to initiate a conversation about legal recourse for environmental gentrification. A study by the National Community Reinvestment Coalition, conducted in 2019 using U.S. census data from the years 2000-2013, found that “Washington, D.C., was the most gentrified city [in the United States] by percentage of eligible neighborhoods that experienced gentrification.”¹⁶ Washington, D.C. was also found to have one of the highest levels of displacement of Black residents, losing 20,000 Black residents between 2000 and 2013.¹⁷ Another study conducted by local news and policy reporting organization Greater Greater Washington found that the District has lost 135,000 Black residents since 1980, whereas it has gained 66,000 white residents.¹⁸

13. Alan Ehrenhalt, *What, Exactly, Is Gentrification?*, GOVERNING (Feb. 2015), <https://www.governing.com/topics/urban/gov-gentrification-definition-series.html> [<https://perma.cc/JA6B-D5V2>] (“[W]orking class quarters have been invaded by the middle class . . . until all or most of the working class occupiers are displaced and the whole social character of the district is changed.”).

14. *Id.*

15. *Id.*

16. JASON RICHARDSON ET AL., NAT’L CMTY. REINVESTMENT COAL., SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES 4 (Mar. 2019), <https://ncrc.org/gentrification/> [<https://perma.cc/65NX-2FLF>].

17. *Id.* at 20.

18. Alex Baca & Nick Finio, *Gentrification in DC is Not Just a Black and White Issue*, GREATER GREATER WASH. (Sept. 6, 2018), <https://ggwash.org/view/68933/gentrification-in-dc-is-not-just-a-black-and-white-issue> [<https://perma.cc/ZY4D-4RFA>].

More local studies have identified the area around D.C.’s Anacostia River as a site of particularly intense gentrification. Wards 7 and 8, east of the river, are known to be neighborhoods with an increasingly high population of low-income residents of color.¹⁹ Those areas have struggled to recover economically from the Great Recession of 2008, while most other areas identified by the D.C. Fiscal Policy Institute have grown in economic productivity.²⁰ Significantly, the areas immediately west of the Anacostia have experienced the most changeover between existing residents and new residents; currently, almost half of D.C.’s Black population has come to live on the east side of the river.²¹ These developments show no signs of abating without proper policy in place to combat gentrification.

B. History of Gentrification in Brooklyn and Manhattan, N.Y.

Sociologists have identified signs of gentrification in neighborhoods like Brooklyn Heights as early as 1962.²² As part of a broader urban strategy of “replacing old with new,” gentrification began in full force in the 1990s in Brooklyn Heights as national and local governmental policies drove increased replacement of economically under-performing neighborhoods with commercial enterprises.²³ Data collected by researcher Laura Lee demonstrates that, over the period of 1970–2000, the number of housing units in Brooklyn Heights decreased while the percentage of owner-occupied housing units increased.²⁴ Moreover, renter-occupied units decreased as average values of gross rent and property value increased exponentially.²⁵ These phenomena are all symptoms of gentrification that cause gentrified neighborhoods to be less affordable and hospitable to existing residents.

19. Claire Zippel, *DC’s Black Residents Increasingly Live East of the Anacostia River*, D.C. FISCAL POL’Y INST. (Sept. 28, 2016), <https://www.dcfpi.org/all/dcs-black-residents-increasingly-live-east-of-the-anacostia-river/> [https://perma.cc/7TPZ-5S6J].

20. *Id.*

21. *Id.*

22. Loretta Lees, *Super-Gentrification: The Case of Brooklyn Heights, New York City*, 40 URB. STUD. 2487, 2488 (2003).

23. *Id.* at 2490, 2494.

24. *See id.* at 2497.

25. *Id.*

Brooklyn's Prospect Park faced a fate similar to the Anacostia River in D.C. The park fell into a state of serious disrepair and economic ill-health, causing surrounding residential properties to depreciate in value.²⁶ In the 1970s and 80s, Prospect Park developed a reputation as a dangerous crime haven because it was the site of drug dealings, violent crimes, and homeless encampments.²⁷ By the 90s and early 2000s, investment in Prospect Park as Brooklyn's main environmental attraction paralleled an increase in commercial and residential investment, which contributed vastly to the increase in property values during that time.²⁸ It is telling that Prospect Park was initially built in Brooklyn to rival Manhattan's Central Park in an effort to attract the wealthy and increase property values.²⁹ As in D.C., investments to revitalize Prospect Park and other neighborhoods have only served to widen existing socioeconomic divides and drive original residents out. Unfortunately, investments purely for economic or development purposes are not the only catalysts to gentrification in these communities.

III. ENVIRONMENTAL INJUSTICE: THE CONNECTION BETWEEN ENVIRONMENTAL DEVELOPMENT PROJECTS AND GENTRIFICATION

Despite promises that increased sustainability would bring heightened equality and social justice to communities, economic endeavors control sustainability efforts just as much as they control typical development projects.³⁰ Sustainable development or "greening" projects, especially in economically disadvantaged areas, are often accompanied by utopic goals and language implying that environmental improvements will solve all other issues of socioeconomic inequality in the areas in which they are based.³¹ This

26. See Kenneth A. Gould & Tammy L. Lewis, *The Environmental Injustice of Green Gentrification: The Case of Brooklyn's Prospect Park*, in *THE WORLD IN BROOKLYN: GENTRIFICATION, IMMIGRATION AND ETHNIC POLITICS IN A GLOBAL CITY* 113, 123 (Judith N. DeSena & Timothy Shortell eds., 2012).

27. *Id.* at 125.

28. *Id.* at 123.

29. *Id.* at 124.

30. Hamil Pearsall & Isabelle Anguelovski, *Contesting and Resisting Environmental Gentrification: Responses to New Paradoxes and Challenges for Urban Environmental Justice*, 21 *SOCIO. RSCH. ONLINE* 121, 121 (2016).

31. *Id.*

is partially why their negative socioeconomic impacts have largely gone unrecognized until recently. However, connections between environmental health and economic value of residential areas illuminate the causal relation between the two. For example, hazardous site clean-up has been associated with increases in mean household income and percentages of college-educated residents in neighborhoods across the United States.³² Further, studies show that environmental contamination depresses property values up to forty-five percent in the surrounding area, while subsequent remediation increases property values.³³

Neighborhoods also tend to naturally segregate themselves for economic reasons. Well-known and severe environmental risks in a residential area drive down housing prices, while more wealthy homeowners are able to afford homes in areas facing low environmental risk, low environmental hazard exposure, and ample green spaces.³⁴ Thus, it follows that environmental “goods,” as they are sometimes called, are distributed predominantly to wealthy homeowners who can afford appreciated property value next to beneficial environmental resources.³⁵ Environmental “bads” are therefore distributed to predominantly lower-income communities and communities of color.³⁶ “Green Gentrification” is merely a compounding of these existing trends surrounding environmental “goods,” but it is one over which current environmental lawyers and policymakers can exercise control.

Finally, it is impossible to discuss environmental gentrification without addressing environmental racism. The term “environmental racism” was initially created to describe the strategic siting of hazardous environmental facilities and problem areas in areas based on race.³⁷ The very same race-based ideologies that have caused phenomena such as redlining, “white flight,” and slating neighborhoods have also left neighborhoods of racial minorities vulnerable to gentrification from their proximity to environmental

32. *Id.* at 122.

33. *Id.*

34. *See* Gould & Lewis, *supra* note 26, at 117.

35. *Id.* at 118 fig.6.1.

36. *Id.* at 118 fig.6.2.

