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Chase Stone

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Easements, Exchanges, and Equity: Models for California's Climate and Housing Crises

Chase Stone*¹

*Nature and its vital contributions to people, which together embody biodiversity and ecosystem functions and services, are deteriorating worldwide . . . Nature's contributions to people are often distributed unequally across space and time and among different segments of society.*²

Introduction

Ben Rauleron's car battery was dead on the morning of November 8, 2018.³ Rauleron and his mother-in-law tried to jump the battery.⁴ When the car died again in the driveway, she walked to the road.⁵ Ben's mother-in-law waved down a pick-up truck—the type of small-town gesture usually unfulfilled in big cities—and the driver stopped.⁶ Paradise is a small town. The ride happened to save their lives.⁷ Mr. Rauleron somehow never learned the name of the driver.⁸ Such was escaping the

* U.C. Davis School of Law (J.D. '20), Editor-in-Chief, *Davis Environmental Law and Policy Journal*, Vol. 43; University of Michigan, Ann Arbor (M.S. Environmental Policy, thesis: "Viswamitri: A River and its Reign (2017)"; California Institute of the Arts (M.A. Aesthetics and Politics). I would like to thank *Hastings Environmental Law Journal's* Vol. 26 staff for their guidance and input, especially Mary Haley Ousley, Sarah Casey, Nasser Noclani, Alex Sauerwein, Sophie Kaineg, and Colin Schoell. In addition, I want to acknowledge Kevin Boutin, Camila Mojica, and Professors Richard Frank and Albert Lin of UC Davis School of Law.

2. Sandra Díaz et al., *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, INTERGOVERNMENTAL SCIENCE-POLICY PLATFORM ON BIODIVERSITY AND ECOSYSTEM SERVICES 1, 2 (May 6, 2019), <https://perma.cc/ZA2G-AMAU>.

3. Sarah Almkhatar et al., 'Hell on Earth': *The First 12 Hours of California's Deadliest Wildfire*, N.Y. TIMES (Nov. 18, 2018), <https://perma.cc/2UMU-7H5L>.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

Paradise Camp Fire, “hell on earth” according to Mr. Raulerson, the most destructive fire in California history.⁹

Even though the Camp Fire burned most of rural Paradise, California, many returned to start anew.¹⁰ In total, roughly 19,000 structures were destroyed and the 3,000 residents that remained were subject to new building codes.¹¹ More than half of Paradise residents during the Camp Fire were underinsured by an average of \$163,000, and almost ten percent were underinsured by \$400,000 or more.¹² Before the fire, the median price of a home in Paradise was \$218,400.¹³ During the rebuilding process, both housing costs and square footage increased—new Paradise homes were valued above \$500,000 and the median size increased by an average of 360 square feet.¹⁴ Paradoxically, in the aftermath of the Camp Fire, returning to Paradise would be more costly than before.¹⁵

The Camp Fire in Paradise, while an imperfect analogy, is illustrative of California’s current housing and environmental management policies. The aftermath of the Camp Fire, in particular, demonstrates a critical juncture in state policy. At the moment, we are stuck between a rock and a hard place. Across the state, California lawmakers seek to harmonize environmental laws and to increase housing density; these laws also to harmonize traditional and nascent environmental policies. One area of focus is the transportation sector, but these efforts are opposed by cities and low-income communities. Aided with key planning metrics, proponents of development introduce solutions that blend traditional and new-wave environmentalism. One example is the California legislature’s adoption of a new metric: “vehicle miles traveled” (“VMT”), which represents the average vehicle distance at a certain threshold for housing development.¹⁶ The significance of VMT is evident by its statewide applicability, gesturing

9. *Id.*; see also Alejandro Borunda, *Climate Change is Contributing to California’s Fires*, NAT’L GEOGRAPHIC (Oct. 25, 2019), <https://perma.cc/EXJ4-WMF7>.

10. Kirk Siegler, *The Camp Fire Destroyed 11,000 Homes. A Year Later Only 11 Have Been Rebuilt*, NPR (Nov. 9, 2019), <https://perma.cc/5LWY-6PYU>; see also Laura Newberry, *Paradise Rebuilds, But Fire Safety Sometimes Takes a Back Seat to Economic Realities*, L.A. TIMES (Nov. 8, 2019), <https://perma.cc/AGQ8-4A79>.

11. *Id.*

12. *Id.*

13. QuickFacts, Paradise town, California, U.S. CENSUS BUREAU, (2019) <https://perma.cc/TXS6-RZQY>.

14. Camille Von Kaenel, *Camp Fire Recovery Rebuilding With Bigger Homes in Paradise*, CHICO ENTERPRISE-RECORD (Jan. 16, 2020), <https://perma.cc/SW83-LRBW>.

15. Robin Epley, *Chico Housing Market Looks Completely Different After Camp Fire*, MERCURY NEWS (Dec. 3, 2018), <https://perma.cc/D4NQ-RZZW>.

16. Transportation Analysis Policy, Res. No. 78520 (2018), <https://perma.cc/V49M-GT6S> (Projects that have a significant VMT must include feasible mitigation measures which will avoid or substantially lessen such significant effects.).

towards a new “paradigm” for policymakers in big cities at various levels of governance in the state.¹⁷

Under CEQA, VMT essentially monitors carbon emissions from increased car travel to and from new developments.¹⁸ By July 1, 2020, all municipalities in California will be required to review and satisfy VMT constraints under CEQA.¹⁹ This could mean that developments must conform to a threshold VMT, which is set at a reasonable level, or obtain permits to “exchange” VMT by building low-impact, preapproved projects elsewhere.²⁰ These “mitigation” projects include ferries, pathways, bus stops, and bike routes, but also land trusts or conservancies, which have already been promoted at the state level.²¹ Policymakers have also advocated for creation of mitigation “banks” or “exchanges” to reduce negative impacts while incentivizing affordable development where on-site mitigation is not feasible.²²

“House rich” cities in California, such as San Mateo and Pasadena, oppose efforts by the state to increase density. The cities’ position is that reducing VMT increases congestion and reliance on public transportation is not feasible. Moreover, low-income community groups also oppose reducing VMT. The communities’ positions are that increasing development, including infill, will displace people since job centers are located in expensive city-centers. When low and moderate-income workers are pushed out of cities, they generate greater emissions by commuting from outlying affordable areas. In the end, VMT may not be guileless. The ostensibly beneficial metric does not have enough bite, and might belie the core issues.

California, while confronting the lack of affordable housing supply, will also contend with events like the Camp Fire that are attributable, in part, to climate change.²³ In that respect, the next generation will have to contend with *both* the lack of housing supply and environmental concerns. Raising equitable housing issues, Notre Dame Law Professor James J. Kelly argues for community-based homeownership.²⁴ Community Land

17. Steven Sharp, *Los Angeles Readies to Adopt VMT for CEQA Analysis*, URBANIZE: LOS ANGELES (Feb. 27, 2019), <https://perma.cc/BWW6-JY6J>.

