

# **BUILDING EQUITY & HEALING HISTORICAL WOUNDS: HOW A COMMUNITY LAND TRUST CAN SAFEGUARD PERMANENT AFFORDABLE HOUSING & COMBAT LONG-STANDING DISPLACEMENT & SEGREGATION**

**Lauren Spiezia<sup>†</sup>**

ABSTRACT .....	274
INTRODUCTION .....	275
I. HISTORY OF SEGREGATION AND DISPLACEMENT .....	277
A. <i>Background on Redlining and Its Practice in Syracuse</i> .....	277
B. <i>Impacts of I-81 Construction on Syracuse's 15th Ward</i> ....	279
1. <i>History and Demolition of the 15th Ward</i> .....	279
2. <i>The Community Grid Plan to Replace the I-81 Elevated Viaduct</i> .....	280
II. BRIEF OVERVIEW OF THE REZONE SYRACUSE ORDINANCE.....	281
A. <i>Asserted Goals of ReZone Syracuse</i> .....	281
B. <i>Effects of ReZone Syracuse</i> .....	282
C. <i>ReZone Syracuse's Insufficiency to Preserve Permanent Affordable Housing</i> .....	283
III. BACKGROUND ON COMMUNITY LAND TRUSTS .....	284
A. <i>What is a Community Land Trust?</i> .....	284
B. <i>Regulation and Legislative Protection of Community Land Trusts</i> .....	285
C. <i>Affordable Housing Alternatives to Community Land Trust</i> .....	286
1. <i>Deed-Restricted Homeownership</i> .....	286
2. <i>Limited Equity Cooperatives</i> .....	287

---

<sup>†</sup> J.D. Candidate, Syracuse University College of Law, 2025. It is a great honor to use my writing as a platform to advocate for a promising affordable housing solution in a community that holds a special place in my heart. Thank you to my loved ones, my faculty advisor Professor Daniel Traficonte, and the *Syracuse Law Review* editorial staff for their ongoing support as well as Pam Clay-Young, Michael Brown, and Mark Asturias for sharing their knowledge and expertise.

IV. ANALYZING SUCCESSFUL CLTs AS PROSPECTIVE MODELS .....	288
A. <i>Irvine Community Land Trust (ICLT)</i> .....	288
1. <i>History &amp; Formation of the ICLT</i> .....	288
2. <i>Structure and Governance of the ICLT</i> .....	289
3. <i>The ICLT's Ground Leasing System and Implications in Syracuse</i> .....	289
4. <i>The ICLT's Resale Procedures and Implications in Syracuse</i> .....	291
B. <i>Lexington Community Land Trust (LCLT)</i> .....	293
1. <i>History and Formation of the LCLT</i> .....	293
2. <i>Structure and Governance of the LCLT</i> .....	295
3. <i>The LCLT's Work with Transportation Officials and Implications in Syracuse</i> .....	295
CONCLUSION .....	297
I. STRONG LOCAL INTEREST AND SUPPORT OF CLT MODEL .....	297
II. FUTURE OF COMMUNITY LAND TRUSTS IN NEW YORK AND AROUND THE COUNTRY .....	298

#### ABSTRACT

Many current affordable housing crises in communities around the United States are inherently tied to historical systems of racial and socioeconomic inequality and discrimination. Due to this, activists, government leaders, and residents alike continue to search for progressive solutions that delicately balance individual and collective interests. This Note argues for the establishment of a community land trust (CLT) on land that will soon be made available for development in one of these cities, Syracuse, New York, to create and preserve permanent affordable housing for marginalized residents, thereby proposing a plan that could be referenced in the future for other localities looking to do the same.

CLTs are nonprofit housing organizations that receive land through purchase or donation and lease housing structures on top of it to income-qualified buyers for long terms. The CLT retains ownership of the actual land underneath the structures in perpetuity, helping these buyers build equity while ensuring the housing's affordability for subsequent residents. This approach is practical under applicable law

following the groundbreaking deconstruction of the Interstate 81 highway's elevated viaduct running through the heart of Syracuse, which will make this land available, as well as the City's first major rezoning in decades. Importantly, a CLT is well-suited to creating a feasible plan for permanent affordable housing that will soon be desperately needed in Syracuse following conclusion of this roadway project and enforcement of this new zoning ordinance.

This is exemplified by the permeation of segregation and displacement in Syracuse, stemming from the City's implementation of nationwide redlining practices and I-81's displacement of a historically marginalized neighborhood. Additionally, while the ReZone Syracuse ordinance is built on principles to benefit the greater good, it alone does not safeguard affordable housing to the extent of preserving land and fostering homeownership for future generations. Likewise, while upholding charitable goals, other shared-equity models similar to CLTs are also inadequately equipped to achieve these relevant objectives.

One can determine possible practices for establishing a CLT on this land in Syracuse through analyzing the formation and features of the Irvine Community Land Trust in Irvine, California and the Lexington Community Land Trust in Lexington, Kentucky. Equivalents of these methods protected by applicable New York and federal law as well as other metrics demonstrating their likelihood of success shape this argument.

While it may be close to half a decade before this land in Syracuse would be available to establish a CLT, strong support for this idea from the local public, a substantial grant recently awarded to the City for neighborhood development post-viaduct transformation, and pending New York State legislation that would explicitly define CLTs and provide acquisitional funding make the project a considerable possibility. However, it is important to note that deficiencies in permanent affordable housing are not uniquely confined to Syracuse or New York State. Instead, nationwide trends in housing price surges and shortages in available dwellings, combined with all-too-familiar trends of structural racism, classism, displacement, and segregation, create a desperate need for affordable housing solutions in many communities around the country.

#### INTRODUCTION

“What ends up happening so often is, whenever there's redevelopment, regardless of the intentions, the benefits often don't go to the

folks who have been marginalized by those activities . . . this story has repeated itself in so many places.”<sup>1</sup>

Within essentially all facets of life, American history is embedded with projects, initiatives, and legislation promising reform and progress for the collective, but instead inflicting disastrous consequences on disadvantaged groups that are felt for generations. Syracuse, a city nestled in Central New York, is a stark example of this. Anyone traveling through the City could easily observe the massive socioeconomic inequality still prevalent in housing and access to community resources between different neighborhoods and residents, embodied by the I-81 elevated viaduct acting as a long-standing physical line of segregation and displacement.

As the City of Syracuse undergoes drastic change with the recent overhauling of its zoning ordinance for the first time in over fifty years and the deconstruction of the I-81 elevated viaduct, these ongoing issues have come to a head. This Note will argue that the substantial portion of developable land that will soon be freed up because of these changes should be established as a community land trust (CLT). Undertaking this project would enable the City to proactively address issues in affordable housing access that are likely to materialize in the near future, triggered by the transformation of existing public housing near the viaduct to mixed-income dwellings and housing costs potentially surging from the rezoning.

Part I will provide a general background of segregation and displacement in Syracuse by detailing the history of redlining nationally and in the City. This Part will also discuss the original construction of the I-81 roadway’s elevated viaduct and the ongoing plans to convert it into a community grid. Part II will describe the ReZone Syracuse ordinance’s goals and inability to definitively protect affordable housing. Part III will provide definitions and general information about CLTs and briefly address comparable alternative models. Part IV will explore the formation and defining features of the Irvine Community Land Trust in Irvine, California and the Lexington Community Land Trust in Lexington, Kentucky to argue that similar methods would be both possible on this land in Syracuse under applicable New York and federal law as well as likely to succeed in preserving permanent affordable housing. Lastly, Part V will outline the local public’s support

---

1. Audiotape: Zoom Interview with Michael Brown, former CLT consultant on the Lexington Community Land Trust and current partner at Burlington Associates, a national community development consulting cooperative (Jan. 18, 2024) (on file with author) [hereinafter Brown].

of a CLT, comment on the benefits of legally recognizing CLTs in New York State, and culminate into a national call to action for permanent affordable housing projects.