37. *Id.* at 115.

hazards requiring “greening” or other environmental improvements.³⁸

A. Case studies of the Anacostia River, Community Gardens, and the High Line

The Anacostia River is a site of longstanding heightened pollution in Washington, D.C. Called D.C.’s “forgotten river,” the District’s poor sewage infrastructure has led to industrial pollution, raw sewage, and stormwater runoff discharging into the River for years. As a result, it was classified as a Superfund site in 1998.³⁹ Consequently, the Anacostia is the target of many environmental remediation, development, and tourism projects, most recently on its waterfronts.⁴⁰ This leaves the economically vulnerable Wards 7 and 8 particularly at risk of being impacted.⁴¹ Environmental development projects seem wholly beneficial on their face. It is therefore easy to overlook their potential for displacement of existing communities—hence their nickname among researchers as “Trojan Horses of Gentrification.”⁴² Redevelopment of waterways and other green spaces has been shown to lead to marginalization and

38. See *id.* at 115, 121–22. Redlining is a discriminatory practice wherein mortgage lenders draw “red lines” around parts of a city map where they do not want to make loans to persons of certain socioeconomic or racial groups. Elizabeth Weintraub, *What is Redlining? Definition and Examples of Redlining*, THE BALANCE (July 5, 2020), <https://www.thebalance.com/definition-of-redlining-1798618> [<https://perma.cc/PQ2W-GJC3>]. “White flight” describes an exodus of sorts by white residents in an area when the area starts to become more culturally, ethnically, and racially diverse. See Tom Jacobs, *‘White Flight’ Remains a Reality*, PAC. STANDARD (Mar. 6, 2018), <https://psmag.com/social-justice/white-flight-remains-a-reality> [<https://perma.cc/6BGM-B3NJ>].

39. Kashaf Momin, *Confronting Environmental Gentrification: The Case of the Anacostia*, ENV’T L. INST. (June 3, 2019), <https://www.eli.org/vibrant-environment-blog/confronting-environmental-gentrification-case-anacostia> [<https://perma.cc/Y46G-T3H2>].

40. See, e.g., *id.*

41. See *id.* (“... the river also symbolically divides the majority white and affluent population on the west side with the minority and low-income residents of Wards 7 and 8 on the east side.”).

42. Nufar Avni & Raphael Fischler, *Social and Environmental Justice in Waterfront Redevelopment: The Anacostia River, Washington, D.C.*, 56 URB. AFFS. REV. 1779, 1801 (2020) (citing Aaron Betsky, *The High Line Effect: Are Our New Parks Trojan Horses of Gentrification?*, METROPOLIS (Dec. 13, 2016), <https://www.metropolismag.com/architecture/landscape/high-line-effect-new-parks-trojan-horses-gentrification/> [<https://perma.cc/AN7J-FA8V>]).

displacement of longtime residents of the areas in which these projects take place.⁴³

Around the Anacostia, development of housing, environmentally-oriented attractions, and green spaces on the waterfront have been lauded for helping efforts to improve the river’s health. However, these actions have ultimately led to increased property values and displacement of existing, low-income residents on the east side.⁴⁴ Studies of Brooklyn community gardens, the Manhattan High Line, and the Atlanta Beltline are also instructive in demonstrating the disruption in communities caused by seemingly benign environmental development projects.

A study of community gardens in Brooklyn analyzed several low-income block groups within one quarter mile of a community garden, specifically those with incomes below Brooklyn’s average as a whole, and found that those block groups displayed increases of per-capita income, indicating gentrification.⁴⁵ The study, collecting data of changing per-capita income from 2010–2015, found that lower-income areas within one quarter mile to one or more community gardens experienced a larger increase in per-capita income than areas not proximate to community gardens.⁴⁶ This finding was “indicative of areas which are either undergoing gentrification or which are at some point later in the gentrification process.”⁴⁷

Brooklyn has also seen “green gentrification” along the Gowanus Canal. The Canal has been a toxic industrial site for decades and is surrounded by low- and middle-income neighborhoods. In 2010, it was designated as a Superfund site, triggering a long-term cleanup and redevelopment project, some parts of which are still underway.⁴⁸ Rental and housing prices have since increased disproportionately around Gowanus Canal

43. *Id.*

44. *See id.* at 1802.

45. Maantay & Maroko, *supra* note 2, at 2237–38, 2243.

46. *Id.*

47. *Id.*

48. Kenneth A. Gould & Tammy L. Lewis, *From Green Gentrification to Resilience Gentrification: An Example from Brooklyn*, 17 CITY & CMTY. 12, 12 (2018). *See* 26 U.S.C. § 9507; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9611.

properties as well as in neighborhoods abutting Brooklyn's aforementioned Prospect Park.⁴⁹

Manhattan's High Line is the culmination of a similar rebirth of a defunct industrial facility turned environmentally improved "green" outdoor attraction. The former elevated railroad line running along the west side of Manhattan was transformed into an elevated walkway and linear urban park. Sociology scholars have described the High Line as being marketed towards socioeconomically privileged white residents and tourists, five million of which visit the restored railroad urban park every year.⁵⁰ Property values near the High Line increased by 103 percent between 2003 and 2011.⁵¹ The increases in property values raised concerns over who gets to access the new park. Although the park's founder, Robert Hammond, a local to the area, originally wanted the park to benefit the neighborhood's original residents, his oft-cited quote captures the impact of the High Line well: "We wanted to do it for the neighbourhood . . . Ultimately we failed."⁵² Critics of the High Line and the numerous other remediation-turned-tourism projects modeled after it, such as the Atlanta Beltline,⁵³ say that these projects inadequately address

49. Maria Hart, Jillian Du & Caroline Coccoli, *How to Prevent City Climate Action from Becoming "Green Gentrification"*, WORLD RES. INST. (Dec. 12, 2019), <https://www.wri.org/blog/2019/12/how-prevent-city-climate-action-becoming-green-gentrification> [<https://perma.cc/TF4U-3X37>].

50. Isabelle Anguelovski, James Connolly & Anna Livia Brand, *From Landscapes of Utopia to the Margins of Green Urban Life: For Whom is the New Green City?*, 22 CITY 417, 418 (2018).

51. *Id.*

52. *Id.*

53. Although outside the scope of this research, a final case study in Atlanta, Georgia is also illustrative. In anticipation of the construction of the Atlanta Beltline, there was a drastic increase in real estate prices and property in surrounding Atlanta neighborhoods, in addition to the construction of housing units largely unaffordable to existing residents. Dan Immergluck, *Large Redevelopment Initiatives, Housing Values and Gentrification: The Case of the Atlanta Beltline*, 46 URB. STUD. 1725, 1737 (2009). The study found that when the site of the Atlanta Beltline was initially announced, housing prices increased in properties within one eighth of a mile of the Beltline's proposed financing area, which are some of the lowest income areas of Atlanta. *Id.* at 1735, 1737, 1740, 1745. From groundbreaking in 2011 until the end of 2016, the Beltline spurred the construction of over 15,000 new housing units, yet less than 800 were affordable by the project's standards, resulting in displacement of existing residents. Dan Immergluck, *Sustainable for Whom? Large-Scale Sustainable Urban Development Projects and "Environmental Gentrification"*, SHELTERFORCE (Sept. 1, 2017), <https://shelterforce.org/2017/09/01/sustainable-large-scale-sustainable-urban-development-projects-environmental-gentrification/> [<https://perma.cc/ZS9C-22B4>].

concerns of environmental justice and redistributive responsibility that accompany drastic change brought to an area by a public investment in a utopic ideal of a “green” urban city.⁵⁴

IV. *EX-POST* SOLUTIONS: FIGHTING GENTRIFICATION IN COURT

As analyses of litigation efforts to fight gentrification will show, *ex-post* legal solutions to environmental gentrification are largely ineffective. Parties in both D.C. and N.Y. have struggled with a dearth of legal resources compared to their corporate and municipal opponents as well as heightened deference to administrative bodies approving development and zoning decisions. In the eyes of the court, plaintiffs have also struggled to explain gentrification as a legally redressable harm and have thus failed to file successful claims based on zoning or land use laws, municipal comprehensive plans, or environmental statutes.