18. Sharp, *supra* note 17 (California Governor’s Office identified “vehicle miles traveled” (VMT) under CEQA as a targeted metric to mitigate transportation impacts).

19. Ethan N. Elkind, Ted Lamm & Eric Prather, *Implementing SB 743: An Analysis of Vehicle Miles Traveled Banking and Exchange Frameworks*, U. CAL. INST. TRANSP. STUD. 1, i (Oct. 2018).

20. *Id.*

21. *Id.* at 4.

22. *Id.* at i.

23. Borunda, *supra* note 9.

24. James J. Kelly, *Land Trusts That Conserve Communities*, 59 DEPAUL L. REV. 69, 70 (2009) (“More than 160 of these democratically controlled community-based nonprofits

Trusts (“CLT”), which gained traction during the civil rights movement in the 1960s, steward “perpetually affordable homes and communal spaces” and community self-governance.²⁵ CLTs also offer access to real estate finance options, which enable purchasers to acquire land and, to some extent, preserve affordability.²⁶

Similar to a land trust, which is an “environmental and agricultural counterpart,” CLTs may employ use restrictions to prioritize communally beneficial development.” CLTs create and sustain permanently affordable homes to break the market’s bias toward socioeconomic homogeneity. CLTs also make room, literally, for green space, sites of shared culture and other productive activities that the market tends to commercialize or marginalize.²⁷

As a legal entity, the CLT is a “quasi-public body,” but may also be aspirational, in that it may be “chartered to hold land in stewardship for all mankind present and future while protecting the legitimate use-rights of its residents.”²⁸ The broad definition of a CLT offers a potential solution, as an ‘in-between’ for environmental and land-use planning concerns.

CLTs also share some similarities to land trusts. As a traditional approach to environmental protection, land trusts also bind property rights permanently.²⁹ Land trusts, or “conservancies,” encumber land with an

have created and sustained resale-restricted homes, community-owned common spaces, or both, in cities, towns, and rural areas within and outside the United States.”); *see also* James J. Kelly, Jr., *Sustaining Neighborhoods of Choice: From Land Bank(ing) to Land Trust(ing)*, 54 WASHBURN L.J. 613 (2015).

25. Kelly, *supra* note 24, 59 DEPAUL L. REV., at 73.

26. *See generally* Gus Newport, *The CLT Model: A Tool for Permanently Affordable Housing and Wealth Generation*, POVERTY & RACE RESEARCH ACTION COUNCIL (Jan. 2005) <https://perma.cc/X7VH-9QQX>; *History*, VILLAGE OF MONTEBELLO, NY, <https://perma.cc/289K-UGR5> (last visited Mar. 12, 2020); *c.f.* Richard M. Frank, *The Public Trust Doctrine: Assessing Its Recent Past & Charting Its Future*, 45 U.C. DAVIS L. REV. 665, 667 (2012) (explaining the public trust doctrine “provides that certain natural resources are held by the government in a special status—in “trust”—for current and future generations.”); *see generally* Siby K. Joseph et al., *Trusteeship: A Path Less Travelled*, INST. OF GANDHIAN STUDIES, WARDHA (2016) (successful initiatives can even be traced to Mahatma Gandhi’s post-independence writings on “trusteeships” in India); *see also* Gramdan Villages in India, <https://perma.cc/PA9H-3K33> (last visited Mar. 12, 2020) (discussing India’s ‘Gramdan Movement’ in the 1950s, where land would be held in trust by a village council and leased to farmers after land was donated to an entire village); *see also* ROBERT S. SWANN ET AL., *THE COMMUNITY LAND TRUST: A GUIDE TO A NEW MODEL FOR LAND TENURE IN AMERICA* 9 (Center for Community Economic Development eds., 1972) (“In the Gramdan that evolved, the village served as trustee of the land on behalf of the whole community, granting individual use-rights to the land.”).

27. Kelly, *supra* note 24, 59 DEPAUL L. REV., at 83.

28. SWANN, *supra* note 26, at 1.

29. *See, e.g.*, *Wooster v. Dep’t of Fish & Game*, 211 Cal. App. 4th 1020, 1026 (2012) (“Conservation easements are negative easements that impose specific restrictions on the

easement to protect the natural environment.³⁰ Moreover, conservancies are administered by governments at the local, state and federal level, including partnerships with non-profits, community organizations, and private landowners.³¹ All conservancies are subject to government regulations that legally require conservation easements yield to local land use planning.³²

In California, state-level conservancies possess a broad legal mandate to implement laws.³³ There are ten unique conservancies operating throughout California.³⁴ The state conservancies represent roughly two million acres (of California's 100 million acres of land total). An enabling legal framework sets out how the organization will govern a specific natural resource, such as the California Tahoe Conservancy ("CTC"). The CTC is a regional conservancy that protects land within the Tahoe Basin by "adopt[ing] and enforc[ing] regulations" under the California Environmental Quality Act ("CEQA").³⁵ California conservancies play an

use of the property" they cover."); CAL. CIV. CODE § 815.1 (1979) ("retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition"); see, e.g., *Argyle Farm & Properties, LLC v. Watershed Agric. Council*, 135 A.D.3d 1262, 1264 (N.Y. App. Div. 2016) ("conservation easements excepted from "many of the defenses that would 'defeat'" a typical common-law easement").

30. *What You Can Do, Questions?*, LAND TRUST ALLIANCE, <https://perma.cc/4AV4-FREK> (last visited May 7, 2019) (Conservancies are "negative easements" because they impose specific restrictions on property use.).

31. *Id.* (landowners retain their right to own, use, sell, and pass on to heirs may create an easement for conservation purposes; an easement is the right to use someone else's land for a specific purpose.).

32. Adena R. Rissman, *Rethinking Property Rights: Comparative Analysis of Conservation Easements for Wildlife Conservation*, 40 ENVTL. CONSERVATION 1, 1 (Sept. 22, 2013); see also *City of Malibu v. Santa Monica Mountains Conservancy*, 98 Cal. App. 4th 1379, 1387 (2002), as modified on denial of reh'g (June 13, 2002) ("the City retains its police power to regulate uses on Conservancy property. But the Conservancy is not restricted from accomplishing its statutory purpose to preserve open space and recreational resources."); see also Gary J. Smith et al., *CA Supreme Court Clarifies When Zoning Ordinance Amendments Trigger CEEQA Review*, THE NAT'L L. REV. (Mar. 12, 2020, 9:16 PM), <https://perma.cc/LJH8-EH5P> (holding CEQA review is no longer triggered when city's amend zoning ordinances).

33. See, e.g., CAL. CODE REGS. tit. 14, § 12100 (2020) ("These regulations are adopted by the California Tahoe Conservancy pursuant to Public Resources Code Section 21082 to implement, interpret, and make specific those provisions of the California Environmental Quality Act").

34. See CA STATE COASTAL CONSERVANCY, <https://perma.cc/B7UJ-7DRQ> (last visited May 1, 2019); see also THE WILDLANDS CONSERVANCY, <https://perma.cc/5RR5-MDF9> (last visited May 7, 2019); see generally California Natural Resources Agency, OUR AGENCIES, *Conservancies*, <https://perma.cc/QQ4W-5WW2> (last visited Apr. 14, 2020).

