

Historically Affordable: How Historic Preservationists and Affordable Housing Advocates Can Work Together to Prevent the Demolition of Rent-Stabilized Housing in Los Angeles

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I. Introduction

Los Angeles is grappling with a severe affordable housing crisis.¹ As with all large-scale socioeconomic problems, its causes are complex.² This paper will focus on one exacerbating factor—the rise in demolition of rent-stabilized multi-family housing—and suggest ways in which historic preservationists and low-income tenants’ advocates might collaborate to combat this trend.

Historic preservationists and housing advocates³ have distinct priorities and may at first glance seem to be strange bedfellows. Historic preservation in the public imagination is more often connected, rightly or not, with increased property values and gentrification than with concerns about social or economic justice.⁴ In New York City, for example, real estate developers have sought (perhaps disingenuously) to blame strong local historic preservation ordinances for the city’s extraordinarily expensive rental market.⁵ However, unique circumstances in Los Angeles present historic preservationists and housing advocates with an opportunity to form a mutually beneficial alliance. Due to the confluence of the city’s rent-stabilization ordinance and a state law called the Ellis Act, the permanent loss of rent-stabilized housing goes hand-in-hand with the demolition of buildings constructed before 1978—some of which are notable examples of early- and mid-twentieth century architecture. This dynamic creates an overlap in goals between two civic-minded groups reliant on community support, offering them a chance to broaden each other’s coalitions while more effectively advocating the preservation of Los Angeles’ affordable, historically valuable rental residences.

In this paper, I will first sketch the bleak affordable housing landscape in Los Angeles, followed by a discussion of the importance of Los Angeles’ Rent Stabilization Ordinance (LARSO) and the challenge posed to housing advocates by the Ellis Act and the Costa-Hawkins Act. Next, I

1. *Los Angeles City Council Housing Committee Report* (Oct. 21, 2015).

2. Rosalie Ray, Paul Ong & Sylvia Jimenez, *Impacts of the Widening Divide: Los Angeles at the Forefront of the Rent Burden Crisis* (Ctr. for the Study of Inequality, UCLA Luskin Sch. of Pub. Affairs, rev’d Sept. 2014), https://issuu.com/csiucla/docs/ziman_2014-08w/1. This report points to the relatively low number of publically subsidized units, decreased state and federal funding for construction of new affordable housing, the frozen local Section 8 voucher program, population growth, and the decline in median income as contributing factors.

3. Unless greater precision is required, I will use the term “housing advocates” to refer to both tenants’ rights advocates and those who advocate for the development of new affordable housing.

4. J. Peter Byrne, *Historic Preservation and Its Cultured Despisers: Reflections on the Contemporary Role of Preservation Law in Urban Development*, GEORGETOWN LAW FACULTY PUBL’NS & OTHER WORKS (Paper No. 784, 2012).

5. See Stephen B. Meister, “History” v. Housing, N.Y. POST, Apr. 10, 2012, <http://nypost.com/2012/04/10/history-v-housing/>.

will outline the recent progress of historic preservation efforts in Los Angeles and describe the protections offered to Historic-Cultural Monuments (HCMs) and how housing advocates could leverage them. I will then examine three illustrative examples of coordination between local housing advocates and historic preservationists. Finally, using lessons learned from these examples, I will present six suggestions for how the two groups can further collaborate to more effectively preserve historic rent-stabilized housing in Los Angeles.

II. Los Angeles' Unaffordable Rental Market

With area home prices at record highs, Los Angeles' renters feel the affordable housing crisis most acutely.⁶ Renters make up 60 percent of the city's population, the largest share in the country (or nearly the largest, depending on which study one consults).⁷ According to some measures, Los Angeles is the least affordable rental market in the nation.⁸ Between 2006 and 2013, the region's median rent rose by nearly 11 percent; during the same time, median renter income declined by four percent.⁹ The situation for the poorest Angelenos is dire: fewer than five percent of rental units are affordable for low-income residents.¹⁰ In fact, in order to afford the average rent in Los Angeles County of just over \$2,000 a month, a household needs to earn four times the state minimum wage.¹¹ The vast majority of low-income renters in the area spend over half of their incomes on rent and utilities, which qualifies as a severe rent burden.¹² Those with average resources are also struggling: 50 percent of residents with incomes in the middle of the spectrum are moderately or severely rent-burdened.¹³

6. Zillow, Press Release, Renting Less Affordable Than Ever Before, While Mortgages Remain Affordable by Historical Standards, Aug. 13, 2015, <http://zillow.mediaroom.com/2015-08-13-Renting-Less-Affordable-Than-Ever-Before-While-Mortgages-Remain-Affordable-by-Historical-Standards>.

7. Ray et al., *supra* note 2; Sean Capperis, Ingrid Gould Ellen & Brian Karfunkel, *Renting in America's Largest Cities* (NYU Furman Ctr. May 28, 2015), http://furmancenter.org/files/CapOneNYUFurmanCenter__NationalRentalLandscape_MAY2015.pdf.

8. Ray et al., *supra* note 2.

9. Capperis et al., *supra* note 7.

10. *See id.*

11. California Housing Partnership Corp., *Special Report: Lack of Affordable Housing Driving More Los Angelenos into Poverty* (Aug. 2015), <http://www.scanph.org/sites/default/files/LAHousingNeed2015.pdf>. This figure references the current minimum wage of \$9 per hour. The minimum wage will rise to \$15 per hour by 2020.

12. Capperis et al., *supra* note 7; California Housing Partnership Corporation, *supra* note 11.

13. "Rent-burdened" is defined as spending over 30 percent of one's income on rent and utilities: Ray et al., *supra* note 2.

When housing costs are factored into the equation, Los Angeles has a poverty rate of 26 percent, one of the highest in the nation.¹⁴

These unaffordable rents are in large part a product of low supply and high demand: the vacancy rate in Los Angeles is a dramatically low 3.4 percent; the national average vacancy rate is 7.3 percent, while the West Coast average is 5.2 percent.¹⁵ Most newly constructed rental housing in the area is targeted toward wealthier residents, while the city's attempts to promote the creation of affordable rental housing have resulted in approximately 10,000 new units built since 2001, a fraction of the estimated 530,000 necessary to meet the need.¹⁶ Moreover, local, federal, and state funding for affordable housing construction in Los Angeles County has actually decreased by a staggering 65 percent since 2008.¹⁷ It is obvious that new construction of affordable rental housing must be a key component to any long-term, multi-pronged strategy aimed at solving the problem. However, to avoid slipping even deeper into crisis, it is imperative that advocates and city officials focus on preserving the affordable rental housing that already exists.