A. Washington, D.C.

There are few cases in Washington D.C. that address gentrification directly, and none incorporate the phrase “environmental gentrification.” Cases that saw some margin of success had applicable knowledge of the City’s Comprehensive Plan and zoning statutes and used these frameworks as anchors to their gentrification claims. Broadly, Comprehensive Plans are municipal policy instruments implemented to guide future actions of a community and encourage changes in zoning and planning laws that conform to a set of established goals set by the city.⁵⁵ While municipalities are not required to adopt Comprehensive Plans, once they do adopt a plan, any future changes in zoning law or actions by the zoning board must conform to that plan.⁵⁶ Often, modern Comprehensive Plans include guidelines such as equitable

54. See Anguelovski et al., *supra* note 50, at 423, 429–30.

55. Gary D. Taylor, *The Purpose of the Comprehensive Land Use Plan*, CMTY. PLAN. & ZONING (July 25, 2019), <https://community-planning.extension.org/the-purpose-of-the-comprehensive-land-use-plan/> [<https://perma.cc/A8BJ-8HXJ>].

56. See *id.* Uniquely, however, D.C. is governed by the Home Rule Act as a non-state, which requires that the District adopt a Comprehensive Plan. Off. of Plan., *2006 Comprehensive Plan*, D.C.GOV, <https://planning.dc.gov/page/2006-comprehensive-plan> [<https://perma.cc/F9E4-FKXN>].

development and affordable housing requirements.⁵⁷ Therefore, once adopted, they can impose an obligation on municipalities to prevent against harmful socioeconomic effects—an obligation easily cited to in court. As such, the Comprehensive Plan can be a useful tool for plaintiffs to rely on.

Sharon Cole faced these issues petitioning *pro se* against the District of Columbia Zoning Commission for their approval of 777 17th Street, LLC's proposed building development on vacant, undeveloped, and used car lots near her home.⁵⁸ Cole's main concern in her complaint was that the plan, which reserved only eight percent of its proposed housing space for affordable housing units, would lead to gentrification in her neighborhood.⁵⁹ However, she failed to raise these concerns during the public hearing for the development initiative, leaving the D.C. Court of Appeals with little documentation on the record from which to address her claims.⁶⁰ Cole's vaguely-stated concerns about the impacts of the plan also left the court without a concrete line of legal reasoning to analyze. She merely cautioned against the "basic project impacts" on the surrounding area, claiming existing neighbors have little protection from "land value destabilization and gentrification pressures."⁶¹ This lack of specificity illustrates the weaknesses inherent in gentrification claims brought by legally inexperienced *pro se* petitioners.

Further, Cole's vague argument meant that the court itself was tasked with assessing whether the developer's plan for affordable housing accommodations and displacement protections fell in line with the District's Comprehensive Plan supporting equitable development and the Commission's Inclusionary Zoning Regulations. The Court's review of the Commission's decisions is deferential and, as it stated, "it is not [the court's] role to determine whether a particular zoning action is, or is not, desirable."⁶²

57. *See, e.g.*, D.C. OFF. OF PLAN., COMPREHENSIVE PLAN: HOUSING ELEMENT 5-7, 5-9, 5-22 (Mar. 2012), https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/District%20Elements_Volume%20I_Chapter%205_April%208%202011.pdf [<https://perma.cc/DL2M-KGJN>].

58. *Cole v. D.C. Zoning Comm'n*, 210 A.3d 753, 757 (D.C. 2019).

59. *Id.* at 757, 759.

60. *Id.* at 761.

61. *Id.* at 759.

62. *Id.* at 760.

Therefore, *Cole* shows that the court is likely to defer to the judgment of the Zoning Commission when assessing development projects, especially in the absence of a cogent legal argument by a petitioner: “Absent a material procedural impropriety or error of law, the Commission’s decision stands so long as it rationally flows from findings of fact supported by substantial evidence in the record as a whole.”⁶³

An earlier case, *Durant*, also failed to overcome the court’s deference to the Zoning Commission, despite crafting a more detailed case than the petitioner in *Cole*. In asserting the proposed development plan near D.C.’s Brookland/Catholic University metro stop would have adverse impacts on the surrounding neighborhood, petitioners in *Durant* specifically cited that the proposed development plan was inconsistent with D.C.’s Comprehensive Plan.⁶⁴ Despite their arguments and ability to rely on a specific District-adopted equitable development policy tool, the Court found that the Zoning Commission is the “exclusive agency” responsible for “balancing the [Comprehensive] Plan’s occasional competing policies and goals.”⁶⁵ Thus, even though the District has a policy instrument in place for assuring minimal displacement and equitable development, when petitioners try to rely on it to argue that a development project will have inequitable results, they are virtually powerless at the hands of the Zoning Commission’s judgment.

The downfalls of *Cole* can be immediately contrasted with the success of Barry Farm Tenants and Allies Association (BFTAA) against the District of Columbia Zoning Commission. Aristotle Theresa, a well-known attorney and civil rights activist,⁶⁶ represented petitioner Barry Farm Tenants and Allies Association challenging the Zoning Commission’s approval of a redevelopment plan in Barry Farm, a historically Black neighborhood in Ward 8.⁶⁷ The applicant for the development plan wished to redevelop a site to include 432 low-income row houses and twelve low-income

63. *Id.* (quoting *Spring Valley-Wesley Heights Citizens Ass’n v. D.C. Zoning Comm’n*, 856 A.2d 1174, 1176–77 (D.C. 2004)).

64. *Durant v. D.C. Zoning Comm’n*, 65 A.3d 1161–62 (D.C. 2013).

65. *Id.* at 1167.

66. See generally STOOP LAW, <https://www.stooplaw.com/> [<https://perma.cc/A3Y6-JJ3J>].

67. *Barry Farm Tenants and Allies Ass’n v. D.C. Zoning Comm’n*, 182 A.3d 1214, 1217–18 (D.C. 2018).

apartment units as well as create more retail/service uses and mixed-income housing to the Anacostia neighborhood.⁶⁸

When comparing BFTAA's claims with Cole's, BFTAA's first advantage was that, as a housing association, the group likely had a better grasp of the District's housing policies and local zoning restrictions. In this way, BFTAA's advantages of community awareness and involvement in zoning laws and regulations reflect those of a community land trust set up by a project developer. The Court of Appeals was able to use BFTAA's prior remarks at public hearings claiming that the proposed plan was inconsistent with D.C.'s Comprehensive Plan and Barry Farm Small Area Plan specifications for density and affordable housing requirements.⁶⁹

The court then examined the Zoning Commission's acceptance of the Barry Farm development plan more closely. BFTAA raised contested issues of fact during the hearings, which led the court to question why the Zoning Commission accepted the development plan with almost no edits.⁷⁰ This initiated more discussion of the actual merits of the plan than was even achieved in *Cole*, effectively giving BFTAA's arguments against gentrification more weight in the Court's decision. Further, BFTAA and Mr. Theresa made concrete connections to requirements and limitations in D.C.'s Comprehensive Plan (zoning density requirements) and Barry Farm's Small Area Plan (number of units to be approved over a 1110-unit limit).⁷¹

Even after ruling in BFTAA's favor, the *Barry Farm* court acknowledged that their review of an order issued by the Zoning Commission is "limited and narrow" and that when reviewing a Zoning Commission decision, they do not "reassess the merits of the decision, but rather . . . determine whether findings supporting the decision are arbitrary, capricious or an abuse of discretion, not supported by substantial evidence."⁷² The court is also very liberal in its assessment of a project's adverse impacts, allowing "flexibility" of development as long as the project offers a "commendable number

68. *Id.* at 1220.

69. *Id.* at 1221.

70. *Id.* at 1224.

71. *Id.* at 1225–26.

72. *Id.* at 1223 (quoting *Foggy Bottom Ass'n v. D.C. Zoning Comm'n*, 639 A.2d 578, 584 (D.C. 1994)).

or quality of public [health] benefits.”⁷³ This suggests that barriers to a successful legal fight against gentrification are still high.