## I. HISTORY OF SEGREGATION AND DISPLACEMENT

### A. *Background on Redlining and its Practice in Syracuse*

The practice of redlining was created in the 1930s by the Home Owners' Loan Corporation (HOLC), a federal agency, to slow nationwide rises in mortgage foreclosures following the Great Depression.<sup>2</sup> To employ the redlining method, HOLC created "residential security maps" of 239 cities around the United States between 1935 and 1940 that assessed and visualized the sufficiency of different neighborhoods to refinance.<sup>3</sup> These maps used a ranking system: the higher a geographic area's rank, the better access its residents had to successful mortgage granting.<sup>4</sup>

One rationale for redlining was its promise to protect financial institutions from accepting mortgage applications from individuals deemed to have limited monetary means, based on the assumption that they would be less likely to repay their mortgage and thus preserve the value of their homes.<sup>5</sup> However, empirical social science scholarship exploring mortgage lending patterns around the country has observed that race and neighborhoods' racial composition historically influenced mortgage lending behaviors, namely which neighborhoods were "redlined" as the highest risk for mortgage lending.<sup>6</sup> For example, a 1996 study found that in Boston, an applicant's identity as a racial minority correlated to lenders' higher reluctance to grant mortgages; similar patterns were observed in other cities such as Baltimore,

---

2. See CNY Fair Housing, *Redlining in Syracuse: How It Led to Segregation, Blockbusting and White Flight*, CENT. CURRENT (Aug. 31, 2023), <https://centralcurrent.org/redlining-in-syracuse-how-it-led-to-segregation-blockbusting-and-white-flight/>.

3. *Id.*; Robert K. Nelson et al., *Mapping Inequality: Redlining in New Deal America*, DIGIT. SCHOLARSHIP LAB, <https://dsl.richmond.edu/panorama/redlining/#loc=8/45.88/-82.669> (last visited Oct. 3, 2024); CNY FAIR HOUS., ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING, SYRACUSE AND ONONDAGA COUNTY, NY 2020, at 49 (2020).

4. See CNY FAIR HOUS., *supra* note 3, at 49–50.

5. See Manuel B. Aalbers, *What Types of Neighborhoods Are Redlined?*, 22 J. HOUS. BUILT ENV'T 177, 178 (2007).

6. *Id.*; see Amy E. Hillier, *Spatial Analysis of Historical Redlining: A Methodological Exploration*, 14 J. HOUS. RSCH. 137, 143–44 (2003); see Geoffrey M. B. Tootell, *Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?*, Q.J. ECON. 1049, 1049 (1996).

Chicago, Cleveland, and New York City.<sup>7</sup> Residential security maps also explicitly mentioned residents' race and ethnicity in neighborhood descriptions, often speaking derogatorily about minorities.<sup>8</sup> In general, almost no neighborhoods that residential security maps stated include Black, East Asian, or Filipino residents were given the two highest rankings of "A" or "B."<sup>9</sup>

In line with this national trend, Syracuse's residential security map, created in 1937, ranked areas observed to house higher concentrations of people of color, immigrants, and other minority groups lower and "redlined" them as the highest risk for mortgage lending, regardless of the neighborhood's condition.<sup>10</sup> Meanwhile, older, wealthier neighborhoods and areas with new construction were usually given higher rankings.<sup>11</sup> Today, economic and demographic distributions in Syracuse neighborhoods continue to closely mirror this map.<sup>12</sup> For instance, one study found that Syracuse had the nation's highest concentration of poverty among African Americans and Hispanics across the country's 100 largest metropolitan areas.<sup>13</sup> The City is also still repeatedly considered extremely segregated in areas such as neighborhood composition and education.<sup>14</sup>

---

7. See Tootell, *supra* note 6, at 1078; see also Peter Dreier, *Redlining Cities: How Banks Color Community Development*, 34 CHALLENGE 15, 16, 18–19.

8. See generally Nelson et al., *supra* note 3.

9. Carolyn B. Swope et al., *The Relationship of Historical Redlining with Present-Day Neighborhood Environmental and Health Outcomes: A Scoping Review and Conceptual Model*, 99 J. URB. HEALTH 959, 960 (2022).

10. Sergei N. Grimm, C.E., *MAP OF THE CITY OF SYRACUSE NEW YORK*, Scale ca. 1:1,000, "Mapping Inequality: Redlining in New Deal America," accessed Oct. 7, 2024, [https://dsl.richmond.edu/panorama/redlining/map/NY/Syracuse/area\\_descriptions#mapview=full&loc=12/43.0376/-76.1569](https://dsl.richmond.edu/panorama/redlining/map/NY/Syracuse/area_descriptions#mapview=full&loc=12/43.0376/-76.1569); see LANESSA OWENS-CHAPLIN ET AL., N.Y. C.L. UNION, BUILDING A BETTER FUTURE: THE STRUCTURAL RACISM BUILT INTO I-81, AND HOW TO TEAR IT DOWN, 10 (2020), [https://www.nyclu.org/uploads/2020/12/202012\\_nyclu\\_i-81-report.pdf](https://www.nyclu.org/uploads/2020/12/202012_nyclu_i-81-report.pdf).

11. See CNY FAIR HOUS., *supra* note 3, at 50.

12. See *id.* at 51.

13. See Mark Weiner, *Syracuse Has Nation's Highest Poverty Concentrated Among Blacks, Hispanics*, SYRACUSE.COM, THE POST-STANDARD (Sep. 15, 2023, 5:00 AM), [https://www.syracuse.com/news/2015/09/syracuse\\_has\\_nations\\_highest\\_poverty\\_concentrated\\_among\\_blacks\\_hispanics.html](https://www.syracuse.com/news/2015/09/syracuse_has_nations_highest_poverty_concentrated_among_blacks_hispanics.html).

14. See Halley Potter, *School Segregation in Cities Across America Mapped*, THE CENTURY FOUND. (May 17, 2022), <https://tcf.org/content/data/school-segregation-in-cities-across-america-mapped/> (demonstrating high segregation in schools); see CNY FAIR HOUS., *supra* note 3, at 1–2; see CNY FAIR HOUS., ZONING AND SEGREGATION IN SYRACUSE, NY 1–2 [hereinafter ZONING].

*B. Impacts of I-81 Construction on Syracuse's 15th Ward**1. History and Demolition of the 15th Ward*

Syracuse's 15th Ward was one of the several neighborhoods red-lined and assigned the lowest ranking on the City's 1937 residential security map.<sup>15</sup> Historically, the 15th Ward was a vibrant and close-knit predominantly Black community described as a "refuge from discrimination" for its residents.<sup>16</sup> In 1958, the City of Syracuse applied for and soon received funding under the Federal-Aid Highway Act to construct an interstate roadway.<sup>17</sup> As part of the project, which broke ground in 1964, the City planned to build a 1.4 mile-long elevated viaduct near its downtown and straight through the 15th Ward.<sup>18</sup> Using its power of eminent domain under the Fifth Amendment, which allows a government to obtain private property for public use without the owner's consent so long as they are justly compensated, New York State seized the 15th Ward to make way for the viaduct's construction.<sup>19</sup> Also, as a result of the area's redlining, 15th Ward residents were overwhelmingly compensated for the seizure of their property at a price less than market value.<sup>20</sup> While government leadership justified the project as urban renewal, it had immense harmful repercussions; approximately 1,300 families and 400 businesses in the 15th Ward were forcibly displaced as a result of the viaduct's construction.<sup>21</sup>

---

15. See ZONING, *supra* note 14, at 49–50.

16. *The Destruction of Syracuse's 15th Ward*, ONONDAGA HIST. ASS'N, <https://www.cnyhistory.org/2018/02/15th-ward/> (last visited Oct. 8, 2023); see also OWENS-CHAPLIN ET AL., *supra* note 10, at 11; see *The I-81 Story*, N.Y. C.L. UNION (Mar. 12, 2021), <https://www.nyclu.org/en/campaigns/i-81-story>.

17. See N.Y. STATE DEP'T OF FIN. SERV., SECOND REPORT ON THE DEPARTMENT'S INQUIRY INTO REDLINING, SYRACUSE, ROCHESTER AND LONG ISLAND 4 (Dec. 8, 2022), [https://www.dfs.ny.gov/system/files/documents/2022/12/second\\_rpt\\_redlining\\_inquiry\\_20221208.pdf](https://www.dfs.ny.gov/system/files/documents/2022/12/second_rpt_redlining_inquiry_20221208.pdf).