III. State Laws as Obstacles to Local Rent Control Efforts

Much of the affordable housing stock in Los Angeles is rent-stabilized multi-family residences.¹⁸ As a result of the Ellis Act, a state law that establishes the right of landlords to withdraw their units from the rental market in certain circumstances, these sorts of residences are especially vulnerable to demolition and conversion when the real estate market is highly lucrative—as it is currently.¹⁹ Compounding the problem is the fact that, due to the Costa-Hawkins Act, California cities are prevented from creating any new rent-controlled units to replace those lost to conversion.²⁰

A. LARSO and the Costa-Hawkins Act

In response to a housing shortage and subsequent sharp increase in citywide rents in the summer of 1978, the Council of the City of Los

14. California Housing Partnership Corporation, *supra* note 11.

15. Capperis et al., *supra* note 7; U.S. Census, *Housing Vacancies and Home Ownership* (2d Q. 2016), <http://www.census.gov/housing/hvs/index.html>.

16. LACC Housing Committee Report, *supra* note 1; California Housing Partnership Corporation, *supra* note 11.

17. California Housing Partnership Corporation, *supra* note 11.

18. Ben Bergman, *Has Rent Control Been Successful in Los Angeles?*, KPCC, Sept. 12, 2014, <http://www.scrp.org/news/2014/09/12/45988/la-rent-has-rent-control-been-successful-in-los-an/>.

19. *Elliman Report: Quarterly Survey of Greater Los Angeles* (4th Q. 2015), <https://www.elliman.com/pdf/2859fc9bcd96b2a95b6e11dedd90994bbc65df1a>.

20. California Apartment Association, *Issue Insights: Rent Control*, <http://www.sfaa.org/pdf/CAA-Insights-Costa-Hawkins-Rental-Housing-Act.pdf>.

Angeles adopted the Rent Stabilization Ordinance of Los Angeles (LARSO).²¹ Applicable to all multi-family housing issued a certificate of occupancy prior to October 1, 1978, LARSO established strict controls on how much and how often landlords could raise rents on their existing tenants. When a tenant voluntarily vacates or is evicted from a rent-stabilized unit, the landlord may then reset the rent to market level.²² Because this creates an economic incentive for landlords to find an excuse to evict long-term tenants when the rental market is strong, LARSO also provides tenants with certain protections against unwarranted evictions.²³ In 2014, the Los Angeles Housing, Community, and Investment Department (HCID) estimated that 80 percent of the city's 880,581 multi-family units were protected by LARSO, which would put the number of rent-stabilized units at about 705,000.²⁴ Other sources estimate the figure to be closer to 638,000.²⁵

LARSO's power was blunted in two key ways by the passage of the Costa-Hawkins Act in 1995. First, the act enshrined vacancy decontrol, which allows the landlord of a rent-controlled building to raise a unit's rent to market rate when tenancies turn over.²⁶ This means that if a rent-controlled unit has recently been leased to a new tenant, its rental rate is likely currently at market or close to it—in other words, not affordable for most residents. As a result, some housing advocates, when formulating objectives, are more inclined to focus on affordability covenants than on rent control.²⁷ However, it would be a mistake to abandon the preservation of rent-controlled units as a goal. There are still more than 600,000 rent-controlled units in Los Angeles, representing a significant portion of the city's affordable housing supply that cannot be easily replenished.²⁸ Furthermore, even with vacancy decontrol, LARSO offers vital protections against unwarranted evictions and economic protection to tenants already occupying rent-stabilized units. Finally, no matter their rental rates, when LARSO units are converted to condominiums, renters are thrown back into a rental market with shrinking supply and growing demand, which pushes up rental rates for the entire market.

21. L.A. MUN. CODE § 151.01.

22. This is not a feature of the original LARSO, but a requirement of the Costa-Hawkins Act.

23. L.A. MUN. CODE §§ 151.02, 151.04, 151.09.

24. Bergman, *supra* note 18.

25. Andrew Khouri, *Evictions from Rent-Controlled Units on the Rise in L.A.*, L.A. TIMES, Apr. 13, 2014, <http://articles.latimes.com/2014/apr/13/business/la-fi-no-fault-evictions-20140413>.

26. California Apartment Association, *supra* note 20.

27. Telephone Interview with Claudia Monterrosa, Director of Policy, Planning, and Research, Los Angeles Housing Community and Investment Department, Nov. 23, 2015.

28. Bergman, *supra* note 18.

LARSO-protected units are especially vulnerable to conversion because, unlike non-rent controlled units, landlords of LARSO buildings cannot take advantage of an increasingly lucrative market by dramatically raising rents on their tenants. The only option for owners determined to make a windfall profit is to invoke the Ellis Act, discussed in detail below, in order to convert their units into market-rate condominiums.

The other key provision of the Costa-Hawkins Act prevents municipalities from applying rent control protections to housing built after 1995.²⁹ This means that, barring a change in state law, the current supply of rent-controlled housing in Los Angeles is as large as it will ever be: when a LARSO unit is lost, another cannot be constructed to replace it. It is therefore that much more important to preserve the rent-stabilized units still in existence.

B. Ellis Act

The Ellis Act, which establishes the right of landlords to remove their units from the rental market, has allowed rent-stabilized multi-family residences to be increasingly targeted for demolition and subsequent conversion to condominiums or luxury rental apartments.³⁰

The history of the Act is instructive. In 1983, pursuant to its rent control ordinance, the City of Santa Monica denied Jerome Nash, a landlord, the removal permit he sought in order to evict the tenants of his rent-controlled building and demolish the structure.³¹ Judging by his comments, Nash, whose mother had purchased the building in question for him when he was still a teenager, was apparently at least partially motivated by personal animus toward his tenants. "There is only one thing I want to do," Nash said, "and that is to evict the group of ingrates inhabiting my units, tear down the building, and hold on to the land until I can sell it at a price which will not mean a ruinous loss on my investment."³² A legal battle ensued, and in *Nash v. City of Santa Monica*, the Supreme Court of California ultimately held that Nash's asserted right "to go out of business" was not constitutionally protected by either the United States or the State of California.³³

In response, the real estate community lobbied the State Legislature to pass the Ellis Act, which provides that "[n]o public entity . . . shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance, or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the

29. California Apartment Association, *supra* note 20.

30. Leo Duran, *Ellis Evictions on the Rise in Los Angeles*, KPCC, Apr. 24, 2015, <http://www.scp.org/news/2015/04/24/51256/ellis-act-evictions-in-l-a-on-the-rise/>.

31. *Nash v. City of Santa Monica*, 37 Cal. 3d 97, 101 (1984).

32. *Id.* at 101.