As the court’s explicit deference to the Zoning Commission may suggest, a positive outcome is not common with cases arguing against possible gentrification resulting from proposed development plans. The court also highlighted the historic significance of Barry Farm, noting the farm’s use after the Civil War, its significance during the abolitionist movement, and the critical importance of maintaining and preserving the site’s African American cultural heritage.⁷⁴ Consequently, the court’s strict examination of the record and of the Zoning Commission’s decision may actually stem from this particular site’s historical importance and integrity rather than the strength of Theresa and BFTAA’s legal arguments.⁷⁵

The same thing can be said of the outcome of *Friends of McMillan Park v. District of Columbia Zoning Commission*. The *McMillan Park* court found that the Zoning Commission incorrectly decided that the “special merit” of the proposed redevelopment project outweighed the “historic preservation losses” that the project would entail.⁷⁶ This sentiment still did not stop the court from affirming the Zoning Commission’s decision about the McMillan Park development on remand in 2019.⁷⁷ The court cited a similar “deferential standard of review” when declining to hear the petitioners’ argument that the Zoning Commission failed to adequately consider evidence contrary to their own findings on the issues of potential gentrification, increases in surrounding property values, and resident displacement raised in the initial case.⁷⁸ The Zoning Commission cited research that gentrification was a product of general economic trends and not influenced by individual building projects.⁷⁹ They rejected a statistical report submitted by petitioners from the D.C. Department of Housing and Community Development

73. *Id.*

74. *See id.* at 1217–18.

75. *Id.*

76. *Friends of McMillan Park v. D.C. Zoning Comm’n*, 149 A.3d 1027, 1031 (D.C. 2016).

77. *Friends of McMillan Park v. D.C. Zoning Comm’n*, 211 A.3d 139, 141 (D.C. 2019).

78. *Id.* at 149.

79. *Id.*

that the specific project at issue would cause affordability pressures on existing residents and subsequent displacement.⁸⁰

The *McMillan Park* saga serves as an example that even the most specific and concrete evidence of potential gentrification from a building project may still fail in the face of courts' deference to the Zoning Commission. Both *McMillan Park* and *Durant* also show that even progressive policy instruments put in place to ensure that development plans adhere to regulations preventing displacement and pricing out of existing residents, like D.C.'s Comprehensive Plan, cannot be relied on by petitioners to prove that a development project may lead to gentrification of a neighborhood.

Overall, in analyzing the cases that address gentrification in general, it is evident that those that were successful were led by a lawyer able to point out concrete and legally demonstrable zoning violations and inconsistencies with D.C.'s Comprehensive Plan. Unsuccessful cases—involving actions brought by both community leaders as pro se plaintiffs and professional lawyers—all faced similar hurdles. These included courts' deference to administrative bodies such as zoning boards, an inability to pinpoint specific facts on the record that evidenced a threat of gentrification, and an inability to properly use existing laws and policy instruments to ground the somewhat nebulous idea of gentrification in legal theories to build a provable case. While a Comprehensive Plan makes gentrification a more concrete and legally enforceable offense, the deference given to zoning boards in interpreting how their decisions comply with a city's Comprehensive Plan negates their utility to potential plaintiffs and ensures nearly all challenges to zoning board decisions fail.

B. Brooklyn and Manhattan, New York

In New York, community organizations have met the same fate despite creative attempts to recover damages retroactively from displacement resulting from new housing developments. After winning a nine-year legal battle to establish affordable housing in Manhattan's Upper West Side neighborhood, Stryker's Bay Neighborhood Council lost a portion of their hard-won territory to

80. *Id.* at 149–50.

the City of New York, favoring a luxury housing development.⁸¹ The Neighborhood Council tried a constitutional approach, claiming that the development of luxury housing on the property violated their civil rights.⁸² They also attempted to take preemptive measures to stop development within the realm of litigation, calling for a preliminary injunction on development.⁸³ The court rejected their claims and also asserted that a preliminary injunction was too severe a repercussion for the case at bar.⁸⁴

Plaintiffs in *Strykers Bay* did attempt to find legal grounding for their claims, asserting that they had a statutory right to be relocated when they were displaced by urban renewal, subject to the National Housing Act of 1949.⁸⁵ The court found that the statute did not mandate displaced persons be relocated to the specific site where urban renewal was happening, but only provided a statutory cause of action if plaintiffs could prove the site of their relocation was not comparable to their original homes.⁸⁶ Plaintiffs failed to do this, and they also failed to demonstrate how their constitutional rights derived from the Fifth and Fourteenth amendments were infringed upon, as there was no evidence that the new zoning regulations were unrelated to their stated purpose and there exists no constitutional right to “suitable low-income housing.”⁸⁷

Plaintiff’s unpreparedness to formulate a salient legal argument catching the nebulous idea of gentrification, as compared to defendant city’s ample preparedness, resources, and fluency in city laws is evident in Plaintiffs’ second attempted statutory claim. Plaintiffs claimed that they had a statutory right to low-income housing under New York General Municipal Law and under the New York City Charter.⁸⁸ The court emphasized the inadequacy of plaintiffs’ “bare allegations” in comparison to defendants’ affidavits and exhibits showing their compliance with these statutes.⁸⁹

81. *Stryker’s Bay Neighborhood Council, Inc. v. City of New York*, 695 F. Supp. 1531, 1533–34 (S.D.N.Y. 1988).

82. *Id.* at 1534, 1541.

83. *Id.* at 1534.

84. *Id.*

85. *Id.* at 1539–40 (citing 42 U.S.C. § 1455(e)).

86. *Id.* at 1540.

87. *Id.* at 1541 (“[T]he Constitution does not guarantee access to dwellings of a particular quality.”).

88. *Id.* at 1540.

89. *Id.*

In addition to emphasizing the difficulties of making a case against gentrification, *Strykers Bay* demonstrates the stark difference in available legal resources to plaintiffs in these cases (who are often formally or informally organized groups of citizens) versus the defendants (municipalities or administrative boards backed by experienced legal teams). This contrast adds to difficulties facing plaintiffs in these cases. *Strykers Bay* plaintiffs, like many others, had a dearth of legal resources compared to their counterparts simply because they must face the professional legal teams of several groups of defendants—often federal or state, municipal, and the developers themselves.⁹⁰

More recently, attempts to focus claims to alter the framework or structure of City zoning plans or planning boards have also failed. *Ordonez v. City of New York* saw two local petitioners attempt to target the validity of Environmental Impact Statements (EIS), claiming that the City's Environmental Quality Review Technical Manual was null and void, thus making the EIS null and void.⁹¹ Plaintiffs challenged the rezoning and development plan for a 96-block area in East Harlem, which would increase the apartments in the block beyond the 200-unit threshold.⁹² This triggered the application of the Uniform Land Use Review Procedure as well as recommendations to the City Planning Commission, and the City Zoning Board's use of the Technical Manual.⁹³

Ming v. The City of New York arose from an action brought by rent-stabilized Brooklyn tenants supported by legal advocacy organization Tenants and Neighbors to challenge a rezoning request for the Bedford Union Armory.⁹⁴ The crux of their argument hinged in part on the negative economic and displacement effects on nearby residents.⁹⁵

90. *Id.* at 1533.

91. *Ordonez v. City of New York*, 60 Misc. 3d 1213(A) *1 (N.Y. Sup. Ct. July 11, 2018).

92. *Id.* at *4.

93. *Id.*

94. *Id.* at *7 (“Petitioner Tenants and Neighbors (T & N), which is based in Manhattan, organizes tenants to oppose actions which they believe directly and negatively impact their rights as residents, and as relevant here, it has worked with tenants who live within 400 feet of the Bedford Union Armory and who oppose the rezoning.”).