18. See *I-81 Viaduct Project Overview*, N.Y. STATE DEP'T OF TRANSP., <https://webapps.dot.ny.gov/i-81-viaduct-project-overview> (last visited Dec. 14, 2023); Jules Struck, *Forced to Live Here, Forced to Leave: The Twin Injustices of I-81 and the Demolition of the 15th Ward*, SYRACUSE.COM (Jun. 21, 2023, 9:30 AM), <https://www.syracuse.com/news/2022/07/forced-to-live-here-forced-to-leave-the-twin-injustices-of-i-81-and-the-demolition-of-the-15th-ward.html>.

19. See David Haas, *I-81 Highway Robbery: The Razing of Syracuse's 15th Ward*, SYRACUSE NEW TIMES (Dec. 12, 2018), <https://syracusenewtimes.com/highway-robbery-5-decades-ago-syracuse-neighborhoods-were-razed-to-construct-interstate-81/>; U.S. CONST. amend. V (providing authority for eminent domain); see generally *Kelo v. City of New London*, 545 U.S. 469 (2005) (sharpening the definition of eminent domain and the broadness of "public use").

20. See N.Y. C.L. UNION, *supra* note 10, at 10.

21. See *Syracuse | I-81*, CONG. FOR THE NEW URBANISM, <https://www.cnu.org/highways>

2. *The Community Grid Plan to Replace the I-81 Elevated Viaduct*

In May 2022, after decades of controversy, the New York State Department of Transportation (NYSDOT) approved plans to demolish the I-81 elevated viaduct and transform it into a community grid model, which promises to create walkable, pedestrian-friendly streets in a street-level grid.<sup>22</sup> The construction for the project, headed by the NYSDOT and in partnership with the federal government, began in July 2023, is projected to conclude in late 2028, and will free up between fifteen and twenty acres of previously-unusable, developable land.<sup>23</sup> Since the project's approval, there have been massive debates over which public or private entity should control the land following its conclusion.<sup>24</sup>

At the same time, a separate project plans to demolish affordable housing in favor of mixed-income development. Specifically, Pioneer Homes, a public housing development comprised of ninety-two apartments built in 1938 and located next to the viaduct, is set to be torn down as part of a Syracuse Housing Authority initiative, distinct from the I-81 project, to build new mixed-income apartments around the City.<sup>25</sup>

---

-boulevards/campaign-cities/Syracuse (last visited Oct. 8, 2023); N.Y. STATE DEP'T OF FIN. SERV., *supra* note 17, at 4–5.

22. See FED. HIGHWAY ADMIN. & N.Y. STATE DEP'T OF TRANSP., JOINT RECORD OF DECISION (May 31, 2022); see Press Release, Office of the New York State Governor Kathy Hochul, Ground Officially Broken on the Transformational I-81 Viaduct Project, City of Syracuse (Jul. 21, 2023), <https://www.syr.gov/News/2023/City-News/2023-07-21-Mayors-Office-News> [hereinafter City of Syracuse].

23. See City of Syracuse, *supra* note 22; New York State Department of Transportation, *Constructing the Community Grid*, Scale ca. 1:3,200, “New York State,” accessed October 21, 2024, <https://webapps.dot.ny.gov/i-81-viaduct-project-contracts>; see Conor Wight, *The I-81 Viaduct Will Come Down, and the Debate for What to Do With the Land Has Begun*, CNY CENTRAL (Oct. 16, 2023, 2:33 PM), <https://cnycentral.com/news/i-team/the-i-81-viaduct-will-come-down-and-the-debate-for-what-to-do-with-the-land-has-begun>.

24. See Michelle Breidenbach, *A Brewing Debate: Who's Going to Control Land Freed Up After I-81 Comes Down in Syracuse?*, SYRACUSE.COM, THE POST-STANDARD (Aug. 22, 2023, 10:07 AM), <https://www.syracuse.com/news/2023/08/a-brewing-debate-whos-going-to-control-land-freed-up-after-i-81-comes-down-in-syracuse.html>.

25. See Michelle Breidenbach, *In Surprise Move, 92 Syracuse Public Housing Units Could Be Replaced by a Hospital Building*, SYRACUSE.COM, THE POST-STANDARD (Feb. 14, 2024, 11:47 AM), <https://www.syracuse.com/news/2024/01/in-surprise-twist-92-syracuse-public-housing-units-could-be-replaced-by-a-hospital-building.html>; Robert Searing, *1938: Pioneer Homes Gives Syracuse Families a Chance at a “Decent” Place to Live*, SYRACUSE.COM,



Additionally, in March 2024, the City of Syracuse accepted a \$180.01 million federal grant to put towards the viaduct project.<sup>26</sup> These funds are some of the first in the country to be pulled from the U.S. Department of Transportation’s Neighborhood Access and Equity Program (NAEP), created through the Inflation Reduction Act (IRA).<sup>27</sup> Signed into law in 2022, the IRA includes several programs fostering broad economic investment, clean energy, and environmental conservation.<sup>28</sup> NAEP specifically operates to provide communities, especially those housing economically disadvantaged or underserved groups, with funding for neighborhood equity, affordable access to transportation, safety, and mitigation of harmful environmental hazards.<sup>29</sup> Syracuse city leaders generally plan to use these NAEP funds, as the I-81 viaduct is transformed, to ensure “neighborhoods in the shadow of the I-81 corridor like the New 15th Ward and the northside will have the modern safe complete streets, new and improved parks, greenery, and community infrastructure to have a brighter, more interconnected and dynamic future . . . .”<sup>30</sup>

## II. BRIEF OVERVIEW OF THE ReZONE SYRACUSE ORDINANCE

### A. *Asserted Goals of ReZone Syracuse*

Against the backdrop of the I-81 project, the ReZone Syracuse ordinance was passed by the City’s Common Council in June 2023; the previous ordinance had not been majorly updated since 1967.<sup>31</sup>

---

THE POST-STANDARD (May 20, 2021, 4:30 PM), <https://www.syracuse.com/living/2021/05/1938-pioneer-homes-gives-syracuse-families-a-chance-at-a-decent-place-to-live.html>.

26. Office of Senate Majority Chuck Schumer, *Schumer, Gillibrand Announce \$180+ Million for Syracuse’s I-81 Project*, CITY OF SYRACUSE (Mar. 13, 2024), <https://www.syr.gov/News/2024/2024-03-13-Mayors-Office-News>.

27. *See id.*

28. *See* THE WHITE HOUSE, BUILDING A CLEAN ENERGY ECONOMY: A GUIDEBOOK TO THE INFLATION REDUCTION ACT’S INVESTMENTS IN CLEAN ENERGY AND CLIMATE ACTION 2, 5–6 (2023).

29. *Fact Sheets, Neighborhood Access and Equity (NAE) Grant Program*, U.S. DEP’T OF TRANSP., FED. HIGHWAY ADMIN. (June 13, 2023), [https://www.fhwa.dot.gov/inflation-reduction-act/fact\\_sheets/nae\\_grant\\_program.cfm](https://www.fhwa.dot.gov/inflation-reduction-act/fact_sheets/nae_grant_program.cfm).

30. *See* Office of Senate Majority Chuck Schumer, *supra* note 26.

31. *See* Melissa Krull, *ReZone Syracuse Passes in the Common Council*, SPECTRUM NEWS 1 (June 23, 2023, 9:50 PM), <https://spectrumlocal-news.com/nys/central-ny/business/2023/06/23/rezone-syracuse-passes-in-the-common-council>; Chris Baker, *City Hall is Using Its Most Boring Weapon to Rethink Syracuse’s Neighborhoods*, SYRACUSE.COM, THE POST-STANDARD (Mar. 9, 2018

This legislation was introduced to facilitate the implementation of Syracuse's Land Use and Development Plan 2040, a comprehensive zoning plan which aims to improve the City's existing land use patterns and enhance neighborhoods' character as well as support attractive designs, environmental sustainability, and efficient development processes.<sup>32</sup> Comprehensive zoning plans are those that describe a community's general land use policy and overall goals used in its related decision-making.<sup>33</sup> Accordingly, ReZone Syracuse's general purpose is centered around public health, safety, and welfare efforts, including ensuring compatible land uses, establishing development guidelines, and providing infrastructure for schools, parks, transportation, and water and sewage systems.<sup>34</sup>

### B. Effects of ReZone Syracuse

ReZone Syracuse marks the City's transition from use-focused Euclidean zoning to form-based zoning.<sup>35</sup> Euclidean zoning is modeled after the Supreme Court's ruling in *Euclid v. Ambler Realty Co.* and involves splitting a community up into three basic classes: residential, commercial, and industrial.<sup>36</sup> Form-based zoning primarily regulates structures' design and appearance and is more agnostic with regard to land use.<sup>37</sup> A form-based zoning ordinance may, for instance, allow a new development to engage in a myriad of uses, while instead regulating its appearance to ensure that it is aesthetically pleasing and

---

11:00 AM), [https://www.syracuse.com/news/2018/03/city\\_hall\\_is\\_trying\\_to\\_fix\\_syracuse\\_using\\_its\\_most\\_boring\\_tool.html](https://www.syracuse.com/news/2018/03/city_hall_is_trying_to_fix_syracuse_using_its_most_boring_tool.html).