35. CAL. GOV'T CODE § 66907.9 (2007).

integral role in traditional environmental protection.³⁶ Thus, California's conservancies offer a legal framework to tailor around housing supply and to the needs of specific regional areas.

The California Resources Agency is charged with acquiring land to advance regional and local land-use conservation goals.³⁷ Property owners transfer land title to a government trust; at the federal and state level, tax credits are often offered as an incentive.³⁸ State-run conservancies, like the CTC, are efficient ways of implementing CEQA. For example, CTC's regulates local land use subject to CEQA, but also prevents habitat destruction and biodiversity loss.³⁹ Other conservancies throughout California contain similar purposes: enhancing urban lands in the Baldwin Hills Parklands in Los Angeles,⁴⁰ or improving waterways to "sustain local economies" along the coast (e.g., California State Coastal Conservancy).⁴¹ It is clear that conservation easements can address shortcomings in both environmental goals and development policies because their existence is proof of concept. These successes demonstrate how conservation easements can address shortcomings in both environmental goals and development policies.

This generation of Californians, who will contend with habitat loss and affordable housing, should be worried.⁴² As governing bodies, conservancies are well-suited to address the needs of housing and the environment and offer an established framework.⁴³ Part I describes the

36. *About the CA Tahoe Conservancy*, CA TAHOE CONSERVANCY, <https://perma.cc/FR84-PHXS> (last visited Mar. 12, 2020) (For example, the California Tahoe Conservancy (CTC) operates the Tahoe Livable Communities Program to "reduce greenhouse gas emissions, restore sensitive lands, and revitalize the Basin's town centers through the acquisition of environmentally sensitive lands, the transfer of development rights, and the sale, lease, or exchange of the Conservancy's developable parcels in town centers.").

37. *CA's Land Conservation Efforts: The Role of State Conservancies*, CA LEGISLATIVE ANALYST'S OFFICE (Jan. 5, 2001), <https://perma.cc/V6L6-64R4> ("[C]onservancies were created in response to perceptions that certain vital land resources were endangered by development or other threats.").

38. See CAL. PUB. RES. CODE § 37000 (2000); see also 26 U.S.C.A. § 170 (2019) (defining the term "qualified conservation contribution" as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes).

39. CA TAHOE CONSERVANCY *supra* note 36.

40. BALDWIN HILLS CONSERVANCY (last visited Mar. 12, 2020), <https://perma.cc/AFE9-S2GY>.

41. CA STATE COASTAL CONSERVANCY, *supra* note 34.

42. See generally *Climate Change and State Bonds*, CA LEGIS. ANALYST'S OFF., 3 (2019), <https://perma.cc/UC4H-XFDM> (discussing major impacts of climate change in California predicted to occur by 2100, including sea-level rise, flooding, temperature increases, drought, and wildfires).

43. Elkind, Lamm & Prather, *supra* note 19, at iii.

housing crisis in California and the dire issue of climate change confronting the state. Part II discusses examples of conservancies, such as the California Tahoe Conservancy, and contrasts conservancies with VMT mitigation bank or exchange proposals. Part III discusses how established legal frameworks, including CLTs, exist assiduously and may offer a solution to these challenges. Simply put, conservation easements and community-land trusts have paved the way for more growth and environmental protection.

Part I: Housing and Climate Change

Over the next decade, the next generation will aspire to increase social equity and achieving environmental goals. Both goals, however, are symptoms of the same inevitable malady.⁴⁴ Climate change is visible around the globe like an illness—our planet’s prognosis has worsened.⁴⁵ In California, climate change is implicated in nearly every policy decision.⁴⁶ Elected officials attempted to harmonize policies across sectors, both in response to natural disasters, and in order to address climate change.⁴⁷ The aftermath of the Camp Fire, which was caused by electrical power lines, demonstrates the need to coordinate amongst local and statewide actors (e.g. Investor-Owned Utilities).⁴⁸ Critiquing California’s approaches to addressing environmental concerns and housing reveals just how complicated the situation is to become.

44. Marc Moreno et al., *Prince Charles At It Again: Issues New 18-Month Climate Tipping Point After Previous ‘100 Month’ Deadline Expires*, CLIMATE DEPOT (Mar. 12, 2020), <https://perma.cc/K6HN-H4AR>.

45. Carolyn Kormann, *When Will Australia’s Prime Minister Accept the Reality of the Climate Crisis?*, NEW YORKER (Jan. 15, 2020), <https://perma.cc/8V8K-BX3L>.

46. See generally CA LEGIS. ANALYST’S OFF., CLIMATE CHANGE AND STATE BONDS: PRESENTED TO SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, 1–3, (Mar. 26, 2019), <https://perma.cc/XBE4-MA6T>.

47. Tayrn Luna, *A Year after Paradise Fire, California Lawmakers Hope to Keep History from Repeating*, L.A. TIMES (Nov. 8, 2019), <https://perma.cc/DAU5-JCDQ> (Bill Dodd (D-Napa) introduced two new laws—one which required a model defensible space program for removing flammable vegetation, another that required the PUC to audit vegetation management work. The Governor also pushed the legislature to adopt a multibillion dollar wildfire fund that utilities could pay into.).

48. Tony Bizjak et al., *PG&E Caused Camp Fire That Destroyed Paradise and Killed 85, Cal Fire Says*, SACRAMENTO BEE (May 15, 2019), <https://www.sacbee.com/news/local/article230445554.html>.

Housing Supply

California is currently experiencing a significant housing crisis.⁴⁹ While only 6.2 million homes have been constructed, California's population has increased by nineteen million people since the 1970s.⁵⁰ About one-fourth of the United States' homeless population lives in California.⁵¹ Throughout the state, the median home value is \$555,815; about \$830,000 in San Francisco, and nearing \$600,000 in Los Angeles.⁵² California's short housing supply, coupled with increasing property values, as hindering the dream of acquiring property in California.⁵³

Los Angeles has enabled homeowners to increase supply by building accessory dwelling units ("ADUs") pursuant to SB 1609.⁵⁴ Permits for ADUs have been approved in increasing numbers.⁵⁵ Other initiatives have sought to increase units of affordable housing in close proximity to transit developments.⁵⁶ Under Senate Bill 50, which failed to pass in February 2020, California's local zoning codes would have required "upzoning."⁵⁷ Upzoning lifts certain prohibitions (e.g., allowing multi-family construction) to enable higher density housing.⁵⁸ The bill would have allowed developers to construct taller buildings with a certain number of units rented below the market rate.⁵⁹ Primarily, SB 50 focused on situating

49. Bryan Schatz, *Everyone Agrees California Has a Housing Crisis. Trying to Fix It Has Become a Battle.*, MOTHER JONES (May 3, 2019), <https://perma.cc/XQ62-H33K>.

