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Community Economic Development Strategies in the New Millennium: Key Advantages of Community Benefits Agreements in Urban Mega-Projects

ANDY CARR*

I. Introduction

Over the past few decades, social, political, and economic transformations have underscored the paradox of steadily increasing globalization amid a renewed isolationist backlash in various Western societies. Populist and nativist political parties and elected leaders have risen in lockstep with wealth and income inequality in those same countries as well as concomitant and rapidly shifting social norms—all have been identified as prominent influences over contemporary life. Within these upheavals, various political, cultural, and economic actors have ascended the ranks of the world's most powerful institutions, spreading their global reach to billions.

This phenomenon is seen on the local level as well. Particularly, the roles of cities have garnered great interest with a renewed popular focus which extends far beyond the typical, niche communities of urbanists, planners, designers, academics, and local organizers of generations past. Today's cities exemplify the aforementioned paradox of modernity in a microcosm, with endemic conflicts and challenges starkly reflected at street level. Cities at once represent the gravest examples of post-recession economic fallout and stubbornly inadequate recovery, while also providing varied models for the strongest economic recoveries since global financial and housing markets began their dramatic collapse over a decade ago. As they have proven resilient incubators for innovation and entrepreneurship, cities also offer many warning signs for how management and policy choices may constrain or wholly impose barriers upon the upward mobility of urban residents. In the present-day United States, some cities are emblematic of

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progressive, localized policy experimentation in the face of unforgiving federal austerity, while others are as polarized and gridlocked as American national politics. In short, cities are both increasingly realized engines of national and even global economic growth as much as deserving targets for critique.

The extreme disparity of experience among major American cities since the financial crisis and Great Recession—between the powerhouse “elite” cities which have experienced rapid growth in the last decade on one hand, and still-struggling, economically disadvantaged postindustrial urban centers on the other—highlights the varied challenges facing today’s urban leaders globally. Cities experiencing continued, sometimes significantly worsening economic stagnation or deterioration have less and less financial security as their populations decrease, tax bases shrink, and longstanding debts or financing obligations come due—pension plans for city employees, debt repayments for decades-old public projects, and many others. For “successful” post-recession American cities, record-setting job growth and seemingly ever-deeper venture capital pockets recall their earlier booms. The latest euphoria, of course, comes with critical caveats: accelerating housing shortages, ultra-competitive labor markets, and cost-prohibitive or altogether nonexistent physical space for new construction can fuel segregation and waves of displacement. Among members of this “successful” group, like New York, San Francisco, Los Angeles, and Washington, DC, the cruel irony is that their resurgent economic growth imposes dire externalities on the most vulnerable members of their communities. The returns generated by recent growth, apparent in national or global comparative analyses, remain wildly concentrated among these “successes.” As community development organizations and leaders grapple with the previous decade’s crises and lingering consequences, then, a stocktaking of strategies for extracting and distributing the benefits of renewed growth is needed.

This paper provides such an assessment, relying upon lessons drawn from recent case studies to elaborate a simple, updated framework for both researchers and practitioners. It also seeks to harmonize and extend research on community economic development (CED), especially where it engages issues of urbanization, economic consolidation, and gaping inequalities. Ultimately, concentrations of capital and talent in major cities entail significant risks to extant low-income residents. Such massive influxes of capital for marquee mega-projects—a form of urban development common in the largest American cities and the primary focus of this paper—nonetheless may offer limited opportunities to the CED movement. Finally, evaluating the novel activist strategies around mega-projects, along with their successes and failures compared to existing models, such as community benefits agreements (“CBAs”), could offer practicable lessons as well.

II. Historical Urbanism, the Community Economic Development Movement and CED Aims

Historical Trends in United States Urban Development

After a half-century of suburbanization and demographic decline in major American cities,¹ the first years of the twenty-first century signaled a partial reversal of those trends.² Since the middle of the twentieth century, three generalized patterns have marked urban demographic shifts in major United States cities. First, the sustained growth of the “Sunbelt” cities of the south and southwest. Second, the persistent population losses and economic stagnation experienced by a number of cities largely concentrated in the “Rustbelt” of the midwest and interior northeast. Finally, the explosive economic and record-breaking population growth occurring in several notable, older coastal urban centers, the so-called “coastal elites.” While many challenges truly are felt by cities universally, the generalized urbanization patterns highlighted herein must be kept analytically distinct because of the different constraints they place upon local activists. For community leaders in the coastal elites, the muted downturns of the late twentieth century combined with the roaring economic conditions since the Great Recession impose singularly extreme concerns. Among the most serious worries are rapidly the escalating cost of living, stretched or entirely dysfunctional city services, from transportation to public education, and the auctioning of limited space to the wealthiest interests.

On balance, it appears many of America’s major cities are “back,” if unevenly so. The first task is to make sense of them cogently and systematically, to generalize from these regional and economic “types” certain common features and current challenges without losing sight of each city’s individuality.

1. Sunbelt Cities: Success, Sprawl, Volatility, Risk

Sunbelt cities are those in the southern and southwestern United States,

1. See, e.g., Desmond King & Ted Gurr, *Federal Responses to Urban Fiscal Stress and Decline in the United States*, 17 BRITISH J. POL. SCI. 109 (1987); Ray Northam, *Declining Urban Centers in the United States: 1940-1960*, 53 ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 50 (1963); Gregory Squires, Ruthanne Dewolfe, & Alan Dewolfe, *Urban Decline or Disinvestment: Uneven Development, Redlining, and the Role of the Insurance Industry*, 27 SOCIAL PROBLEMS 79 (1979). For an overview discussion of endogenous interactions between urbanization/development and climate change in a global context, see Matthew E. Kahn, *Urban Growth and Climate Change*, 1 ANN. REV. RESOURCE ECON. 333 (2009).

2. See discussion in Part II (B), *infra*. See generally, Leah Boustan & Allison Shertzer, *Population Trends as a Counterweight to Central City Decline, 1950-2000*, 50 DEMOGRAPHY 125 (2013).

stretching from Los Angeles and San Diego in Southern California across the desert Southwest, Texas, the Gulf States to Florida and the Southeast.³ These cities continue to contain some of the fastest-growing Census jurisdictions nationwide.⁴ This is a sustained pattern which began in the 1930s,⁵ continued through the 1960s, and accelerated from the 1970s to the present.⁶ Between 2015 and 2016, ten of the country's fifteen fastest-growing cities were in the loosely geographically defined Sunbelt, and four of the top five were in Texas alone.⁷

Research suggests that there are various drivers of the longstanding urban population growth across the Sunbelt. Expanded "oil and natural resource exploration" in the south and west followed the energy crisis of the 1970s, with workers following highly paid jobs into the heartland and Gulf Coast regions.⁸ For instance, Houston, among other cities, came into global prominence as a major center for the oil and gas industries.⁹ More broadly, the post-industrial, decentralizing economic transformations of the latter half of the twentieth century touched industries far beyond oil and gas,¹⁰ with cross-industry "brain drains" pulling educated talent from the older cities of the Northeast and Midwest into the Sunbelt regions.¹¹

Government policies reinforced and expanded these trends as well. The formation of the federal interstate highway system, various tax and regulatory incentives promoting homeownership, and increasing local, state, and federal government spending on suburban and exurban development projects and

3. See SUNBELT CITIES: POLITICS AND GROWTH SINCE WORLD WAR II (Richard M. Bernard & Bradley R. Rice, eds., 1983) (surveying major cities in the Sunbelt region, also including Albuquerque, New Mexico, Atlanta, Georgia, Dallas-Fort Worth, Texas, Miami, Florida, New Orleans, Louisiana, Oklahoma City, Oklahoma, and Phoenix, Arizona, all of which benefited from both shifting social and political preferences as well as federal government policies from the middle of the twentieth century onward).

4. See U.S. CENSUS BUREAU, THE SOUTH IS HOME TO 10 OF THE 15 FASTEST-GROWING LARGE CITIES, Press Release CB17-81 (May 25, 2017), <https://www.census.gov/newsroom/press-releases/2017/cb17-81-population-estimates-subcounty.html>. Accord U.S. CENSUS BUREAU, FIVE OF THE NATION'S ELEVEN FASTEST-GROWING CITIES ARE IN TEXAS, Press Release CB16-81 (May 19, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-81.html> (noting the same five Texan cities were among the fastest-growing cities with populations over 50,000 the year prior, between 2016 and 2016).

5. Richard Lloyd, *Urbanization and the Southern United States*, 38 ANN. REV. SOC. 483 (2012).

6. William H. Frey & Alden Speare, Jr., *The Revival of Metropolitan Population Growth in the United States: An Assessment of Findings from the 1990 Census*, 18 POPULATION & DEV. REV. 129 (1992).

7. U.S. CENSUS BUREAU, TEXAS, *supra* note 4.

8. Frey & Alden, *supra* note 6, at 130.

9. See Joe R. Feagin, *The Global Context of Metropolitan Growth: Houston and the Oil Industry*, 90 AM. J. SOC. 1204 (1985).

10. Frey & Alden, *supra* note 6, at 130.

11. Lloyd, *supra* note 5, at 483-84.

infrastructure all were hallmarks of twentieth century American urban policymaking.¹²

New highway construction during the midcentury economic boom—roughly from the 1940s onward, overlapping with major cities’ marked demographic declines—proved to be influential in two ways. First, the expansion of urban highways, e.g., new interstates or “spurs” from existing highways through central city neighborhoods, “contributed markedly to this central city population decline.”¹³ In part, the impact of highways may be explained by a “land use theory” in which “faster commuting times [in new suburbs with highway access] push up demand for space in suburbs relative to central cities.”¹⁴ The interactive effects of those pull factors in the outskirts vis-à-vis the push factors in urban cores were also substantial. Among them are the conscious production of “amenity value” in the suburbs, the confluence of self-selected racial segregation with redlining¹⁵ and related actions by government or banking sector actors sanctioning private-sector discrimination, increasing crime rates in urban centers, and desegregation of city schools after the 1950s.¹⁶ As truck transportation of goods became the norm nationwide, moreover, the “decentralization of residential activity was followed by employment decentralization.”¹⁷ A “self-reinforcing” process developed where both employers and their employees increasingly followed one another farther away from traditional urban cores.¹⁸ One empirical estimate found that, “had the interstate system not been built, instead of

12. Lloyd, *supra* note 5, at 487.

13. Nathaniel Baum-Snow, *Did Highways Cause Suburbanization?*, 122 Q. J. ECON. 775 (2007).

14. *Id.* Accord Peter Mieszkowski & Edwin S. Mills, *The Causes of Metropolitan Suburbanization*, 7 J. ECON. PERSP. 135 (1993); Charles M. Tiebout, *A Pure Theory of Local Expenditure*, 54 J. POL. ECON. 416 (1956).

15. See, e.g., John M. Stahura, *Determinants of Change in the Distribution of Blacks across Suburbs*, 24 SOC. Q. 421, 422 (1983) (“Black suburban expansion tends to follow administrative boundaries. As a black suburban community grows, it moves into adjacent residential areas within the same suburb, rather than into other suburbs, because of the difficulties encountered with ‘exclusionary’ zoning and dual housing markets . . . In other words, some suburbs have become defined as environmentally undesirable, and it is into these areas that blacks are ‘steered’ or ‘contained’ by a variety of agencies, including subdivision developers, realtors, individual sellers, lending institutions, and local and federal government . . . ‘Redlined’ areas are those areas for which lending institutions provide little financial backing in terms of mortgages or home improvement loans because of the assumed risk related to the housing stock and/or racial composition of the area.”)

16. See, e.g., Julie Berry Cullen & Steven D. Levitt, *Crime, Urban Flight, and the Consequences for Cities*, 81 REV. ECON. & STATS. 159 (1999); Daniel T. Lichter & Glenn V. Fuguitt, *Demographic Response to Transportation Innovation: The Case of the Interstate Highway*, 59 SOCIAL FORCES 492 (1980); Carol A. O’Connor, *Sorting Out the Suburbs: Patterns of Land Use, Class, and Culture*, 37 AM. Q. 382 (1985); Sarah Reber, *Court-Ordered Desegregation: Successes and Failures in Integration since Brown vs. Board of Education*, 40 J. HUM. RES. 259 (2005).

17. Mieszkowski & Mills, *supra* note 14, at 136.

18. *Id.*

declining by 17 percent, aggregate central city population would have *grown* by 8 percent” from 1950 to 1990.¹⁹

As economic forces and affirmative government policy choices fostered rapid growth across the Sunbelt—and the concomitant downfall of traditional urban cores around the country—global investment followed. The diffusion of foreign investment in the United States, from earlier concentrations in New York City and the Northeast during the 1970s to broader distributions of investing across the south and west through the early 1980s,²⁰ reinforced the same developmental and economic patterns. Between 1979 and 1983, for example, foreign investment rates in service sector economies skewed increasingly toward the Sunbelt: southern and western cities comprised eight of the top 10 metropolitan areas receiving such investment during the period, with only New York and Chicago among non-Sunbelt major cities making the list, second and eighth respectively.²¹ The “deconcentration” of foreign investment and foreign labor across America’s metropolitan regions continues at present—2016’s list of leading metropolitan areas receiving foreign capital investment closely tracks with the leading cities from 1979 to 1983.²² Notable variation exists as smaller southern metropolitan regions, like Richmond, Virginia, have become favored destinations for inbound global capital.²³ Thus, deconcentration and its effects across the Sunbelt are felt on two levels: the general shift of global capital toward the Sunbelt cities over the past four decades and the concomitant dispersion of that capital among a broader cross-section of the region’s cities since the turn of the twenty-first century.

No matter how consistent they appear, the economic and financial trends among Sunbelt cities—ever upward and outward—are peppered with evidence of extreme volatility. Indelible to the spectacular growth rates are increasingly clear ecological and climatological effects of climate change²⁴

19. Baum-Snow, *supra* note 13, at 776 (emphasis added).

20. See, e.g., Sharmistha Bagchi-Sen & James O. Wheeler, *A Spatial and Temporal Model of Foreign Direct Investment in the United States*, 65 ECON. GEOGRAPHY 113 (1989).

21. *Id.* at 116.

22. Devashree Saha, Kenan Fikri, & Nick Marchio, *FDI in U.S. Metro Areas: The Geography of Jobs in Foreign-Owned Establishments*, 14 BROOKINGS-JPMORGAN CHASE (June 2016), <https://www.brookings.edu/wp-content/uploads/2016/06/MetroFDI.pdf>.

23. *Richmond Named Top U.S. City for Foreign Direct Investment*, GREATER RICHMOND P’SHIP (Sept. 19, 2017), <https://www.grpva.com/newsroom/news/richmond-named-top-u-s-city-for-foreign-direct-investment/>.

24. See Lloyd, *supra* note 5, at 498–99 (describing New Orleans as simultaneously “distinctive and beloved” among American cities, yet also “long . . . a city in distress, with all industries other than tourism in terminal decline,” high poverty levels and spiraling population losses, all of which were exacerbated after the catastrophic landfall of Hurricane Katrina in 2005); see generally J.G. Bartlett, D. M. Mageean, & R. J. O’Connor, *Residential Expansion as a Continental Threat to U.S. Coastal Ecosystems*, 21 POP. & ENVIRO. 429, 430–31 (2000) (noting, *inter alia*, the rapid population growth in coastal U.S. communities, which outpaced total national

and, like the country overall, pervasive inequalities that come with vast suburban sprawl.

Many of the Sunbelt's major metropolitan regions began their extraordinary growth spurts during the middle of the last century, but the story of their expansions often is oversimplified. Phoenix, Arizona, for example, grew at astonishing rates between 1940 and 1980.²⁵ By the 2010 Census, Phoenix's population had surged to over 1.45 million and by 2017 had increased a further 12.4 percent to nearly 1.63 million, the fifth-most-populous city in the United States.²⁶ While the city's explosive growth signals many of the strengths of the Phoenix urban area—a strong economy with successful high-technology and tourism sectors and affordable housing and services²⁷—it obscures the consequences of its own success.

Aside from increased pollution, traffic, and crime, which are all ubiquitous consequences of urban growth, Phoenix's boom has entailed some less-obvious, locale-specific costs. The city's vast sprawl and summertime heat, for instance, have generated a feedback loop, where the asphalt and built environment trap and retain daytime heat over longer durations.²⁸ As the city's fringes stretch deeper into the surrounding desert landscapes, this urban heat island phenomenon—referring to the countless acres of pavement across the low-density region's suburban shopping districts and office parks, which “retain and magnify” the extreme heat of Arizona summers—cumulatively “warmed [Phoenix by] at least seven degrees [Celsius]” between 1960 and 1990.²⁹

The increasingly intense summer heat has been suggested as underlying a sense that there has been a “lack of personal commitment” or social

population growth by approximately three-to-one and, for certain communities and even entire states during the 1990s—e.g., Nevada, Arizona, Idaho, and Utah—growth rates which were “faster than many developing countries,” all contributing to systemic environmental consequences); Mark Crawford, *Planning for Climate Change*, 242 SCI. 510 (1988) (arguing that, while the effects of climate change are widely—indeed, globally—distributed, the Southeastern United States is expected to face especially severe effects in the region's major industries).

25. Population grew by “over one thousand percent,” from a population of just over 65,000 to nearly 800,000 over those four decades alone. Bradford Luckingham, *Trouble in a Sunbelt City*, 33 J. SOUTHWEST 52 (1991).

26. U.S. CENSUS BUREAU, QUICKFACTS, PHOENIX, ARIZ. (2018), <https://www.census.gov/quickfacts/fact/table/phoenixcityarizona/IPE120216>.

27. Luckingham, *supra* note 25, at 52–53.

28. See, e.g., Richard C. Balling, Jr. & Sandra W. Brazel, *Time and Space Characteristics of the Phoenix Urban Heat Island*, 21 J. ARIZ.-NEV. ACAD. SCI. 75 (1987) (reporting a 3.9 degree (Fahrenheit) increase in nighttime maximum temperatures in parts of the Phoenix area between 1970 and the mid-1980s alone). Accord Brent C. Hedquist & Anthony J. Brazel, *Urban, Residential, and Rural Climate Comparisons from Mobile Transects and Fixed Stations: Phoenix, Arizona*, 38 J. ARIZ.-NEV. ACAD. SCI. 77, 85 (2006) (reporting a maximum temperature variance between urban-Phoenix and rural outlying areas' measures of up to 11 degrees Celsius during the summer of 2001).