32. See *ReZone Syracuse*, CITY OF SYRACUSE, <https://www.syr.gov/Departments/Planning-and-Sustainability/Planning-Initiatives/ReZone-Syracuse> (last visited Oct. 11, 2023).

33. See N.Y. STATE DEP'T OF STATE, ZONING AND THE COMPREHENSIVE PLAN 1 (2024), <https://dos.ny.gov/system/files/documents/2024/08/zoning-and-the-comprehensive-plan.pdf>.

34. See Office of Senate Majority Chuck Schumer, *supra* note 26.

35. See CITY OF SYRACUSE, REZONE SYRACUSE, FINAL GENERIC ENVIRONMENTAL IMPACT STATEMENT 1, 12 (Oct. 28, 2022), [https://www.syr.gov/files/sharedassets/public/v/1/2-departments/planning/documents/rezone-syracuse-fgeis-10282022\\_1.pdf](https://www.syr.gov/files/sharedassets/public/v/1/2-departments/planning/documents/rezone-syracuse-fgeis-10282022_1.pdf).

36. See 12 RICHARD R. POWELL, POWELL ON REAL PROPERTY § 79C.04 (Matthew Bender & Co., Inc. ed., 2023); *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926).

37. See 7 RESTATEMENT (FOURTH) OF PROPERTY § 3.3 (Am. L. Inst. ed., tent. drft. no. 3, 2022).

visually conforms with surrounding structures in the area or neighborhood.<sup>38</sup>

*C. ReZone Syracuse's Insufficiency to Preserve Permanent Affordable Housing*

The ReZone Syracuse ordinance does include provisions aimed at protecting affordable housing, such as its mandate that every development of twenty or more residential units include affordable and mixed-income dwelling units.<sup>39</sup> This encompasses mixed-income development, a category containing any development or redevelopment project offering housing for multiple different income levels, such as affordable and market price housing.<sup>40</sup> Additionally, the ordinance states that affordable dwelling units must be income-restricted, based on an annually-calculated percentage or range of the Syracuse area's annual median income, as determined by the United States Department of Housing and Urban Development.<sup>41</sup> It then provides that any mixed-income development which demonstrates a "practical hardship" related to complying with this requirement

may offset a portion, up to one quarter of the required number of affordable dwelling units through a payment to the City's Affordable Housing Trust Fund with an established fee for each affordable dwelling unit omitted following the procedures described in the Administrative Manual and other associated requirements of the trust fund.<sup>42</sup>

Upon closer analysis, since the ordinance fails to clearly define "practical hardship" and allows developers to avoid this affordable housing requirement by paying a fee, it is certainly possible that the purpose of this provision could be subverted. In other words, this language creates the risk of mixed-income developments disproportionately utilizing this loophole to avoid meeting affordable housing obligations.

---

38. See Richard S. Geller, *The Legality of Form-Based Zoning Codes*, 26 J. LAND USE & ENV'T. L. 35, 38 (2010); see also Andres Duany & Emily Talen, *Making the Good Easy: The Smart Code Alternative*, 29 FORDHAM URB. L. J. 1445, 1447 (2002) (discussing the concerns regarding walkability, public transportation, and social and cultural community integration addressed by proponents and practitioners of form-based zoning).

39. See SYRACUSE, N.Y., ZONING ORDINANCES art. 3, § 3.3(A)(4)(a)(1) (2023).

40. See SYRACUSE, N.Y., ZONING ORDINANCES art. 7, § 7.3 (2023).

41. See SYRACUSE, N.Y., ZONING ORDINANCES art. 3, § 3.3(A)(4)(b)–(c).

42. *Id.* § 3.3(A)(4)(g).

Also, a substantial number of the areas currently surrounding the viaduct, and close to where the 15th Ward was previously located, have been zoned as mixed-use districts.<sup>43</sup> A portion of the proposed zoning map, with an overlay indicating the original location of Syracuse's 15th Ward, is demonstrated in Appendix A.<sup>44</sup> This poses serious concerns about housing prices surging as a result of non-residential development without affordability safeguards, especially in an area with a long history of racial and socioeconomic displacement and segregation. From these factors, it is clear that the ReZone Syracuse ordinance, on its own, is insufficient to definitively preserve long-term affordable housing.

### III. BACKGROUND ON COMMUNITY LAND TRUSTS

#### A. *What is a Community Land Trust?*

A CLT is a democratically arranged nonprofit corporation with open membership and an internally elected board of trustees that is created to control land in ways benefitting the local community.<sup>45</sup> In CLTs, ownership interests in the physical land are separate from those in dwelling units on top of it, as the entity builds or purchases housing at predetermined prices designed to keep properties affordable for low and moderate-income households.<sup>46</sup>

CLTs can “acquire land through purchase or donation” and retain the land title in perpetuity, “thus removing the land from the speculative [real estate] market.”<sup>47</sup> Typically, CLT organizers elect to lease land for extended periods, often the maximum permitted by state law, either to governmental or community organizations for public facility

---

43. Syracuse – Onondaga County Planning Agency, *ReZone Syracuse Zoning Map*, Scale: ca. 1:5,000, “City of Syracuse,” March, 2023, accessed October 21, 2024, [https://www.syr.gov/files/sharedassets/public/v/1/2-departments/planning/documents/rezone/rezone-syracuse-zoning-map\\_march-2023.pdf](https://www.syr.gov/files/sharedassets/public/v/1/2-departments/planning/documents/rezone/rezone-syracuse-zoning-map_march-2023.pdf).

44. *Id.*; see Tom Magnarelli, *How I-81 Divided Syracuse and Why Opinions Are Divided on How to Replace It*, WRVO PUB. MEDIA (Jan. 4, 2017, 04:50 AM), <https://www.wrvo.org/transportation/2017-01-04/how-i-81-divided-syracuse-and-why-opinions-are-divided-on-how-to-replace-it> (map of Syracuse's 15th Ward prior to construction of I-81).

45. See Priya S. Gupta & Navneet K. Grewal, *State and Local Regulation Promoting Affordable Housing*, in *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT*, 91, 129 (Tim Iglesias et al. eds., 3rd ed. 2022).

46. See David M. Abromowitz, *Community Land Trusts and Ground Leases*, 1 J. AFFORDABLE HOUS. & COMM. DEV. L. 5, 5 (1992); see Gupta & Grewal, *supra* note 45.

47. INSTITUTE FOR COMMUNITY ECONOMICS, *The Community Land Trust Handbook*, in *THE COMMUNITY LAND TRUST READER* 228, 241 (John E. Davis ed. 2010).

construction or management or, alternatively, to private individuals.<sup>48</sup> In either scenario, the lessee usually pays rent to the CLT equivalent to the land's value for its actual use, as opposed to the largest value it could possibly have on the open land market.<sup>49</sup>

CLTs are typically overseen by an elected or self-appointed “tripartite” board comprised of individuals from three groups with differing interests: housing residents and lessees on the CLT's land, residents in the surrounding area, and other “outside” actors knowledgeable about housing or possessing other relevant skills.<sup>50</sup> According to data collected in 2022, there are over 300 organizations around the United States that self-identify as CLTs or employ related methods.<sup>51</sup>

### *B. Regulation and Legislative Protection of Community Land Trusts*

The Cranston-Gonzalez National Affordable Housing Act, a federal statute passed in 1990, provides a federal definition of CLTs.<sup>52</sup> Specifically, the Act describes a CLT as a nonprofit organization dedicated to community housing development that acquires land for long-term leasing, transfers ownership of structural improvements to lessees, and retains an option to purchase any structural improvements using a formula that allows dwellings to remain affordable to low and moderate-income individuals.<sup>53</sup> The legislation additionally sets parameters for the governance of CLTs by requiring each board of directors to include a majority of members who are internally elected and an equal composition of lessees, non-lessee corporate members, and any other category mentioned in the organization's bylaws.<sup>54</sup>

---

48. See 1 ENVIRONMENTAL LAW PRACTICE GUIDE: STATE AND FEDERAL LAW § 3.06(6) (Matthew Bender & Co., Inc. ed., 2023).

49. *Id.*

50. See John Emmeus Davis, *Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development*, 51 UNIV. S.F. L. REV. 1, 5 n.5 (2020).