50. Jonathan Woetzel et al., *A Tool Kit to Close California's Housing Gap: 3.5 Million Homes by 2025*, MCKINSEY&COMPANY, 1, 2 n.2 (Oct. 2016), <https://perma.cc/73L5-KUSS>.

51. *Id.*

52. Woetzel et al., *supra* note 50; CA HOME PRICES & VALUES, <https://perma.cc/GQS5-BBET> (last visited Mar. 12, 2020).

53. Matt Fleming, *How CA's Environmental Rules Deprive Minorities of Housing Opportunities*, ORANGE CTY. REGISTER (Feb. 8, 2020), <https://perma.cc/4VQM-4C6W>.

54. CAL. GOV'T CODE § 65589.5 (2019).

55. Jonathan Zasloff, *Grandma Saves the City!*, LEGAL PLANET (Apr. 22, 2019), <https://perma.cc/Z7CF-X7BD> (Many of these units may not in fact be new, since more than 25,000 were illegal (estimated) prior to the Bill.).

56. Liam Dillon, *Why Did Senate Bill 50 Fail For The Third Time?*, L.A. TIMES (Feb. 3, 2020), <https://perma.cc/P9EW-GCBX>.

57. See The Times Editorial Board, *CA's Housing Crisis Demands Moving SB 50 Forward*, L.A. TIMES (Jan. 11, 2020), <https://perma.cc/8JU3-XM87> (In 2019, SB 50 had been gaining traction but was halted in the California State Senate Appropriations Committee before a vote was held.).

58. Yonah Freemark, *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction*, URBAN AFFAIRS FORUM (Mar. 29, 2019), <https://perma.cc/GS2Y-YFP5> (The upzonings were designed to increase density and reduce parking requirements around rail stations.).

59. Schatz, *supra* note 49.

housing near “major transit” hubs and fast-tracking certain permitting requirements.⁶⁰

It is unclear whether upzoning would have benefitted disadvantaged communities by creating infill development.⁶¹ Critics argue that increasing housing development fuels the market’s response, because the market seeks to obtain a return on investment.⁶² Environmental land use practitioner Jennifer Hernandez, a leading scholar on CEQA litigation, has argued previously that infill development and “transit-oriented land use plans” are too often challenged under CEQA.⁶³ CEQA, while attempting to steward the environment, erected barriers to housing development that was much-needed, while making it difficult to challenge other projects (in part because of litigation expense).⁶⁴

The issue is further complicated as transit-oriented housing projects are “precisely the types of projects and plans that today’s environmental and climate policies seek to promote.”⁶⁵ In recent litigation, transit-oriented projects have drawn the ire of those that were once proponents of them. On behalf of The Two Hundred, a non-profit corporation of the California Community Builders (“CCB”), Hernandez filed a civil rights lawsuit⁶⁶ alleging that California’s implementation of climate policies is racially biased and denies Due Process under the California Constitution.⁶⁷ The Two Hundred argues that California’s policies force low-income communities out of job centers because areas near transit centers are more expensive.⁶⁸

The Two Hundred also acknowledges that the California Air Resources Board (“CARB”), one of the defendants in the lawsuit, has shed some light on transit-oriented projects.⁶⁹ CARB studied transit-oriented housing and found that “transit proximity has a significant impact on the stability of the surrounding neighborhood, leading to increases in housing

60. S.B. 50, Cal. Leg. Reg. Sess. 2019-2020.

61. *Letters to the Editor: Will SB 50 Result in More Affordable Housing in California, or Just More Housing?* L.A. TIMES: OPINION (Jan. 17, 2020), <https://perma.cc/8JU3-XM87>.

62. *Id.* (noting that the “market will respond in the areas where the price of the construction is met by an effective market demand—a return on its investment”).

63. Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California’s Housing Crisis*, 24 HASTINGS ENVTL. L. J. 21, 21 (2018).

64. *Id.* at 24, 29, 30, 51.

65. *Id.*

66. Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief at 1, *The Two Hundred et al. v. California Air Resources Board et al.* (2018).

67. Fleming, *supra* note 53.

68. *Id.*

69. CIVIL RIGHTS HOUSING LITIGATION FREQUENTLY ASKED QUESTIONS, <https://perma.cc/88DR-EUHU> (last visited Mar. 13, 2020).

costs that change the composition of the area, including the loss of low-income households.”⁷⁰ Additionally, CARB reported that “gentrification and displacement in rail station areas would only be likely to cause an increase in auto usage and regional VMT when accompanied by a significant loss of population near transit.”⁷¹ Similar endeavors in Chicago and New York increased real estate costs by fueling speculation.⁷²

The CARB study concluded that upzoning increases displacement of low-income populations, rather than increasing housing supply for low-income populations. Thus, disadvantaged communities, which are assumed to be served by transit-oriented housing, are precluded from living in their own neighborhoods after upzoning.⁷³ The Two Hundred contends that “bureaucrats and techworkers in the ‘keyboard’ economy can work remotely with better wages.”⁷⁴ But otherwise, Californians who provide services, including staffing restaurants and coffeeshops, building infrastructure, and growing food cannot afford to live in these areas.⁷⁵ It is also an open question whether increasing transit-oriented housing properly addresses habitat loss, in addition to forcing folks out of neighborhoods.⁷⁶

Streamlining the process of developing under-utilized lands, at the same time global biodiversity loss is accelerating, is unwise. California has promoted infill development, which is subject to streamlined review under CEQA.⁷⁷ “Infill development,” like upzoning, refers to building upon unused or underutilized lands.⁷⁸ Introducing infill development is a complicated proposal with respect to habitat loss. In general, California’s building sector represents the second largest source of greenhouse gas (“GHG”) emissions in the state.⁷⁹ Assuming infill development occurs in

70. Karen Chapple et al., *Developing a New Methodology for Analyzing Potential Displacement*, U.C. BERKELEY 1, v (Apr. 26, 2017), <https://perma.cc/8B86-RUR6> (hereinafter “CARB”).

71. *Id.*

72. *Id.* (suggesting [SB 50] will “increase the value of that land, fueling greater speculation . . . that gets translated into increased rent and more people getting pushed out”).

73. Schatz, *supra* note 49.

74. Complaint at 64, *The Two Hundred et al. v. California Air Resources Board et al.* (2018).

75. *Id.*

76. Brad Plumer, *Humans Are Speeding Extinction and Altering the Natural World at an ‘Unprecedented’ Pace*, N.Y. TIMES (May 6, 2019), <https://perma.cc/S8U9-VH64>.

77. *Streamlined CEQA Review for Infill Projects (SB226)*, CA NAT. RESOURCES AGENCY (2014), <https://perma.cc/5R4E-G39Z>.

78. *Infill Development*, GOVERNOR’S OFF. OF PLAN. & RES., <https://perm a.cc/ZLH8-LKHL> (last visited May 7, 2019) (“urbanization impacts biodiversity and ecosystem services both directly and indirectly”).