29. Luckingham, *supra* note 25, at 53–54.

connection among the city's many newcomers from the latter half of the twentieth century to today.³⁰ Social "isolation," especially during peak summer months from May to September, is a result of the design of the city's sprawling housing developments. "Detached single-family homes [remain] the ideal."³¹ Commutes are almost always solo trips from home to the office and back, in a necessarily air conditioned vehicle.³² Common design elements, such as the use of cement-block privacy walls to separate the yards of many suburban tract homes, create barriers to interaction.³³ These factors all reinforce social isolation.

Among other demographic consequences, Phoenix's residents historically have moved frequently to new homes and jumped between apartments, with a near-majority of renters moving as often as every year.³⁴ Commercial tenants in the city's many shopping centers turned over quickly, as new developments and shifting residential population centers constantly evolved.³⁵ Most starkly, "for every three people who moved to Phoenix [during the height of its boom in the 1970s and 1980s], two left."³⁶ Phoenix, in short, reflects the trade-offs of the "counterurbanization" model in many Sunbelt metropolises³⁷—as well as the developmental, planning, and environmental challenges they all will face ahead.

2. Rustbelt Cities: Longstanding Challenges, Creativity and Tenacity

In contrast to the breakneck expansions of many Sunbelt urban areas, a handful of Rustbelt cities—generally defined as the post-industrial urban areas of the interior northeast and American Midwest, e.g., Chicago,³⁸ Milwaukee,³⁹ Pittsburgh,⁴⁰ and, most notably, Detroit⁴¹—either have

30. Luckingham, *supra* note 25, at 53.

31. *Id.* at 54.

32. *Id.*

33. *Id.*

34. *Id.* at 54–55.

35. *Id.*

36. *Id.* at 53.

37. Brian J.L. Berry, *Urbanization and Counterurbanization in the United States*, 451 ANNALS AM. ACAD. POL. & SOC. SCI. 13 (1980).

38. U.S. CENSUS BUREAU, QUICKFACTS, CHICAGO, ILL. (2018), <https://www.census.gov/quickfacts/fact/table/chicagocityillinois/PST045216> (estimated 0.3% growth between 2010 and July 2016).

39. U.S. CENSUS BUREAU, QUICKFACTS, MILWAUKEE, WISC. (2018), <https://www.census.gov/quickfacts/fact/table/milwaukeecitywisconsin/PST045217> (near-zero population change from 2010 through July 2017).

40. U.S. CENSUS BUREAU, QUICKFACTS, PITTSBURGH, PENN. (2018), <https://www.census.gov/quickfacts/fact/table/pittsburghcitypennsylvania/PST045216> (estimated 0.7% population loss from 2010 through July 2016).

41. Detroit experienced an astonishing 6.9% population decline from 1990 through 2000, U.S. CENSUS BUREAU, POPULATION DISTRIBUTION AND CHANGE: 2000 TO 2010, 2010 CENSUS BRIEFS

remained largely stagnant or have endured persistent, deep population declines into the new millennium. Rustbelt urban demographic and economic declines are further compounded by other challenges facing racial and ethnic minorities residing in these same communities. Disproportionate use of predatory lending practices, consistently poorly vetted subprime mortgage lending, and highly concentrated foreclosures in black and Hispanic/Latino neighborhoods across these regions deepened the impact of the 2007-2009 crisis and subsequent Great Recession.⁴² Those intertwined crises affected the same urban populations, which, despite decreasing aggregate poverty rates from the 1960s through the 1980s, had remained well above rates for white Americans. Approximately one-third of black Americans fell below the poverty rate in the late 1960s,⁴³ compared to fewer than one in eight white Americans, figures which remained nearly static⁴⁴ until the Great Recession, after which the national white poverty rate jumped to 11.6 percent.⁴⁵ For Hispanic and Latino Americans, meanwhile, the

9 (Mar. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>; from 2010 through July 1, 2016, Detroit further lost an estimated 5.8% of its population—off nearly 1.2 million from its all-time-high population of 1.85 million in 1950. U.S. CENSUS BUREAU, QUICKFACTS, DETROIT, MICH. (2018), <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan/PST045216>. Detroit's systemic issues exemplify the myriad planning, financing, and economic challenges of postindustrial urban areas in industrialized societies, with slow-motion financing crises—for all segments of the City's government-funded programs, from health and public safety to public schools and basic infrastructure—as well as how they can accelerate dramatically in the face of unrelenting population decline. See, e.g., Evan Bursey & David Wessel, *Lessons Learned from Detroit: A Judge's Perspective*, BROOKINGS INSTITUTION: CITIES & REGIONS (July 20, 2016), <https://www.brookings.edu/blog/up-front/2016/07/20/lessons-learned-from-detroit-a-judges-perspective/>; Bruce Katz & Jennifer Bradley, *A Growth Strategy for Post-Bankruptcy Detroit*, BROOKINGS INSTITUTION: CITIES & REGIONS (July 19, 2013), <https://www.brookings.edu/opinions/a-growth-strategy-for-post-bankruptcy-detroit/> (arguing that resolving Detroit's fiscal crises—even if achieved, a tall order—will not offer a panacea for resolving continuing decline, but that there is room for optimism in the “market momentum” of its downtown revival).

42. Matthew Hall, Kyle Crowder, & Amy Spring, *Neighborhood Foreclosures, Racial/Ethnic Tensions, and Residential Segregation*, 80 AM. SOC. REV. 526, 543–44 (2015).

43. As of 2017, the U.S. Census Bureau defined the poverty line for a family of four with two dependent children as a household with an annual income under \$24,858. DATA: POVERTY THRESHOLDS BY SIZE OF FAMILY AND NUMBER OF CHILDREN (2017), U.S. CENSUS BUREAU (2018), <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>. For 1978, the “baseline” year for Census Bureau estimates and analyses, the poverty threshold for a family of four with two dependent children was \$6,612 (\$24,572 in 2018 dollars). DATA: POVERTY THRESHOLDS BY SIZE OF FAMILY AND NUMBER OF CHILDREN (1978 BASE), U.S. CENSUS BUREAU (2018), <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.

44. Paul E. Peterson, *The Urban Underclass and the Poverty Paradox*, 106 POL. SCI. Q. 617, 619–20 (1991).

45. Suzanne Macartney, Alemayehu Bishaw, & Kayla Fontenot, *Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007-2011*, U.S. CENSUS BUREAU, AM. COMMUNITY SURVEY BRIEFS (Feb. 2013), <https://www.census.gov/prod/2013pubs/acsbr11-17.pdf>.

poverty rate actually *increased* from 28 percent in 1972 to 39 percent in 1987, although researchers cautioned that the Census Bureau “broadened its definition of Hispanic” between those measures, complicating precise comparisons.⁴⁶ As of 2011, the poverty rate for Americans of any reported Hispanic origin was just below 25 percent.⁴⁷

Economic and income data for the aforementioned key Rustbelt cities affirm these patterns at both the city and the metropolitan-region levels of analysis. In Chicago, some 21.7% of the city’s population lived in poverty as of 2015, when the total per capita income was reported as \$30,847.⁴⁸ Those figures were 28.4% and \$20,630 for Milwaukee,⁴⁹ 22.3% and \$29,196 for Pittsburgh,⁵⁰ and 39.4% and \$15,562 for Detroit⁵¹ (the latter figure being only approximately \$3,000 above the poverty threshold for single Americans nationwide).⁵² Over the same period, however, nationwide figures for the total poverty rate and for per capita incomes were 12.7 %⁵³ and \$57,589⁵⁴ respectively.

Of course, the Rustbelt cities, much like the region’s counterparts across the Sunbelt, reflect heterogeneous individual experiences. The wrenching forces of deindustrialization and economic transformation hit most of the country’s older urban centers hard during the latter half of the twentieth century, and hit the Rustbelt particularly severely. The outcomes across the Rustbelt, however, have diverged, especially in recent years. Cleveland, Ohio, pilloried as the “mistake on the lake” four decades ago, began

46. Peterson, *supra* note 44, at 620.

47. Macartney et al., *supra* note 45, at 1–2.

48. CENSUS: CHICAGO, *supra* note 38.

49. CENSUS: MILWAUKEE, *supra* note 39.

50. CENSUS: CHICAGO, *supra* note 38.

51. CENSUS: DETROIT, *supra* note 41.

52. See, e.g., HHS POVERTY GUIDELINES FOR 2018, U.S. DEP’T HEALTH & HUMAN SERVICES (2018), <https://aspe.hhs.gov/poverty-guidelines>. But see Corey Williams, *Census Figures Show Drop in Detroit Poverty Rate*, U.S. NEWS (Sept. 14, 2017), <https://www.usnews.com/news/best-states/michigan/articles/2017-09-14/census-figures-show-drop-in-detroit-poverty-rate> (reporting that, while Detroit retained “the highest [poverty] rate among the nation’s 20 largest cities,” the city’s poverty rate nonetheless declined from nearly 40 percent in 2015 to 35.7 percent in 2016; the Census Bureau also reported a modest increase in Detroit’s median household income over the same period, from just under \$26,000 to slightly over \$28,000).

53. INCOME AND POVERTY IN THE UNITED STATES: 2016, U.S. CENSUS BUREAU (2018), <https://www.census.gov/library/publications/2017/demo/p60-259.html>.

54. GDP PER CAPITA (CURRENT US\$): UNITED STATES, WORLD BANK (2018), <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=US>. Note, however, the distinction between per capita income (defined as the per-individual share of the country’s total gross domestic product) and median household income (defined as the arithmetic midpoint between income extremes for all families, reducing outlier effects for very high or very low-income individuals as compared to per capita measures). For present purposes, the distinction—an erstwhile substantial concern in many empirical contexts—is less pronounced, as the 2016 median household income was reported at \$59,039, only slightly higher than the per capita figure given by the World Bank. Accord INCOME AND POVERTY, *supra* note 55.

recovering in the 1990s through “the emergence of post-Fordist production systems, producer services, and consumer consumption,” i.e., modernizing and diversifying the city’s economic base while cultivating a cultural/tourism identity rooted in the city’s history.⁵⁵ Where Cleveland built momentum out of the area’s musical and sports historical/cultural icons, Pittsburgh enlisted iconic higher education institutions—most notably Carnegie Mellon University and the University of Pittsburgh—to build local capacity from the bottom-up, through local economic development in neighboring communities and through directing research funding into long-term employment bases throughout the city.⁵⁶ Similar efforts to prop up existing or nascent employment hubs and cultural amenities, building upon the successes of concentrated educational institutions, are playing out across the region. These approaches, as well as the increased attention to regional cooperation instead of inter-city competition, signal some promising developments after decades of dire news media and scholarly analysis.⁵⁷

3. American Coastal Elites: The Megalopolis to the Bay Area

Many of America’s largest, oldest urban centers have rebounded only

55. Barney Warf & Brian Holly, *The Rise and Fall and Rise of Cleveland*, 551 ANN. AM. ACAD. POL. & SOC. SCI. 208, 209 (1997).

56. See, e.g., Robert M. Berdahl, Jared L. Cohon, Ruth J. Simmons, John Sexton, & Leslie Cohen Berlowitz, *The University and the City*, 64 BULLETIN AM. ACAD. ARTS & SCI. 4, 11–12 (2011).

57. See, e.g., Peter Truog, *One Key to a Rust Belt Comeback: Job Hubs*, CITYLAB (June 25, 2017), <https://www.citylab.com/life/2017/06/one-key-to-a-rust-belt-comeback-job-hubs/530697/> (discussing, *inter alia*, the roles of “job clusters” or “job hubs” being leveraged to diversify the economy and retain talent, as well as growing attention to regional, rather than single-city, policy); Pete Saunders, *Hey, Rust Belt and Sun Belt: Don’t Follow the Coasts*, FORBES (Jan. 10, 2018), <https://www.forbes.com/sites/petesaunders1/2018/01/10/hey-rust-belt-and-sun-belt-dont-follow-the-coasts/#699b5ffc70e4> (arguing that because the “successes and challenges of coastal cities are the exception, not the rule,” the Rustbelt—and Sunbelt—urban areas face distinct challenges which require different strategic approaches); accord Mark D. Partridge & M. Rose Olfert, *The Winners’ Choice: Sustainable Economic Strategies for Successful 21st-century Regions*, 33 APPLIED ECON. PERSP. & POL’Y 143, 145 (2011) (discussing efforts to promote and institutionalize regionalism and regional governance among stagnant or declining regions, and finding encouraging evidence of regionalism’s successes); Charles J. Whalen, *Consensus Mechanisms and Community Economic Development: The Buffalo Experience*, 21 J. ECON. ISSUES 763, 765–66 (1987) (highlighting the role of the City of Buffalo and Erie County’s “overlapping structures” and concomitant inter-neighbor competition in economic development, which exacerbated the region’s economic decline and near-bankruptcies during and after the 1970s—at least until new efforts toward regional cooperation among business leaders and organized labor arose). Compare Robert G. Chollar, *Public-Private Partnerships*, 37 ANTIOCH REV. 162, 163 (1979) (noting that regionalism and collaboration can backfire, as in Montgomery County, Ohio, where social spending there in 1973 totaled \$790 million, but was “disbursed through 490 grants in aid and administered by no less than 270 separate jurisdictions and organizations . . . a typical pattern in many urban communities” for the era) (*italics omitted*).

since the late 1990s. New York City lost over 800,000 people between 1950 and 1980, but reached a then-all-time-maximum population of 8,008,278 in 2000,⁵⁸ and nearly 8.2 million in the 2010 census.⁵⁹ Boston grew by an estimated 9 percent between 2000 and July 2017, after previously losing over 200,000 people between 1950 and 1990.⁶⁰ Philadelphia,⁶¹ San Francisco,⁶² Seattle,⁶³ and other major cities followed have similar trends.

New York and San Francisco embody a specific developmental and demographic pattern, informally referred to as the “coastal elite” cities herein.⁶⁴ Both are older, major urban centers whose economic influence predates the turn of the twentieth century. Both cities, notwithstanding population losses after 1950, recovered and eventually exceeded earlier peak

58. TOTAL AND FOREIGN-BORN POPULATION, NEW YORK CITY, 1790-2000, NEW YORK CITY PLANNING DEP'T. (2018), https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/historical-population/1790-2000_nyc_total_foreign_birth.pdf.

59. NYC2010: RESULTS FROM THE 2010 CENSUS, NEW YORK CITY PLANNING DEP'T. (2010), <https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/census2010/pgrhc.pdf>.

60. U.S. CENSUS BUREAU, QUICKFACTS, BOSTON CITY, MASS. (2018), <https://www.census.gov/quickfacts/fact/table/bostoncitymassachusetts#viewtop>.

61. U.S. CENSUS BUREAU, QUICKFACTS, PHILADELPHIA, PENN. (2018), <https://www.census.gov/quickfacts/fact/table/philadelphiacountypennsylvania/PST045216> (estimated 3.6% growth between 2010 and July 2017).

62. U.S. CENSUS BUREAU, QUICKFACTS, SAN FRANCISCO, CALIF. (2018), <https://www.census.gov/quickfacts/fact/table/sanfranciscocitycalifornia,sanfranciscocountycalifornia/PST045217> (estimated 9.8% growth between 2010 and July 2017).

63. 2010 CENSUS, CITY OF SEATTLE OFFICE OF PLANNING & COMMUNITY DEVELOPMENT (2010), <https://www.seattle.gov/opcd/population-and-demographics/decennial-census#2010> (approximately 8% growth rate between 2000 and 2010); *accord* POPULATION GROWTH IN WASHINGTON REMAINS STRONG, WASHINGTON STATE OFFICE OF FINANCIAL MANAGEMENT 7 (June 30, 2017), https://www.ofm.wa.gov/sites/default/files/public/legacy/pop/april1/ofm_april1_press_release.pdf (noting that King County, where Seattle is located, grew by 2.31% from 2016 to 2017 alone).

64. “Coastal elites” colloquially (and pejoratively) may refer to “any educated professional who lives in a major city in California or along the Eastern seaboard,” or more narrowly to “Wall Street executives” and other very-high-income coastal urbanites, David Masciotra, “*Real Americans*” vs. “*Coastal Elites*”: *What Ring-Wing Sneers at City Dwellers Really Mean*, SALON (Nov. 20, 2016), <https://www.salon.com/2016/11/20/real-americans-vs-coastal-elites-what-right-wing-sneers-at-city-dwellers-really-mean/>. The term, moreover, usually connotes (and derides) the liberal politics of the people living in those coastal communities, Salena Zito, *Why Liberal Elites Are So Resentful of Middle America*, N.Y. POST (Jan. 11, 2017), <https://nypost.com/2017/01/11/why-liberal-elites-are-so-resentful-of-middle-america/>. A simpler—and less polemical—meaning for “coastal elites” is meant for present purposes: cities which are geographically along the Atlantic and Pacific coasts of the United States, particularly those which have much higher incomes, higher living costs, and highly competitive economies compared to cities of any other region. New York and San Francisco provide the signal, paradigmatic examples, but this loose definition would encompass Boston, Washington, Los Angeles, Seattle, and others as well. Precision is less important than the general, theoretical organizing principle of the typology—that this subgroup of major cities is “different” in both normative and empirical senses, and thus merit individualized analysis of their unique conditions and development challenges.

population figures as they entered the twenty-first century. Whereas Washington, D.C., Boston, and Minneapolis, among others, have seen large inflows of residents in recent years, none of the three has approached their mid-twentieth-century historical highs. Hence, New York and San Francisco uniquely confront pressures of renewed growth without the literal and proverbial “room” found in those cities that experienced proportionally deeper population declines. These specific cities—exemplars of challenges facing America’s coastal urban hubs—have less available space, fewer “infill” development opportunities, and significantly higher costs than others, e.g., the shrunken Rustbelt industrial centers or the sprawling, lower-density cities of the South and interior West.