51. See Ruoniu (Vince) Wang et al., *The 2022 Census of Community Land Trusts and Shared Equity Entities in the United States: Prevalence, Practice and Impact*, LINCOLN INST. OF LAND POL'Y 11–14 (2023) (figure includes self-identified community land trusts as well as nonprofit organizations with shared equity homeownership programs, except for those only providing cooperative housing services).

52. 42 U.S.C. § 12773(f) (2009).

53. *Id.* § 12773(f) (1–3).

54. *Id.* § 12773(f) (4–5).

Several states have also enacted legislation recognizing CLTs as distinct legal entities.<sup>55</sup> Yet, no law explicitly defining CLTs has been passed in New York. However, Assembly Bill 2023-A5865, a proposed law introduced during the New York State Assembly's 2023–2024 legislative session and referred to the Committee on Housing, aims to fulfill that need.<sup>56</sup> The bill defines a CLT as a not-for-profit corporation with Internal Revenue Service Section 501(c)(3) federal tax exemption status that strives to preserve permanently affordable single-family or multi-family residences and sells housing on its land to qualified owners.<sup>57</sup> Additionally, Assembly Bill 2023-A5865 calls for a new acquisition fund exclusively available to CLTs located within New York for purposes of facilitating affordable homeownership development programs.<sup>58</sup>

### C. *Affordable Housing Alternatives to Community Land Trusts*

In determining the best course of action to take in Syracuse, it is important to note that two affordable housing methods akin to CLTs, deed-restricted homeownership and limited equity cooperatives, contain weaknesses rendering them insufficient to safeguard permanent affordable housing in the City and other similarly situated communities.

#### 1. *Deed-Restricted Homeownership*

Under a deed-restricted homeownership model, a government or philanthropic-backed subsidy is used to reduce a new or existing home's price to make it affordable for potential buyers within a specific income range.<sup>59</sup> To preserve affordability, restrictions, called covenants, are placed on the deed, requiring the home to be sold and re-sold to buyers of a certain income at a price created using a formula in the deed. These covenants “run with the land,” meaning they are binding on subsequent homeowners throughout their period of

---

55. See Gupta & Grewal, *supra* note 45 at 130.

56. See N.Y. Assembly Bill No. 5865, 246th Sess. (2023).

57. *Id.*

58. *Id.*

59. See LOC. HOUS. SOL., *Deed-Restricted Homeownership* (May 11, 2021), <https://localhousingsolutions.org/housing-policy-library/deed-restricted-homeownership/>.

enforceability.<sup>60</sup> Generally, deed restrictions are considered self-enforceable.<sup>61</sup>

While this form of affordable homeownership is economically prudent, only requiring a one-time subsidy, a lack of oversight is built into its model, leaving open the possibility of arbitrary enforcement. Along with this, when deed restrictions are enforced in court, it can often be a costly process with no determined outcome. On the other hand, courts are generally more familiar with ground leases, as used by CLTs, and have standardized procedures for disputes surrounding them.<sup>62</sup> Also, CLTs, in contrast to this deed-restricted model, are built on continuous democratic governance and stewardship principles. This potential confusion over enforceability and lack of organizational structure renders deed-restricted homeownership programs less likely than CLTs to effectively support long-lasting affordable housing.

## 2. *Limited Equity Cooperatives*

Within limited equity cooperatives, each household purchases a “share” in a form of cooperative housing, as opposed to a usual property interest, at a price determined internally.<sup>63</sup> They are typically used in apartments, townhouse communities, or similar multi-family housing structures.<sup>64</sup> Around the country, there are about 400,000 to 500,000 limited or no equity cooperative housing units.<sup>65</sup> In exchange for each household’s right to occupy one housing unit and vote on issues related to the cooperative’s common interest, members are all often responsible for maintaining common areas and admitting new members.<sup>66</sup> These cooperatives are democratically-governed, similar to CLTs, and the mortgage is held by the entity itself, meaning individual shareholders need not qualify.<sup>67</sup> However, because it is possible for cooperatives to only restrict appreciation in equity and not owners’

---

60. *Id.*; NAT’L HOUS. CONF., *Shared Equity Models of Ownership*, <https://nhc.org/policy-guide/shared-equity-homeownership-the-basics/shared-equity-models-of-ownership/> (last visited Feb. 7, 2024).

61. *See* LOC. HOUS. SOL., *supra* note 59; NAT’L HOUS. CONF., *supra* note 60.

62. *See* JOHN EMMEUS DAVIS, *SHARED EQUITY HOMEOWNERSHIP: THE CHANGING LANDSCAPE OF RESALE-RESTRICTED, OWNER-OCCUPIED HOUSE*, NAT’L HOUS. INST. 71 (2006); *see generally* David Abromowitz & Kirby White, *Deed Restrictions and Community Land Trust Ground Leases: Protecting Long Term Affordable Homeownership*, HOUS. NEWS NETWORK, J. FLA. HOUS. COAL. 10 (2006).

63. *See* NAT’L HOUS. CONF., *supra* note 60.

64. *See id.*

65. *Id.*

66. *See id.*

67. *See id.*

income, residents with moderate income could hypothetically continue living within them, even when their income is too high to qualify for affordable housing.<sup>68</sup> This could unreasonably limit affordable housing access for low-income individuals and as such, make this method ill-adapted for enactment in Syracuse and similar locations.

#### IV. ANALYZING SUCCESSFUL CLTs AS PROSPECTIVE MODELS

Two successful existing CLTs, the Irvine Community Land Trust (ICLT) in California and the Lexington Community Land Trust (LCLT) in Kentucky, illustrate practicable methods to create a CLT on at least part of the land in Syracuse that will be freed up by the deconstruction of the I-81 elevated viaduct and rezoning. While both CLTs share similarities in their structure and housing offerings, their unique inceptions and paths to growth serve as models for a CLT on this land in Syracuse that balances the community's need for permanent affordable housing with governmental goals.

##### A. *Irvine Community Land Trust (ICLT)*

###### 1. *History & Formation of the ICLT*

In 2005, the City of Irvine assembled a housing task force in response to the community's affordable housing crisis, which recommended forming the ICLT after exploring a variety of potential solutions.<sup>69</sup> A year later, the Irvine City Council approved the recommendation and supplied the project with financial support and personnel.<sup>70</sup> The ICLT was formed as a "nonprofit public benefit corporation" with 501(c)(3) federal tax exemption status under the California Nonprofit Public Benefit Corporation Law "for the benefit of, and to carry out the purposes of, the City by helping the City ensure that its residents are able to secure decent and affordable housing and thereby lessen the burdens of government."<sup>71</sup>

---

68. See Legal Information Institute, *Limited Equity Housing*, CORNELL L. SCH. (2020), [https://www.law.cornell.edu/wex/limited\\_equity\\_housing#:~:text=Primary%20tabs,to%20preserve%20its%20affordable%20price](https://www.law.cornell.edu/wex/limited_equity_housing#:~:text=Primary%20tabs,to%20preserve%20its%20affordable%20price).

69. IRVINE CMTY. LAND TR., *Our Story*, <https://www.irvineclt.org/about-us> (last visited Oct. 9, 2023); see Audio tape: Zoom Interview with Mark Asturias, former Executive Director of Irvine Community Land Trust (Jan. 12, 2024) (on file with author) [hereinafter Asturias].

70. See IRVINE CMTY. LAND TR., *supra* note 69; IRVINE CMTY. LAND TR., ARTICLES OF INCORPORATION OF IRVINE COMMUNITY LAND TRUST (Mar. 17, 2006) [hereinafter ARTICLES OF INCORPORATION].