33. *Id.* at 100.

property for rent or lease. . . .”³⁴ In practice, the Act has significantly hindered Los Angeles’ efforts to maintain its affordable housing stock because it allows landlords to evict all of a rent-controlled building’s tenants in order to convert the property to condominiums.³⁵ This conversion often involves the demolition of the original structure.³⁶

An additional factor in the equation is the controversial Small Lot Subdivision Ordinance (SLS), approved by the City Council in 2005; it is aimed at increasing Los Angeles’ low homeownership rate by increasing the supply of small homes for sale.³⁷ By reducing minimum lot sizes from 5,000 to 600 square feet, the SLS has made the prospect of redeveloping rental housing in sought-after neighborhoods into new condominiums or small homes highly economically attractive to speculators because they can fit more homes on a single parcel.³⁸ In this environment, invoking the Ellis Act to evict tenants and redevelop the property is an increasingly appealing option for landlords seeking a bonanza.

In Los Angeles, landlords have invoked the Ellis Act to withdraw almost 19,000 rent-controlled units from the market since 2001.³⁹ Use of the Act peaked in 2005 and 2006, when the local housing market was at its strongest, with the withdrawal of almost 10,000 units in those two years alone (for a bracing comparison, note that it took the city over a decade to construct that many new affordable units—see above). These numbers fell sharply with the arrival of the Great Recession. While current figures are nowhere near those of the pre-recession years, there is

34. CAL. GOV’T CODE § 7060.

35. Condominium conversion is one of several scenarios that qualify as an Ellis-sanctioned “withdrawal from the rental market.” A landlord may also use the Ellis Act to evict tenants if the building is then left vacant for a period of at least 5 years, after which the building is no longer subject to rent control and the landlord may re-rent the units at the market rate. See L.A. MUN. CODE § 151.2–28. The City of Los Angeles does not yet track what happens to a property after it has been Ellised so there is no hard data on how often Ellis invocations result in condo conversions versus extended vacancy (or non-compliance). This may soon change, as the City Council is considering a proposal to require the Housing and Community Investment Department (HCID) to continue to monitor Ellised properties beyond the eviction stage. However, common sense indicates that extended vacancy would be economically appealing to few landlords.

36. Again, it is impossible to know exactly how often an Ellised residence is subsequently demolished since HCID does not yet collect this data. Anecdotal information relayed by city officials and housing and preservation advocates suggests that such properties are usually demolished or significantly renovated.

37. Chase Scheinbaum, *L.A.’s Small Lot Homes: Destroying Low-Rent Housing, Restoring the American Dream, or Both?*, KCET, Feb. 9, 2015, <http://www.kcet.org/news/agenda/planning/los-angeles-small-lot-homes.html>.

38. Interview with Adrian Scott Fine, Director of Advocacy, Los Angeles Conservancy, Nov. 18, 2015.

39. Duran, *supra* note 30.

renewed cause for concern as the housing market again reaches record heights: from 2013 to 2014, the number of occupied units withdrawn from the rental market under the Act increased by 235 percent, from 308 to 725.⁴⁰ In 2015, that number jumped to 1,075.⁴¹ The phenomenon gained sufficient attention to inspire the City Council to pass three motions in October 2015, calling on city agencies to study various approaches aimed at lowering the rate of Ellis evictions.⁴²

The purported rationale for the Ellis Act was to protect property owners of limited means from being forced to remain landlords of buildings they could not properly maintain, although, of course, the option to sell the property has always been available. In practice, rather than primarily being used by landlords to “go out of business,” the Act allows speculators and developers—which are not, and have no intention of being, landlords of rent-controlled buildings—to purchase LARSO-protected properties, evict their tenants, demolish the structures, and build luxury housing. In other words, it allows developers and investors to go *into* business at the expense of Los Angeles’ moderate- and low-income renters.⁴³ In fact, more than half of the rent-controlled Los Angeles properties withdrawn from the market under the Ellis Act in 2013 had been purchased within the previous year.⁴⁴ Often, the brand new owner invoking the Act is not an individual but an investment firm such as the Robhana Group, which recently purchased and served eviction notices on all tenants of the Cove, a LARSO-protected apartment building in Los Feliz. The firm plans to convert the rent-stabilized apartments into condominiums.⁴⁵

Jerome Nash—the plaintiff at the center of *Nash*, the impetus for the passage of the Ellis Act—is himself a potent, albeit extreme, illustration of the gulf between the language used to justify the Act and its use in practice. More than twenty years after suing for the right to “go out of business,” Nash continues to own multiple residential rental buildings in the Los Angeles area.⁴⁶ He has also repeatedly wielded the Ellis Act in a vindictive manner. After purchasing West Hollywood’s historic

40. LACC Housing Committee Report, *supra* note 1.

41. Ben Poston & Andrew Khouri, *More Rent-Controlled Buildings Are Being Demolished to Make Way for Pricier Housing*, L.A. TIMES, Apr. 2, 2016, <http://www.latimes.com/local/california/la-me-apartments-demolished-20160402-story.html>.

42. *See id.*

43. *See* Larry Gross, *LA’s Eviction Game*, L.A. TIMES, June 9, 2015, <http://www.latimes.com/opinion/op-ed/la-oe-0609-gross-housing-ellis-act-20150609-story.html>.

44. *See id.*

45. Allison B. Cohen, *Neighborhood Council Asks City to Crack Down on Ellis Act Abuse*, LOS FELIZ LEDGER, Oct. 1, 2015, <http://www.losfelizledger.com/article/neighborhood-council-asks-city-to-crack-down-on-ellis-act-abuse/>.

46. His business earns a 1-star review on Yelp, <http://www.yelp.com/biz/nash-jerome-los-angeles>.

landmark El Mirador Apartments in 2002, Nash became embroiled in a feud with the city over replacing the building's broken windows (the city's Historic Preservation Commission insisted that he repair, not replace, the windows).⁴⁷ Admittedly motivated by pique, in 2010 he invoked the Ellis Act and evicted all of El Mirador's tenants, citing plans to convert the building to condos or an "urban inn." It remains vacant as of June 2016.⁴⁸ In 2013, Nash used the Ellis Act to evict all of the tenants of yet another historic West Hollywood landmark, El Pasadero, to spite two tenants with whom he was engaged in an acrimonious dispute.⁴⁹

IV. Historic Preservation in Los Angeles

Meanwhile, the prospects for historic preservation in Los Angeles have brightened. In 1962, three years before New York City passed its touted Landmarks Preservation Law, Los Angeles became one of the first urban areas to implement historic preservation legislation with the passage of the Cultural Heritage Ordinance.⁵⁰ However, until ten years ago, there was no city agency or department dedicated to historic preservation in the City of Los Angeles, nor was there a wide-ranging historic preservation agenda overseen by any agency.⁵¹

A. Recent Progress

In 2006, the Office of Historic Resources (OHR) was established within the Department of City Planning.⁵² The OHR's mission is to "create a comprehensive, state-of-the-art, and balanced preservation program for the City of Los Angeles." Prior to the creation of the OHR, the Cultural Affairs Department oversaw the designation of landmarks, called Historic-Cultural Monuments (HCMs), and a few staff members in the Department of City Planning handled the administration of historic districts, or Historic Preservation Overlay Zones (HPOZs).⁵³ In addition to managing these two programs, the OHR has identified the following foundational goals: to complete the first thorough citywide historic resources survey,

47. Neal Broverman, *WeHo's El Mirador Saved: City Agrees to Condo/Inn Conversion*, L.A. CURBED (Aug. 9, 2012, 4:14 PM), http://la.curbed.com/archives/2012/08/wehos_el_mirador_saved_as_city_agrees_to_condoinn_conversion.php.