Although the affordable housing crisis increasingly is viewed (accurately) as a global phenomenon affecting the “superstar” cities and old industrial centers in both economically industrialized and industrializing places,⁶⁵ America’s coastal urban areas face markedly dire statistical realities. Los Angeles, for example, has “just 14 public-housing facilities, with just over 6,500 [affordable, public housing] units, in a city of about 4 million people, an estimated 21.5 percent of whom live in poverty.”⁶⁶ Meanwhile, New York City runs “326 [such] facilities,” which is roughly “23 times as many as [in] LA” and in a city with “double the population [of] and a lower poverty rate”⁶⁷ than Los Angeles. New York also manages a further “661 buildings in the municipal [homeless] shelter system,”⁶⁸ far more than any other American city, and it has benefited from long traditions of renter protections and vibrant tenant activist movements.⁶⁹ Nonetheless, New York’s housing crisis remains a persistent, widespread emergency, disproportionately affecting its most-vulnerable residents. As early as 2011, New York’s rental market included just under 425,000 units considered “affordable to extremely low income and very low income households” for a city with nearly 980,000 households meeting the same low-income

65. See, e.g., Richard Florida & Benjamin Schneider, *The Global Housing Crisis*, CITYLAB (Apr. 11, 2018), <https://www.citylab.com/equity/2018/04/the-global-housing-crisis/557639/>; Damien Sharkov, *Homeless Numbers Up for First Time Since Great Recession*, NEWSWEEK (Dec. 6, 2017), <http://www.newsweek.com/affordable-housing-crisis-forces-us-homeless-numbers-first-time-great-739333> (ascribing the first post-recession increase in nationwide homelessness to widespread affordable housing crises); see also discussion *infra*, Part III(B).

66. Bryce Covert, *The Deep, Uniquely American Roots of Our Affordable-Housing Crisis*, NATION (May 24, 2018), <https://www.thenation.com/article/give-us-shelter/>.

67. *Id.*

68. Michael Greenberg, *Tenants Under Siege: Inside New York City’s Housing Crisis*, N.Y. REV. BOOKS (Aug. 17, 2017), <http://www.nybooks.com/articles/2017/08/17/tenants-under-siege-inside-new-york-city-housing-crisis/>.

69. Isaac Chotiner, *What’s Making NYC’s Housing Crisis Worse, and How to Fix It*, SLATE (Aug. 8, 2017), http://www.slate.com/articles/news_and_politics/interrogation/2017/08/what_s_making_nyc_s_housing_crisis_worse_and_how_to_fix_it.html.

thresholds.⁷⁰ By 2040, New York's population likely will top nine million, further squeezing current, competitive rental markets citywide and revealing how Mayor Bill de Blasio's plan to "build or preserve nearly 200,000 affordable units" over coming years falls far short of the city's projected needs.⁷¹ San Francisco's efforts to contain and reverse its own housing crisis, much like New York's, are at once historically ambitious and still far from sufficient. The recently completed Natalie Grubb Commons, a development "reserved for households with incomes up to 50 percent of the local median," featuring "*complete* homes, one-, two- and three-bedroom apartments with privacy, a sense of peace," received a staggering 6,580 applications for the project's 95 units, a ratio of almost 70:1.⁷²

Such challenges are endemic in other major cities along the country's coasts—from Seattle to San Diego, Miami to Boston—but the intensity of these pressures accelerates almost exponentially among the subset of "superstar," "elite" cities. The present focus on these cities recognizes the stakes and the extremity of their challenges, but does so without minimizing or dismissing the challenges of other urban, suburban, and non-metropolitan communities across the United States. Affordable and stable housing are ubiquitous challenges and demand a far more expansive stocktaking than is possible within the limits of a single article.

B. Elite Global Cities Under Pressure

The renewed growth of America's largest cities mirrors both historical patterns of urban development and the new millennium's trends toward increased consolidation of economic power among relatively few "elite global" cities.⁷³ Across the last several decades, urban observers and

70. PROBLEM: OUR CURRENT AFFORDABLE HOUSING CRISIS, N.Y.C. HOUSING DEP'T (2018), <https://www1.nyc.gov/site/housing/problem/problem.page>.

71. *Id.*

72. Emily Badger, *These 95 Apartments Promised Affordable Rent in San Francisco. Then 6,580 People Applied*, N.Y. TIMES (May 12, 2018), <https://www.nytimes.com/2018/05/12/upshot/these-95-apartments-promised-affordable-rent-in-san-francisco-then-6580-people-applied.html> (emphasis in original).

73. The phrases "elite city" and "global city" sometimes are used interchangeably herein, since various publications and researchers define them in overlapping yet divergent ways. *See supra* note 58 and related discussion. U.S.-based consulting firm A.T. Kearney offers one especially comprehensive set of measures, including a city's positioning "to attract and retain global capital, people, and ideas," a city's cultivation of "entrepreneurship and innovation," and indicators of economic, social, and political stability and institutional resiliency; among the 2017 Global Cities list, New York was identified as the world's leading global city, while San Francisco was identified as leading the Global Cities Outlook list, which projects future performance based on current metrics. Other American cities on the 2017 include Chicago, Los Angeles, Washington, DC, and Boston. *See* Nicole Dessibourg, Mike Hales, & Andres Mendoza Pena, GLOBAL CITIES 2017: LEADERS IN A WORLD OF DISRUPTIVE INNOVATION, A.T. KEARNEY (2017), <https://www.atke>

academics alike have noted the globalized reach of major financial centers like New York, London, and Frankfurt over the even-larger and rapidly growing megacities of the industrializing world.⁷⁴ While urbanization has long been seen as a prerequisite or co-requisite for economic development in industrializing states,⁷⁵ this sustained concentration of economic, political, and financial power among incumbent global cities has continued for now at least.⁷⁶

The continued agglomeration of global wealth in the largest, incumbent major cities parallels domestic economic dynamics in the early twenty-first century. In part, considerable attention has focused on major cities' roles in skyrocketing income and wealth inequality across the United States. Major coastal cities have been called "vast gated communities where the one percent reproduces itself," with Manhattan, San Francisco, Miami, Boston, Washington, Oakland, Chicago, and Los Angeles all highlighted for having especially severe inequalities.⁷⁷ Put differently, the ongoing trends of

arney.com/global-cities/full-report. The concept of "elite/global cities," however, should be distinguished from metrics emphasizing quality of life or other social wellbeing indicia; a "global city" connotes economic, financial, and cultural power, which *may* be correlated with higher quality of life, but is not necessarily so. For example, only Portland, Oregon, ranked among the top 25 "Most Livable Cities" list by UK-based *Monocle* magazine in 2017, which was otherwise dominated by the largest cosmopolitan cities in high-income Asia (e.g., Tokyo, Singapore, Hong Kong), Europe (e.g., Amsterdam, Berlin, Hamburg), and Oceania (e.g., Melbourne, Auckland); accord Casey Baseel, *Tokyo Ranked as Most Livable City in the World in Monocle Annual Survey*, JAPAN TODAY (July 10, 2017), <https://japantoday.com/category/features/lifestyle/tokyo-ranked-as-most-livable-city-in-the-world-in-monocle-annual-survey>. For present purposes, these distinctions are less consequential than the general ordering principle: among America's major cities, irrespective of foregoing "elite" typologies, New York (always included in "elite" and "global" cities lists) and San Francisco (often included) are assumed to be within the more-general universe of economically and culturally powerful urban centers.

74. See generally David Meyer, *The World System of Cities: Relations between International Financial Metropolises and South American Cities*, 64 SOC. FORCES 553 (1986).

75. Patricia Clarke Annez & Robert Buckley, *Urbanization and Growth: Setting the Context* 1–2, in URBANIZATION AND GROWTH: COMMISSION ON GROWTH AND DEVELOPMENT, WORLD BANK (2009).

76. See, e.g., REDEFINING GLOBAL CITIES: THE SEVEN TYPES OF GLOBAL METRO ECONOMIES 2, BROOKINGS INSTITUTION/JPMORGAN CHASE (2016) (noting that more than half the world's population now lives in major cities, with growth rates among industrializing countries' largest cities vastly outpacing the traditional urban centers of finance and economic power, although the "global giants"—New York, Los Angeles, Tokyo, Osaka-Kobe, Paris, and London—remain "key nodes in global capital and talent flows"). See also David A. Graham, *Red State, Blue City*, ATLANTIC (Mar. 2017) (discussing the political transformation of American cities in recent decades, highlighted by the sharply partisan urban/rural divide in the 2016 election and major American cities' resurgent, sometimes overtly confrontational approach toward state and federal governments—trends likely to continue in coming years).

77. Joel Kotkin, *Where Inequality Is Worst in the United States*, FORBES (Mar. 20, 2014), <https://www.forbes.com/sites/joelkotkin/2014/03/20/where-inequality-is-worst-in-the-united-states/#24748190327c>. Further secondary research has suggested over decades that such deep inequality can not only stifle opportunities for those in greatest need, but also in certain

concentrating power among relatively few affluent urban regions plays out on both levels of analysis, global and domestic.

The gains from having more powerful urban centers as a counterweight to central governments, which largely have abandoned partaking in modern urban policymaking, are offset by the losses to the urban communities which still receive disproportionately little attention and financial support in these booming metropolises. Still, the global is increasingly local indeed. Longstanding patterns of inequality are now being compounded by the renewed “successes” of major cities, while wealth continues to flow toward the same few individuals and institutions along each of these local, regional, national, and global dimensions. As such, the focus of this paper emphasizes the panoply of implications for those most-vulnerable communities at the heart of the CED movement and how activists within those networks might be able to leverage these trends—especially massive capital investments in the largest urban development projects—for those in greatest need.

C. Defining Community Development and Positive CED Outcomes

Among the “core definitions” of community economic development (“CED”) are those which “[embrace] efforts to develop housing, jobs, or business opportunities for low-income people” in a geographically bounded community.⁷⁸ Other components of CED include “a leading role played by nonprofit, nongovernmental organizations” and those institutions’ “[accountability] to residentially defined communities.”⁷⁹ Regardless of the precise definition considered and applied, however, the overriding theme of CED—as a movement, as a strategy for improving the social welfare of low-income communities, and as a method of community organization more generally—is that the community remains the focus: economic development must benefit the extant community to fall within the ambit of CED.⁸⁰

CED commonly encompasses both retrospective and prospective challenges facing low-income, often long-marginalized communities. The CED movement expressly frames activist involvement and direction of new development in terms of past wrongs (e.g., remedying past environmental

circumstances might lead to social dislocations—and even political violence. *See, e.g.*, Lee Sigelman & Miles Simpson, *A Cross-National Test of the Linkage between Economic Inequality and Political Violence*, 21 J. CONFLICT RESOLUTION 105 (1977); accord Sean Fox & Kristian Hoelscher, *Political Order, Development, and Social Violence*, 49 J. PEACE RESEARCH 431 (2012) (affirming empirical research suggesting an inequality—political violence nexus, while adding that institutional weaknesses—transitional or weakly institutionalized democratic states, highly contested authoritarian regimes—also play a role).

78. WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS & THE NEW SOCIAL POLICY* 3 (2001).

79. *Id.*

80. *Id.*

damage through “reparations” and compensating communities damaged, carved up, or altogether displaced during earlier eras of so-called “urban renewal.”⁸¹ CED activists’ goals are also critically forward-looking, both in terms of preventing development from repeating earlier disasters and as a means “to prevent further marginalization and decisions . . . [impacting] current and future residents in [a given] area,” affording locals a voice in decision-making processes and at least some agency over precise outcomes.⁸² Sustainable “self-empowerment” and infusing urban planning institutions with “democratic participation” undergird CED.⁸³ Hence, CED and its broader aims should be viewed not as hyper-specific reactions to individual developments, but rather as bottom-up organizing efforts which become habitual, sustainable, and perpetual movements. Most ambitiously, CED seeks to transform urban leaders’ mindsets from a “pro-growth” orientation to a “value-conscious” growth model, one which maximizes communities’ long-term security and prospects.⁸⁴

D. CED in a New Millennium of Re-Urbanization

Recent shifts in demographic trends across the United States have accelerated pressures on already vulnerable urban communities, those very communities at the center of the CED movement’s mission. Over 80 percent of Americans lived in urban areas as of the 2010 Census, nearly two percent higher than in 2000, with growth in urban centers outpacing the overall population growth rate by a similar margin.⁸⁵ In part accelerated by the Great Recession, during which younger workers flocked toward major cities for job opportunities, this trend could be slowing but not ending quite yet.⁸⁶ Moreover, even in higher-density regions where growth has slowed, as in

81. Emma T. Lucas-Darby, *Community Benefits Agreements: A Case Study in Addressing Environmental and Economic Injustices*, 97 J. AFRICAN AM. HIST. 92, 93–98 (2012).

82. *Id.* at 99.

83. *Id.* at 99–100; accord Robyn Eversole, *Community Agency and Community Engagement: Re-theorising Participation in Governance*, 31 J. PUB. POL’Y 51 (2011) (arguing for more open-ended conceptualizations of participatory governance across many contexts, including both bottom-up and top-down models for encouraging community engagement in local decision-making of all kinds). For more-generalized discussions of business actors’ models of engagement in community development, and economic development at the national and global levels of analysis, see, e.g., Ananya Mukherjee Reed & Darryl Reed, *Partnerships for Development: Four Models of Business Development*, 90 J. BUS. ETHICS 3 (2009).

84. Colleen Cain, *Negotiating with the Growth Machine: Community Benefits Agreements and Value-Conscious Growth*, 29 SOC. FORUM 937 (2014).

85. U.S. DEP’T OF COMMERCE, CENSUS BUREAU, GROWTH IN URBAN POPULATION OUTPACES REST OF NATION, CENSUS BUREAU REPORTS (Mar. 26, 2012), https://www.census.gov/newsroom/releases/archives/2010_census/cb12-50.html.

86. Laura Lorenzetti, *America’s Urban Population Boom Is Slowing Down*, FORTUNE, May 19, 2016, <http://fortune.com/2016/05/19/urban-population-growth-slowing/>.

Metropolitan New York and the San Francisco Bay Area, ongoing growth of any degree strains already hypercompetitive housing markets.⁸⁷ Given these interacting forces (economic pressures for young, relatively affluent, mobile Americans to move to cities; a shortage of new and recently built housing; the rapidly escalating cost of living in dense urban centers, etc.)⁸⁸ the pressures on lower-income communities that long predate this recent urban boom have increased in lockstep. The CED movement broadly emphasizes improving employment, housing, and other services for local communities, developing bottom-up institutions that are responsive to those communities' needs. The movement's constitutive institutions now face even greater demands than before, especially in these aforementioned, dense coastal cities.⁸⁹

City density, on its own, is a significant consideration for America's urban planners, developers, and community leaders.⁹⁰ Traditionally, the

87. For example, nearly as many housing units were permitted in Manhattan in 1960 as in the entire decade of the 1990s, with similar building patterns in San Francisco and the Bay Area. *See, e.g.*, Edward Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply*, 32 J. ECON. PERSP. 3 (2018).

88. *See, e.g.*, Bourree Lam, *The Recovery's Geographic Disparities*, ATLANTIC, Feb. 26, 2016, <https://www.theatlantic.com/business/archive/2016/02/eig-distressed-communities/471177/> (citing reports by the Economic Innovation Group, ranking 25,000 U.S. zip codes according to "economic distress" factors, which ranked various central San Francisco [94102, 94103, 94109] and Manhattan [10001, 10017] zip codes among the *least* distressed nationally). The booming economies of these urban cores overlay with the general distributional patterns of the post-Great Recession recovery: most income gains have accrued to the top income-earners, who tend to live in the largest metropolitan areas, where industries like finance dominate. Annie Lowrey, *The Rich Get Richer Through the Recovery*, N.Y. TIMES, Sept. 10, 2013, <https://economix.blogs.nytimes.com/2013/09/10/the-rich-get-richer-through-the-recovery/>. *See generally*, ECONOMIC INNOVATION GROUP, THE 2016 DISTRESSED COMMUNITIES INDEX (Feb. 2016), <http://eig.org/wp-content/uploads/2016/02/2016-Distressed-Communities-Index-Report.pdf>; Richard Florida, *Geographic Inequality Is Swallowing the Recovery*, CITYLAB, May 23, 2016, <https://www.citylab.com/equity/2016/05/there-are-more-losers-than-winners-in-americas-economic-recovery-due-to-geographic-inequality/483989/> (citing the same EIG report's finding that, when measuring economic recovery by new business establishments at the county-level measure, nearly half of all new business starts took place in just 20 counties, which included Los Angeles [number 1], Miami-Dade [2], Kings/Brooklyn [3], Harris/Houston [4], and the two running examples of San Francisco [17] and Manhattan [19], with particular concentrations across the Sunbelt and the American West; the report noted that job growth patterns follow the same trends as new business openings generally).

89. In part, the focus of this paper focuses predominantly on the largest coastal urban areas—the San Francisco Bay Area and New York City—not because they are the only metropolitan regions experiencing the phenomena examined, but rather because of the extremity and acuteness of their challenges. The densest coastal cities face extreme costs in locating, funding, and building in their urban cores, whereas the lower-density development patterns of, e.g., the Sunbelt and Southeastern United States face *comparatively* lower development costs; *see generally* Richard Lloyd, *Urbanization and the Southern United States*, 38 ANN. REV. SOC. 483 (2012).

90. *See generally* Witold Rybczynski, *Dense, Denser, Densest*, 35 WILSON Q. 46 (2011) (overviewing generally the economic/financial costs and environmental risks underlying recent arguments in favor of densifying American cities and curtailing suburban sprawl).

United States' largest cities have not been as dense as their European counterparts; Europe historically has been one of the densest population centers globally.⁹¹ Nonetheless, generations of consistently rapid population growth in the United States has necessitated a gradual clustering of American households, regardless of the vast open spaces in the country's interior.⁹² The core of Paris has over 50,000 inhabitants per square mile, and even the broader, 12-million-member Ile-de-France region surrounding the center of Paris has well over 20,000 inhabitants per square mile.⁹³ New York, America's densest city, has just over 27,000 people per square mile⁹⁴ (though Manhattan itself has nearly triple that, at over 70,000).⁹⁵ The example of Paris—much like Barcelona, Brussels, and London, among other major European cities—suggests that density and quality of life need not always run in opposing directions, hence American urbanists' longstanding acclaim for and desires to replicate elements of European cities' development models.⁹⁶

These lessons are instructive for the leading case studies at the heart of this paper, New York and San Francisco, which must accommodate swelling residential populations within the most competitive, resource-constrained real estate markets in the United States. The necessity of densification follows decades of urbanists "singing the praises of urban density" as a potential economic driver with health, environmental, and resource

91. Stephan Klasen & Thorsten Nestmann, *Population, Population Density and Technological Change*, 19 J. POP. ECON. 611, 618 (2006) (finding that the "Old World," including the Middle East and North Africa, Central and Western Europe, and Asia, not only had the highest population and density of major global regions, but also that density patterns over millennia predicted well with modern economic performance and technological innovation).