71. ARTICLES OF INCORPORATION, *supra* note 70.



From its origin, the ICLT's organizers conceptualized that it would grow as an organization until it became self-sustaining and hit certain milestones, such as establishing a certain number of housing units, before branching off from the city.<sup>72</sup> Thus, the ICLT became an independent nonprofit organization, separate from the City of Irvine, in 2017.<sup>73</sup> It now includes nine condo rentals, 398 apartment rentals, and sixty-eight ownership properties.<sup>74</sup>

### 2. *Structure and Governance of the ICLT*

The ICLT is governed by a Board of Directors representing parties with different interests implicated in its work. Specifically, in addition to internal administrative members, namely the Executive Director and Deputy Executive Director, the Board typically includes two members appointed by the City of Irvine.<sup>75</sup> The rest of the Board may include elected public officials, legal counsel or those knowledgeable about affordable housing advocating for the local community, development experts, and accessibility proponents representing residents with disabilities.<sup>76</sup>

### 3. *The ICLT's Ground Leasing System and Implications in Syracuse*

When establishing the ICLT, its organizers adopted a model of a ground lease created by the Grounded Solutions Network, a national nonprofit organization focused on affordable housing methods.<sup>77</sup> Specifically, this model utilizes ninety-nine-year renewable ground leases with each homeowner on the land as part of a dual ownership model.<sup>78</sup> A ground lease is a lease of either vacant and unoccupied land, land below buildings or structures, or unimproved real property.<sup>79</sup> Ground

---

72. *See id.*

73. *See* IRVINE CMTY. LAND TR., *supra* note 69.

74. IRVINE CMTY. LAND TR., *Quick Facts*, <https://www.irvineclt.org/quick-facts> (last visited Jan. 12, 2024) [hereinafter *Quick Facts*].

75. *See* Asturias, *supra* note 69.

76. *Id.*

77. *Id.*; GROUNDED SOLS. NETWORK, *About Us*, <https://groundedsolutions.org/about-us> (last visited Jan. 12, 2024); *see* GROUNDED SOLS. NETWORK, 2011 MODEL GROUND LEASE & COMMENTARY (July, 2018), <https://groundedsolutions.org/wp-content/uploads/2018-10/2011%20Model%20Ground%20Lease%20and%20Commentary.pdf> [hereinafter 2011 MODEL GROUND LEASE & COMMENTARY].

78. 2011 MODEL GROUND LEASE & COMMENTARY, *supra* note 77, at 8.

79. *See Ground Lease*, BLACK'S LAW DICTIONARY (6th ed. 1990).

leases give the lessee the right to use and occupy the property as well as ownership rights of the structures on the land.<sup>80</sup>

Under California state law, ninety-nine years is the maximum permissible term for a ground lease.<sup>81</sup> A ninety-nine-year renewable ground lease is not subject to the Rule Against Perpetuities, a common law doctrine that strives to limit uncertainty related to property ownership extending far into the future, because it vests a reversionary left-over future interest in the individual or entity, called the grantor, that conveys possession of the property to the grantee or their heirs.<sup>82</sup> For example, the grantor retains a reversionary future interest if the property is transferred to the grantee simply “for life” or, alternatively, “to [the grantee] for life, remainder to [a third party] and his heirs, but if [the third party] dies in the lifetime of [the grantee], the land is to revert to [the grantor] and his heirs.”<sup>83</sup> In both examples, the grantor retains a reversionary future interest because upon the fulfillment of one or more conditions, the ownership interest in the property would revert back to the grantor— which, here, would be the ICLT.<sup>84</sup>

Just as in California, New York state law does permit ninety-nine-year ground leases.<sup>85</sup> Specifically, ground leases with terms up to ninety-nine years are generally enforceable in the state, so long as they abide by New York’s statute of frauds, which mandates it be in writing and subscribed to by the charged party if not to be performed within one year of its creation.<sup>86</sup> In a New York ground lease, lessees are generally given substantial control over the leased property and retain the rights to create, change, use, and demolish structures.<sup>87</sup> When describing the benefits of ninety-nine-year ground leases for CLT organizations, Mark Asturias, the ICLT’s former Executive Director,

---

80. See 3A NY PRACTICE GUIDE: REAL ESTATE § 25.05(2)(vi) (Matthew Bender & Co., Inc. ed., 2024); see *N. Royalton City Sch. Dist. Bd. of Educ. v. Cuyahoga Cnty. Bd. of Revision*, 950 N.E.2d 955, 958 n.1 (Ohio 2011).

81. See *Tufeld Corp. v. Beverly Hills Gateway, L.P.*, 302 Cal. Rptr. 3d 203, 206 (Ct. App. 2022); CAL. CIV. CODE § 718 (Deering 2024).

82. See 1 PATRICK J. ROHAN, CURRENT LEASING LAW AND TECHNIQUES: FORMS § 13.01(1) (Matthew Bender & Co. ed., 2024); see 3 DAVID A. THOMAS, THOMPSON ON REAL PROPERTY, THE OPERATION OF THE RULE AGAINST REMOTENESS OF VESTING § 28.04 (Matthew Bender & Co., Inc. ed., 2024).

83. RESTATEMENT (FIRST) OF PROPERTY § 154 (Am. L. Inst. ed., 1936).

84. See *id.*

85. N.Y. GEN. MUN. LAW § 556 (Consol. 2023); JOHN BLYTH ET AL., 7 WARREN’S WEED N.Y. REAL PROPERTY § 84.14 (Matthew Bender & Co., Inc. ed., 2023); see *Wallace v. 600 Partners Co.*, 658 N.E.2d 715, 715 (N.Y. 1995).

86. N.Y. GEN. OBLIG. LAW § 5-703(2) (McKinney 2023); N.Y. GEN. OBLIG. LAW § 5-701(a)(1) (McKinney 2023).

87. 3A NY PRACTICE GUIDE, *supra* note 80.

explained that this type of agreement grants “control in establishing all the terms and conditions for the ground leases, resales and . . . operational and functional maintenance of the home.”<sup>88</sup>

From the residents’ perspective, entering a ninety-nine-year ground lease allows them to build equity in a manner like that of a typical landowner. A person “builds equity” through widening the difference between the value of their home and the amount owed on their mortgage. This can be accomplished by either increasing the former or decreasing the latter.<sup>89</sup> These opportunities for building equity are embodied in the similarities between ground leases and fee simple absolute ownership, which grants full ownership without virtually any restrictions.<sup>90</sup> Just as in fee simple absolute, ground lessees in New York retain the right to make major improvements on their home.<sup>91</sup> While ground leases, unlike fee simple absolute ownership, are subject to a ninety-nine-year limit, this is not a significant drawback due to its considerable duration. Put simply, one can assume that in most instances, a lessee entering a ninety-nine-year ground lease essentially commits to it for the rest of their life.

Furthermore, New York ground leases allow renewal and courts strongly construe both renewal procedures and disputes over timely notices of renewal in favor of the lessee.<sup>92</sup> Additionally, New York ground leases can contain provisions conveying them to a lessee’s heirs.<sup>93</sup> These aspects of ninety-nine-year ground leases arguably create a framework for families to pass down CLT homes for many generations and continuously reap the economic benefits of homeownership.

#### 4. *The ICLT’s Resale Procedures and Implications in Syracuse*

Another important aspect of the ICLT’s model is its resale procedures, namely its utilized formula and retained right of first refusal.

---

88. Asturias, *supra* note 69.

89. See Ana Staples, *What is Home Equity and How Can I Use It?*, CNBC (June 10, 2024), <https://www.cnbc.com/select/what-is-home-equity-and-how-can-you-use-it/>.

90. Audio tape: Zoom Interview with Pam Clay-Young, former Member of Newtown Pike Extension Project Team and Staff Attorney with the Kentucky Transportation Cabinet, Department of Highways (Jan. 26, 2024) (on file with author) [hereinafter Clay-Young].

91. See 1 N.Y. PRACTICE GUIDE § 3.14 (Matthew Bender & Co., Inc. ed. 2023).

92. *Id.*; see SVC W. Babylon LLC. v. 204 Great E. Neck Rd. LLC, 135 N.Y.S.3d 780, 784 (Sup. Ct. 2020).