48. WEHOVILLE Staff, *Rent Control Advocate Attacks City Council Candidates D'Amico and Meister*, Feb. 26, 2015, <http://www.wehoville.com/2015/02/26/rent-control-advocate-attacks-city-council-candidates-damico-and-meister/>.

49. Dan Watson, *Residents of WeHo's Historic El Pasadero Apartments Evicted by Controversial El Mirador Owner*, WEHOVILLE, July 25, 2013, <http://www.wehoville.com/2013/07/25/pasadero-draft/>.

50. Office of Historic Resources, *History of the Cultural Heritage Commission*, <http://preservation.lacity.org/commission/history-cultural-heritage-commission>.

51. Office of Historic Resources, *About the OHR*, <http://preservation.lacity.org/about>.

52. *See id.*

53. *See id.*

to fully integrate historic preservation into the city planning process, and to “create additional incentives and creative partnerships for historic preservation.”⁵⁴

The first of these goals, the historic resources survey, grew into the project now known as SurveyLA. Begun in 2010 and partially funded by a \$2.5 million grant from the J. Paul Getty Trust, SurveyLA is the first attempt to systematically identify every historic resource, whether a building, object, structure, natural feature, or landscape, within the City of Los Angeles. This is no small feat because the city comprises 880,000 legal parcels spread over almost 500 square miles.⁵⁵ The findings from concluded survey phases have been published on a dedicated, user-friendly website,⁵⁶ and the final survey phase is scheduled to be completed this year. Historic resources are evaluated not solely based on their architectural significance, but also on their connection to social history, commerce and industry, cultural significance, or ethnic heritage—to name just a few of the broad-minded criteria considered by the OHR.⁵⁷

These criteria are reflective of the innovative character of historic preservation in Los Angeles. According to Adrian Scott Fine, Advocacy Director of the Los Angeles Conservancy (LAC), while historic preservation is a more firmly established part of local planning regimes in the East Coast and Midwest, the focus of preservation efforts is almost exclusively on pre-modern structures of historic or architectural significance.⁵⁸ In Los Angeles, however, historic preservationists have expanded their concerns to include architecture from the mid-twentieth century, as well as architecturally unremarkable sites of great cultural importance.⁵⁹

The LAC is pioneering this sort of preservation advocacy.⁶⁰ A private nonprofit, the LAC was founded in 1978 as part of the successful campaign to save the Los Angeles Central Library from demolition. The LAC now boasts 6,500 members, making it the largest local preservation advocacy organization in the nation.⁶¹ One of LAC’s current campaigns, supported by former Los Angeles County Supervisor Gloria Molina, is

54. Other goals listed by the OHR included earning “certified local government” status in historic preservation, achieved in 2007; to be an expert resource for the Department of City Planning and other agencies; and to provide customer service to community members throughout the historic preservation review process. Office of Historic Resources, *Mission*, <http://preservation.lacity.org/about/mission>.

55. SurveyLA: *Project Description*, <http://preservation.lacity.org/survey/description>.

56. Historic Places LA, www.historicplacesla.org.

57. SurveyLA, *supra* note 55.

58. Fine interview, *supra* note 38.

59. *See id.*

60. *See id.*

61. Los Angeles Conservancy, *About*, <https://www.laconservancy.org/about>.

devoted to placing sites associated with the Chicano Moratorium on the National Register of Historic Places.⁶² The Chicano Moratorium, considered a turning point in the Chicano/a activist movement, refers to the series of marches and rallies held in East Los Angeles between 1969 and 1971 to protest the Vietnam War and the disproportionate casualty rate among Mexican-Americans in particular.⁶³ A march on August 29, 1970, drew 30,000 protestors from across the nation; the brutal response by the Los Angeles Police and Sheriff's Departments resulted in the deaths of two protestors⁶⁴ and prominent journalist Ruben Salazar.⁶⁵ The LAC is promoting historic recognition for three associated sites: Belvedere Park, where the fateful march began; Ruben F. Salazar Park (originally Laguna Park and later renamed for the slain journalist), where the march ended and where protestors were attacked by law enforcement; and the Silver Dollar Café, where Salazar was killed by a Sheriff's deputy.⁶⁶

The LAC has also launched an initiative to identify, discuss, and preserve sites associated with the LGBTQ community in Los Angeles, which possesses a rich and under-recognized history.⁶⁷ As is also the case with the Chicano Moratorium sites, many of the structures connected to this history are architecturally modest. Nevertheless, the LAC believes that such places are worthy of protection and preservation. The preservation of landscapes and structures attached to historic sociocultural events facilitates collective memory, understanding, and storytelling.⁶⁸ This forward-looking, democratic approach to preservation in Los Angeles should facilitate the development of relationships with grassroots community groups and housing advocates animated by social justice concerns.

There are indications that awareness of and support for historic preservation among Los Angeles residents have "gone mainstream."⁶⁹ The

62. Los Angeles Conservancy, *Chicano Moratorium*, <https://www.laconservancy.org/issues/chicano-moratorium>.

63. KCET, *The Chicano Moratorium*, <http://www.kcet.org/social/departures/highland-park/painting-the-walls/chicano-moratorium.html>.

64. The protestors killed were José Diaz and Lyn Ward, a Brown Beret. The Brown Berets are a Chicano/a activist organization founded in the 1960s and are still active today. National Brown Berets, *History*, <http://nationalbrownberets.com/History.html>.

65. Los Angeles Conservancy, *supra* note 62.

66. *See id.*

67. "Over the course of the twentieth century, [Los Angeles] was home to the world's first gay pride parade, the world's first LGBTQ synagogue and oldest continuously operating Christian LGBTQ ministry, the country's longest-running LGBTQ publication, and groundbreaking work in medical research and care for members of the LGBTQ community." Los Angeles Conservancy, *Curating the City: LGBTQ Historic Places in L.A.*, <https://www.laconservancy.org/lgbtq>.