92. Nathan Keyfitz, *Population Density and the Style of Social Life*, 16 BIOSCIENCE 868, 870 (1966) (using a standard 1.5% U.S. population growth rate as a basis for concluding that, eventually, "dispersion [of people broadly across the United States will in a few generations] become impossible; no amount of redeployment would enable us to get out of sight of one another"); compare Alice Taylor Day & Lincoln H. Day, *Cross-National Comparison of Population Density*, 181 SCI. 1016, 1017 (1973) (noting that on a per capita/national basis, the U.S. still has a very low population density—only 55 people per square mile as of the early 1970s—ranking near the bottom globally); Walter Swanton, *Land Value Trends in the United States*, 24 AM. J. ECON. & SOC. 163, 169 (1965).

93. PARONAMA – ILE-DE-FRANCE (Data), INSTITUT NATIONAL DE LA STATISTIQUE ET DES ÉTUDES ÉCONOMIQUES (2018), <https://www.insee.fr/fr/statistiques/2018915>.

94. NEW YORK CITY POPULATION, NEW YORK CITY PLANNING (2018), <https://www1.nyc.gov/site/planning/data-maps/nyc-population/population-facts.page>.

95. Eric Jaffe, *Watch 210 Years of Manhattan Densification in 2 Minutes*, CITYLAB (June 3, 2018), <https://www.citylab.com/equity/2015/06/watch-210-years-of-manhattan-densification-in-2-minutes/394736/> (illustrating that Manhattan's density peaked between 1890 and 1910, before settling near its current rate from the 1980s onward).

96. See, e.g., Feargus O'Sullivan, *Lessons from Europe's Densest Neighborhoods*, CITYLAB (Mar. 28, 2018), <http://www.citylab.com/life/2018/03/density-european-cities-maps/555503/>; accord Amos Hawley, *Population Density and the City*, 9 DEMOGRAPHY 521 (1972).

conservation advantages.⁹⁷ It also, however, faces stringent constraints in existing high-density cities. The most-daunting constraints include the prevalence of development-deterring land use policies in “growing, land-constrained metropolitan areas [and] cities where preexisting land values [are] high and worth protecting,” especially where physical barriers—mountains, bodies of water, or political-jurisdictional lines—prevent access to new land.⁹⁸ Furthermore, as these cities grow, the proximity premium for housing near a city’s business and commercial centers (e.g., the referent city’s central business district (CBD)) is amplified and exaggerated—stretching ever-further distances beyond a city core—while accelerating increasing home values.⁹⁹ The tensions are manifold and overlapping in these signal cases. Densification is necessary for reducing housing pressures, yet density promoting developments can displace vulnerable residents, directly and indirectly. Denser development can work in tandem with transit system improvements, but they may also exacerbate already overloaded urban bus, subway, and rail networks.

Environmental and sustainability concerns compound these challenges for twenty-first century cities both in the United States and around the world. The specter of climate change makes denser urban development patterns imperative for long-term livability.¹⁰⁰ Among other approaches, rejuvenating and repurposing old industrial sites has become a recurring theme in pursuit of sustainability goals. Post-industrial opportunities for redevelopment, especially in the increasingly service-sector-oriented cities of the industrialized world, have turned to rehabilitation of the last century’s largest infrastructure projects (e.g., port facilities).¹⁰¹ As the industrializing world works to close economic gaps, similar waterfront redevelopment opportunities have gained attention in places like Zanzibar, Tanzania as well.¹⁰² These global trends, in the American context, have translated into myriad, often novel legal arrangements for guaranteeing environmental and

97. David Roberts, *Want to Reduce the Energy Used by Buildings? Make Cities Denser*, VOX (Nov. 26, 2017), <https://www.vox.com/science-and-health/2017/1/26/14388942/building-energy-use-density>; accord Vishaan Chakrabarti, *Building Hyperdensity and Civic Delight*, PLACES J. (June 2013), <https://placesjournal.org/article/building-hyperdensity-and-civic-delight/> (providing an example of a “maximalist” approach to densification, pulling from both quantitative and qualitative research comparing global leaders in urban housing density).

98. Albert Saiz, *The Geographic Determinants of Housing Supply*, 125 Q.J. ECON. 1253, 1257 (2010).

99. *Id.* at 1263–64.

100. Jennifer Welch, *Forum: Green Urban Worlds*, 97 ANNALS OF THE ASSOCIATION OF AM. GEOGRAPHERS 373 (2007); V. Kelly Turner, *Obstacles to Developing Sustainable Cities: The Real Estate Rigidity Trap*, 22 ECOLOGY & SOCIETY (2017).

101. Brian Hoyle, *Global and Local Change on the Port-City Waterfront*, 90 GEO. REV. 395 (2000).

102. Brian Hoyle, *Urban Waterfront Revitalization in Developing Countries: The Example of Zanzibar’s Stone Town*, 168 GEO. J. 141 (2002).

economic justice imperatives. Key among these are CBAs.¹⁰³ In these tailored agreements, communities may be empowered to exact “environmental reparations” for the “historical and current damages to [their] neighborhoods and communities through redevelopment projects,” emphasizing environmental protection and local community economic empowerment.¹⁰⁴ As increasingly powerful epicenters of the global economy continue growing against constraints of aging infrastructure and limited physical space, the challenges facing their community activists and low-income residents are accelerating as well, particularly after the financial crisis and Great Recession.¹⁰⁵

At a smaller scale, New York City’s High Line project similarly sought to convert the long-shuttered 10th–11th Avenues elevated rail line (“El”) into a landscaped park trail in the middle of Manhattan.¹⁰⁶ Closed in the early 1950s, the El train network had become an anachronistic urban transit system, dwarfed and largely shoved aside by contemporaneous expansions of New York’s subway system.¹⁰⁷ One of the social effects of the El in its heyday was that it blurred public and private spaces, where both lower- and middle-income Manhattan apartments—and their windows, balconies, and fire escapes—brushed against the public transit network and public streets directly.¹⁰⁸ After 60 years of neglect, the rejuvenated High Line brought back that “dialogue that undid the separation between the public, semiprivate domestic, and private spheres.”¹⁰⁹ Other environmentally conscious projects in New York and around the world have sought to revitalize urban biodiversity, providing new or rebuilt habitats as well as public spaces for surrounding communities to commune.¹¹⁰ Several other cities have sought to emulate New York’s successes accordingly.¹¹¹

103. Emma T. Lucas-Darby, *Community Benefit Agreements: A Case Study in Addressing Environmental and Economic Injustices*, 97 J. AFRICAN AM. HISTORY 92 (2012).

104. *Id.* at 92–93.

105. Eugenie Birch & Susan Wachter, *Introduction: The Shape of the New American City*, 626 ANNALS OF THE AM. ACAD. POL. & SOC. SCI. 6 (2009).

106. Sunny Stalter, *Farewell to the El: Nostalgic Urban Visuality on the Third Avenue Elevated Train*, 58 AM. Q. 869 (2006).

107. *Id.*

108. *Id.* at 879.

109. *Id.* Accord Jared Keller, *First Drafts: James Corners’ High Line Park*, ATLANTIC (July 5, 2011), <https://www.theatlantic.com/entertainment/archive/2011/07/first-drafts-james-corners-high-line-park/240695/>.

110. See, e.g., Richard Blaustein, *Urban Biodiversity Gains New Converts*, 63 BIOSCIENCE 72 (2013) (mentioning in addition to the High Line projects such as Teardrop Park in Lower Manhattan, Singapore’s “Butterfly Trail,” and the restoration of Jamaica Bay wetlands, also in New York).

111. Leonard Greene, *New York’s High Line Inspires Other Cities to Build Similar Parks*, N.Y. DAILY NEWS (May 28, 2018), <http://www.nydailynews.com/new-york/new-york-high-line-inspires-cities-build-similar-parks-article-1.4014330> (among the cities seeking to emulate New York’s repurposing of old industrial infrastructure are Miami, Chicago, Philadelphia, London, and

Despite its acclaim, the High Line has seemingly accelerated the development of ultra-high-end projects clamoring for views of and access to the elevated park. Among these are the luxury condominium project at 520 West 28th designed by the late Zaha Hadid,¹¹² an “art and performance space” called “the Shed” described as “the latest spectacle along New York’s High Line,” which is adjacent to another massive development at the northern terminus of the High Line, the Hudson Yards redevelopment,¹¹³ and a host of smaller-scale, yet similarly high-end apartment and condominium projects in the vicinity.¹¹⁴ As such, even the High Line’s designers and strongest early proponents have raised concerns over whether the project fulfils one of its key aims at its inception: improving and serving the needs of nearby communities.¹¹⁵

The rising political power and influence of major cities has been heralded by numerous media and academic commentators in recent years.¹¹⁶

Albany, New York).

112. Lucy Wang, *New Images Capture Zaha Hadid’s Luxury High Line Condos in NYC*, INHABITAT (Mar. 16, 2018), <https://inhabitat.com/nyc/new-images-capture-zaha-hadids-luxury-high-line-condos-in-nyc/>.

113. Michael Kimmelman, *Have You Seen This? N.Y. TIMES* (Aug. 13, 2017), <https://www.nytimes.com/interactive/2017/08/13/arts/high-line-shed-shell.html>.

114. Kim Velsey, *A Would-Be Developer Chooses a Neighborhood Under Construction*, N.Y. TIMES (Apr. 2, 2018), <https://www.nytimes.com/2018/04/02/realestate/would-be-developer-hudson-yards-manhattan.html>. See also Alya Abourezk, *New Renderings Reveal Thomas Heatherwick’s Design for Residential Towers Straddling NYC’s Highline*, ARCH DAILY (Jan. 15, 2018), <https://www.archdaily.com/887010/new-renderings-reveal-thomas-heatherwicks-design-for-residential-towers-straddling-nycs-highline>; Kristin Tablang, *5 Luxury Condos Sprouting Up Along New York City’s High Line*, FORBES (Feb. 28, 2015), <https://www.forbes.com/sites/kristintablang/2015/02/28/5-luxury-condos-new-york-city-high-line/#76c69f88390e>.

115. Andrew Davis, *Unintended Consequences: Friends of the High Line Founder Raises Concern about Park’s Success*, ARCHITECT’S NEWSPAPER (Feb. 24, 2017), <https://archpaper.com/2017/02/high-line-founder-raises-concern/>.

116. See generally Ian Klaus, *When Mayors Spoke Up*, CITYLAB (Dec. 29, 2017), <https://www.citylab.com/equity/2017/12/when-mayors-spoke-up/549356/> (noting U.S. mayors’ roles as participants in and organizers of various global conferences relating to, among other things, climate change, in lieu of the traditional federal government’s leadership on key global concerns); accord Kriston Capps, *Mayors Take the Fight for Affordable Housing to Capitol Hill*, CITYLAB (Jan. 29, 2018), <https://www.citylab.com/equity/2018/01/mayors-take-the-fight-for-affordable-housing-to-capitol-hill/551618/> (reporting on a coalition of mayors, launched by the late San Francisco Mayor Ed Lee, to pressure Congress on affordable housing policy and funding); Nicole Flatow, *Cities Launch Plan to Protect Net Neutrality*, CITYLAB (Mar. 12, 2018), <https://www.citylab.com/equity/2018/03/net-neutrality-executive-orders-fcc-mayors-bill-de-blasio/555344/>; Juliana Kerr, *Want Immigration Reform? Look to Cities*, CITYLAB (Jan. 23, 2018), <https://www.citylab.com/equity/2018/01/want-immigration-reform-look-to-cities/551261/>; Teresa Mathew, *How Cities Can Take a Stand on Cannabis*, CITYLAB (Jan. 12, 2018), <https://www.citylab.com/equity/2018/1/how-cities-can-take-a-stance-on-cannabis/549833/>; Tanvi Misra, *How the DOJ Is Broadening Its Attack on Sanctuary Cities*, CITYLAB (Jan. 25, 2018), <https://www.citylab.com/equity/2018/01/how-the-doj-is-broadening-its-attack-on-sanctuary-cities/551396/> (reporting significant federal pushback against sanctuary cities, including a recent collection of 23 letters sent from the DOJ to the largest cities opposing federal immigration crackdowns).

Yet, these same cities face enormous internal pressures and challenges, particularly those otherwise deemed “most successful” in the new millennium, such as New York and San Francisco. The tragic irony of these urban powerhouses, from a CED perspective, is that they have seen dramatically increased investments in all types of real estate development projects while simultaneously combatting lingering post-recession social and economic crises affecting their neediest citizens. Put another way, America’s erstwhile booming cities have proven unable to absorb the added pressures of their own successes, becoming microcosms of the asymmetric American economic recovery unto themselves.

III. Mega-Projects, Historical Development, and Recent Trends

A. Defining Mega-Projects and Key Examples

These recent demographic and economic shifts have paralleled changes in the built environments of the “beneficiary” cities. New York City exemplifies the reinvigorated boom in “supertall” skyscrapers¹¹⁷ and other mega-projects,¹¹⁸ but by no means is it alone. In Los Angeles, for example,

117. A “supertall” building is defined as one exceeding 300 meters/984 feet in height. COUNCIL ON TALL BUILDINGS AND URBAN HABITAT, CTBUH HEIGHT CRITERIA FOR MEASURING & DEFINING TALL BUILDINGS, <http://www.ctbuh.org/LinkClick.aspx?fileticket=zvoB1S4nMug=>; as of January 2018, New York City has 24 supertall buildings either in planning stages, under construction, or already completed, *NYC’s Supertall Skyscraper Boom, Explained*, CURBED N.Y., Jan. 22, 2018, <https://ny.curbed.com/maps/new-york-skyscraper-construction-supertalls>; notably, many of the proposed, under-construction, and recently completed supertall towers in Manhattan—unlike those of previous generations—are primarily residential buildings, like Central Park Tower, 80 South Street (half-residential), and 111 West 57th Street, all over 1,400 feet. *Id.* For purposes of this essay, these definitions will be used more flexibly, including structures which fall just short of a “supertall” and those which both exceed 750 feet and are among the five-tallest structures in a central urban area. Keeping this definition open and flexible ensures greater numbers of available cases and comparisons, while recognizing that cities of different sizes may experience similar outcomes despite differences in a project’s absolute size or height alone.

118. The term “mega-project” reflects several common meanings. In the context of infrastructure planning and investment, “mega-projects” refer to large public or industrial projects like dams, highways, and airports. Joseph S. Szyliowicz & Andrew R. Goetz, *Getting Realistic about Megaproject Planning: The Case of the New Denver International Airport*, 28 POL’Y SCI. 347 (1995). Urban planning and development—i.e., those disciplines focusing more on mixed-use, large, and/or master-planned projects—have a separate conception of “mega-projects” or “megadevelopments”; see, e.g., Kane Pham, *Clearing Stock of the Invisible: Effects of Cosmopolitan Power on the Supply of Affordable Housing*, in FROM CONFLICT TO INCLUSION IN HOUSING: INTERACTION OF COMMUNITIES, RESIDENTS, AND ACTIVISTS 120 (Graham Cairns, Georgios Artopoulos, & Kirsten Day eds., 2017) (terming the Barangaroo precinct redevelopment on Sydney’s waterfront a “mega-project,” with a 22-acre, mixed-use redevelopment of a former shipping container terminal). As with flagship skyscraper projects, the terms “mega-project” and “megadevelopment” are used both interchangeably and flexibly. For simplicity, a “mega-project” would include with total costs upon completion in excess of \$1 billion, irrespective of buildout

the recently completed Wilshire Grand (currently the tallest building both in the city and in any American city west of Chicago)¹¹⁹ will soon be joined by other supertall towers approved or already under construction.¹²⁰ In San Francisco, the thirty-feet shorter Salesforce Tower recently topped out at 1,170 feet, with a \$1.1 billion price tag, as part of a massive public-private redevelopment of the adjoining portions of the South of Market neighborhood.¹²¹ From Philadelphia¹²² to Chicago¹²³ to Miami¹²⁴ to

heights or square footage. For smaller cities without established projects of this scale, comparative cases and examples may embrace developments with total buildout costs below \$1 billion, e.g., the Amazon headquarters development in Seattle, Washington: while none of Amazon's buildings individually meets either a supertall or mega-project definition alone, the company has added nearly 10 million square feet of office space to downtown Seattle, over 2.5 million of which was completed during 2016 alone. Mike Rosenberg, *Record Construction Frenzy Sweeps Downtown Seattle; More Buildings to Come*, SEATTLE TIMES, Mar. 10, 2017, <https://www.seattletimes.com/business/real-estate/record-construction-frenzy-sweeps-downtown-seattle-with-more-building-to-come/>.

119. Jenna Chandler, *The Wilshire Grand—LA's Tallest Tower—Opens Today*, CURBED L.A., June 23, 2017, <https://la.curbed.com/2017/6/23/15860186/wilshire-grand-tower-los-angeles-opening>.

120. Among other planned projects are Angels Knoll (or Angels Landing), including an 88-story centerpiece for a \$1.2 billion mixed-use complex; 1045 S. Olive Street, a 70-story, all-residential tower in Downtown Los Angeles; and 913 S. Figueroa Street, a 66-story mixed-use tower which would become the city's third tallest upon completion. See Jenna Chandler & Elijah Chiland, *Mapping the Rise of LA's Tallest Towers*, CURBED L.A., Jan. 22, 2018, <https://la.curbed.com/maps/tower-highrise-construction-map-los-angeles>; Bianca Barragan, *City Council Approves Angels Landing Plan that Would Bring 88-Story Tower, Elementary School to Bunker Hill*, CURBED L.A., Dec. 13, 2017, <https://la.curbed.com/2017/12/12/16767876/angels-landing-development-macfarlane-handel>.

121. Rachel Lewis, *Salesforce Tower is Now San Francisco's Tallest Building*, FORTUNE, Aug. 16, 2017, <http://fortune.com/2017/08/16/san-francisco-salesforce-tower-finished/>. See also John King, *Neighborhood on the Rise*, S.F. CHRON., Dec. 27, 2017, <http://projects.sfchronicle.com/2017/transbay-terminal/the-future/> (discussing both Salesforce Tower and adjacent redevelopment projects across the "Transbay Center" project's dozen blocks and 145 acres, just south of the city's Financial District).