93. See David M. Abromowitz, *supra* note 46, at 6.

Turning first to the resale formula, it allows residents selling their homes on the ICLT's land to receive their initial investment price plus the value of any improvements to the property and some share in the appreciated value at the affordable resale rate.<sup>94</sup> The affordable resale rate is based on the area median income, calculated annually by the California Department of Housing and Community Development, at the time of sale.<sup>95</sup> In the event of an ICLT resident's resale of their home, the ICLT requires notice and checks that the property's sale price is consistent with the ground lease upon appraisal.<sup>96</sup>

In practice, the portion of the ICLT's resale formula that allows CLT residents to recoup on their improvements would also be practicable on newly freed-up land in Syracuse because New York ground leases grant lessees ownership of their improvements.<sup>97</sup> This would guarantee that any resident who wishes to leave the CLT would still receive a fair return on their investment. Additionally, the ReZone Syracuse ordinance's affordable housing income restrictions also utilize a metric of median income, as described in Part II, meaning that using this figure would maintain consistency and ensure that any CLT development projects on this land would not run afoul of the legislation. Equally as important, these income restrictions would assure that this affordable housing is reserved for those with limited financial means.

Another notable component of these resale procedures is the fact that the ICLT has the contractual right of first refusal, meaning that the seller is required to give it a chance to match third parties' sale offers to purchase their ICLT home.<sup>98</sup> While a seller can elect to either utilize an independent California real estate agent or work exclusively with the ICLT to locate a buyer and facilitate the sale, this right of first refusal is built into the ground lease and triggered whenever there is a resale during its term.<sup>99</sup> During this stage of the resale process, the ICLT is tasked with conducting a thorough investigation of relevant financial documentation to certify that the proposed buyer's income is appropriately qualified with respect to the average median income, size of the household, and specific homeownership property sought.<sup>100</sup>

---

94. See TURNER CTR. FOR HOUS. INNOVATION, COMMUNITY LAND TRUSTS: IRVINE 1, 4 (Apr. 2019).

95. *Id.*

96. Asturias, *supra* note 69.

97. 1 N.Y. PRACTICE GUIDE, *supra* note 91; see generally N.Y. Overnight Partners, L.P. v. Gordon, 633 N.Y.S.2d 288 (App. Div. 1995).

98. *Right of First Refusal*, BLACK'S LAW DICTIONARY (12th ed. 2024).

99. Asturias, *supra* note 69.

100. See *Quick Facts*, *supra* note 74.

New York courts have generally upheld ground lessors' right of first refusal as enforceable and broad, so long as the terms are reasonable. The main purpose of this contractual right has been interpreted as restricting sale of properties to third parties, not prompting the sale back to the lessor.<sup>101</sup> Lessors are also not required to exercise this right of first refusal, meaning it merely enacts a notice requirement.<sup>102</sup> As such, this contractual right is arguably not unduly burdensome on lessees and is inherently intertwined with any CLT's goal to indefinitely keep its stake in the physical land in return for its assurance to residents and the local area that the housing will remain permanently affordable.

As demonstrated, the ICLT's ninety-nine-year ground leasing system and resale procedures are not only feasible under applicable New York law, but would also align with the ReZone Syracuse ordinance's objectives related to reserving affordable housing for those most in need of it.

### *B. Lexington Community Land Trust (LCLT)*

#### *1. History and Formation of the LCLT*

The LCLT, located in Lexington, Kentucky, was established in 2008 as a Section 501(c)(3) nonprofit organization and is the state's first CLT to offset the negative repercussions of a transportation initiative.<sup>103</sup> More specifically, it is part of the Newtown Pike Extension Project (NPEP), an ongoing endeavor dating back decades that focuses on extending the Newton Pike, a major exit off of Interstates 64 and 75 that ends in the twenty-four acre neighborhood of Davis Bottom.<sup>104</sup> Davis Bottom was developed following the end of the Civil War and housed significant African American, European, and Appalachian

---

101. See generally *Cipriano v. Glen Cove Lodge #1458*, 801 N.E.2d 388 (N.Y. 2003).

102. See generally *Martin v. Seeley*, 142 N.Y.S.3d 252 (App. Div. 2021).

103. See LEXINGTON CMTY. LAND TR., *Davis Bottom History*, <https://lexington-clt.org/history/> (last visited Oct. 11, 2023); see FED. HIGHWAY ADMIN., *The Road that Rebuilt a Neighborhood - The Newtown Pike Extension Project*, YOUTUBE (June 27, 2016), <https://www.youtube.com/watch?v=B4ke-j5P6yY>.

104. See FED. HIGHWAY ADMIN., *supra* note 103; *Davis Park Residents Use Transportation Project Mitigation to Strengthen Their Neighborhood*, DEP'T HOUS. & URB. DEV. OFF. POL'Y DEV. & RSCH. (May 16, 2016), <https://www.huduser.gov/portal/pdredge/pdr-edge-inpractice-051616.html>.

populations in its early days.<sup>105</sup> While the area has largely remained low-income, its community is racially diverse and closely-bonded.<sup>106</sup> Plans to extend the Newton Pike into the neighborhood to reduce traffic congestion had previously been stopped and started several times as the NPEP continuously aimed to make headway on the project without unfairly burdening Davis Bottom.<sup>107</sup>

In 1998, the NPEP procured funding to revamp their work through the combined efforts of the U.S. Department of Housing and Urban Development, Federal Highway Administration (FHWA), Kentucky Transportation Cabinet (KYTC), and Lexington Fayette Urban County Government (LFUCG).<sup>108</sup> After conducting a community impact assessment on the project, it was determined that its effects on the Davis Bottom neighborhood were excessively high and mitigation was required to abide by Environmental Justice Executive Order 12898.<sup>109</sup> Issued in 1994, this executive order mandates that federal agencies identify and address their actions' disproportionately high, negative impacts on human health or the environment on minority and low-income communities, create environmental justice implementation strategies, promote non-discrimination in federal human health and environmental programs, and facilitate disadvantaged groups' access to public information and participation opportunities.<sup>110</sup>

As a result, those involved in the project conceptualized ways to mitigate harm to Davis Bottom residents. Amidst concerns that the neighborhood's land would be bought up by developers who would tear down existing housing and build more expensive dwellings in their place once the road was built, the LCLT was established.<sup>111</sup> Similar to the ICLT, the LCLT offers both rental and ownership housing options.<sup>112</sup> The LCLT also uses ninety-nine-year ground leases,

---

105. See KY. ARCHAEOLOGICAL SURV., *General History*, <https://www.kentuckyarchaeologicalsurvey.org/davis-bottom/history/general-history/#toggle-id-1> (last visited Feb. 2, 2024).

106. *Id.*; see DEP'T HOUS. & URB. DEV. OFF. POL'Y DEV. & RSCH., *supra* note 104; Clay-Young, *supra* note 90.

107. FED. HIGHWAY ADMIN., *supra* note 103.

108. *Id.*; see *Doing the Right Thing: Building a Road and Preserving a Community—The Newton Pike Extension Project*, 86 FED. HIGHWAY ADMIN., 2022, at 17–18, [https://highways.dot.gov/sites/fhwa.dot.gov/files/2022-04/PR-Spring2022\\_1.pdf](https://highways.dot.gov/sites/fhwa.dot.gov/files/2022-04/PR-Spring2022_1.pdf).