95. *Id.*

Plaintiffs in both cases submitted affidavits and testimony addressing technical procedural inadequacies in the respective development and rezoning applications. Counsel for plaintiffs in *Ordonez* submitted an affidavit of a regional planning expert that conducted a thorough analysis of the inadequacies of New York’s Technical Manual.⁹⁶ The affidavit even specifically highlighted ways in which the Manual was inadequate in preventing against adverse displacement effects for local residents in violation of various New York zoning and planning laws.⁹⁷ In *Ming*, the Brooklyn Borough held a hearing condemning the Zoning Board’s decision to allow the zoning alterations to come forward, making arguments that were more policy oriented but equally specific and legally compelling regarding the proposed impacts of the rezoning efforts.⁹⁸ In both *Ordonez* and *Ming*, despite adequate legal representation, a case firmly rooted in New York City laws, and an understanding of these laws sufficient to participate appropriately in the administrative process and communicate the case to a judge, the claims failed and are currently pending appeal.⁹⁹

Ordonez even introduced an interesting legal strategy to try to achieve success. Plaintiffs attempted to base their cause of action at least in part on harm to the “human environment,” seeking to have the damage of their displacement subject to review by the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review (CEQR).¹⁰⁰ The court found that, although the residents’ displacement indeed qualified as a harm to human environment, there was not adequate data to prove that a significant number of residents would be impacted to trigger further SEQRA action.¹⁰¹

This shows that even dependence on established environmental statutes did not result in success for plaintiffs. Like most environmental statutes, environmental justice ends are rarely met through action under SEQRA. Plaintiffs historically cannot rely on broader interpretations of changes to “environment” to substantiate

96. *Id.* at *12.

97. *Id.*

98. *Id.* at *10.

99. *Id.* at *26.

100. *Id.* at *9.

101. *See id.*

their cases.¹⁰² Often, claims brought under such statutes are deemed insufficiently specific or significant to constitute a redressable harm under the statute.¹⁰³ Generally, attempting to bring environmental statutory claims to address justice issues such as gentrification face far too many procedural and administrative hurdles to succeed.

Similar to hurdles faced in D.C. courts, N.Y. petitioners often face a high level of deference to City planning and administrative bodies as well as a judge unwilling to undertake review of existing laws, processes, or development plans in light of a still legally ambiguous consequence such as gentrification. This evidences the fact that community participation at the planning stages of development, remediation, and rezoning efforts is a necessary initiative to be taken by legal counsel for developers and to be coordinated by lawyers and legal organizations advocating for environmental remediation projects, as even the strongest, most legally grounded gentrification cases fail in court. Local voices are lost in the litigation process in the face of constricting precedent and statutory interpretation, as well as a lack of legal resources. Further, the discussion below demonstrates that community participation and agency is a significant asset to be gained from incorporating, and ensuring, community participation early on in the planning process.

V. *EX ANTE* SOLUTIONS: PREEMPTIVE LEGAL MEASURES

Given the ineffectiveness of challenging development projects in court, an optimal solution seems to be to address these issues *ex ante*, or before communities near environmental development sites face displacement. This section addresses solutions focused both on municipal government-driven solutions, such as changes to zoning and land use laws and equitable development plans, as well as community-driven solutions, such as community land trusts and

102. See, e.g., Hannah Weinstein, *Fighting for a Place Called Home: Litigation Strategies for Challenging Gentrification*, 62 UCLA L. REV. 794, 814 (2015) (“Thus, inclusionary zoning litigation appears on its face applicable to attempts to create and preserve affordable housing in gentrifying neighborhoods, but litigation regarding preservation might ultimately depend on whether plaintiffs can definitively show the effects of the loss of the building or program on the housing market in the neighborhood.”).

103. See *id.* at 816 (“Even though such zoning-related litigation may be a helpful tool in the fight to challenge gentrification, it is likely the most limited of the [litigation strategies]).”).

other similar organizations. Establishment and involvement of community land trusts and community-oriented solutions appear to be the most salient of the preemptive legal solutions, as they ensure community participation in development processes and provide local communities with legal and economic solutions to avoid displacement and inflated property costs.

A. Zoning and Land Use

One legal mechanism for municipalities and drivers of policy to pursue is passing inclusionary zoning laws while preventing the passage of exclusionary zoning laws. Exclusionary zoning laws are defined in New York as land use control regulations “which singly or in concert tend to exclude persons of low or moderate income from the zoning municipality.”¹⁰⁴ While few ordinances actually explicitly exclude persons of a certain race or income level, many more impose restrictions so stringent and unattainable that they result in the exclusion of persons not wealthy enough to meet the requirements.¹⁰⁵ While exclusionary zoning practices fall more into the category of traditional gentrification, they still represent ways in which environmental law and developments can be corrupted to displace residents. While environmental lawyers must maintain awareness of the impacts environmental remediation projects may have, they must also be aware of existing zoning and land use provisions in the areas where green spaces and environmental programs are to be developed. Accordingly, it is important to take action to promote the adoption of inclusionary zoning programs as well as inclusionary comprehensive plans.

Inclusionary housing programs are policies that were initially developed in the 1970s in response to “snob zoning,” or forms of exclusionary zoning that only enabled residents wealthy enough to afford certain areas.¹⁰⁶ “Inclusionary zoning requires or incentivizes private developers to designate a certain percentage of the units in a given project as below market rate (BMR)—cheaper than their value on the market”¹⁰⁷ D.C.’s current inclusionary zoning program

104. 2 PATRICIA E. SALKIN, N.Y. ZONING LAW & PRACTICE § 20:02 (4th ed. 2019).

105. *Id.*

106. Benjamin Schneider, *CityLab University: Inclusionary Zoning*, BLOOMBERG CITYLAB (Jul. 17, 2018), <https://www.citylab.com/equity/2018/07/citylab-university-inclusionary-zoning/565181/> [<https://perma.cc/MWG2-EGFX>].

107. *Id.* Approximately 80% of inclusionary zoning programs are mandatory. *Id.*

began in 2009, with the first below market rate units becoming available in 2011.¹⁰⁸ Developers receive a twenty percent increase in density over set zoning requirements in exchange for complying with the policy.¹⁰⁹

New York City's Inclusionary Housing Program, established in 1987 and since modified in 2005 and 2009,¹¹⁰ originally offered two optional floor area incentives for the creation or preservation of affordable housing in different zoning areas of specific commercial and residential density.¹¹¹ This policy was since amended in 2016 by Mayor Bill de Blasio when he instituted the Mandatory Inclusionary Housing Program, or MIH, based on less-than-optimal results from the original voluntary framework.¹¹² However, MIH's results have also proven to be weaker than expected.¹¹³ The benefits offered by the program in low-income areas do not outweigh the profits lost to developers from including the requisite amount of affordable housing, as opposed to much more profitable high-income housing.¹¹⁴ As such, instead of increasing developers' propensity to include requisite amounts of affordable housing into their development plans, it deterred developers from participating in the program at all.¹¹⁵

108. *Id.*

109. *Id.* (“[A] developer can increase the size and count of its development beyond existing zoning, in exchange for producing affordable housing.”).

110. N.Y.C. Dep't of City Plan., *Inclusionary Housing Program*, NYC PLANNING, <https://www1.nyc.gov/site/planning/zoning/districts-tools/inclusionary-housing.page> [<https://perma.cc/Z6J2-9DBX>].

111. N.Y.C. Dep't of City Plan., *Glossary of Zoning Terms*, NYC PLANNING, <https://www1.nyc.gov/site/planning/zoning/glossary.page#inclusionary> [<https://perma.cc/XC4P-ZCER>]. The floor area of a building is the sum of the collective areas of each floor of the building, excluding floor space not constituting traditional living or commercial space such as mechanical space, cellar space, open balconies, and stair bulkheads. *Id.*

112. ERIC KOBER, DE BLASIO'S MANDATORY INCLUSIONARY HOUSING PROGRAM: WHAT IS WRONG, AND HOW IT CAN BE MADE RIGHT 4 (2020), <https://media4.manhattan-institute.org/sites/default/files/deblasios-mandatory-inclusionary-housing-program.pdf> [<https://perma.cc/SE7D-UKKQ>]. “The cost of this housing, whose rentals are, by definition, below the market rate, was supposed to be met by capturing some of the added economic value that rezoning creates for private developers and directing it toward the city's housing goals. . . . The [voluntary inclusionary housing] program has continued to operate where it applied at the end of Bloomberg's administration, and 8,476 permanently affordable VIH units have been approved during de Blasio's tenure.” *Id.*