79. *Research on Green Buildings*, CA AIR RESOURCES BOARD, <https://perm a.cc/WCP9-5T5L> (last visited Sept. 21, 2019).

under-utilized urban spaces, habitat loss will occur.⁸⁰ Urban lands contain 10 percent of all terrestrial vertebrates in low-elevation coastal zones, which comprises a significant amount of California.⁸¹

Part II: Conservation and Development

“Conservation easement” was a term coined by journalist William Whyte in the 1950s to describe the type of property interests acquired by the federal government in national parks two decades earlier.⁸² The Federal Highway Beautification Act mandated that three percent of highway funds appropriated to the states were to be used for scenic enhancement.⁸³ Around this time, however, the federal funds lapsed and states began to enact their own conservation easement laws.⁸⁴ In the late 1950s, California was among the first states to enact early conservation easement statutes.⁸⁵ In 1964, the Internal Revenue Service (“IRS”) granted tax benefits in exchange for charitable donations of conservation easements (adjacent to highways).⁸⁶

“Open space” statutes empowered municipalities and counties to acquire the fee, development right, or easement to preserve open space areas.⁸⁷ An owner of a “scenic property” in California could donate or sell land to the city; the interest in the land would limit its future development permanently.⁸⁸ Scholars evaluated easements against the backdrop of “alternative methods,” like eminent domain, zoning, and taxation.⁸⁹ Those alternative methods represented more traditional approaches. The open space statute allowed land acquisition by “purchase, gift, grant bequest, devise, lease or otherwise;” it appeared that this was largely redundant as the State possessed the power to acquire property to conserve as open space through eminent domain.⁹⁰

80. Thomas Elmqvist, Wayne C. Zipperer and Burak Güneralp, *Urbanization, Habitat Loss and Biodiversity Decline*, UNITED STATES FOREST SERVICE, 139, 145, <https://perma.cc/LYS8-S8SF> (last visited Sept. 21, 2019).

81. *Id.* at 140.

82. Frederico Cheever et al., *An Introduction to Conservation Easements in the United States: A Simple Concept and a Complicated Mosaic of Law*, 1 J. OF L., PROP., & SOC’Y 107, 115 (2015).

83. Cheever et al., *supra* note 82, at 115.

84. *Id.*

85. *Id.* at 116.

86. *Id.*

87. *Preservation of Open Spaces Through Scenic Easements and Greenbelt Zoning*, 12 STAN. L. REV. 638, 639–40 (1960).

88. *Id.* at 643.

89. *Id.* at 638–640.

90. *Id.* at 646.

Some conservancies have acquired eminent domain powers. Beginning under the Santini-Burton Act, the U.S. Secretary of Agriculture authorized the purchase of “environmentally sensitive” land in Lake Tahoe Basin in 1980.⁹¹ Voters in California and Nevada, on both sides of Lake Tahoe, approved significant funding measures to acquire land.⁹² The California Resources Agency introduced the California Tahoe Conservancy (“CTC”) to administer the program.⁹³ Scholars concluded that the legislation establishing the CTC was well-structured, carefully tailored to “specific historical and geographical circumstances” that “effectively promote environmental quality” by acquiring “selected lands.”⁹⁴

A. California Tahoe Conservancy

CTC can take “whatever actions are reasonably necessary and incidental to the management of lands and facilities under its ownership or control.”⁹⁵ The CTC has a broad mandate to determine best use or possession of the land.⁹⁶ In practice, this may mean working with individuals, corporate entities, and partnerships.⁹⁷ The CTC’s powers to regulate development are enhanced by state policies, including funding provided by Proposition 68 Climate Grants and Executive Orders on housing.⁹⁸ CTC’s governance structure enables the adoption of its own regulations to determine the land use consistent with the basin-wide management plan.⁹⁹ The CTC may also improve and develop lands for the purpose of protecting the natural environment.¹⁰⁰ Finally, the CTC may merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land, or as needed, in order to facilitate the management of land.¹⁰¹

California grants the CTC expansive powers to acquire land in the Tahoe Basin and “adopt and enforce regulations” pursuant to the objectives

91. Richard J. Fink, *Public Land Acquisition for Environmental Protection: Structuring A Program for the Lake Tahoe Basin*, 18 *ECOLOGY L.Q.* 485, 490 (1991).

92. *Id.* at 491.

93. *Id.*

94. *Id.* at 493.

95. CAL. GOV’T CODE §§ 66907.9(a)–(c) (2019).

96. California Tahoe Conservancy, *Programs*, <https://perma.cc/8TBX-FZCV> (last visited Apr. 11, 2020).

97. CAL. GOV’T CODE § 66907.8 (2019).

98. California Tahoe Conservancy, *March Board Packet*, 27, <https://perma.cc/95X4-QZBY> (last visited Apr. 11, 2020).

99. *Id.*

100. CAL. GOV’T CODE § 66907.10 (2019).

101. *Id.* at § 66907.11.

of its' enabling act.¹⁰² The CTC receives funding through general obligation bonds affirmed by majority vote.¹⁰³ Voters recently approved \$27 million in funding to the CTC.¹⁰⁴ With this funding, the CTC is the principle agency responsible for acquiring real property in Lake Tahoe.¹⁰⁵

With funds appropriated, the CTC may select and acquire real property or interests therein in the name of and on behalf of the state, for the purposes of protecting the natural environment, providing public access or public recreational facilities, preserving wildlife habitat areas, or providing access to or management of acquired lands.¹⁰⁶ The CTC may acquire land purchase land "in fee or lesser interest."¹⁰⁷ In addition, the CTC may acquire land through "land exchanges," or easements, development rights, and leaseback agreements.¹⁰⁸

To facilitate a land exchange, the CTC may "award grants" to local public agencies, state agencies, Tahoe transportation district, recognized Indian Tribes, and nonprofit organizations for acquisition of real property or interests, including "local public agencies, state agencies," as well as nonprofits and Indian tribes.¹⁰⁹ The awards are subject to six conditions: the purchase price of any interest in land may not exceed fair market value; the interest in land may not be used as a security for a debt incurred by the landowner (e.g. nonprofit); the transfer of land must be "sufficient to protect the interest of the people of California;" and the state shall have the right to terminate any interest in land that was acquired by state funds if a term of the conditions is violated.¹¹⁰

CTC may also utilize eminent domain by requesting the California State Public Works Board.¹¹¹ In doing so, the request must satisfy two requirements.¹¹² First, the eminent domain request must be lawful.¹¹³ Second, the CTC must find that "all reasonable efforts to acquire the

102. CAL. GOV'T CODE, Title 7.42, § 66905 et seq. (2019).

103. Maggie Meyer, *California Tahoe Conservancy to Receive \$27 Million in Funding from Prop 68*, TAHOE DAILY TRIBUNE (June 28, 2018), <https://perma.cc/4KTW-G2BD>.

104. *Id.*

105. CAL. GOV'T CODE § 66907 (2019).

106. *Id.*

107. *Id.* at § 66907.6.

108. CAL. GOV'T CODE § 66907.1(a) (2019) ("The conservancy may acquire interests in land by means of land exchanges and is authorized to enter into all alternatives . . . including . . . easements, development rights, life estates, leases, and leaseback agreements").