68. Fine interview, *supra* note 38.

69. *See id.*

Office of Historic Resources (OHR) has seen a large uptick in the number of Historic-Cultural Monument (HCM) nominations, mostly from owners of would-be historic properties (community members, the Cultural Heritage Commission, and the City Council may also submit HCM nominations).⁷⁰ There is also great demand for new HPOZ designations.⁷¹ An HPOZ is a historic district, usually residential, consisting of between fifty and 3,000 parcels, with a high concentration of historically or culturally significant properties; these properties do not need to be HCMs to qualify. Any proposed alteration, addition, or renovation to a property within an HPOZ must undergo a rigorous review process.⁷² Originally four planning officials were tasked with managing HPOZs, but demand for the designation grew so overwhelming that in June 2014, the city approved a budget increase to cover the salaries of two additional staff members.⁷³ With the recent approval of the 52nd Place HPOZ—the first historic district in Southeast Los Angeles, and the former neighborhood of jazz singer Ivie Anderson and Gilbert Lindsay, the first African-American City Council member⁷⁴—there are now thirty HPOZs in the City of Los Angeles, and seven more pending.⁷⁵

The past year has also seen the passage of two local ordinances welcomed by historic preservationists. First, in response to the “surprise” demolition in June 2014 of the Mole-Richardson Studio Depot on North La Brea Avenue, which was an historic Art Deco building that had not yet received HCM status and its attendant protections, advocates succeeded in persuading the City Council to approve a demolition notification ordinance that had been in discussion for over a year.⁷⁶ The ordinance requires a property owner seeking a demolition permit to provide advance written notice to the City Council member representing the district in which the property is located and to all adjacent property owners, and to post a visible notification at the property site, for at least thirty days

70. Interview with Ken Bernstein, Manager of the Office of Historic Resources, Nov. 12, 2015.

71. *See id.*

72. Office of Historic Resources, *About the HPOZ Program*, <http://preservation.lacity.org/hpoz/homepage/about-hpoz-program>.

73. Adrian Scott Fine, *Conserving L.A.'s Older and Historic Neighborhoods*, 36:4 LAC NEWS (July/Aug. 2014).

74. Office of Historic Resources, *52nd Place Becomes Los Angeles' 30th Historic District*, <http://preservation.lacity.org/news/52nd-place-becomes-los-angeles-30th-historic-district>.

75. Office of Historic Resources, *Historic Preservation Overlay Zones*, <http://preservation.lacity.org/hpoz>.

76. *Preservation Issues*, 36:5 LAC NEWS (Sept./Oct. 2014); Ken Bernstein *supra* note 70.

prior to receiving a permit.⁷⁷ This allows the City Council, neighboring property owners, or any member of the public who happens to walk by and encounter the notification to initiate an HCM nomination, which temporarily freezes or delays the issuance of a demolition permit.⁷⁸

In another promising development, Los Angeles County passed its very first historic preservation ordinance in October 2015. Similar to the preservation framework in the City of Los Angeles, the ordinance allows for the designation of landmarks as well as historic districts in unincorporated territories within Los Angeles County—a vast category that includes such varied neighborhoods as Marina del Rey, East Los Angeles, and Altadena—and does not require owner consent.⁷⁹

B. Protections for HCMs and Their Potential for Use by Housing Activists

When an historically significant, rent-stabilized multifamily residence is threatened with demolition and conversion to condominiums or luxury rentals,⁸⁰ the goals of historic preservationists and tenants' advocates are brought into more or less perfect alignment, assuming the following logical equation is accurate: designation as an HCM prevents a building from being demolished, and if owners are prevented from demolishing a rent-stabilized building, they will abandon plans to withdraw the building from the rental market. This is a generally appropriate assumption in most, although not all, situations.

While designation as an HCM does not guarantee that a building will not be demolished if its owner is determined to see it happen, it does provide layers of protection that make the process more time-consuming and demolition as the end result less likely. First, any demolition permit sought for an HCM is discretionary, not ministerial—that is, the Department of City Planning will review, rather than automatically approve, a permit request.⁸¹ As a discretionary project, it is now subject to the California Environmental Quality Act (CEQA) and accordingly must undergo

77. Los Angeles City Ordinance No. 183312, http://clkrep.lacity.org/online/docs/2013/13-1104_ord_183312.pdf.

78. Bernstein interview, *supra* note 70.

79. Los Angeles Conservancy, *Los Angeles County*, <https://www.laconservancy.org/communities/los-angeles-county>.

80. An owner may invoke the Ellis Act to develop luxury or market-rate rentals as long as at least five years elapse between the withdrawal of the original units from the market and the offer of the new units for rent, or if the new development includes at least as many covenanted affordable units as required to replace the original LARSO units on a 1:1 basis. See L.A. MUN. CODE § 151.28. The latter sort of development plan could present a conflict of interest between historic preservationists and affordable housing advocates, a scenario I will discuss in more detail in the Wyvernwood case study.

81. Bernstein interview, *supra* note 70.

an evaluation to determine the extent of its environmental impacts.⁸² If the project is found to have “significant” impacts, an environmental impact report (EIR) must be prepared by the government agency, i.e., the lead agency, overseeing the project. Because CEQA considers historic resources to be part of the environment, the proposed demolition of an HCM will necessarily trigger the preparation of an EIR.⁸³

Looking at issues such as traffic, waste, air pollution, and cultural heritage, an EIR examines how a project would affect quality of life in the surrounding area and investigates alternative approaches to the project that would mitigate or avoid these negative impacts altogether.⁸⁴ The EIR process has a built-in public review period, during which advocates and community activists may submit comments, questions, or propose alternatives to which the lead agency must respond.⁸⁵ If an HCM is still facing demolition after the EIR process has been completed, the Cultural Heritage Commission may delay the issuance of a demolition permit for 180 days, with an additional 180-day extension possible with the consent of City Council.⁸⁶ Finally, individuals or organizations may sue the local government if it has not properly discharged its duties under CEQA.⁸⁷

Thus, a determined developer with the support (or apathy) of local government and the public could eventually demolish a landmarked structure. Nevertheless, the protections afforded to HCMs provide activists with time to mobilize community support for preservation and potentially a cause of action for litigation. However, the question on the other side of the equation still remains: assuming that demolition was prevented or at least made into a prolonged, unappealing hassle, would landlords then choose to refrain from withdrawing those rent-stabilized units from the market? Without hard data on how often “Ellised” LARSO buildings are subsequently demolished, it is not possible to say with certainty how often saving a building from demolition would save its tenants from eviction.⁸⁸ However, common sense and anecdotal data suggest that in most or at least many cases, converting a LARSO property to market-rate condominiums entails demolishing or significantly renovating the original building. Alternatively, leaving a property vacant for five years,

82. California Office of Historic Preservation, *Technical Assistance Series #1: California Environmental Quality Act (CEQA) and Historical Resources*, <http://ohp.parks.ca.gov/pages/1054/files/ts01ca.pdf>.

83. See *id.*

84. Los Angeles Conservancy, *Using CEQA to Protect Your Community* at 1 (2010).

85. *Id.* at 9.

86. Office of Historic Resources, *What Does Historic-Cultural Monument Status Mean?*, <http://preservation.lacity.org/commission/what-does-historic-cultural-monument-status-mean>.