113. *See id.*

114. *See id.*

115. *See id.*

D.C.’s Inclusionary Zoning (IZ) Affordable Housing Program has met a similar fate, including a rocky start. Like New York City, the District’s Inclusionary Zoning Rule, introduced as an amendment to its zoning regulations, included a requisite amount of floor area to be set aside for affordable housing.¹¹⁶ Families qualifying for the income level for these designated spaces can obtain residence there through a lottery system.¹¹⁷ D.C.’s original IZ program was amended with a new set of regulations on December 29, 2017, responding to feedback from current IZ program participants and an order from the D.C. Zoning Commission.¹¹⁸ The comments and order emphasized that the present zoning regulations were too incoherent for developers to follow and needed to be simplified.¹¹⁹

Similar to New York, D.C.’s first IZ units in the program failed to afford the developer responsible for them appropriate compensation for the profits lost from reserving them for IZ use.¹²⁰ This resulted in a lawsuit brought by the property developer against D.C.’s Department of Housing and Community Development. The developer claimed that the IZ Program’s mandate that they reserve two units for affordable housing constituted an unconstitutional taking and that the Department robbed him of the ability to profit from his property.¹²¹ After a lengthy period of litigation, the case was appealed to the District of Columbia Circuit Court of Appeals.¹²² The court held that the IZ program was rationally tied to D.C.’s legitimate interest in setting affordable housing goals and did not

116. D.C. Mun. Regs. tit. 14, §§ 2200, 2202 (2017).

117. *Id.* §§ 2211–2213. Dep’t of Hous. & Cmty. Dev., *Inclusionary Zoning Affordable Housing Program*, DC.GOV, <https://dhcd.dc.gov/service/inclusionary-zoning-affordable-housing-program> [<https://perma.cc/5Y5V-J5PY>].

118. Dep’t of Hous. & Cmty. Dev., *Inclusionary Zoning Regulations Finalized*, DC.GOV (Jan. 4, 2018), <https://dhcd.dc.gov/release/inclusionary-zoning-regulations-finalized> [<https://perma.cc/9YAT-EKMY>].

119. *See id.*

120. *See* Aaron Wiener, *Georgia Avenue Developer Sues City Over Inclusionary Zoning*, WASH. CITY PAPER (Dec. 14, 2012), <https://washingtoncitypaper.com/article/377779/georgia-avenue-developer-sues-city-over-inclusionary-zoning/> [<https://perma.cc/KK2B-LXJA>].

121. *See* 2910 Georgia Ave. LLC v. District of Columbia, 983 F. Supp. 2d 127, 130 (D.D.C. 2013) (“[A]lleging the District of Columbia’s Inclusionary Zoning Program constitutes an unconstitutional taking and violates the Plaintiff’s substantive due process and equal protection rights.”).

122. *See* 2910 Georgia Ave. LLC v. District of Columbia, 234 F. Supp. 3d 281, 286 (D.C. Cir. 2017).

constitute a regulatory taking of the developer's property; therefore, the developer's substantive due process claim failed.¹²³

In theory, advocating for neighborhoods and developers to abide by inclusionary zoning programs is a good preemptive solution to anticipated displacement from "greening" projects. However, inclusionary zoning provisions have been largely criticized as ineffectual, and require a great deal of bureaucratic and legislative effort to establish.¹²⁴ Further, advocating for the change of zoning law is an extremely difficult and arduous process.

In New York, for example, the availability of MIH's impact is completely dependent on the whims of city council members whose opposition to rezoning their respective districts is met with great deference from Mayor de Blasio.¹²⁵ Further, rezoning efforts in more affluent areas are frequently met with well-funded and well-organized opposition, thereby limiting rezoning opportunities in less affluent areas where developers, as previously discussed, are loathe to participate in MIH due to their small profit margins.¹²⁶

Although the District's IZ program was ultimately upheld in Court, its existence was in legal jeopardy from its earliest inception for the ensuing four years. This demonstrates how fiercely the changes to zoning laws are fought by developers and others eager to protect profitable, affluent housing areas. Overall, inclusionary zoning policies are arduous to legally negotiate through administrative processes, face a lot of pushback, and are not yet proven to achieve their intended goals of significantly increasing affordable housing options. Additionally, zoning regulations only address finite areas within a particular municipality and do little to preserve cultural character and stability of a broader community.¹²⁷ The above case studies in N.Y. and D.C. demonstrate the difficulties at play here: any change to zoning laws takes several years and statutory revisions to effectuate, which most certainly does not effectively serve the needs of potentially displaced persons facing impacts of green gentrification.

123. *Id.* at 312, 316.

124. *See* Schneider, *supra* note 106.

125. KOBER, *supra* note 112, at 4.

126. *See id.*

127. Katherine Ghilain, Note, *Improving Community Character Analysis in the SEQRA Environmental Impact Review Process: A Cultural Landscape Approach to Defining the Elusive "Community Character"*, 17 N.Y.U. ENV'T L.J. 1194, 1196 (2009).

B. Community Land Trusts

In practical terms, a community land trust is a non-profit that acquires large amounts of land and the buildings on that land, with the goal of the community maintaining control in perpetuity.¹²⁸ The concept originated with African-American farmers in the Jim Crow South seeking to protect their assets.¹²⁹ The trust can lease buildings out to residents and effectively maintains control of the land long-term for community use—most often for affordable housing.¹³⁰ Through the trust’s initial investment and purchase of the land, it keeps real estate and property prices from rising out of current residents’ reach as a result of property appreciation from future development.¹³¹ The trust also aims to reinvest its rental profits into other subsidies or beneficial projects in the neighborhood, even helping residents to purchase homes at lower prices.¹³² The trusts are typically governed by a “tripartite board,” in which one third of members are residents of the property itself, one third are from surrounding neighborhoods, and one third are stakeholders such as nonprofits, elected officials, or funders.¹³³ Lawyers can also serve on these boards or as staff members.¹³⁴

Generally, community land trusts have emerged as a response to recognized inadequacies of property law to address modern issues of equity.¹³⁵ A new focus within the realm of property law turns toward “virtue ethics,” supporting the common good instead of maximizing aggregate individual gain.¹³⁶ As of 2009, more than 160

128. Julie Gilgoff, Note, *Local Responses to Today’s Housing Crisis: Permanently Affordable Housing Models*, 20 CUNY L. REV. 587, 590 (2017).

129. Abigail Savitch-Lew, *The NYC Community Land Trust Movement Wants to Go Big*, CITYLIMITS (Jan. 8, 2018), <https://citylimits.org/2018/01/08/the-nyc-community-land-trust-movement-wants-to-go-big/> [<https://perma.cc/6Y6M-X6JC>].

130. *See id.*

131. *See id.*

132. BLDG. BRIDGES ACROSS THE RIVER, 11TH STREET BRIDGE PARK’S EQUITABLE DEVELOPMENT PLAN 16 (Sept. 2018), https://bbardc.org/wp-content/uploads/2018/10/Equitable-Development-Plan_09.04.18.pdf [<https://perma.cc/DA74-WCR8>].

133. Savitch-Lew, *supra* note 129.

134. *See, e.g., Our Team*, BROOKLYN QUEENS LAND TRUST, <https://bqlt.org/our-team> [<https://perma.cc/DG6G-94R9>]; *Our Team*, DOUGLASS CMTY. LAND TR., <https://douglassclt.org/#Team> [<https://perma.cc/R38Z-WFY3>].

135. *See* James J. Kelly, Jr., *Land Trusts that Conserve Communities*, 59 DEPAUL L. REV. 69, 69 (2009).

136. *Id.*

community land trusts have created affordable, price-stabilized and democratically controlled common spaces around the United States.¹³⁷

One of the most effective examples of a community land trust has been developed with the 11th Street Bridge Project.¹³⁸ Given the economic and environmental vulnerability of the river's east side, disruptive impacts of environmentally-focused development projects around the Anacostia are a popular point of discussion when new development projects are introduced. Developers on the river's wealthier West side have already capitalized on the river's improved image and health and initiated development of waterfront attractions and housing.¹³⁹ While residents on the East side certainly can benefit from the public amenities on the waterfront, increased attention to the West side has indirectly increased property values on the East side, which has effectively initiated gentrification.¹⁴⁰

Environmental revitalization models, such as the High Line and others across the country, have been criticized for their "invisibilization" of marginalized communities during the planning processes.¹⁴¹ While revitalization projects typically see citizen involvement in the city-led planning stages, local voices, especially those from marginalized communities, are lost when the planning process reaches the developers.¹⁴² Therefore, when the developers consult with municipal decisionmakers to show metrics for anticipated social, economic, and displacement impacts of their projects, these data are inherently skewed to erase the more harmful and severe effects to be faced by communities of color.¹⁴³ Therefore, community groups, whether they be community land trusts or other organizations, must be involved early on at the planning stages to ensure meaningful participation from those communities most affected by these projects.