109. CAL. GOV'T CODE § 66907.7(a) (2019).

110. *Id.* at §§ 66907.7(b)(1)–(5).

111. *Id.* at § 66907.5.

112. *Id.* at § 66907.5 (e.g., Section 66906.4 majority voting requirements are met).

113. *Id.*

property have failed” and that eminent domain “is necessary to remove an impediment to an otherwise voluntary acquisition or is needed to achieve the purposes of other related acquisitions.”¹¹⁴ Provided these requirements are satisfied, the CTC may petition to acquire land in the jurisdiction through eminent domain.¹¹⁵

Within the CTC’s Tahoe jurisdiction, a property with “special significance” may be subject to eminent domain.¹¹⁶ Several factors may establish special significance, including public access, recreation, wetlands, natural habitat, open space, or water protection.¹¹⁷ With the property owner’s consent, special significance can also be established if it “might appropriately be the subject of trades for lands owned by the state for the purposes of preserving natural resources.”¹¹⁸ Arguably, the CTC’s broadest property powers apply to properties of “special significance.”¹¹⁹ Given its successes, the enabling act of the CTC may offer a framework to consider mapping onto both environmental and housing supply needs.

Part III: Easements, Exchanges, and Equity

As discussed above, conservation easements restrict the use of property to protect wildlife.¹²⁰ In Lake Tahoe, the CTC is a “prime example” of a conservancy in California organized around a specific natural resource.¹²¹ The CTC’s legal framework, while providing standards to develop and improve land uses, also establishes an objective decision-making process to acquire land consistent with CEQA. As an agency, the conservancy may make necessary improvements by acquiring land of “special significance” to further goals.

A. Vehicle Miles Traveled

In 2020, California will undergo a “paradigm shift.”¹²² This ‘shift’ began in 2013 with the passage of SB 743.¹²³ By July 1, 2020, all California

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at § 66907.12.

118. *Id.*

119. CAL. GOV’T CODE § 66907.12.

120. Rissman, *supra* note 32, at 2.

121. Fink, *supra* note 91, at 493.

122. *New Year’s Resolution for Public Agencies: Prepare to use Vehicle Miles Traveled as the Metric for Transportation Impacts under CEQA*, BEST BEST & KRIEGER: INSIGHTS (Jan. 23, 2020), <https://perma.cc/CE8Y-NJK8>.

123. *Id.*

municipalities will have to use VMT as a key planning tool.¹²⁴ In contrast, Section 15064.3 in the State CEQA Guidelines provides that a “project’s effect on automobile delay shall not constitute a significant environmental impact.”¹²⁵ Overall, VMT promotes the state’s environmental goals within the transportation sector.¹²⁶ Under CEQA, VMT is premised on information gathering.¹²⁷ By analyzing VMT, local policymakers will aim to reduce vehicle emissions by adopting the metric as a key planning tool.¹²⁸

VMT “banking” was introduced when CEQA was amended in order to prioritize transportation impact analysis and reduce emissions.¹²⁹ The VMT bank issues credits, which are then applied to specific VMT-mitigating projects.¹³⁰ Alternatively, the developer may propose off-site mitigation projects when on-site mitigation is not feasible.¹³¹ These initiatives leverage private funding for transit-oriented projects that benefit the public.¹³² State and local policy makers have considered implementing regional VMT banks or exchanges to assist in mitigation of VMT.¹³³ A mitigation exchange or bank would enable developers to “meet the scale” of their projects by offsetting negative impacts otherwise regulated under CEQA.¹³⁴

On one hand, real estate developers are subject to CEQA’s requirements governing the implementation of transit-oriented projects.¹³⁵ Transit-oriented projects, such as a bus line, bike path, or pedestrian walkway, may not be physically feasible to put on each new development.¹³⁶ Developers, while mitigating VMT through off-site development, can still comply successfully with CEQA. However, residents of cities like Pasadena take the position that less stringent requirements for developers are not realistic. Pasadena residents argue that VMT enables developers to exempt themselves from CEQA; instead, their focus is singularly on reducing car travel which has significant unintended

124. *SB 743 Implementation*, CALTRANS, <https://perma.cc/D4D6-EPPE> (last visited Mar. 14, 2020).

125. 14 CAL. CODE REGS. § 15064.3 (2018).

126. *Id.*

127. Transportation Analysis Policy, *supra* note 16.

128. Joe Linton, *Pasadena Re-Examining Key Environmental Metric – Vehicle Miles Traveled*, STREETS BLOG LA (Jan. 13, 2020), <https://perma.cc/P6HL-N69X>.

129. Elkind, Lamm & Prather, *supra* note 19, at 1.

130. *Id.*

131. Elkind, Lamm & Prather, *supra* note 19, at 1.

132. *Id.*

133. *Id.* at i. (A study co-authored by Ethan Elkind of the Center for Law, Energy, and Environment at Berkeley Law, analyzed the strategic implementation of SB 743.).

134. *Id.*

135. *Id.*

136. *Id.* at 3.

consequences.¹³⁷ One consequence is an increase of infill development, premised on “theoretical success” of people driving less, walking, biking, and riding buses, which may be unrealistic.¹³⁸ The VMT metric “will only lead to residents fearing for their safety and suffering a reduced quality of life.”¹³⁹ Thus, more infill development will impact residents’ quality of life negatively.¹⁴⁰

California attempting to regulate housing policy under the Housing Accountability Act, adopted the law amidst housing shortages.¹⁴¹ In *San Francisco Bay Area Renters Federation v. City of San Mateo* before the California Court of Appeal, the issue is whether charter cities, like San Mateo, can “reject proposals for housing developments” that would otherwise survive zoning requirements (e.g., infill development).¹⁴² Charter cities appear unwilling to accept large regional approaches outside of their borders or jurisdictions (e.g., regional VMT banking), which may result in greater housing density.¹⁴³ The California Attorney General intervened and argues that the Housing Accountability Act “protects the States’ ability to address housing availability and affordability.”¹⁴⁴ The Housing Accountability Act is “an important instrument in ensuring California’s housing protections are consistently applied throughout the state.”¹⁴⁵

California’s position is complicated by the federal government’s funding assistance. Attorney General Becerra has argued that the Department of Housing and Urban Development has sought to eliminate housing assistance funds to families living with people who are ineligible for assistance, including “Temporary Protected Status, work visas, student visas, nonimmigrant visas for victims of crimes, and those who are undocumented.”¹⁴⁶

137. Erika Foy, *Is Pasadena Destined to Become the Next Westside?*, PASADENA NEWS NOW (Jan. 12, 2020), <https://perma.cc/4DRP-DJNF>.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* (Charter city is a city is defined by the city’s own *charter* document rather than by general law.).

142. *Id.*

143. Foy, *supra* note 137.

144. *Attorney General Becerra Files to Intervene in Lawsuit to Protect California’s Affordable Housing Laws*, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE (Jan. 14, 2020), <https://perma.cc/Q8HX-WESN>.