87. California Office of Historic Preservation, *supra* note 82.

88. HCID does not collect this information. Monterrosa interview, *supra* note 27.

even with the prospect of market-rate rents, is unlikely to be economically appealing to many landlords.⁸⁹ While some landlords may have other motivations (see the example of Jerome Nash, above), it is probably fair to assume that most of them operate as rational businesspeople.

C. Examples of Collaboration Between Housing Advocates and Historic Preservationists

In recent years, events have brought historic preservationists and housing advocates together on several occasions. The following examples of collaboration demonstrate how housing advocates can leverage the support of historic preservationists and benefit from the protections provided to landmarks—and also reveal potential impediments to an alliance.

1. Flores and Edinburgh

Until September 2015, Matthew Jacobs was the chairman of the California Housing Finance Agency (CHFA), which according to its website is dedicated to promoting “safe, decent and affordable housing opportunities for low to moderate income Californians.”⁹⁰ Jacobs is also the owner of two architecturally notable rent-stabilized apartment complexes in Los Angeles: the Mendel and Mabel Meyer Courtyard Apartments on North Flores Street and the Edinburgh Bungalow Court on North Edinburgh Avenue (hereinafter referred to as Flores and Edinburgh).⁹¹ In early 2015, less than a year after purchasing the properties, Jacobs exercised his right under the Ellis Act to serve eviction notices on all tenants residing at the two complexes.⁹² He intended to tear down both complexes in order to build new, luxury small lot subdivisions (SLS) (briefly discussed above).⁹³

Flores and Edinburgh tenants organized against the plan. Led by Steve Luftman, a long-time resident of Flores, tenants and community activists organized multiple protests, passed out fliers in front of Jacobs’ other luxury developments, and picketed in front of his home.⁹⁴ No doubt aided by the glaring irony of Jacob’s public position contrasted with his private business, tenants attracted the support of tenants’ rights organizations

89. How often landlords violate this mandated vacancy period after invoking the Ellis Act is an open question.

90. California Housing Finance Agency, *About*, <http://www.calhfa.ca.gov/about/index.htm>.

91. Harriet Ryan, *Tenants Decry Eviction by Landlord, the Chair of State Housing Agency*, L.A. TIMES, May 30, 2015, <http://www.latimes.com/local/lanow/la-me-ln-tenants-decry-eviction-by-landlord-the-chair-of-state-housing-finance-agency-20150530-story.html>; Fine interview, *supra* note 38.

92. Ryan, *supra* note 91.

93. Gross, *supra* note 43.

94. Ryan, *supra* note 91.

Tenants Together and the Coalition for Economic Survival,⁹⁵ as well as attention from many local and even national media outlets, including *LA Weekly*,⁹⁶ the *Los Angeles Times*,⁹⁷ *The Sacramento Bee*,⁹⁸ and *The Daily Beast*.⁹⁹ After months of bad publicity and a letter-writing campaign—organized by Tenants Together and resulting in over 1,000 letters demanding his resignation from the CHFA sent to Governor Jerry Brown—Jacobs announced in July 2015 that he would step down from the CHFA at the end of his term in September.¹⁰⁰ The tenants of the Edinburgh and Flores apartments, however, had already been forced to leave their homes, and the properties were still slated to be razed and redeveloped.¹⁰¹

Despite the eviction battle seemingly lost, Luftman and his neighbors continued to fight for the buildings' preservation. Working closely with the OHR, Luftman submitted an HCM nomination for the Flores apartments.¹⁰² Built in the late 1930s, the complex was designed in the Minimal Traditional style by architect Mendel Meyer, whose firm designed Grauman's Chinese Theater, the Egyptian Theater, Charlie Chaplin Studios, and the Getty House.¹⁰³ On September 3, 2015, the Cultural Heritage Commission (CHC) recommended that the City Council approve the

95. Tenants Together, *CalHFA Chair to Leave Amidst Ellis Act Controversy*, July 15, 2015, <http://www.tenants-together.org/article.php?id=3690>; Lovell Estell III, *Demolition Man: Developer Matthew Jacobs Quits Housing Agency*, CAPITAL & MAIN (July 21, 2015), <http://capitalandmain.com/latest-news/issues/labor-and-economy/demolition-man-developer-matthew-jacobs-quits-housing-agency-0721/>.

96. Dennis Romero, *Neighborhood Opposes Housing Official's Plan to Raze Rent Control Units*, L.A. WKLY., June 19, 2015, <http://www.laweekly.com/news/neighborhood-opposes-housing-officials-plan-to-raze-rent-control-units-5708205>.

97. Ryan, *supra* note 91.

98. Jon Ortiz, *Embattled California Housing Agency Chairman Leaving in September*, SACRAMENTO BEE, July 15, 2015, <http://www.sacbee.com/news/politics-government/capitol-alert/article27357769.html>.

99. James Joiner, *California Housing Boss to Build Luxury Condos over Poor Tenants' Homes*, DAILY BEAST, May 31, 2015, <http://www.thedailybeast.com/articles/2015/05/31/california-housing-boss-to-build-luxury-condos-over-poor-tenants-homes.html>.

100. Tenants Together, *supra* note 95; Ortiz *supra* note 98.

101. With the exception of Steve Luftman, the final holdout. Jessie Lingenfelter, *Beverly Grove Resident Fights Eviction in Court*, PARK LABREA NEWS/BEVERLY PRESS, Aug. 12, 2015, <http://beverlypress.com/2015/08/beverly-grove-resident-fights-eviction-in-court/>.

102. Lovell Estell III, *Historic, Affordable Bungalows Saved from Wrecking Ball*, CAPITAL & MAIN, Sept. 16, 2015, <http://capitalandmain.com/latest-news/issues/labor-and-economy/historic-affordable-bungalows-saved-from-wrecking-ball-0916/>.

103. Los Angeles Conservancy, *Mendel and Mabel Meyer Courtyard Apartments*, <https://www.laconservancy.org/locations/mendel-and-mabel-meyer-courtyard-apartments>.

building's HCM nomination, thereby freezing the demolition process that Jacobs had already set in motion. On November 25, the City Council voted to formally designate the Flores apartments as an HCM.¹⁰⁴ The complex is thus protected from demolition while the project's plans are subjected to the extensive environmental review and public comment period outlined above.