122. The under-construction Comcast Technology Center is Philadelphia's most-prominent example. When completed, the 1,121-foot tower will become the city's tallest structure—and its first supertall, nearly 200 feet taller than the Comcast Center, across the street. Melissa Romero, *15 Things to Expect When Comcast Technology Center Opens This Year*, CURBED PHILLY, Jan. 8, 2018, <https://philly.curbed.com/2018/1/8/16862492/comcast-technology-center-tower-amenities-fact-sheet>.

123. The 98-floor, 1,389-foot Trump International Hotel & Tower topped out in 2009, becoming one of the world's 20-tallest buildings and the city's second-highest, after Willis Tower. CTBUH, *Trump International Hotel & Tower*, CTBUH Global Tall Building Database (2018), <http://www.skyscrapercenter.com/building/trump-international-hotel-tower/203>; accord Elizabeth Butler, *Second Chances for the Second City's Vacant Properties: An Analysis of Chicago's Policy Approaches to Vacancy, Abandonment, & Blight* [note], 91 CHI.-KENT L. REV. 233 (2016).

124. The Panorama Tower recently overtook the Four Seasons as Miami's tallest tower, at 868 feet. Johnny Diaz, *Miami's New Panorama Tower to Be Tallest Building in Florida*, SUN SENTINEL (Miami), July 10, 2017, <http://www.sun-sentinel.com/features/sfl-fea-tallest-buildings-in-miami-20170710-photogallery.html>.

Houston¹²⁵ numerous supertall or near-supertall towers and other mega-projects have been completed, begun construction, or gained approval over the last few years. Cities beyond the traditional urban cores of major metropolitan regions (e.g., Jersey City, New Jersey,¹²⁶ and the Tysons Corner area of Fairfax County, Virginia,¹²⁷ just southwest of Washington, DC) are also seeing massive alterations to their historic skylines.

Mega-projects are defined loosely as singular projects (with or without phased development plans over years or decades) with total costs exceeding \$1 billion in the largest U.S. cities.¹²⁸ Many mega-projects include signature skyscrapers, often supertalls,¹²⁹ as well as quintessential “mixed-use” spaces (i.e., combined commercial, residential, hospitality, and other functions in one).¹³⁰

125. 609 Main Street joined Houston’s skyline in 2016, with just over one million square feet and 48 floors; however, breaking the pattern of the foregoing cities, it topped out at 757 feet, well below the “supertall” designation. See Allyn West, *609 Main: A Different Skyscraper*, HOUSTON CHRON., May 19, 2017, <https://www.houstonchronicle.com/local/gray-matters/article/609-Main-A-different-skyscraper-11153566.php#photo-12920686>.

126. See, e.g., the 30 Hudson Street development, including a 781-foot signature tower completed in 2004, CTBUH, *30 Hudson Street (Jersey City)*, CTBUH Global Tall Building Database (2018), <http://www.skyscrapercenter.com/building/30-hudson-street/1025>.

127. The Capital One Headquarters project, including a 470-foot signature tower. Brian Trompeter, *Capital One’s Tysons Campus Set for Major Growth*, INSIDE NOVA, Jan. 12, 2018, http://www.insidenova.com/news/arlinton/capital-one-s-tysons-campus-set-for-major-growtharticle_6d597970-f78c-11e7-baaf-a3e2c660e8ce.html. Although significantly shorter than other developments mentioned, Capital One’s building will be the second-tallest in the Washington, DC metropolitan region, just behind the 555-foot Washington Monument across the Potomac, representing a major shift in the urban fabric of the area. *Capital One Approved to Build Wegmans, Event Center, Parks in Tysons*, FAIRFAX COUNTY BOARD OF SUPERVISORS, TYSONS, July 12, 2017, <https://www.fairfaxcounty.gov/news2/capital-one-approved-to-build-wegmans-event-center-park-s-in-tysons/>. In a sense, Tysons epitomizes the definitional difficulties in identifying “mega-projects”—while the Capital One complex itself falls far short of such a project itself, it is one component of a massive redevelopment plan: the Tysons Corner Comprehensive Plan, a 50-year buildout of the area’s urbanizing core, at the confluence of the Silver and Orange Metrorail lines. Upon realization in 2050, the plan will apartment and condominium units for 100,000 residents, office and commercial space for 200,000 workers, and millions of square feet of new building space, at a cost of billions. See, e.g., TYSONS COMPREHENSIVE PLAN, FAIRFAX COUNTY BOARD OF SUPERVISORS (2017), https://www.fairfaxcounty.gov/tysons/sites/tysons/files/assets/documents/pdf/comprehensive_plan/fc_comp_plan2017ed_tysons_amended04_04_2017.pdf.

128. See *supra* note 118 and related discussion.

129. See *supra* notes 120–126 and related discussion.

130. See, e.g., Christopher Hawthorne, *Wilshire Grand Center, the New Tallest Building in L.A. and a Schmoozer in the Skyline*, L.A. TIMES (June 24, 2017), <http://www.latimes.com/entertainment/arts/la-et-cm-wilshire-grand-review-20170624-htmstory.html> (“The Wilshire Grand Center opened . . . as the tallest building in [Los Angeles, holding] meeting rooms and 365,000 square feet of class A office space . . . a 900-room InterContinental Hotel . . . and a collection of bars and restaurants at the top”); TIME WARNER CENTER, RELATED PROPERTIES (2018), <http://www.related.com/our-company/properties/65/Time-Warner-Center> (cataloguing the components of the TWC, to include dozens of stores, several restaurants and bars, the Time Warner, Inc. World Headquarters and other offices, as well as hotel and residential space).

Looking to these mega-projects helps to recognize both the increased pace of investments in the recent post-recession recovery as well as the scope of opportunities for leveraging massive financing for local communities' needs. These developments concentrate enormous sums of money in small areas, for better and worse. They at least temporarily boost employment during their construction, and may improve long-term employment prospects depending upon the nature of new businesses and other employment centers included within them.¹³¹ Finally, because of their high-profile nature, they tend to generate immediate public awareness and mobilizing effects, whether supportive, oppositional, or mixed. Given these interacting considerations, the risks and potential rewards of mega-projects for CED, how new and existing strategies for exacting concessions from developers might work more generally, all merit deeper exploration.

B. Mega-projects as Potential Threats to CED

Any flood of largely private development dollars—albeit often in conjunction with public incentives, subsidies, or other partnerships—threatens to squeeze CED opportunities out of already competitive markets. However, the emergent prominence of mega-projects for America's largest cities, in part because of their very size, should be viewed as a potential, if qualified opportunity to augment the usual functions of CED. Hence, I use a focused case study approach, analyzing the proposal, approval, and development processes of selected examples across the United States. In doing so, each case analysis emphasizes the opportunities for CED and provides pertinent examples of successes or shortfalls in extracting concessions or other public benefits from private mega-developers, all while

131. See, e.g., J.K. Dineen, *\$260 Million Bailout in Works for Troubled Transit Center Project*, S.F. CHRON. (Apr. 10, 2016), <https://www.sfchronicle.com/politics/article/260-million-bailout-in-works-for-troubled-7240115.php> (describing San Francisco's "investment" in the Salesforce-Transbay Center project as including hundreds of "good-paying construction jobs" with longer-term benefits for "the future of transportation in the San Francisco Bay Area"). Tanay Warkerkar, *Study: Hudson Yards Will Generate Billions in Revenue for NYC*, CURBED N.Y. (May 2, 2016), <https://ny.curbed.com/2016/5/2/11565382/hudson-yards-generate-billions-nyc-economy-jobs> (noting the "creation of over 7,000 full-time jobs" for construction workers over the development timeline of the Hudson Yards mega-project on Manhattan's west side, as well as an estimated 55,000 jobs filling the project's "10.4 million rentable square feet of office space," a "750-seat public school," and "over 100 shops and restaurants"); but see Steve Cuzzo, *Swanky Hudson Yards Tower Secures Another Major Tenant*, N.Y. POST (Aug. 22, 2016), <https://nypost.com/2016/08/22/swanky-hudson-yards-tower-secures-another-major-tenant/> (reporting, among other office lease announcements at Hudson Yards, the relocation of trading firm MarketAxess headquarters from Park Avenue to 55 Hudson Yards, adding to corporate relocations by KKR, Wells Fargo Securities, and Point72, suggesting corporate office relocations, rather than newly created jobs, comprise a significant portion of job creation estimates by Hudson Yards developer Related Co.).

paying particular attention to CBAs and their contents, where applicable.¹³²

Large-scale urban redevelopment projects typically bring concrete threats to extant lower-income communities, with “the potential to displace poorer residents, [to] cause overcrowding in local schools and create traffic congestion.”¹³³ Even with sound review and permitting processes, local governments may face resident opposition, skepticism, and fears of deleterious community “character” changes.¹³⁴ Controversy inevitably arrives with new project announcements and buildouts in many cities. In San Francisco, large residential projects like NeMa (short for “New Market”) and The Jasper, both south of Market Street in the heart of the city, have drawn the scorn of locals for their sky-high rents (studios in each building begin at or above \$3,000 per month) and sparked vigorous objections to their presence within the context of longstanding, lower-scale built environments of surrounding communities.¹³⁵ These criticisms dovetail with sociological research that suggests housing costs as a prime, central correlate of dislocation and, in extremis, homelessness.¹³⁶ Against the contrast of oft-reported inadequacies plaguing homeless shelters and social services, as well as the criminalization of homelessness through anti-loitering ordinances and “harassment sweeps” of encampments, projects like NeMa have become towering symbols of market forces brushing up against the unmet needs of their surroundings.¹³⁷ As such, these major projects—themselves not even “mega-projects” under the present working definition—heighten community tensions, suggesting greater risks of conflict as they scale up in size and as they primarily serve ever-higher income brackets, which they often do.¹³⁸

132. See *infra* Parts III(C) & IV, *passim*.

133. Christine A. Fazio & Judith Wallace, *Legal and Policy Issues Related to Community Benefits Agreements*, 21 *FORDHAM ENVTL. L. REV.* 543, 547–48 (2010).

134. *Id.*

135. Jay Barmann, *Much Like the Nema, Apartments at the Jasper Are Wildly Expensive*, SFIST (June 11, 2015), http://sfist.com/2015/06/11/much_like_the_nema_apartments_at_th.php; Katie Sweeney, *SF: NEMA Brings Luxury Rentals to Mid-Market*, HAUTE LIVING (July 25, 2016), <http://hauteliving.com/2016/07/sf-nema-brings-luxury-rentals-to-mid-market/618101/>; THE JASPER, 45 LANSING DEVELOPMENT, LLC (2018), <https://www.rentjasper.com/#>.

136. Barrett Lee, Kimberly Tyler, & James Wright, *The New Homelessness Revisited*, 36 *ANNUAL REV. SOCIOLOGY* 501, 509 (2010) (citing consistent and longstanding survey findings among homeless respondents in major cities, where cost of living increases lead many to housing insecurity or chronic homelessness).

137. See, e.g., Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 *YALE L. & POL'Y REV.* 1 (1996).

138. *But see* Marcia Rosen & Wendy Sullivan, *From Urban Renewal and Displacement to Economic Inclusion: San Francisco Affordable Housing Policy 1978-2014*, 25 *STAN. L. & POL'Y REV.* 121, 122–23 (2014) (arguing that San Francisco remains a “renowned nationally for its best practices in housing and community development,” despite these challenges, through funding and designating some 26,000 permanently affordable housing units between the 1970s and early 2010s, as well as approximately 170,000 market-rate family-oriented rental units with strict rent control restrictions).

Finally, observers consistently have noted that a range of economic and business variables tend to be pro-cyclical, meaning that higher spending moves in lockstep with a growing overall economy. Government fiscal policies¹³⁹ and research and development program spending¹⁴⁰ sometimes are found to be pro-cyclical. Labor productivity and manufacturing output in industrial-exporting states exhibit sector-specific cyclical behaviors in Chile.¹⁴¹ Consumption and individual investment decisions in the UK have been shown to follow pro-cyclical patterns.¹⁴² With particular salience following the Great Recession, borrowing and debt-financed investing among private businesses also tend to be pro-cyclical.¹⁴³ Housing costs, along with housing development patterns among both public and private actors, tend to move in tandem with the business—economic cycle as well, with some areas devastated by broad volatility in localized economies.¹⁴⁴ Worryingly, recent research also has suggested that municipal budgetary decisions in times of severe economic distress become “more unpredictable,” as financial and personnel resources become strained and cities are forced to compete with neighboring jurisdictions for significant private investment.¹⁴⁵

139. Alberto Alesina & Guido Tabellini, *Why Is Fiscal Policy Often Procyclical?* Working Paper (May 2005), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.485.1225&rep=rep1&type=pdf>; but see Carlos Vegh & Guillermo Vuletin, *How Is Tax Policy Conducted Over the Business Cycle?* AM. ECON. J: ECON. POL'Y 327 (2015) (arguing that industrialized states' fiscal policies are countercyclical, whereas industrializing states' policies are procyclical, while finding the same patterns vis-à-vis tax policies and economic cycles).

140. Gadi Barlevy, *On the Cyclicity of Research and Development*, 97 AM. ECON. REV. 1131 (2007); accord Min Ouyang, *On the Cyclicity of R&D*, 93 REV. ECON. & STATS 542 (2011).

141. Lucas Navarro & Raimundo Soto, *Procyclical Productivity in Manufacturing*, 44 CUADERNOS DE ECONOMIA 193 (2006).

142. Jagjit S. Chadha & Charles Nolan, *A Long View of the UK Business Cycle*, 182 NAT'L INSTITUTE ECON. REV. 72 (Oct. 2002).

143. Javier Bianchi, *Overborrowing and Systemic Externalities in the Business Cycle*, 101 AM. ECON. REV. 3400 (2011).

144. Kenneth Gibb, Tony O'Sullivan, & Gillian Young, *Analyzing the Belfast Housing Market: Learning Lessons from Extreme Volatility*, 83 TOWN PLANNING REV. 407 (2012) (finding that the Belfast, Northern Ireland, housing market exhibited profoundly pro-cyclical price shifts during the run-up to the Great Recession, such that UK home prices between 2005 and 2007 increased by “slightly less than [17%],” whereas the Northern Ireland market showed price increases of 95% over the same period).

145. Susan Opp, Jeffery L. Osgood Jr., & Cynthia Rugeley, *City Limits in a Postrecessionary World: Explaining the Pursuit of Developmental Policies after the Great Recession*, 46 STATE & LOCAL GOV'T REV. 236, 237 (2014); accord Karen Nelson, *Municipal Choices During a Recession: Bounded Rationality and Innovation*, 48 STATE & LOCAL GOV'T REV. 44S (2012). But see CHRIS BENNER & MANUEL PASTOR, EQUITY, GROWTH, AND COMMUNITY: WHAT THE NATION CAN LEARN FROM AMERICA'S METRO AREAS 100–29 (2015) (noting increased efforts to “regionalize” development, thus mitigating inter-jurisdictional competition of the sort described by Opp and her coauthors); accord Mark Partridge & M. Rose Olfert, *The Winners' Choice: Sustainable Economic Strategies for Successful 21st-Century Regions*, 33 APPLIED ECON. PERSP. & POL'Y 143 (2011) (affirming both actual trends toward and empirical needs for regional policy integration to avoid deleterious effects of inter-jurisdictional competition).

The evident pro-cyclicality of urban development and construction patterns in the United States highlights concerns from a CED perspective. While “mega-projects” exemplify the economic-business cycle,¹⁴⁶ with project proposals and the scale of development investments generally moving in lockstep with the ups and downs of the overall economy,¹⁴⁷ recent empirical evidence suggests the noted urban recoveries since the Great Recession have not favored existing low-income communities, from Skid Row in Los Angeles¹⁴⁸ to the inner suburbs of established urban centers and the furthest, poorer exurban fringes.¹⁴⁹ Official government statistics showed an aggregate increase in the poverty rate from 12.5 percent to 15 percent from 2007 to 2011, despite massive increases in federal social services funding (approximately \$500 billion) over the same period.¹⁵⁰ Moreover, unemployment skewed heavily during and following the peak of the Great Recession, disproportionately affecting workers without college degrees, racial and ethnic minorities, and younger Americans generally during any period of the business-economic cycle.¹⁵¹ The “suburbanizing” of American poverty and its ongoing, generally upward trend over the preceding decade

146. See, e.g., Michael Comiskey & Pawan Madhogarhia, *Unraveling the Financial Crisis of 2008*, 42 PS: POL. SCI. & POLITICS 271, 274 (2009) (focusing especially on risk factors for “speculative” developments and other “bubbles,” which follow pro-cyclical patterns as well); Giovanni Dell’Ariccia, Deniz Igan, & Luc Laeven, *Credit Booms and Lending Standards: Evidence from the Subprime Mortgage Market*, 44 J. MONEY, CREDIT & BANKING 367 (2012); Yuliya Demyanyk & Otto Van Hemert, *Understanding the Subprime Mortgage Crisis*, 24 REV. FIN. STUDIES 1848 (2011). For a broad, generalized discussion of real estate speculation throughout U.S. history, see Edward Glaeser, *A Nation of Gamblers: Real Estate Speculation and American History*, 103 AM. ECON. REV. 1 (2013).

147. See *supra* Part III, *passim*.

148. Jordan Camp, *Blues Geographies and the Security Turn: Interpreting the Housing Crisis in Los Angeles*, 64 AM. Q. 653 (2012).

149. Elizabeth Kneebone, *The Great Recession and Poverty in Metropolitan American*, BROOKINGS INST. METRO. POL’Y PROGRAM (Oct. 2016), https://www.brookings.edu/wp-content/uploads/2016/06/1007_suburban_poverty_acs_kneebone.pdf.

150. Robert Moffitt, *The Great Recession and the Social Safety Net*, 650 ANNALS OF THE AM. ACAD. POL. & SOC. SCI. 143, 143–45 (Nov. 2013).