109. FED. HIGHWAY ADMIN., *supra* note 103.

110. Exec. Order No. 12898, 59 Fed. Reg. No. 32 (Feb. 11, 1994); see Clay-Young, *supra* note 90.

111. Clay-Young, *supra* note 90.

112. See *Homeownership*, LEXINGTON CMTY. LAND TR., <https://lexington-clt.org/homes/> (last visited Feb. 3, 2024).

which, as explained previously, are practical for use in New York and offer great benefits.<sup>113</sup>

## 2. *Structure and Governance of the LCLT*

The LCLT is governed by a tripartite board comprised of twelve to fifteen members from three categories of interests: Lessee Directors, who are residents leasing or owning land and housing within the LCLT; General Directors, who represent the Fayette County community; and Public Directors representing bodies governing the public, including the FHWA, KYTC, and LFUCG.<sup>114</sup> Four positions—president, vice president, treasurer, and secretary—are elected.<sup>115</sup>

## 3. *The LCLT's Work with Transportation Officials and Implications in Syracuse*

A distinct feature of the LCLT is its close relationship with transportation officials, which could be replicated in Syracuse. Specifically, forging partnerships with state and federal government organizations to form a CLT creates avenues for funding and regulation. Michael Brown, a former consultant on the project and seasoned CLT expert, characterized the LCLT at its inception as a unique “road project that included a community land trust, as opposed to a [community] land trust that tried to look for ways to bring properties in.”<sup>116</sup>

Environmental Justice Executive Order 12898 was expanded in 2023 through Executive Order 14096.<sup>117</sup> In addition to reaffirming federal agencies’ duty to develop methods for mitigating federal activities’ disproportionately high, adverse health and environmental effects on low-income and marginalized groups, Executive Order 14096 mandates they also provide timely opportunities for the general public to voice their concerns, share information, and participate in the decision-making process.<sup>118</sup>

With Executive Order 14096 in mind, following in the LCLT’s footsteps and recruiting the FHWA to create a CLT on this land in Syracuse would ensure proactive mitigation measures, strong public input, and environmental analysis requirements.<sup>119</sup> Importantly,

---

113. Clay-Young, *supra* note 90.

114. See *Lexington Community Land Trust*, LEXINGTON CMTY. LAND TR., <https://lexingtonclt.org/about/staff-board> (last visited Jan. 3, 2024).

115. *Id.*

116. See Brown, *supra* note 1.

117. Exec. Order No. 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

118. *Id.*

119. See Clay-Young, *supra* note 90.

involving the FHWA and thus invoking Executive Order 14096 would require more definitive mitigation parameters to accompany the I-81 community grid project. This is especially relevant because, as previously mentioned, existing public housing is set for demolition and transformation into mixed-income housing. Although this concurrent initiative is not part of the I-81 project, it underscores the need for current and prospective lower-income residents to be assured that they will not face financial barriers to securing affordable housing in the area containing the community grid. In other words, it is essential that the voices and interests of economically disadvantaged individuals are not overlooked or forgotten as more market-rate housing is introduced into the area.

Additionally, ongoing recent discourse surrounding the I-81 project's environmental impacts underlines the need for this Executive Order 14096 framework. Specifically, in September 2022, Renew 81 for All, a group of towns, local businesses, and politicians, filed a petition attempting to block the construction, citing environmental issues that could immensely harm neighborhoods predominantly housing minority communities.<sup>120</sup> In February 2023, the Onondaga County Supreme Court upheld the project, subject to Environmental Impact Statement supplementation.<sup>121</sup> A year later, the Appellate Division, Fourth Department reversed, green-lighting the construction without requiring supplementation and, in May 2024, the New York Court of Appeals denied Renew 81 for All's motion for the case to be heard.<sup>122</sup>

Lastly, especially as the I-81 viaduct transforms into a community grid, transportation officials would be well-suited to identify best practices for a CLT that would mesh well with the area's new surroundings. Overall, the LCLT is a prime example of many individuals with different professional expertise working together to provide

---

120. See Verified Petition at 4, 6, Renew 81 for All v. N.Y. State Dep't of Transp., 204 N.Y.S.3d 666 (App. Div. 2024) (No. 007925/2022); see also Jim Zaroli, *Why It's So Hard to Tear Down a Crumbling Highway Nearly Everyone Hates*, THE N.Y. TIMES (June 3, 2023), <https://www.nytimes.com/2023/06/03/nyregion/syracuse-interstate-81.html>.

121. Decision and Order, at 23–24, Renew 81 for All v. N.Y. State Dep't of Transp., No. 007925/2022 (N.Y. Sup. Ct. 2023).

122. Michelle Breidenbach & Tim Knauss, *NY State is Free to Tear Down I-81 in Syracuse, Appeals Court Rules*, SYRACUSE.COM, THE POST-STANDARD (Feb. 2, 2024, 5:40 PM), <https://www.syracuse.com/news/2024/02/ny-state-is-free-to-tear-down-i-81-in-syracuse-appeals-court-rules.html>; *Court Denies Motion for Renew 81 to be Heard by N.Y. Court of Appeals Over Syracuse Community Grid Project*, SPECTRUM NEWS (May 6, 2024, 3:06 AM), <https://spectrumlocalnews.com/nys/central-ny/traffic/2024/05/06/court-denies-motion-for-renew-81-to-be-heard-by-n-y-court-of-appeals>.



affordable housing to marginalized groups disproportionately impacted by a transportation project.

### CONCLUSION

As demonstrated above, there are immense benefits to allocating at least a portion of the land freed up from the deconstruction of the I-81 viaduct and rezoning in Syracuse as a CLT. Through analyzing the ICLT and LCLT, only two of the hundreds of CLTs around the country, it is arguable that a CLT on this land with a ninety-nine-year ground leasing system, well-balanced resale procedures, and close collaboration with transportation officials would cultivate permanent affordable housing.

#### I. STRONG LOCAL INTEREST AND SUPPORT OF CLT MODEL

The case for a CLT in this area is not unheard of, as there are several local and statewide organizations that strongly advocate for this position.<sup>123</sup> With this already-existing support and attention, the public would likely wish to be involved and engage with this proposed CLT project. As Pam Clay-Young, a long-time former member of the NPEP team and prior staff attorney for the Kentucky Transportation Cabinet's Department of Highways, explained, involving the public in the decision-making process for any development project, especially those involving roadways, is essential to reaching results valued by all parties.<sup>124</sup>

Along with this, even a portion of the NAEP grant recently awarded to the City could help CLT organizers overcome a hurdle common among shared-equity affordable housing projects— initial funding to acquire areas of land and build or renovate housing structures.<sup>125</sup> Simply put, establishing and financially supporting a CLT on a portion of land in a city facing an impending affordable housing crisis fits squarely within NAEP's purpose because this would directly support historically marginalized, underserved groups of residents.

---

123. See Press Release, N.Y. C.L. Union, NYCLU and Community Members Rally to Protect Black Syracuse Residents from Displacement After ReZone Passage (Aug. 22, 2023), <https://www.nyclu.org/press-release/nyclu-and-community-members-rally-protect-black-syracuse-residents-displacement-after>; N.Y. C.L. UNION, *About* <https://www.nyclu.org/about-nyclu> (last visited Nov. 6, 2023).

124. Clay-Young, *supra* note 90.

125. See generally Brown, *supra* note 1.

## II. FUTURE OF COMMUNITY LAND TRUSTS IN NEW YORK AND AROUND THE COUNTRY

This shared motivation to create a CLT in Syracuse among groups located around New York may hopefully aid in pushing Assembly Bill 2023-A5865 forward as the state awaits its fate. Creating this acquisition fund would provide even further economic resources to cities, towns, and community groups facing economic barriers to building permanent affordable housing systems. In addition, explicitly defining CLTs may increase their name recognition around the state and encourage further legislation to protect them as cognizable entities.

Broadly, CLTs' effective methods could benefit many localities around the country experiencing or on the verge of facing affordable housing challenges, including limited dwelling options and rising prices, as a result of trends such as declines in new construction and growing economic inflation. This is demonstrated by the nationwide housing shortage of between 5.5 and 6.8 million homes as well as the approximate thirty-nine percent increase in home prices and thirty-one percent surge in rent prices over the past four years, heavily restricting many individuals' access to rental or homeownership properties.<sup>126</sup>

Although Syracuse is just a small dot on a map in one state out of fifty, the City's history of deep-rooted segregation and displacement severely disrupting marginalized groups speaks to trends observed in places around the country and the need for progressive affordable housing solutions, such as CLTs, to support affected residents.

---

126. The Affordable Housing and Homeownership Protection Act Would Tackle Housing Crisis by Creating Millions More Homes and Helping Main Street Compete with Wall Street, TINA SMITH: U.S. SENATOR FOR MINN., (Jan. 26, 2024, 1:13 PM), <https://www.smith.senate.gov/the-affordable-housing-and-homeownership-protection-act-would-tackle-housing-crisis-by-creating-millions-more-homes-and-helping-main-street-compete-with-wall-street/>; Anna Bahney, The US Housing Market is Short 6.5 Million Homes, CNN BUS. (Mar. 8, 2023, 8:57 AM), <https://www.cnn.com/2023/03/08/homes/housing-shortage/index.html>.

## Appendix A