The developers for the Anacostia 11th Street Bridge Park Project, Building Bridges Across the River (BBAR), announced their

137. *Id.* at 70.

138. See *11th Street Bridge Park*, BLDG. BRIDGES ACROSS THE RIVER, <https://bbardc.org/project/11th-street-bridge-park/> [<https://perma.cc/8EWT-C2JJ>].

139. Momin, *supra* note 39.

140. *Id.*

141. See Anguelovski et al., *supra* note 50, at 419.

142. See *id.* at 429.

143. *Id.*

building plans in D.C.’s economically and politically divided climate, with an awareness of and sensitivity to the impact the Project may have on nearby low income and Black communities. The project intends for a pedestrian bridge and green space to cross the river parallel to the existing 11th Street Bridge, which is currently used for automotive transportation and largely unwelcoming to pedestrian travelers.¹⁴⁴ The project includes bicycling accommodations, several parks, and educational amenities throughout the bridge for residents to better acclimate themselves with the “forgotten river.”¹⁴⁵

BBAR has taken proactive measures to combat the anticipated impact of the Bridge Project and incorporated an Equitable Development Plan into their project. It is evident that existing research on gentrification around the Anacostia and public discussion on the socioeconomic divide across the river informed BBAR’s social conscience when planning.¹⁴⁶ BBAR’s Equitable Development Plan frames the bridge as a metaphorical and physical connector between the socially and racially divided East and West sides of the river, indicating that the wealth disparities between the neighborhoods were at the forefront of discussion when designing the bridge.¹⁴⁷ BBAR also included statistics citing higher poverty, unemployment, and rental rates in Wards 7 and 8 on the east side of the river and addressed the likelihood that their park would increase surrounding property values and threaten opportunities for affordable renting and homeownership in these communities.¹⁴⁸ The text of the Plan directly acknowledged concerns with displacement of longtime D.C. residents and assured readers that BBAR did not intend for the Bridge Project to have this impact.¹⁴⁹

To ensure affordable home purchase and rental options will be available during and after the Bridge Project’s development, a preemptive legal and economic measure considering the Anacostia region’s socioeconomic makeup was incorporated: the Douglass Community Land Trust.¹⁵⁰ These kinds of preemptive measures are

144. See BLDG. BRIDGES ACROSS THE RIVER, *supra* note 132, at 4.

145. *Id.* at 4, 6, 28–30.

146. *Id.* at 7, 10.

147. *Id.*

148. *Id.* at 7, 13–17.

149. *Id.* at 13–17.

150. See generally DOUGLASS CMTY. LAND TR., <https://douglassclt.org/> [<https://perma.cc/5GV4-HHSN>].

increasingly recognized as salient ways to even out the “tensions and contradictions” of environmental improvement projects that end up harming and displacing nearby communities.¹⁵¹ This concern over the moral authority of “greening” communities has found solutions in such communication- and dialogue-centered planning approaches intended to “promote participation and inclusion, build consensus on sustainability planning priorities and strategies, and secure durable decisions and plans, while avoiding top-down decisions.”¹⁵²

It is too early in the Bridge Project’s development to judge the Douglass Community Land Trust’s effectiveness in D.C., but legal scholars highlight community land trusts as salient political solutions to environmental gentrification as well as economic ones.¹⁵³ In addition to preventing displacement, they preserve agency and democratic decisionmaking amongst members of vulnerable communities.¹⁵⁴ In preventing displacement through stabilizing a neighborhood, a community land trust increases the likelihood that residents become more involved in community affairs, participate and have control over decisions affecting their communities, and develop a sense of ownership of their community and invest in it themselves.¹⁵⁵ The trust also focuses strengthening of local policies on community cultural fabrics,¹⁵⁶ which has been an understudied facet of environmental justice addressed by legal scholars.¹⁵⁷

The community land trust movement has taken off in New York as well and has demonstrated that the trusts can develop a legal significance all their own, outside of partnership with a development project. In July 2017, following aggressive campaigns from community land trust advocates, New York City Mayor de Blasio announced \$1.65 million of funding for various community land trust projects across the city.¹⁵⁸ In December of that year, the City Council passed legislation officially codifying the trusts into city law and

151. See Anguelovski et al., *supra* note 50, at 421.

152. *Id.*

153. See, e.g., Pearsall & Anguelovski, *supra* note 30, at 124; Kelly, *supra* note 135; BLDG. BRIDGES ACROSS THE RIVER, *supra* note 132, at 15.

154. Gilgoff, *supra* note 128, at 592.

155. *Id.*

156. See DOUGLASS CMTY. LAND TR., *supra* note 150.

157. Ghilain, *supra* note 127, at 1194.

158. Savitch-Lew, *supra* note 129.

allowing them to enter into regulatory agreements with the city.¹⁵⁹ Community land trusts have continued to score significant funding from the City’s budget, demonstrating the City government’s commitment to the movement as a viable affordable housing alternative to unsuccessful zoning plans.¹⁶⁰ The community land trusts’ codification and funding demonstrates their power to participate in zoning and land use decisions as legal entities with legal power unto themselves. Combined with their potential significance in the development process and legal bargaining power, community land trusts are one of the most salient *ex ante* legal solutions to curbing environmental gentrification.

C. Sustainable Development Initiatives and Other Community-focused Solutions

Additional tools that cities can use to address environmental gentrification are specific sustainable development frameworks.¹⁶¹ One centralized resource available to cities is the C40 organization, which aims to help cities make sustainable changes at the local level in order to meet the global sustainability goals of the Paris Agreement.¹⁶² Significantly, cities that are beginning to address

159. *Id.* See also Abigail Savitch-Lew, *Council Passes Key Housing Bills at Busy Last Meeting*, CITYLIMITS (Dec. 20, 2017), <https://citylimits.org/2017/12/20/council-to-vote-on-key-housing-bills-at-busy-last-meeting/> [<https://perma.cc/XWY7-TA4N>].

160. See Caroline Spivack, *Community Land Trusts Score Crucial Funds in City Budget*, CURBED N.Y. (June 18, 2019, 8:50 AM), <https://ny.curbed.com/2019/6/18/18682466/nyc-community-land-trusts-funding-city-budget> [<https://perma.cc/93LP-6KXS>]. See also Emma Whitford, *NYC Just Made its Biggest Commitment Ever to a Radical Affordable Housing Model*, GOTHAMIST (Aug. 4, 2017, 1:23 PM), <https://gothamist.com/news/nyc-just-made-its-biggest-commitment-ever-to-a-radical-affordable-housing-model> [<https://perma.cc/F74E-QCL4>].

161. See e.g., MEHRNAZ GHOJEH ET AL., ROADMAP: INCLUSIVE PLANNING INDICATOR MODULE, https://cdn.locomotive.works/sites/5ab410c8a2f42204838f797e/content_entry5ab410fb74c4833febe6c81a/5d93591eb8f2fb0080030ed4/files/Indicators_Module.pdf?1570617151 [<https://perma.cc/YCU4-SJ7P>].