151. Sheldon Danziger, *Introduction: Evaluating the Effects of the Great Recession*, 650 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 7 (Nov. 2013); accord Lindsay Owens & Karen Cook, *The Effects of Local Economic Conditions on Confidence in Key Institutions and Interpersonal Trust after the Great Recession*, 650 ANNALS AM. ACAD. POL. & SOC. SCI. 274, 274–75 (Nov. 2013) (finding not only geographic concentrations in foreclosure rates—namely, in the “Sunbelt,” e.g., Florida, California, Arizona, and Nevada—but also racial and ethnic concentrations of economic losses from the mortgage and foreclosure crisis, especially among African American and Latino homeowners); Brian Thiede & Shannon Monnat, *The Great Recession and America’s Geography of Unemployment*, 35 DEMOGRAPHIC RESEARCH 891 (2016); see also Daniel T. Lichter, Domenico Parisi, & Michael C. Taquino, *The Geography of Exclusion: Race, Segregation, and Concentrated Poverty*, 59 SOC. PROBLEMS 364 (2012) (finding overlapping, but generally heterogeneous patterns of increased hardship in terms of both class segregation and racial/ethnic segregation, across urban, suburban, and rural communities alike over the Great Recession).

accelerated markedly,¹⁵² as did the numbers of extremely low-income households vying for increasingly scarce public housing during and after the crisis.¹⁵³ These declines in individual and household welfare are mirrored by declining inbound financial investment, often likewise concentrated in the same already struggling communities. Though local bank branch closures from 2008 through 2016 were widely distributed, hitting both older Rustbelt cities like Detroit and the booming Sunbelt's Las Vegas alike, urban areas generally account for 82% of all closed branches nationwide.¹⁵⁴ The hardest-hit areas notably include Baltimore County, where 25% of all bank branches closed during this period, and moreover, research pointed to the acute risks of "banking deserts" emerging in the rural American heartland as particularly alarming as well.¹⁵⁵ These patterns have suggested deteriorating perceptions of trust in both public and private institutions, from the local to the global, in the hardest-hit American communities. Accordingly, as much as "mega-projects" afford opportunities to the CED movement, those opportunities may face exacting scrutiny and lingering distrust from those who might benefit from any extracted concessions given the at-best mixed records of private developers' engagements with urban communities.

C. Lessons for Emerging and Proposed Projects: San Francisco, Salesforce, and Top-Down Urban Planning

The mid-2000s saw the collapse of numerous, privately promulgated urban developments, from smaller markets like Norfolk, Virginia¹⁵⁶ to the

152. Kneebone, *supra* note 149 at 1–3.

153. Michael C. Lens, *Extremely Low-Income Households, Housing Affordability, and the Great Recession*, URB. STUD. 1 (2017).

154. Owens & Cook *supra* note 151 at 275–76.

155. *Bank Branch Closures from 2008-2016: Unequal Impact in America's Heartland* 1–2, 10, NAT'L COMMUNITY REINVESTMENT COALITION (2017), https://ncrc.org/wp-content/uploads/2017/05/NCRC_Branch_Deserts_Research_Memo_050517_2.pdf.

156. See Lydia Wheeler, *With Granby Tower Well Behind Him, Buddy Gadams Refocuses on Apartment Market Downtown*, VIRGINIA-PILOT (June 20, 2014), https://pilotonline.com/inside-business/news/economic-development/article_89b78e8a-bd7b-5784-9573-78ce21c93997.html (discussing the post-recession rebound in the Norfolk, Virginia, housing market, after the collapse of funding and presales for a proposed \$100 million, 34-floor condominium tower, which would have become tallest building in both the city and surrounding metro region).

largest markets¹⁵⁷ and others in between.¹⁵⁸ These foiled developments followed similar patterns during earlier cycles. For example, there were volatile swings in urban development patterns during the early to mid-1980s,¹⁵⁹ but, new financing mechanisms, like Tax-Increment Financing (“TIF”) districts¹⁶⁰ or increasingly popularized transit-oriented development (“TOD”) projects, which channel public funds or other subsidies into transportation-rich developments,¹⁶¹ distinguish these recent and ongoing

157. VORNADO TOWER – 15 PENN PLACE, EMPORIS (2018), <https://www.emporis.com/buildings/1182771/vornado-tower-new-york-city-ny-usa> (noting the 1,450-foot tower planned just west of the Empire State Building was originally to finish in 2014, but fell through in 2013); *but see* Jessica Dailey, *Vornado’s Hotel Penn-Killing 68-Story Tower Lives, Kind Of*, CURBEDNY (Aug. 5, 2014), <https://ny.curbed.com/2014/8/5/10064394/vornados-hotel-penn-killing-68-story-tower-lives-kind-of> (discussing the implications of the project being “put on hold” amid preservationists’ concerns about the historic Penn Plaza district, notably including the Hotel Pennsylvania); Lois Weiss, *Finance Firm in Talks Over Vornado’s Jumbo Skyscraper*, N.Y. Post (May 9, 2017) (reporting a reworking of the original Pelli Clarke Pelli-designed tower, already approved by the city’s Planning Commission, as well as “interest” from Merrill Lynch, Morgan Stanley, and Deutsche Bank as potential financiers for a revived buildout). The revolving door of key players in these pro-cyclical projects—not only including Vornado, but also Related Companies and Skanska, as well as various architecture firms and investors—carries over across post-recession rebounds, especially in large cities with many such projects. *Id.* See also THE GIRASOLE, EMPORIS (2018), <https://www.emporis.com/buildings/251226/the-girasole-new-york-city-ny-usa> (a 1,000-foot mixed-use tower proposed for completion in 2011, but cancelled during the economic downturn); 80 SOUTH STREET, EMPORIS (2018), <https://www.emporis.com/buildings/205013/80-south-street-new-york-city-ny-usa> (a 1,000-foot, very low-density residential tower designed by famed architect Santiago Calatrava, cancelled before construction began, which would have “[held] only 12 residences” across its 56 floors and 12 “cubes” atop a commercial base); 52 WEST 57TH STREET, EMPORIS (2018), <https://www.emporis.com/buildings/102103/52-west-57th-street-new-york-city-ny-usa> (a 24-floor, 365-foot residential tower scrapped after the market crash and onset of the Great Depression, which originally had been slated for completion in 1930).

158. Two massive developments would have provided Miami with its two-tallest towers, and several others among the tallest ten, including the twin Empire World Towers I and II, and the pair of towers of the Capital at Brickell; for the latter project, the North Tower would have topped at 809 feet, while the South Tower would reach 756 feet. Both massive projects derailed after the start of the economic downturn in 2008, years short of the anticipated 2010 delivery. See BUILDINGS IN MIAMI (UNBUILT), EMPORIS (2018), <https://www.emporis.com/city/101321/miami-fl-usa/status/unbuilt>.

159. At least four skyscrapers—including two supertalls—were proposed and approved, but never completed, in Houston during the early to mid-1980s. BUILDINGS IN HOUSTON (UNBUILT), EMPORIS (2018), <https://www.emporis.com/city/101031/houston-tx-usa/status/unbuilt>. The tallest unbuilt building, the Bank of the Southwest Tower, would have reached 1,404 feet—the tallest U.S. skyscraper outside of New York and Chicago. Unfortunately, the International Style, 21-story Southwest Tower was demolished before its much-taller replacement was put on hold and later cancelled altogether. BANK OF THE SOUTHWEST TOWER, EMPORIS (2018), <https://www.emporis.com/buildings/103046/bank-of-the-southwest-tower-houston-tx-usa>.

160. See generally Jeffrey Chapman & Evgenia Gorina, *Municipal Fiscal Stress and the Use of Tax Increment Financing (TIF)*, 83 TOWN PLANNING REV. 195 (2012).

161. See generally Justin Jacobson & Ann Forsyth, *Seven American TODs: Good Practices for Urban Design in Transit-Oriented Development Projects*, 1 J. TRANSPORT & LAND USE 51 (2008); Richard D. Margerum, Susan Brody, Robert Parker, & Gail McEwen, *Metropolitan Smart-Growth Centers: An Assessment of Incentive Policies in Four Regions*, 6 J. TRANSPORT & LAND USE 21 (2013).

projects from their predecessors. Nonetheless, since the nadir of the financial crisis and recession, a new wave of proposed projects, including many which are heavily concentrated in New York, San Francisco, and similarly situated cities, follows these earlier boom-and-bust sequences in both style and form. They should encourage caution among observers and activists.

San Francisco provides an illustrative example. The City Planning Commission there has adopted an expressly TOD-favoring policy, evidenced by agreements involving the largest developments and in long-term planning approaches for neighborhoods with the greatest level of current and proposed activity. The “Central SoMa Plan,” referring to a neighborhood roughly bounded between the Westfield Center, the Moscone Center, and the Caltrain lines southwest of AT&T Park, heavily emphasizes multi-modal transportation connectivity, improvement and enlargement of green spaces and other public amenities, all the while mitigating the “neighborhood challenges” of increasing rents, walking and cycling accessibility in the neighborhood, and land use inefficiencies.¹⁶² If completed as envisioned by 2040, the Central SoMa neighborhood “is projected to [gain] 40,000 jobs and 7,500 housing units,” as well as “over \$2 billion in new infrastructure and other amenities.”¹⁶³ In part, the Central SoMa Plan relies upon various “tiers” of “increased development capacity” depending upon existing building types within the defined area—extra allowances for retrofitted or new developments above current building height limits.¹⁶⁴ These allowances are designed to move in sync with defined “public benefits packages” (e.g., public amenities, facilities, and services to be funded through developers who wish to build within the expanded permissions of the revised allowances).¹⁶⁵ Creating new affordable housing for the neighborhood is included among the “public benefits” envisioned, and highlighted extensively in the Central SoMa Plan’s organizing and research documents.¹⁶⁶ Although omitted from Seifel’s analysis of the Plan, the original policy paper for affordable housing called for at least 33 percent of newly built housing “in areas [which] are rezoned” to be a mixture of “affordable-to-low-and-moderate-income households.”¹⁶⁷ The Plan and its associated policies further require

162. CENTRAL SOMA PLAN, S.F. PLAN. DEP’T (2018), <http://sf-planning.org/central-soma-plan>.

163. Seifel Consulting, Inc., *Financial Analysis of San Francisco’s Central SoMa Plan 1* (Dec. 2016), http://default.sfplanning.org/Citywide/Central_Corridor/Central_SoMa_Financial_Analysis_FINAL.pdf.

164. *Id.* at 3.

165. *Id.* at 6.

166. *Id.* at 6–8; accord CENTRAL SOMA DRAFT POLICY DOCUMENT: AFFORDABLE HOUSING (“SOMA POLICY: AFFORDABLE HOUSING”), S.F. PLAN. DEP’T (Nov. 2014), http://default.sfplanning.org/Citywide/Central_Corridor/Draft_CentralSoMa_AffordableHousingPolicy-November2014.pdf.

167. SOMA POLICY: AFFORDABLE HOUSING, *supra* note 171, at 2.

underscoring, maintaining, and growing the mixed-use/residential nature of land uses in the Central SoMa area,¹⁶⁸ as does the adjacent Transbay development and Salesforce Tower, part of the “Transit Center District” which adjoins Central SoMa.¹⁶⁹

Despite these efforts and stated aims, the Central SoMa Plan and San Francisco’s general approach to development in the neighborhood have been challenged on various grounds. Among other critiques, the Plan’s envisioned changes and land use restriction allowances might fuel high-end development and its concomitant displacement, rather than work to restrain it.¹⁷⁰ In brief, the Plan ignores the “huge inversion” of the city’s demographics (namely, racial and class groups) from 2010 through 2015, a surge of higher-income white residents and simultaneous, historical “reversal and decline in low-income people of color.”¹⁷¹ The South of Market neighborhood typifies these trends: the black population decreased over the same years while “a sharp increase in per-capita incomes” occurred throughout the area, with the eastern portions of SoMa seeing average annual per capita incomes rise from \$88,000 to \$114,000 over the same period.¹⁷² Furthermore, the outcomes illustrated by other, previous neighborhood Plans—such as the Downtown Plan, the Eastern Neighborhoods Plan, and the Western SoMa Community Plan—are decidedly mixed as well.¹⁷³ If past is prescient, such Plans may “[achieve] the primary goals of adding new housing and office space,” but fail to “provide housing at various income levels” or “provide the infrastructure necessary to meet the . . . demands of new development.”¹⁷⁴ More acute failures concerning funding priorities and cost overruns—most notably the Central Subway extension, from the Transbay Center and Salesforce Tower north into the city’s Chinatown—have stirred considerable controversy as well.¹⁷⁵ Irrespective of contractor failures or cost projection

168. CENTRAL SOMA DRAFT POLICY DOCUMENT: LARGE SITE LAND USE CONTROLS, S.F. PLAN. DEP’T (Feb. 2014), http://default.sfplanning.org/Citywide/Central_Corridor/Draft_Central_SoMa_Large_Site_Land_Use_Policy-February2014.pdf.

169. *Id.* at 2.

170. David Woo, *People, Land, and Profit in the South of Market: A Critical Analysis of the Central SoMa Plan* (May 2017) (unpublished M.A. thesis, University of San Francisco) (on file with the University of San Francisco Library repository).

171. *Id.* at 41.

172. *Id.*

173. *Id.* at 64–65.

174. *Id.* at 65.

175. *Id.* at 72; accord Michael Cabanatuan, *SF Subway Stalled After Contractor Lays Down Wrong Track, City Says*, S.F. CHRON. (May 10, 2018), <https://www.sfchronicle.com/bayarea/article/SF-subway-stalled-after-contractor-lays-down-12905429.php> (reporting that Tutor Perini, the contractor responsible for laying the new subway line’s tracks, “installed 3.2 miles of the wrong grade of rail,” which could add significantly to the project’s already over budget and behind schedule delivery; the project originally was slated for completion in December 2018, later pushed to 2019, for the nearly \$1.6 billion extension).

mistakes, the rosy outlook of San Francisco's planners belies the main thrust of the stated redevelopment strategy: prioritization of "building office space for technology companies" amid the latest tech sector boom and "constructing market-rate housing" as the predominant residential type.¹⁷⁶ Even maximum delivery of affordable housing under the current plans will be insufficient to halt the city's, much less the region's, affordability crisis, nor will expanding office spaces for high-tech and service-sector positions blunt the protracted effects of blue-collar job losses in formerly working-class San Francisco neighborhoods.¹⁷⁷

The very use of comprehensive rezoning plans, like Central SoMa, tends to fuel speculative development, a phenomenon already apparent in areas adjacent to the Central SoMa Plan-defined district.¹⁷⁸ These externalities should not be surprising given that the Plan, and much of San Francisco's commercial market broadly, relies upon the technology sector, an industry which disproportionately hires workers from outside the Bay Area and whose workforce is "primarily white and male."¹⁷⁹ This top-down approach to planning agenda-setting can birth the mega-projects at the heart of this paper, providing the opportunities envisioned by local leaders and community groups, but the foregoing limitations should frame CED strategies, inform the process, and cabin the loftiest expectations.

These are long-term lessons from San Francisco, a city described as "[having] arisen as an 'instant city' not once but three times."¹⁸⁰ Three boom-bust cycles of rapid development through the late 1990s, with an arguably ongoing fourth cycle, since the dot-com bust gave way to the modern iteration of the Bay Area's exploding technology sector.¹⁸¹ In each of these cycles, San Francisco has struggled with the social costs and mounting displacement concerns associated with rapid urban development¹⁸² and speculation-fueled investment.¹⁸³ As the city works to execute the Central SoMa Plan, the Transbay Center redevelopment, and the increasingly

176. Woo, *supra* note 170, at 73.

177. *Id.* at 73-74.

178. *Id.* at 75-76.

179. *Id.* at 76-77.

180. Brian Godfrey, *Urban Development and Redevelopment in San Francisco*, 87 GEO. REV. 309 (1997).

181. *Id.*

182. Nancy Raquel Mirabal, *Geographies of Displacement: Latina/os, Oral History, and the Politics of Gentrification in San Francisco's Mission District*, 31 PUB. HISTORIAN 7 (2009); Rachel Weber, *Selling City Futures: The Financialization of Urban Redevelopment Policy*, 86 ECON. GEO. 251 (2010) (rephrase: reviewing the globalization and "financialization" of US cities' bond, corporate, and housing markets, as well as the mixed results for both TIF programs and overall commercial real estate markets).

183. Charles Himmelberg, Christopher Mayer, & Todd Sinai, *Assessing High House Prices: Bubbles, Fundamentals, and Misperceptions*, 19 J. ECON. PERSP. 67 (2005).

scandal-plagued redevelopment of the Bayview Hunter's Point neighborhood,¹⁸⁴ these challenges are instructive, interrelated, and necessary to overcome for genuine partnerships with communities and their leaders to thrive.

IV. Mega-Projects: Cases, Controversies, and CBAs in New York: The Time-Warner Center, Hudson Yards, and Atlantic Yards

The comprehensive development plans overviewed in Part III may suggest that private development—responsive to speculation, incentives, and concentrations of escalating cost of living—is unpromising for CED, but certain private projects and even mega-projects can offer a direct line from surrounding communities to the planners and designers. Rather than wading into a city's planning policy milieu, CED participants and leaders can, alternatively, engage directly with designers and builders from the earliest post-announcement stages, hoping to affect the direction and outcomes of enormous projects. In this section, a series of brief case studies primarily drawn from New York City highlights the possibilities and pitfalls of this suggested alternative to the strictures of official redevelopment plans or to reliance upon CBAs alone. At the same time, a recurring focus on the use of CBAs remains paramount; such agreements, it seems, remain pivotal drivers of positive development outcomes, work from the bottom-up more readily than alternative strategies, and help to solidify various stakeholders' goals and commitments in binding fashion. Despite opportunities for negotiated innovations in the following cases, the continued use of and elaboration on extant CBA models should not be discarded as vital components of CED strategy.

A. Time-Warner Center and Columbus Circle Redevelopment: Powerful Patrons Collide with Local Demands

The Time-Warner Center (TWC) at Columbus Circle in Midtown Manhattan characterizes both the possible opportunities for and drawbacks inherent in engaging with private mega-developers over CED concessions.¹⁸⁵

184. The latest—and arguably unprecedented—is a scandal involving faked soil testing in the area amid the environmental cleanup of the former military-industrial site. On May 1, 2018, local residents filed a class action lawsuit against Tetra Tech Inc., the environmental engineering firm accused of “faking” soil tests, “seeking \$27 billion in damages” for the “mishandled cleanup,” fabrications of testing, and “exposing [residents and neighbors] to toxic materials.” See, e.g., Emily Fancher, *Bayview Residents Sue Engineering Giant over Alleged Fake Soil Testing at Hunters Point*, S.F. BUS. TIMES (May 2, 2018), <https://www.bizjournals.com/sanfrancisco/news/2018/05/02/bayview-lawsuit-hunters-point-tetra-tech-ttk.html>.