145. *Id.*

146. *Attorney General Becerra Urges Withdrawal of Harmful Housing Assistance Proposal Risking Eviction for Tens of Thousands of Californians*, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE (July 9, 2019), <https://perma.cc/5CXD-AL97>.

San Francisco Bay Area Renters Federation v. City of San Mateo also redoubles efforts by Governor Gavin Newsom to address the shortcomings of federal funding for housing. Governor Newsom's 2020-21 Budget to seeks harmonize local housing laws with broader state policy.¹⁴⁷ The Budget proposes "more than \$1 billion to radically shift the state's involvement to house the many unsheltered individuals living in California."¹⁴⁸ Given the need for greater housing, and the lack of resources, the state's position in *San Francisco Bay Area Renters Federation* may suggest that in order to enable consistency of housing laws across the state, charter cities, which comprise about 58 percent of the population, should be subservient to the Housing Accountability Act.¹⁴⁹

Cities like San Mateo may present challenges to broader state policies trending towards implementation across California.¹⁵⁰ San Mateo's position, like some of Pasadena's residents, appears to override state policies that would create more infill development. One reason may be wealth preservation: the median income in San Mateo is \$113,776 (more than double the median income of Paradise, California).¹⁵¹ San Mateo can afford higher development costs, therefore it makes sense to reject state-wide policies that increase housing. But even low-income communities argue that policies, like VMT, will "disproportionately raise commute costs" of those who commute from outlying areas.¹⁵²

B. Land Trusts

In response to attacks on innovative policies by all sides, the state should return to the conservancy model. The issue is whether land conservancies, which grant and restrict certain property uses, can be utilized to promote housing equity and environmental protection. A conservancy can prevent development in a specific area for an environmental purpose and increase *sensitive* development; a conservancy

147. *Governor Newsom Proposes 202021 State Budget*, OFFICE OF GOVERNOR (Jan. 10, 2020), <https://perma.cc/SM2N-Q38T>.

148. *Id.*

149. *Attorney General Becerra Files to Intervene in Lawsuit to Protect California's Affordable Housing Laws*, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE (Jan. 14, 2020), <https://perma.cc/Q8HX-WESN>.

150. U.S. BUREAU OF RECLAMATION, WATER MARKETING REPORT, 15 (Dec. 2016), <https://perma.cc/9RMV-H6W4> ("Short-term water transfers in the Central Valley of California re some of the most developed in the western U.S.").

151. *San Mateo County, California Quick Facts*, UNITED STATES CENSUS BUREAU (July 1, 2019), <https://perma.cc/Q3B4-48SG>.

152. *Civil Rights Housing Litigation Frequently Asked Questions*, THE TWO HUNDRED, <https://perma.cc/3YQC-9TMY> (last visited Mar. 24, 2020).

like CTC.¹⁵³ However, a conservancy may not necessarily increase socioeconomic equity. In that respect, scholars point out that neighborhoods warranting a housing stewardship are “just too different” from those nearby land trusts.¹⁵⁴

As discussed before, a conservation easement is a negative easement, which limits use one’s land for a specific purpose.¹⁵⁵ However, a conservation easement may not make much sense in the context of real estate development. But if land trusts are thought of more broadly to promote socioeconomic equity, an array of “intermediate possibilities present themselves.”¹⁵⁶ In the abstract, land conservation is a form of VMT mitigation. More land is conserved, and emissions decrease; the remaining available spaces for development become clustered.

Whereas conservancies like the CTC regulate local land-use for a specific environmental purpose,¹⁵⁷ VMT offers options for what developers can choose with respect to *incentivizing* certain types of development.¹⁵⁸ VMT mitigation merely promotes transit-conscious developments, efforts could complement conservation trusts.¹⁵⁹ VMT banking feeds funds into specific mitigation projects that can include conservation. This does not mean that VMT mitigation should be disregarded. Rather, VMT may operate similarly or alongside to a conservancy, which creates new community organizations by acquiring land or exchanging land.¹⁶⁰ The issue with VMT mitigation is the clustering of populations in fewer geographic areas—which would have an incidental benefit of reducing VMT—but force low-income communities to leave the state. As a result, many disadvantaged Californians will be put at an even greater disadvantage, which is an unacceptable tradeoff between environment and transit benefits. Therefore, conservation easements may protect areas of key environmental concern and continue creating incentives to develop housing while protecting biodiversity.

153. Kelly, Jr., *supra* note 24 at 614.

154. *Id.*

155. LAND TRUST ALLIANCE, *supra* note 30.

156. Kelly, Jr., *supra* note 24, at 614.

157. CAL. GOV’T CODE § 66907.10.

158. Examples, in cities like Los Angeles, include: transit subsidies, traffic calming improvements, neighborhood shuttles, or employer sponsored rideshare programs. See City of Los Angeles Dep’t of City Planning, *Recommendation Report*, 15–16 (Feb. 28, 2018), <https://planning.lacity.org/StaffRpt/InitialRpts/CPC-2018-6577.pdf>.

159. Elkind, Lamm & Prather, *supra* note 19, at 4.

160. *Id.* at iii (describing challenges to coordinating across jurisdictions, reduced oversight limited capacity for regional application).

C. Community Equity Fund and Community Land Trust (CLT)

An early iteration of the CLT concept was brought to the United States by Ralph Borsodi, a teacher in India, around 1966.¹⁶¹ Borsodi founded the Independence Foundation, Inc. which indentured land to homeowners through a corporation representing them.¹⁶² Along with Robert Swann, Modern CLTs have spread across the United States, including in California and Massachusetts.¹⁶³ CLTs obtain land for a permanent public purpose to preserve lasting affordability.¹⁶⁴ Typically, CLTs will incorporate a governance structure overseen by a Board, which diffuses power across collective ownership to benefit people within the broader community.¹⁶⁵ In the United States, Mironova traces CLTs to the “Albany Movement,” where a CLT was established with an express purpose of desegregating Albany, Georgia during the 1960s.¹⁶⁶ New Communities Inc. (“NCI”) in Albany is considered the first CLT in the United States, inspired by agricultural cooperatives stemming from Israel’s kibbutz movement.¹⁶⁷

Building on the 1960s movement, newer iterations of CLTs have drawn from the older models in increasing community homeownership. Oksana Mironova, an architectural historian, wrote recently about reviving mid-century concepts in urban planning inspired by the civil rights movement.¹⁶⁸ CLTs were originally created in response to poverty and land

161. *Gramdan Villages in India*, CENTER FOR COMMUNITY LAND TRUST INNOVATION, <https://perma.cc/JL8N-JKJV> (last visited Mar. 24, 2020) (explaining height of the Gramdan movement and local experiments witnessed by Ralph Borsodi, who returned in 1966).

162. *History*, *supra* note 26.

163. THE DUDLEY STREET NEIGHBORHOOD INITIATIVE, <https://perma.cc/W99N-TF5N> (last visited Mar. 24, 2020).

164. Newport, *supra* note 26; *see also Policy Advocacy*, GROUNDED SOLUTIONS NETWORK, <https://perma.cc/BX7P-2JL2> (last visited Mar. 24, 2020) (“Housing markets don’t naturally preserve affordable housing in gentrifying neighborhoods, and they don’t readily support new development of housing for lower-income families in high-opportunity neighborhoods.”).