Luftman and his supporters were still putting together the HCM nomination for Edinburgh¹⁰⁵ when the Flores nomination was endorsed by the CHC and its demolition permit frozen.¹⁰⁶ Friends of the Edinburgh and Flores apartments had little time to celebrate this good news. Several days later, on September 9, Jacobs, exploiting a loophole, withdrew the SLS proposal for the Edinburgh property. An SLS is a discretionary project, subject to review by City Planning and Building and Safety officials, and the demolition permit is put on hold while approval for such a project is pending. By withdrawing the SLS application, Jacobs was now able to obtain a ministerial (that is, automatic) demolition permit.¹⁰⁷ (Had Edinburgh's HCM nomination already been submitted, a freeze would have been placed on the demolition process.) This is exactly what he did, and on September 11, workers arrived at Edinburgh to begin demolition.¹⁰⁸

However, savvy community supporters had already sprung into action. Notified by an Edinburgh neighbor on the eve of the impending demolition, Ken Bernstein, manager of the OHR, immediately rushed Edinburgh's nomination to the CHC for formal consideration. This triggered a freeze on demolition. An order to halt demolition was posted at the site the same day, and workers went home after inflicting only minor damage to the building.¹⁰⁹ The 1920's Spanish Colonial Revival complex was now safe from destruction while the HCM-designation process was underway. On November 19, 2015, at a meeting attended by over 30 community supporters, the CHC formally recommended that the City Council designate

104. *See id.*

105. The HCM nomination application requires information on the building's architectural style, construction materials, renovation history, primary and secondary documentation, current and historical photographs, and two written essays, http://preservation.lacity.org/sites/default/files/HCM_Application%20Form_0.pdf.

106. Bernstein interview, *supra* note 70.

107. There would be nothing to stop Jacobs from resubmitting the discretionary SLS proposal for review after the building was already demolished. This is why the City Council passed a motion asking city agencies to look into the possibility of withholding demolition permits for LARSO units until all permits for the proposed replacement construction are granted. *LACC Housing Committee Report, supra* note 1.

108. Estell, *supra* note 102.

109. *See id.*

the site as an HCM.¹¹⁰ On March 2, 2016, the City Council unanimously voted in favor of Edinburgh's historic designation.¹¹¹

If these efforts ultimately save Edinburgh and Flores from destruction (they were still intact as of June 2016), it will clearly be a win for historic preservationists. It is less obvious how rent-stabilized tenants have gained, but there is indeed reason for encouragement. Regarding the displaced tenants of Edinburgh and Flores, if Jacobs is ultimately required to abandon his plans for demolition, it is possible he will choose to re-offer the units for rent at the stabilized rate at the time withdrawal: he would have few alternatives at that point besides leaving the units vacant for five years. If he does, the original tenants have right of first refusal on their old units, assuming they preserved this right in writing.¹¹² After such upheaval, it is unclear how much of a victory this outcome would be for the individuals directly affected.

On the other hand, this episode provides tenants of historic, rent-stabilized buildings potentially facing mass Ellis eviction in the future with instructive lessons: first, where the plight of long-time rent-stabilized tenants facing eviction intersects with the fate of a character-filled historic building threatened with demolition, there are deep reserves of community support waiting to be tapped. Second, had the HCM nominations been initiated earlier—ideally before Jacobs invoked Ellis, or before he decided to purchase the properties with an eye toward redevelopment—perhaps the evictions would have been avoided, suggesting that tenants' rights groups could benefit from preemptively pursuing historic status for rent-stabilized buildings. Third, close cooperation and communication with the OHR throughout the HCM nomination process paid off for Edinburgh supporters in a time of crisis. The OHR does not usually initiate HCM nominations itself; rather, it prefers to receive nominations from property owners and community groups. However, because the OHR had already developed a relationship with the community members preparing the nomination, when it came to light that Edinburgh was under imminent threat, the OHR was willing to depart from protocol and immediately initiate Edinburgh's nomination itself in order to trigger the demolition freeze.¹¹³

2. Lincoln Place

Lincoln Place, an historic product of the Garden City Movement, originally opened in 1951 and consisted of fifty-two multi-family buildings

110. Los Angeles Conservancy, *Edinburgh Bungalow Court*, <https://www.laconservancy.org/locations/edinburgh-bungalow-court>.

111. *See id.*

112. L.A. MUN. CODE § 151.27.

113. Bernstein interview, *supra* note 70.

arranged over thirty-eight acres north of Lincoln Boulevard in Venice.¹¹⁴ Built by architect Heth Wharton and Ralph Vaughan, a groundbreaking African American designer, Lincoln Place was the largest development in California to be financed under an early Federal Housing Association (FHA) mortgage program.¹¹⁵ This kind of garden apartment complex, meant to serve as quality affordable housing for returning World War II veterans and defense workers, flourished in mid-century Los Angeles more so than anywhere else in the nation.¹¹⁶

Garden apartment complexes, characterized by abundant communal green space and the purposeful separation of pedestrian and automobile traffic, foster a strong sense of community and high quality of life among residents. Their low density, however, makes them irresistible targets for developers.¹¹⁷ Lincoln Place's troubles began in 1991 when its then owner announced plans to demolish all 795 rent-stabilized units in order to construct about 700 market-rate condominiums and 144 new affordable rental units.¹¹⁸ At the time, Lincoln Place was not yet designated as an HCM. An EIR was prepared, and the city approved the redevelopment plan with the inclusion of explicit mitigation measures that would prevent the issuance of demolition permits unless the affected tenants were given the opportunity to move to a comparable or better unit at Lincoln Place or voluntarily accept a relocation fee and move elsewhere.¹¹⁹ Preservationists and tenant activists were unimpressed, and the Committee to Preserve Lincoln Place and the Lincoln Place Tenants Association (LPTA) appealed the approval. As an inducement to the city, the owner-developer reiterated its commitment to the mitigation measures, and its plan—with mitigation measures incorporated—was eventually approved in late 2002.¹²⁰ By this time Lincoln Place had a new owner, Aimco, with the same intentions as its predecessor.

In 2003, Aimco applied for and was granted demolition permits from the city. LPTA and a historic preservation group, the 20th Century Architectural Alliance, sued to enjoin demolition on the ground that (1) the EIR was inadequate because it failed to sufficiently consider the apartments' historical and cultural value; and (2) because Aimco had not complied with the mitigation measures regarding tenant relocation prior to

114. Los Angeles Conservancy, *Historic-Cultural Monument Application for Lincoln Place Apartments*, Oct. 6, 2011, https://www.laconservancy.org/sites/default/files/files/issues/CHC-2011-2002_HCM_Designation.pdf.

115. Los Angeles Conservancy, *Lincoln Place*, <https://www.laconservancy.org/locations/lincoln-place>.

116. *See id.*

117. Fine interview, *supra* note 38.

118. *Lincoln Place Tenants Ass'n v. City of Los Angeles*, 155 Cal. App. 4th 425, 432 (2007).

119. *Id.* at 432.

120. *Id.* at 433.

applying for the demolition permits, the city's issuance of the permits was in violation of CEQA.¹²¹ The court, unpersuaded by the first argument, found the second one convincing and enjoined all further demolition.¹²² Perhaps the court would have come to a different conclusion on the first issue if Lincoln Place at that point already had been designated as an HCM.