185. Justin Davidson, *The Megamall-Hotel-Condo-Concert Hall That Ate New York City*,

The project arose in the wake of 9/11, in a city still uncertain how to build or regulate its urban form with the specter of possible future attacks in mind.¹⁸⁶ The TWC also embraced the opportunity to redevelop and repurpose the long-neglected site of the Coliseum, a convocation center left vacant and unused since the mid-1980s, a monumental relic beside the similarly neglected Columbus Circle.¹⁸⁷ Upon its opening in February 2004, the TWC was “the vindication of a [two-decade-long] \$1.7 billion gamble,” following economic extremes, 9/11, and protracted negotiations among many stakeholders, as well as numerous earlier failed attempts to build out the property.¹⁸⁸ The TWC is hardly an icon of progressive, egalitarian development itself. Within its twin, 750-foot towers “rises a city [within the city] of \$10,000-per-night hotel rooms, \$325 dinner menus, and \$125,000-a-month rentals” or, more colorfully put, “a fat cat’s bazaar.”¹⁸⁹ Given that, how on earth could the TWC offer lessons for or even be relevant to CED?

The TWC inspired two interlinked trends in Manhattan real estate development in the years since 2004. First, the TWC set a template for the design and scale of many projects to follow: large, tall, and glass, “embodying the glamour of high-rise Manhattan living.”¹⁹⁰ Second, the TWC set a broadly recognized precedent that there is an expectation that comparably large projects in New York must provide cultural spaces and amenities to those who do not dine or vacation or live within the project’s walls, but who already live nearby.¹⁹¹ In doing so, the pejoratively labeled “neighborhood naysayers” who initially opposed the TWC can be said to have “learned to *shape* the development rather than just opposing it” wholesale.¹⁹² That learning curve, though, was steep – and the lessons for future developments and CED movement members’ attempts to “shape” later projects are more ambiguous.

The first neighborhood concession during the TWC planning process was for the Lincoln Center, which was granted permission to expand its Jazz Center to a new, thousand-seat auditorium in the TWC complex.¹⁹³ However, negotiations at the early stages were not concluded with a CBA, which had not yet been implemented in the United States, nor with any other binding, multi-party agreements. As such, once construction of the twin-tower project

N.Y. MAG. (Jan. 10, 2018), <http://nymag.com/daily/intelligencer/2018/01/the-megamallhotelcondo-concert-hall-that-ate-new-york-city.html>.

186. Kevin Fox Gotham & Miriam Greenberg, *From 9/11 to 8/29: Post-Disaster Recovery and Rebuilding in New York and New Orleans*, 87 SOCIAL FORCES 1039 (2008).

187. Davidson, *supra* note 185.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* (emphasis added).

193. *Id.*

got underway in earnest, “the developer and the music-group arm fought over every detail. [For the developer, the Related Co.], every square foot [given] away for free cut into [profit calculations and increased] risk.”¹⁹⁴ Conversely, community stakeholders and the Lincoln Center especially bristled at the developer’s unfamiliarity with performance spaces, especially those which would need to accommodate a full range of productions, from young students to collegiate events to high-profile professional concerts.¹⁹⁵ After years of false starts and contentious negotiations, the Jazz Center was delivered along with the TWC’s grand opening for a final cost of \$131 million against initial estimates of just \$40 million.¹⁹⁶ Furthermore, the TWC failed to incorporate many locals’ demands from the earliest planning stages altogether. No affordable housing or market-rate-capped units, no added green space, and a wholesale emphasis on the highest-end residents and clientele pervaded the completed project.

Was the TWC a failure from a CED perspective? Not a *complete* failure, perhaps, inasmuch as the project’s design succeeded in “knit[ting] together midtown and the Upper West Side” through “regridding” the former superblock, introducing new connections between the east and west facades of the building, and “rejuvenated” both Columbus Circle and the southwest portions of Central Park.¹⁹⁷ From an urbanism and livability perspective, the TWC fulfilled some of its early mission to improve the vitality of the surrounding streets and to provide semi-public spaces to all New Yorkers and any visitors alike. The TWC remains a cautionary tale on balance, and its successor project currently rises along the Hudson River’s abandoned industrial waterfront southwest of Columbus Circle: Hudson Yards, by the TWC’s own developer, Related.

194. Davidson, *supra* note 185.

195. *Id.*

196. *Id.*

197. *Id.* For discussions of the ancient historical roots of street grid use in urban planning, see, e.g., Pamela Gaber, *The History of History: Excavations at Idalion and the Changing History of a City-Kingdom*, 71 NEAR EASTERN ARCHAEOLOGY 52, 61 (2008) (noting evidence of grid-based street planning at Idalion, in modern-day Cyprus, evidently implemented upon Hellenistic colonization as early as ca. 300-100 B.C.E.); Nick Holder, *Mapping the Roman Inscriptions of London*, 38 BRITANIA 13, 21 (2007) (describing Roman-era *Londinium*, the primogenitor of modern-day London, as having an “irregular grid” plan consistent with Roman city planning traditions ca. the first century B.C.E. and after); Martin Pitts & Dominic Perring, *The Making of Britain’s First Urban Landscapes: The Case of Late Iron Age and Roman Essex*, 37 BRITANIA 189, 191–92 (2006) (describing excavation sites at Silchester, southwest of London, as an “urban plantation” with typical Roman “planned street grid” organization, dating to ca. 25-15 B.C.E.).

B. Time-Warner and Hudson Yards: Unlearned Lessons

The first major distinction between the TWC project and its successors is the introduction of CBAs. CBAs emerged after the TWC in New York City, following the lead of the Staples Center in Los Angeles, signed in 2001.¹⁹⁸ CBAs thus became CED tools only after the TWC got off the ground, their use proliferating nationally only since the Staples Center's CBA over fifteen years ago.¹⁹⁹ Despite their availability and use nationwide, however, Hudson Yards did not incorporate a CBA into its planning and negotiating process, suggesting that Related, again the developer, may have abandoned ambitions for integrated, community-engaged development after challenges at the TWC.²⁰⁰ Hudson Yards is immense, with over 18 million square feet of new construction at a cost of \$25 billion, "the country's largest and probably most complex construction project" ongoing as of 2018.²⁰¹ As the new mixed-use towers rise over the western edge of Manhattan, an enormous migration of financial services firms (KKR, Deutsche Bank, etc.) is set for coming years.²⁰² The sheer scope and the high-profile clientele of Hudson Yards suggest a less than promising avenue for CED victories, especially in the absence of a CBA. The project's extent has seeped northward to the Lincoln Center and the Lincoln Tunnel, with closely adjacent towers being built all along the western edge of Lower Manhattan, an "almost unreckonable scale," similarly raising alarms.²⁰³

C. Atlantic Yards and Embracing the Wisdom of CBAs

The Atlantic Yards project (now renamed Pacific Park) sits atop the former Navy Yards location in Brooklyn. Unlike the TWC and Hudson, Atlantic Yards is guided by a CBA, signed in 2005 as New York's first and, to-date, largest governing a development project in the city.²⁰⁴ Atlantic Yards

198. The Role of Community Benefit Agreements in New York City's Land Use Process 1–2, NYC BAR (Mar. 8, 2010), <http://www.nycbar.org/pdf/report/uploads/20071844-TheRoleofCommunityBenefitAgreementsinNYCLandUseProcess.pdf>.

199. *Id.* at 1.

200. Justin Davidson, *Superhuman City: Hudson Yards, a Mega-Neighborhood Built from Scratch, Comes into View*, N.Y. MAG. (Apr. 18, 2018), <http://nymag.com/daily/intelligencer/2018/04/superhuman-city-a-walk-through-hudson-yards.html> (referring to the main Hudson Yards plaza as merely "nominally public," while jabbing the Thomas Heatherwick-designed "basket of staircases" art installation as a "\$200 million tchotchke").

201. *Id.* ("Hudson Yards is the 21st century Rockefeller Center, but on an oppressive scale").

202. Rob Urban, David M. Levitt, & Christopher Cannon, *Wall Street Is Moving, and It's Reshaping New York*, BLOOMBERG (May 14, 2018), <https://www.bloomberg.com/graphics/2018-manhattan-office-migrations/>; see also *supra* note 135.

203. Davidson, *supra* note 200.

204. Dan Rosenblum, *Selling Low, Building High: How Brooklyn Dropped the Ball on the Biggest Negotiation of Its Life*, NEXT CITY (Feb. 18, 2013), <https://nextcity.org/features/>

also includes extensive set-asides for affordable housing targeted to low-income and middle-income families throughout Brooklyn, funding and training support for nonprofits to train or retrain community members, including Brooklyn United for Innovative Local Development (“BUILD”), and stabilizing a necessary mixture of commercial, communal, and other uses semi-permanently in rapidly crowding central Brooklyn.²⁰⁵ The surrounding areas of Brooklyn typify the types of communities most at-risk after the Great Recession and its stunted recovery. They are rapidly gentrifying, shifting demographically, and becoming more impoverished, affecting those who were already most-vulnerable during the financial crisis.²⁰⁶ Hence, like the Central SoMa Plan and the Salesforce-Transbay development in San Francisco,²⁰⁷ Atlantic Yards presents the same counterproductive risks of accelerating rather than curtailing harms to extant residents.

With the Staples Center in Los Angeles as a benchmark for CBAs, the Atlantic Yards CBA faces one common but pernicious challenge in the slow erosion of community organizational support since the CBA’s signing.²⁰⁸ Even BUILD, the new nonprofit constituted by the project’s developers, folded in November 2012, resulting in a series of lawsuits filed by former apprentices who were discharged during their training programs.²⁰⁹ Local, urban, and community-focused Brooklyn media seized upon these and other failures as validation of initial trepidation, as well as entrenched distrust of former Mayor Michael Bloomberg, a major supporter of Atlantic Yards from its inception.²¹⁰ In recent years, the systemic crisis of affordable housing shortages in New York have exacerbated these concerns: as of early 2017, Brooklyn’s demands for affordable housing included “more than 84,000 applications for [the] 181 units at 461 Dean” and approximately 95,000 applications for 535 Carlton, which has only 297 units.²¹¹

Although BUILD collapsed quickly and litigation has plagued the intervening years of Atlantic Yards’ development, at least three community organization-signatories remain party to the CBA and several of its general outlines remain in force. These include workforce and labor force requirements (e.g., minimum suggested requirements for minority and

view/selling-low-building-high.

205. Rosenblum, *supra* note 204.

206. *Id.*; see generally discussion at Parts III(A) and (B).

207. See *supra* discussion at Part III(C).

208. Rosenblum, *supra* note 204.

209. *Id.*

210. See, e.g., Jess Wislonski, *In Bruce We Trust: Mayor Bloomberg Says the Word of “Great Guy” Ratner Is Enough on Atlantic Yards ‘Community Benefits’ Agreement*, BROOKLYN PAPER (July 9, 2005), https://www.brooklynpaper.com/stories/28/27/28_27nets1.html.

211. Norman Oder, *The Real Math of an Affordable Housing Lottery: Huge Disconnect Between Need and Allotment*, CITY LIMITS (Apr. 19, 2017), <https://citylimits.org/2017/04/19/the-real-math-of-an-affordable-housing-lottery-huge-disconnect-between-need-and-allotment/>.

female workers at project construction sites and at subsequent full-time, post-construction-phase jobs); similar requirements for contracting services; retail leasing set-asides for local businesses; ambitious 50 percent targets for stabilized and/or below-market-rate housing; and, finally, various public and community-focused amenities upon buildout, among others.²¹² Additionally, Atlantic Yards actually exceeded some of its initial plans for specific types of affordable housing, namely improved and enlarged family-sized apartments not initially included in designs.²¹³ Even while the present de Blasio mayoral administration continues to “[target] a broad range of income bands” in New York affordable housing policy and “rent stabilization” for existing units, recent developments further encourage Atlantic Yards-styled mixed-income, market and below-market-rate construction.²¹⁴ The red flags of a few years ago now offer some promising lessons for present and future successes.

Atlantic Yards still receives considerable ire from its neighbors in Brooklyn and personifies locals’ distrust, but it appears much more successful from a CED perspective than similar mega-projects in the last few decades. That qualified success should militate in favor of increasing the use of CBAs for projects of all shapes and sizes, though perhaps particularly mega-projects, since they are often the largest concentrations of financing, new temporary and permanent employment opportunities, and housing in strained markets. CBAs have had a “mixed track record” since their inception with the Staples Center,²¹⁵ but they are promising strategic avenues for CED leaders.

D. CBAs and CED in the Context of Urban Development: Alternative and Mixed Strategies

The lessons offered by the foregoing case analyses highlight the importance of creative, mixed strategies for the CED movement and its leaders. That is, multiple approaches to promoting CED aims vis-à-vis private developments should be leveraged to maximize local benefits and protections for community members. The TWC project’s shortfalls from a CED perspective, for example, may have been contained or offset by a CBA instituted from the outset of the project.²¹⁶ Similarly, Atlantic Yards could have supplemented its CBA with targeted, informal pressure strategies used

212. NYC BAR, *supra* note 198, at 8–9.

213. Oder, *supra* note 211.

214. *Id.*

215. See, e.g., Oscar Perry Abello, *What One L.A. Development Deal Says About the Future of Community Benefit Agreements*, NEXT CITY (Dec. 24, 2015), <https://nextcity.org/daily/entry/benefits-of-community-benefit-agreements>.

216. See *supra* Part IV(A).

by cultural institutions to exact (limited) concessions delivered by the TWC buildout.²¹⁷ The confluence of different approaches linking governmental, private, and community stakeholders offers better opportunities for realizing the aims of CED while mitigating the externalities of high-profile, high-budget mega-developments.

Beyond the discrete strategies discussed below, perhaps the most important and intuitively simple strategy for CED leaders is to be mindful of and open to the full panoply of their strategic options. No one “solution” exists, and no two projects or local community contexts are ever truly the “same,” suggesting no singular tool offers the key to success. As such, while this paper emphasizes opportunities in CBA-based frameworks for CED, the novelty and recent emergence of CBAs must cabin evaluations of their projected outcomes. These limits should also encourage further inquiry into how CBAs can be combined with longstanding legal, political, and social tools. While the range of these tools is vast, three broad classes are of particular interest: direct developer-local government agreements, financial frameworks to deconcentrate investment and to offset the externalities of development through (e.g., tax-increment financing [TIF] and public-private partnerships [PPPs]), and related public housing-promoting arrangements in which private and governmental entities collaborate in all stages of development and post-buildout administration.

i. Development Agreements and Land Use Regulations

Agreements between private developers and governmental entities, unlike the broader range of stakeholders in a CBA, typically do not include or contemplate the needs of constituencies who are not parties to the agreements. Nonetheless, developer agreements (or development agreements) share much in common with the purposes of CBAs. The fundamental “purpose of the development agreements . . . is to vest certain developmental rights in the landowner/developer in exchange for construction and dedication of public improvements.”²¹⁸ Most often, these agreements are bilateral covenants between private and public parties in which the government authority agrees to abstain from using certain police powers (e.g., not applying later-in-time changes to zoning or land use regulations covering the development in question for some agreed duration) in exchange for the developer’s commitment to providing “public purpose”

217. *See supra* Part IV(C).

218. BARGAINING FOR DEVELOPMENT: A HANDBOOK ON DEVELOPMENT AGREEMENTS, ANNEXATION AGREEMENTS, LAND DEVELOPMENT CONDITIONS, VESTED RIGHTS, AND THE PROVISION OF PUBLIC FACILITIES 3–4 (David L. Callies, Daniel J. Curtin, Jr., & Julie A. Tappendorf eds. 2003).

or “general welfare” benefits offsetting the impacts of the project (e.g., establishing a fund for new classroom space in area schools, improved public infrastructure, public spaces, and other public goods).²¹⁹ A related but distinct agreement type is the imposition of land development conditions on private developers in exchange for project approval, which similarly recognize the “variety of public facilities” required to “[support] development of any size and substance,” like roads, utilities, and schools.²²⁰ Unlike development agreements, however, land development conditions are not *bilateral* exchanges, but instead are unilateral restrictions on land use and development defined and implemented by local authorities, such as city planning and zoning entities, acting on their own.²²¹ Hence, land development conditions “invite judicial scrutiny” and must meet judicial standards under the Takings Clause and related doctrines.²²² Among other factors, reviewing courts will consider whether the “so-called rational nexus” between the conditions placed on the development (e.g., exaction fees) and the extent to which the development in question is likely to produce outcomes which necessitate conditions or fees.²²³ Further, any “exaction” must “[bear] some rough proportionate relationship” to the need generated²²⁴ and whatever exactions are taken (most often direct fees) must “actually be used” for their stated purposes, rather than being directed into a general fund.²²⁵ Finally, whatever fees or exactions taken cannot sit idle (i.e., unspent) for long.²²⁶

219. BARGAINING FOR DEVELOPMENT, *supra* note 218, at 91–97.

220. *Id.* at 5.

221. *Id.* at 6.

222. *Id.* The review standards applied when litigation challenges land development conditions are neither deferential to local governments nor are they models of clarity. *Accord* U.S. CONST. amend. V (“private property [shall not] be taken for public use, without just compensation”); *see generally*, *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978) (holding the refusal to permit Penn Central to build a skyscraper atop the landmark-designated Grand Central Terminal did not constitute an unconstitutional “taking” because the City’s refusal was specific to the proposal put forward by Penn Central, not a carte blanche bar on any construction above the site, and thus constituted a reasonable limit by the state which was related to a legitimate public interest goal); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) (striking down a South Carolina law which barred new construction on the state’s barrier islands on grounds of mitigating erosion and environmental damage because the construction restriction effectively and entirely destroyed the value of owners’ lands); *Kelo v. City of New London*, 545 U.S. 469 (2005) (holding that the taking of private property through state powers of eminent domain for private development did not constitute an unconstitutional “taking” because the private development was geared toward public uses—namely, economic development—under the City of New London’s overall economic development plan, a legitimate public purpose).