165. Oksana Mironova, *How Community Land Trusts Can Help Address the Affordable Housing Crisis*, JACOBIN MAG (July 6, 2019), <https://perma.cc/T8BN-PZHQ>.

166. *Seeding the First CLTs: New Communities Inc.*, ROOTS & BRANCHES, <https://perma.cc/4WVR-RPU7> (last visited Mar. 24, 2020).

167. *Id.* (“Often called the ‘first CLT,’ New Communities Inc. (NCI) was an outgrowth of the Southern Civil Rights movement . . .); *see also* INT’L INDEPENDENCE INST., *supra* note 25, at 9 (“The Jewish National Fund is perhaps the best example of an existing community land trust. It is a public but nongovernmental institution comprised of trustees who hold title to land in Israel. Land is leased to those who can use it in keeping with the long-range public interest. Much of the land is agricultural and is leased to collective ownership communities (*kibbutz* or *mishav shitufi*) or cooperative smallholders’ settlements (*moshav ovdim*), although urban land has recently been acquired . . .”).

168. Mironova, *supra* note 165.

tenure.¹⁶⁹ Mironova contends that CLTs are an innovation borne in the mid-century that may help address the “massive housing crisis” in the United States today.¹⁷⁰

Today, however, CLTs have responded to lack of affordability; for example, since 2003, Boston has experienced a forty percent increase in land prices.¹⁷¹ In response, the Dudley Street Neighborhood Initiative (“DSNI”) in Roxbury, Massachusetts “was born out of the desire of residents to reclaim and take control of their neighborhood.”¹⁷²

In California, the Bay Area Consortium of Community Land Trusts is a network of seven CLTs in the Bay Area.¹⁷³ Virtually all of the CLTs ensure stability for low-to-moderate income residents both in rural and urban areas.¹⁷⁴ Northern California Land Trust (“NCLT”) was established in 1973.¹⁷⁵ NCLT aims to “stabilize small multi-family buildings and tenants at-risk of displacement” in the Bay Area.¹⁷⁶ CLT homeowners own their homes through a ninety-nine year lease of the land underneath from the CLT.¹⁷⁷ The land held by the CLT ensures “perpetual affordability of homes and facilities for low-income residents” through below-market rate restrictions.¹⁷⁸ The CLT owns forty-seven homes and operates a full service real estate brokerage for “community-minded buyers and sellers.”¹⁷⁹ In order to qualify for homeownership, applicants must meet the “Allowable Maximum Household Income” limits, have “relatively good credit history,” and aid individuals with special needs.¹⁸⁰

Similar to CLTs and community-based home ownership, architecture and urban planning professionals have sought to define the relationship

169. Newport, *supra* note 26.

170. Mironova, *supra* note 165.

171. Sharon Cho, Koko Li, & Tessa Salzman, *Building a Livable Boston: The Case for Community Land Trusts*, TUFTS UNIVERSITY (Apr. 2016), <https://perma.cc/F49Y-SFYS>.

172. *Program Focus Areas*, DUDLEY STREET NEIGHBORHOOD INITIATIVE, <https://perma.cc/LJS2-9G5T> (last visited Mar. 24, 2020).

173. BAY AREA CONSORTIUM OF COMMUNITY LAND TRUSTS, <https://perma.cc/VB3D-5978> (last visited Mar. 24, 2020).

174. *Partners*, BAY AREA CONSORTIUM OF COMMUNITY LAND TRUSTS, <https://perma.cc/4V68-A6T8> (last visited Mar. 24, 2020).

175. NORTHERN CALIFORNIA LAND TRUST, <https://perma.cc/M86U-23NX> (last visited Mar. 24, 2020).

176. *Facing Displacement*, NORTHERN CALIFORNIA LAND TRUST, <https://perma.cc/K9ZE-8YWS> (last visited Mar. 24, 2020).

177. NORTHERN CALIFORNIA LAND TRUST, *supra* note 175.

178. *Id.*; *Community Brokerage*, NORTHERN CALIFORNIA LAND TRUST, <https://perma.cc/XF3B-8X3R> (last visited Mar. 24, 2020).

179. *Id.*

180. *Eligibility and Selection Process for Housing*, NORTHERN CALIFORNIA LAND TRUST, <https://perma.cc/E7L2-7BP3> (last visited Mar. 24, 2020).

between low-income communities, developers, and the environment.¹⁸¹ A recent example is the “Community Equity Fund” project from the Harvard University Graduate School of Design, a product of a design workshop. The Community Equity Fund articulates that “long term economic resiliency is vital to curb the effects of gentrification and that building equity is akin to creating agency to decide on the future of a community.”¹⁸² The Harvard architecture students’ focus was to build resiliency in Overtown, a community home to traditionally underrepresented minorities near downtown Miami.¹⁸³

The Community Equity Fund establishes a collectively-managed equity fund that aims to capture real estate development profits. The Fund’s purpose is to mitigate gentrification and provide access to capital for residents impacted by the expensive market.¹⁸⁴ Designers proposed that local planning bodies enable developers to increase square-footage to incentivize development; in exchange, they would “share” profits pooled within the Community Equity Fund.¹⁸⁵ Profits would be distributed to residents living on properties impacted by new development projects.¹⁸⁶ In California, several similar programs exist, such as the Regional Conservation Investment Strategies under CEQA, that loosely resemble the Community Equity Fund.¹⁸⁷

Conclusion

On July 1, 2020, all municipalities in California will be required to evaluate VMT under CEQA when permitting new development projects. Over the past decade, California’s home prices have increased exponentially. The need for new development is clear, as California’s population increased by 19 million people, while only 6.2 million homes were built. Advocates for high-density zoning argue that transit-oriented development will address both environmental and affordable housing needs. But opponents on both sides of the political aisle argue that infill development does not necessarily confer the greatest benefit. Moreover,

181. Laura Lopez, Daniel Padilla & Eduardo Pelaez, *Community Equity Fund*, HARVARD GRADUATE SCHOOL OF DESIGN, <https://perma.cc/UXR9-CYEC> (last visited May 3, 2019).

182. *Id.*

183. Lily Song, *Multiple Miamis Project-Based Course: Infrastructure, Affordability, Identity + the Public*, HARVARD GRADUATE SCHOOL OF DESIGN, <https://perma.cc/E5XD-9VMK> (last visited May 3, 2019).

184. *Id.*

185. *Id.*

186. Song, *supra* note 183.

187. *Regional Conservation Investment Strategies Program*, CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, <https://perma.cc/RA35-7GB5> (last visited Mar. 24, 2020) (Assembly Bill 2087).

VMT may be abused by developers with guile. Therefore, if affordable housing development is to be encouraged, CLTs should be mapped onto existing conservancies, such as the CTC, which has a proven track record of success. In thinking through the possibilities, there is potential to instill greater socioeconomic equity and environmentally conscious decision-making at the community level through these initiatives.