162. With the ratification of the Paris Agreement in 2016, nations committed to ambitious efforts to keep average global temperature increase to well below 2 degrees Celsius, and preferably below 1.5 degrees Celsius, recognizing that this would greatly reduce the risks and impacts of climate change. Paris Agreement to the United Nations Framework Convention on Climate Change art. 2, Dec. 13, 2015, in Rep. of the Conference of the Parties on the Twenty-First Session, U.N. Doc. FCCC/CP/2015/10/Add.1, annex (2016). C40 is committed to helping achieve this goal by assisting local communities in developing and implementing climate action

adverse effects of “greening” products face a common difficulty: the absence of examples to follow to ensure equitable environmental development.¹⁶³ C40 provides guidance, frameworks, and specific examples of cities who have successfully implemented both environmentally and socially conscious development plans.¹⁶⁴

New York City has promulgated a model of development called “just green enough,” which aims to clean up hazardous and unhealthy environmental areas while at the same time retaining and creating accessible jobs for the local communities.¹⁶⁵ This has manifested in several community organizations that exhibit virtues of equitable planning and local involvement similar to community land trusts. One such example is UPROSE, Brooklyn’s oldest Latino community-based organization focused on meeting dual objectives of racial justice activism and climate resilience planning in the Sunset Park neighborhood in Brooklyn.¹⁶⁶ Following improvements and environmental remediation to Sunset Park, UPROSE has fought against rezoning the improved waterfront and advocated for investment and training for local small businesses that are predominantly Latino-owned.¹⁶⁷ The group, founded in 1966, generates its influence through community and youth organizing and retains a community-based organizational structure that includes board members, an advisory board that includes legal professionals, and block captains.¹⁶⁸ Its principles of community involvement, self-advocacy, bottom-up organizing, and intersectionality have garnered it wide community support and allowed it to become a powerful advocating body against harmful zoning laws and displacement repercussions from environmental developments.¹⁶⁹

plans. *Climate Action Planning Resource Centre*, C40 CITIES, <https://resourcecentre.c40.org> [<https://perma.cc/6ZUP-YSEN>].

163. *Inclusive Climate Action in Practice*, C40 CITIES, <https://resourcecentre.c40.org/resources/inclusive-climate-action-in-practice> [<https://perma.cc/68PV-MQ5Z>].

164. *Id.*

165. Hamilton & Curran, *supra* note 6.

166. *Id.*

167. *Id.*

168. *Team*, UPROSE, <https://www.uprose.org/team> [<https://perma.cc/CUZ8-2NH4>].

169. *Jemez Principles for Democratic Organizing*, UPROSE, <https://www.uprose.org/values> [<https://perma.cc/3WV6-TNKJ>].

The Newtown Creek Alliance is another example of a community-led organization achieving similar objectives in Brooklyn and Queens. The Alliance focuses on the area surrounding Newtown Creek, which divides the two boroughs and has been a dumping site for oil refineries, chemical plants, fiber plants, smelting works, and many other industries.¹⁷⁰ Newtown Creek was also designated as a Superfund site in 2010.¹⁷¹ Nearby residents have been burdened with public health effects of its toxicity for years; but residents again faced risk of displacement following the mandated Superfund cleanup and subsequent remediation following a major oil spill in 1950.¹⁷²

The Newtown Creek Alliance sets forth in its Vision Plan that it seeks input from community members, local businesses, and stakeholders to design solutions that are sustainable for the river’s health as well as the community’s stability.¹⁷³ Further, the Plan incorporates a Community Advisory Group that assures the Creek’s remediation and waterfront development plans are kept transparent to existing residents and, where possible, are adapted based on discussion and consensus from community members and leaders.¹⁷⁴ The Plan also includes extensive analysis and discussion of planned shifts in zoning in the areas around the Creek from primarily industrial to more commercial and residential.¹⁷⁵ The Alliance, together with the NYC Department of City Planning, has established a plan to adapt the surrounding community to changing zoning laws in Brooklyn and Queens by preserving industry jobs and productivity while maintaining transit accessibility to these areas for employees.¹⁷⁶ On the Plan’s team are “Voices from the Working Waterfront,” ensuring that the local community’s working ties to industry there are preserved for their own economic stability.¹⁷⁷

170. Hamilton & Curran, *supra* note 6.

171. *Id.*

172. *Greenpoint Oil Spill*, NEWTOWN CREEK ALL., <http://www.newtowncreekalliance.org/greenpoint-oil-spill/> [<https://perma.cc/W3TF-HWEL>].

173. RIVERKEEPER & NEWTOWN CREEK ALL., NEWTOWN CREEK 2018 VISION PLAN 13 (2018), <https://view.publitas.com/riverkeeper/newtown-creek-vision-plan-2018/page/1> [<https://perma.cc/87DL-BVUZ>].

174. *Id.* at 46.

175. *Id.* at 50.

176. *Id.*

177. *Id.* at 57.

This Vision Plan demonstrates other ways that preemptive measures can be taken in planning stages of environmental remediation to manipulate legal frameworks to prevent gentrification impacts. Similar to the Anacostia River Development Plan, the Vision Plan puts local community voices at the forefront of the planning process and does not leave longtime residents to fight for themselves in expensive, complicated, and largely fruitless litigation battles. Newtown Creek's Plan takes environmental planning a step further and incorporates climate resiliency measures not only for the improved health of the river itself, but also for the many industries that rely on coastal stability and protection from flooding.¹⁷⁸

These *ex-ante* solutions also seem to be a more effective legal method of protecting communities against gentrification than litigation, where harmful development projects have already been proposed and approved. Community land trusts created by developers themselves place legal and administrative power in the hands of a board of trustees, which can include community members, leaders, public officials, and community-invested individuals.¹⁷⁹ Community involvement initiated by developers at the planning stages similarly ensures local voices are elevated before irreversible changes are made to their community fabric.

Conversely, post-development litigation forces communities or their lawyers to challenge the administrative power of a zoning commission or other administrative body. Further, community land trusts have a structure in place that allows community members to utilize and educate themselves with various legal and administrative property tools.¹⁸⁰ In the context of these land trusts, gentrification is an anticipated and well-understood phenomenon that the trust intends to avoid. Taking advantage of zoning laws and legislation can be useful, but this is a less efficient process and much less accessible to community members. Inclusionary zoning laws are also largely inadequate to prevent displacement. Other community organizations achieve many of the legal advocacy objectives and manipulation of local laws that community land trusts do, without its economic component.

178. *Id.* at 132.

179. *See, e.g., id.* at 17–18, 146.

180. *See id.*

In contrast, anti-gentrification litigation requires community leaders (sometimes as pro se plaintiffs) to navigate confusing facets of zoning laws, administrative law, and policy instruments. Plaintiffs are also responsible for legally proving potential future displacement, which is a difficult task to complete without the help of existing statistical evidence. Because community land trusts place decisionmaking power in the hands of community members and preemptively acknowledge the possibility of gentrification, they seem to be more effective legal solutions than courtroom arguments against gentrification.

VI. CONCLUSION

In conclusion, community land trusts and community groups in general should serve as examples of ethical environmental development practices in N.Y. and D.C. Not only are community land trusts viable land use tools because they freeze property values at accessible levels for rent and purchase, but they also lend decision making power and awareness of helpful policy tools to economically vulnerable communities. Community land trusts and groups are powerful legal tools to protect local resident interests in development planning and legal decisionmaking at a municipal level, and far outshine other zoning or land use solutions. Further, litigation against other developers of potentially disruptive building projects has not proven to be a useful legal strategy to prevent gentrification in cities like D.C. and N.Y.

It is also imperative that developers follow the example of BBAR and the Newtown Creek Alliance and incorporate community voices and organizations *during* the planning process. The involvement of such organizations in the planning stages is critical to ensure economic incentives do not outweigh social equity priorities. The most direct ways of ensuring that more preemptive legal measures are used when considering environmental gentrification are public awareness, education, and discussion.¹⁸¹

Environmental lawyers consulting on and advocating for environmental remediation and development projects need to be aware of the disruptive impacts these projects can have, as well as the importance of adopting these strategies as alternatives to challenging development projects in court. With their awareness,

181. See Fox, *supra* note 1, at 854.

they can advocate for mandates that environmental remediation projects work with local community groups during planning stages, and also aid in legal representation of these groups. While the issue of environmental gentrification stretches far beyond the legal discipline, environmental lawyers stand in a unique position of power and perspective to ensure equitable enjoyment of environmental assets.