223. BARGAINING FOR DEVELOPMENT, *supra* note 218, at 11.

224. That is, the exaction and the development’s impact must be reasonably proportional to one another, though jurisdictions have diverged considerably on what is “proportional,” *id.*

225. *Id.* at 11–12.

226. *Id.* at 13–15; *see Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) (establishing and explaining the “essential nexus” framework generally); *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (addressing regulatory/adjudicative takings through planning commission

Generally, though, exactions or conditions furthering affordable housing through these mechanisms have been successful in practice and upheld by courts.²²⁷

ii. Tax-Increment Financing

Developer agreements and land use conditions circumscribe the uses and functions of a development property, but tax-increment financing (“TIF”) offers “a method of financing the redevelopment of underperforming property by isolating the value added to the property from [the] proposed development (the increment) and taxing that increment only to pay for the redevelopment project.”²²⁸ In other words, TIF arrangements establish a “development incentive” using existing local property tax funds where a “portion of the property taxes raised by county, school and other local governments is given to cities . . . as reimbursement for development expenditures that have been made in specially designated TIF districts.”²²⁹ Although variegated, the general functions of TIF and TIF districts are summarized as follows:

The incentive for cities to undertake development projects using TIF is created by the generation and diversion (distribution) of tax increments among various local governments in an area. Under TIF, a city designates a temporary TIF district in which development expenditures will be made and records the total property value in the district at the time of designation [i.e., the ‘base value’]. Then, for a limited number of years, the city makes expenditures for such activities as purchasing and clearing of land, street improvements, etc. which serve to increase the value of property within the district.

The expenditures made by the city are reimbursed over time by the tax increment payments of the various governments having taxing authority over the property contained in the TIF district. As property values in the TIF district increase above the base value, tax increments are generated by applying the general property tax rate for each government involved to the

decisions and clarifying the two-step analysis and its application following *Nollan*). For further discussion of acceptable grounds for development conditions vis-à-vis governmental comprehensive plans and planning consistency, see BARGAINING FOR DEVELOPMENT, *supra* note 226 at 40–42; *accord* City of Irvine v. Irvine Citizens Against Overdevelopment, 25 Cal. App. 4th 868 (1994) (affirming California’s highly deferential standard of review for “consistency” with municipal development plans, requiring only that the city or other local governmental entity’s regulation *cannot possibly* rationally be based upon furthering the aims of the plan).

227. See BARGAINING FOR DEVELOPMENT, *supra* note 218, at 67–71.

228. TAX INCREMENT FINANCING xxi (David L. Callies & W. Andrew Gowder, Jr. eds. 2012).

229. Jack R. Huddleston, *Intrametropolitan Financial Flows under Tax Increment Financing*, 19 POL’Y SCI. 143, 144 (1986).

growth in value (i.e., the “value increment”).²³⁰

In theory, TIF arrangements offset city expenditures for promoting initial (re)development, usually meaning the city covers basic infrastructure and public amenities investments, including parking/garages, public streets, and sidewalks.²³¹ TIFs operate through shifting tax revenues until “all development expenditures by the city [are] recovered,” after which the “TIF district is dissolved and the tax base within [it] is returned to full use” for any government entities with tax authority over the area.²³² TIFs are common mechanisms for promoting and financing developments throughout the United States. In Chicago alone, over 170 active TIF districts exist across the city, not including the broader Cook County, Illinois, or Greater Chicago metropolitan communities.²³³

The elegant theory notwithstanding, TIFs have attracted widespread critical attention following the Great Recession. In California, where TIFs were first implemented broadly, the state decided to scale back uses of TIF in recent years.²³⁴ Although metropolitan- and state-specific outcomes vary, recent studies have suggested TIF implementation was pro-cyclical leading up to and following the housing market crash just over a decade ago.²³⁵ TIFs’ pro-cyclicality makes intuitive sense: TIFs are future-facing, designed and implemented on the basis of future expected returns on development investments and future growth of property taxes accruing from the covered area.²³⁶ When the overall economy is growing, future expectations increase; when the overall economy corrects, much less when it crashes dramatically as in the Great Recession, future tax return projections follow suit. The future-facing nature of TIFs thus can lead to inaccurate predictions and concomitantly misplaced investment choices. Using Chicago as a leading example again, one post-recession survey of the city’s TIF practices found that while “billions of dollars in global capital” accrued to the city between 1996 and 2007, the influx of investment became over-concentrated in commercial real estate properties²³⁷ and produced a sizable glut of office

230. *Id.* at 146.

231. Huddleston, *supra* note 229, at 146.

232. *Id.*

233. TIF DISTRICT REDEVELOPMENT PLANS, CITY OF CHICAGO PLANNING & DEVELOPMENT (2018), https://www.cityofchicago.org/city/en/depts/dcd/supp_info/redevelopment_plans.html.

234. See generally Robert T. Greenbaum & Jim Landers, *The Tiff over TIF: A Review of the Literature Examining the Effectiveness of the Tax Increment Financing*, 67 NAT’L TAX J. 655 (2014).

235. Richard F. Dye, David F. Merriman, & Katherine Goulde, *Tax Increment Financing and the Great Recession*, 67 NAT’L TAX J. 697 (2014); see also *supra* notes 143-149 and accompanying text.

236. See Greenbaum & Landers, *supra* note 234.

237. Rachel Weber, *Selling City Futures: The Financialization of Urban Redevelopment Policy*, 86 ECON. GEO. 251 (2010).

spaces still searching for permanent tenants.²³⁸

Beyond the pernicious risks of fueling pro-cyclical economic volatility, other theoretical and practical concerns regarding TIFs abound. Typically, state laws “still require some evidence of blight” before TIFs can be implemented.²³⁹ The notion of “blight” in urban areas carries a racialized connotation from America’s earlier eras of slum clearing and so-called urban renewal projects from the 1940s through the 1970s.²⁴⁰ Recent econometric analyses have concluded the aggregate, city-wide, and decades-after effects of urban renewal policies were less unequivocally disastrous than some popular criticism suggests.²⁴¹ At the same time, “blight,” as a term of art in urban politics in the last century, was an invented “disease” weaponized by renewal advocates without much more than a “vague, amorphous” meaning undergirding vast transfers of property and dislocations of entire communities.²⁴² At a minimum, the problems of “blight” and of urban renewal were linked explicitly to “a class as well as a color” in practice,²⁴³ with marginalized minority communities disproportionately and often severely affected.²⁴⁴ TIFs or any other strategies employing a language of renewing and

238. Ely Razin, *Why the Chicago Property Market Could Be a Good Deal, or a Risky Bet*, FORBES (Nov. 9, 2017), <https://www.forbes.com/sites/elyrazin/2017/11/09/why-the-chicago-property-market-could-be-a-good-deal-or-a-risky-bet/#25e685b61314>.

239. Greenbaum & Landers, *supra* note 234 at 658.

240. The twin policies of slum clearing and urban renewal were complex, driven by federal and local policy choices alike. In fine, the Housing Act of 1949 provided legal authority and financial resources “aimed to revitalize American central cities,” often in conjunction with local powers of eminent domain enhanced by state government deference and delegation. The effect of these actions and incentives was to allow local agencies to “assemble, clear, and then sell parcels of land in ‘blighted’ urban areas for redevelopment,” and by the time the original program ended in 1974, “local authorities had been awarded federal support for more than 2,100 distinct renewal projects with grants totaling approximately \$53 billion (in 2009 dollars).” William J. Collins & Katharine L. Shester, *Slum Clearance and Urban Renewal in the United States*, 5 AM. ECON. J.: APP. ECON. 239 (2013).

241. *Id.*

242. See, e.g., Clement Lai, *The Racial Triangulation of Space: The Case of Urban Renewal in San Francisco’s Fillmore District*, 102 ANNALS ASS’N AM. GEOG. 151 (2012); Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 3 (2003).

243. Robert C. Weaver, *Class, Race and Urban Renewal*, 36 LAND ECON. 235 (1960).

244. See, e.g., John P. Elwood, *Rethinking Government Participation in Urban Renewal: Neighborhood Revitalization in New Haven*, 12 YALE L. & POL’Y REV. 138, 179–80 (1994) (discussing “fine-grained” vis-à-vis “coarse-grained” redevelopment policy approaches in New Haven, Connecticut, through the early 1990s, with the latter’s exacerbating effects on commercial business displacement in so-called “blighted” communities highlighted in particular); Robert P. Kessler & Chester W. Hartman, *The Illusion and the Reality of Urban Renewal: A Case Study of San Francisco’s Yerba Buena Center*, 49 LAND ECON. 440 (1973) (noting the class-specific effects of displacement during the development of the Yerba Buena Center—now part of the Moscone Center convention complex South of Market in San Francisco—on “nearly 4,000 residents [who were] mainly low-income, elderly, white males living alone”); John A. Kirk, “A Study in Second Class Citizenship”: *Race, Urban Development, and Little Rock’s Gillam Park, 1934–2004*, 64 ARK.

rectifying “blight” likely will be viewed as inherently suspect. The last century’s model of “urban renewal” was abandoned decades ago, yet it echoes in the ongoing, pervasively unequal milieu of urban redevelopment and runaway gentrification, often in regions where current progressive reputations collide with multi-generational traditions of institutionalized racism.²⁴⁵

The terminology alone raises hackles, yet “blight” and “urban renewal” remain common fixtures of academic and legal writing on modern-day redevelopment, including in the context of TIFs.²⁴⁶ The challenges of implementing TIFs to achieve CED goals encompass much more than a branding problem, however. The CED movement aims to support, develop, and empower local communities, fostering bottom-up agency and self-determination.²⁴⁷ But TIFs implicitly and explicitly aim to draw outside capital and investment into targeted communities, relying upon temporary, defined periods of tax incentives which end after a predetermined date.²⁴⁸ Moreover, TIFs achieve their aims without providing the full panoply of public services needed in an area.²⁴⁹ It is unclear whether TIFs can be leveraged successfully in communities at either end of the economic spectrum, i.e., those which are booming or those which are stagnant, where the need for tax shifting incentives is either unnecessary or is (sometimes highly) unlikely to alter a community’s trajectory. Though research on the intersections of CED and TIFs is growing,²⁵⁰ caution should underscore any

HIST. Q. 262 (2005); George Lipsitz, *The Possessive Investment in Whiteness: Racialized Social Democracy and the “White” Problem in American Studies*, 47 AM. Q. 369, 373–76 (1995); Paul R. Mullins, *Racializing the Commonplace Landscape: An Archaeology of Urban Renewal Along the Color Line*, 38 WORLD ARCHAEOLOGY 60 (2006); Andrea Smith & Rachel Scarpato, *The Language of “Blight” and Easton’s “Lebanese Town”: Understanding a Neighborhood’s Loss to Urban Renewal*, 134 PENN. MAG. HIST. & BIOG. 127 (2010); accord Lucas-Darby, *supra* note 75 and Mirabal, *supra* note 169.

245. See, e.g., N.D.B. CONNOLLY, A WORLD MORE CONCRETE: REAL ESTATE AND THE REMAKING OF JIM CROW SOUTH FLORIDA (2014); Pam Kelley, *Old Anger and a Lost Neighborhood in Charlotte*, CITYLAB (Oct. 11, 2016), <https://www.citylab.com/equity/2016/10/old-anger-and-a-lost-neighborhood-in-charlotte/503627/>; Niles Niemuth, *Urban Renewal and the Development of Milwaukee’s African American Community: 1960–1980* (May 2014) (unpublished M.A. thesis, University of Wisconsin-Milwaukee) (on file with the University of Wisconsin-Milwaukee Digital Commons repository); Alana Semuels, *The Racist History of Portland, the Whitest City in America*, ATLANTIC (July 22, 2016), <https://www.theatlantic.com/business/archive/2016/07/racist-history-portland/492035/>.

246. H. Lawrence Hoyt, *What’s the “TIF” All About?* 9, in TAX INCREMENT FINANCING (David L. Callies & W. Andrew Gowder, Jr. eds. 2012).

247. See SIMON, *supra* notes 78–80.

248. Hoyt, *supra* note 246, at 19–20.

249. *Id.*

250. See, e.g., Matthew S. Gray & Cecily Barclay, *California: TIF and Community Development Law* 37 in TAX INCREMENT FINANCING (David L. Callies & W. Andrew Gowder, Jr. eds. 2012); George Lefcoe & Charles W. Swenson, *Redevelopment in California: The Demise of TIF-Funded Redevelopment and Its Aftermath*, 67 NAT’L TAX J. 719 (2014); Kenneth M. Murchison, *Louisiana: From the Big Easy to the Suburbs, TIF and Its Dangers* 95 in TAX

consideration of using TIFs for CED movement aims.

iii. Public-Private Partnerships

Finally, the use of public-private partnerships (PPPs) to produce affordable housing offers another strategic option for the CED movement. Although they have been used for decades, PPPs have gained increased attention in recent years as they incorporated various forms of subsidized/public housing in exchange for tax incentives, “density bonuses,” and other government-provided perks.²⁵¹ PPPs provide affordable housing most often through one of two general models. The first major model is one in which the relevant private entity “develops, owns, and operates” the housing, but that portion project is financed publicly.²⁵² Usually, such affordable housing PPPs emerge after the public sector directly appeals to developers with plans for a project and announces subsidies for including income-restricted units (e.g., rental vouchers or tax credits).²⁵³ The second model is one in which the developer provides affordable housing units in exchange for broader—and often “more controversial”—forms of “favorable regulatory treatment,” such as “inclusionary zoning,” up-zoning, and other exemptions from building standards or usual project size limits.²⁵⁴ Once a PPP-based project with inclusive affordable housing is complete, however, different managerial and tenant participation outcomes emerge. Overall, PPPs which use tax credit-based approaches (e.g., those which allot credits to subsidize low-income tenants) rarely “involve residents in [any] significant, much less an ownership, capacity.”²⁵⁵ This disengagement of would-be residents from PPPs spans the lifecycle of such projects; from initial “involvement in the planning of a project” through “participation in its management” and the often nonexistent ability of residents to “obtain title to the property at the expiration of the tax credit” lifespan, residents often are shut out from most

INCREMENT FINANCING (David L. Callies & W. Andrew Gowder, Jr. eds. 2012); compare W. Andrew Gowder, Jr., *South Carolina: Using TIF to Restore a Community* 153 in TAX INCREMENT FINANCING (David L. Callies & W. Andrew Gowder, Jr. eds. 2012) (providing a defense of TIF use in the North Charleston, South Carolina, development of Noisette and noting, *inter alia*, the transparent and community-involved process of developing it).

251. Tim Iglesias, *Our Pluralist Housing Ethics and Public-Private Partnerships for Affordable Housing* 11, in AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS (Nestor M. Davidson & Robin Paul Malloy eds. 2009).

252. Nestor M. Davidson, *The Value of Lawyering in Affordable Housing Transactions* 35, 37, in AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS (Nestor M. Davidson & Robin Paul Malloy eds. 2009).

253. *Id.* at 38.

254. *Id.*

255. Michael Diamond, *Another Model of Low Income Housing Tax Credit Development: Building Housing and Building Capacity* 51, 56, in AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS (Nestor M. Davidson & Robin Paul Malloy eds. 2009).

of the fundamental workings of PPPs.²⁵⁶ The benefits of resident engagement and agency are intuitive—and well developed in research on public housing and PPPs²⁵⁷—but elusive under this particular developmental model. Particularly in communities with long histories of displacement, legacies of government-perpetrated dislocations under the guise of “renewal,” and modern challenges of hyper-competitive markets in resurgent major cities especially,²⁵⁸ disengagement from and lack of direct participation in PPPs can backfire, stoking backlash and community antipathy.

V. Conclusion

The foregoing case analyses suggest a few generalized lessons for CED movement leaders, urban planning practitioners, city policymakers, and local residents alike. First, non-CBA agreements in principle between developers and local organizers *may* lead to delivery of local community amenities or needs—like the Jazz Center at the TWC in New York, host to professional performances and local students’ groups alike. Unfortunately, though, the TWC’s Jazz Center is not an easily emulated model. For instance, the Lincoln Center and its jazz productions benefitted from powerful allies (i.e., former Mayor Rudy Giuliani) and enjoyed enormous brand name recognition advantages; the TWC also was conceived and delivered during an economic downturn in a part of the city which long lagged other development hotspots, like Midtown and parts of Lower Manhattan. Second, and more instructive, is that the TWC’s developer, Related, veered away from such commitments in their larger, higher-impact encore project, the Hudson Yards redevelopment. This suggests at least some limited risk that the failure to deliver negotiated, public-facing components of erstwhile private mega-projects might diminish developers’ willingness to engage in the same processes and compromises again.

Although a qualified success story, the drafting and negotiation of the Atlantic Yards CBA in Brooklyn helps frame lessons for practitioners’ strategies and further avenues for researchers. The gaps in the Atlantic Yards CBA illustrate the importance of not only finding, but also retaining community partners and stakeholders well after the ink is dry. Additionally, Atlantic Yards shows the need for defining goals with greater precision (e.g., specifying *types* of jobs or training programs to be implemented) as well as demanding guarantees for certain continuity (e.g., through financing training-

256. Diamond, *supra* note 255, at 56–62.

257. *Id.* at 62–65; accord Barbara Bezdek, *Putting Community Equity in Community Development: Resident Equity Participation in Urban Redevelopment* 93, in *AFFORDABLE HOUSING AND PUBLIC–PRIVATE PARTNERSHIPS* (Nestor M. Davidson & Robin Paul Malloy eds. 2009).

258. *Id.* at 99–100.

focused nonprofits like the now-defunct BUILD). Finally, all the projects discussed—and future mega-projects on the horizon—could learn from the successes of the Staples Center CBA. There, building and maintaining the broadest practicable range of community group partners from the onset, involving them in the entire process, and binding all parties through a CBA remains the gold standard.

CBAs are no panacea for urban challenges, particularly in the densest, most competitive urban markets. But the structure and clarity they provide appear far superior guarantees than the informally and independently negotiated “extractions” achieved in the Time-Warner and Atlantic Yards cases. Combinations of these and other approaches merit extensive further investigation and synthesis, especially as the size, cost, and complexity of these major urban projects increase.