Aimco switched tactics. Between 2004 and 2006, it employed a "relocation assistant," who persuaded 250 tenants to sign "voluntary relocation agreements" and move out of Lincoln Place. In 2005, Aimco invoked the Ellis Act and began serving eviction notices to tenants who would not voluntarily relocate.¹²³ LPTA filed a writ of mandate to compel the city to ensure that Aimco was complying with the mitigation measures outlined in the EIR and to enjoin Aimco from evicting Lincoln Place's remaining tenants. Aimco asserted, among other things, that its rights under the Ellis Act to evict tenants and withdraw units from the rental market preempted any mitigation measures developed and adopted during CEQA proceedings.¹²⁴ In 2007, the California District Court of Appeal held that CEQA qualified as "local or municipal environmental or land use regulations" with which the Ellis Act explicitly does not "interfere."¹²⁵ In other words, Ellis Act or no Ellis Act, Aimco was not allowed to evict tenants in noncompliance with the CEQA-developed mitigation measures by which it had earlier agreed to abide.

As Aimco entered into a series of settlement negotiations with the City Council, Southern California's housing bubble burst and the bottom fell out of the condominium market.¹²⁶ Forced to abandon its earlier plans out of legal and economic necessity, Aimco reached a final agreement with the city in May 2010: it would renovate the forty-four original buildings that remained according to historic rehabilitation standards and rebuild ninety-nine new units to replace those that had been illegally demolished.¹²⁷ The renovated, and entirely rent-stabilized, Lincoln Place reopened in August 2014, and many of the tenants who had been forced to vacate earlier were able to move back in.¹²⁸ The renovation was so well done that the Los Angeles Conservancy (LAC) actually gave Aimco a 2015 Conservancy Preservation Award for "outstanding achievement in

121. *Id.* at 435.

122. *Id.* at 436.

123. *Id.*

124. *Id.* at 438.

125. *Id.* at 451; CAL. GOV'T CODE § 7060.7.

126. Peter Y. Hong, *Southern California Home Prices Close Out 2008 Down 35%*, L.A. TIMES, Jan. 20, 2009, <http://articles.latimes.com/2009/jan/20/business/fin-housing20>.

127. Los Angeles Conservancy, *Lincoln Place*, *supra* note 115.

128. *See id.*; Fine interview, *supra* note 38.

historic preservation."¹²⁹ Aimco's turnaround is genuine: one Aimco executive, during testimony at a recent hearing in support of Lincoln Place's inclusion on the National Register of Historic Places, declared that she had completely changed her mind regarding the value of historic preservation and was now an enthusiastic supporter.¹³⁰ The LAC now uses Aimco as a resource to persuade developers that incorporating elements of historic preservation into their plans results in more successful projects.¹³¹

The Lincoln Place saga highlights the helpful role that litigation, even when only partially successful, can play in such a battle. It is also an excellent example of the mutual benefits of collaboration between historic preservationists and tenant activists. Had there not been a core group of tenants resisting eviction and willing to endure prolonged litigation, the complex would probably have been entirely demolished in 2003 and again in 2006 and 2007. In addition to playing a key role in the litigation, had preservationists not passionately advocated for sensitive renovation, tenants likely would not have had such appealing homes to return to. Finally, Lincoln Place provides a useful reminder that sometimes it is possible to turn adversaries into allies.

3. Wyvernwood Garden Apartments

Boyle Heights' Wyvernwood, opened in 1939, is the first garden apartment complex ever built in Los Angeles and the second largest rent-stabilized development in the city.¹³² About 98 percent of Wyvernwood's 1,200 units are occupied by Latino/a tenants, most of whom have lived there for many years.¹³³ Like other examples of the Garden City Movement, Wyvernwood features abundant communal green space and natural landscaping that encourages socializing among neighbors.¹³⁴ It is listed in the California Register of Historical Resources but has not received local HCM-designation or been included in National Register of Historic Places, despite being deemed eligible.¹³⁵ Wyvernwood's owner, a Miami-based developer, wants to demolish the entire complex and build a mixed-used project that would quadruple the site's density and destroy its historically significant park-like setting.¹³⁶ In addition to commercial, office, and retail

129. Los Angeles Conservancy, *Lincoln Place*, *supra* note 115.

130. Fine interview, *supra* note 38.

131. *See id.*

132. *See id.*; Los Angeles Conservancy, *Wyvernwood*, <https://www.laconservancy.org/wyvernwood>.

133. Fine interview, *supra* note 38.

134. Steven Keylon, *Garden Cities at Risk: Introduction*, BALDWIN HILLS VILL. & VILL. GREEN, June 14, 2011, <http://baldwinhillsvillageandthevillagegreen.blogspot.com/2011/06/garden-cities-at-risk.html>.

135. *See id.*

136. Los Angeles Conservancy, *Wyvernwood*, *supra* note 132.

space, the plan entails 4,400 rental and condominium units, of which 660, or 15 percent of the total, would be covenanted affordable units. Current tenants would have first priority for new units and would pay no more than their current rent.¹³⁷

This scenario presents a complicated question: is it better to have 1,200 units of rent-stabilized housing that can be raised to market rate whenever tenancies turn over, or to have 660 units set aside for low-income families via affordability covenants that will eventually expire? Affordable housing proponents have not reached a consensus position on this issue.¹³⁸ Depending on which side of the question advocates fall, this kind of development project could potentially pit preservationists and housing advocates against each other.

In fact, these plans have divided Wyvernwood tenants as well as the larger Boyle Heights community. Some are warier than others about the developer's promises to minimize displacement or about the prospect of removing 1,200 LARSO units in exchange for 660 affordable units.¹³⁹ Moreover, many of Wyvernwood's units and common areas are in a shabby state of repair, and some frustrated tenants see the new development as an opportunity to upgrade to better living conditions.¹⁴⁰ It is widely suspected that the owner has chosen not to properly maintain the building to garner more support for the redevelopment.¹⁴¹

Preservationists, however, insist that it is economically and logistically feasible to renovate and preserve some or most of the site and redevelop and densify the rest—much like what happened at Lincoln Place.¹⁴² They have plenty of community and tenant support: Boyle Heights' City Council representative, José Huizar, opposes the project, as do the majority of

137. The other 3,740 units would be market rate and not subject to LARSO. New Wyvernwood, *Overview*, <http://www.wyvernwood.com/files/overview.pdf>.

138. Monterrosa interview, *supra* note 27.

139. Eve Bachrach, *Boyle Heights Too Divided to Take Any Position on Huge Wyvernwood Redevelopment*, L.A. CURBED, Mar. 26, 2013, http://la.curbed.com/archives/2013/03/boyle_heights_too_divided_to_take_any_position_on_huge_wyvernwood_redevelopment.php

140. Kris Fortin, *Sides Agree Wyvernwood Living Conditions Intolerable, Divided on "Right" Solution*, STREETBLOG LA, Jan. 14, 2013, <http://la.streetsblog.org/2013/01/14/sides-agree-wyvernwood-living-conditions-intolerable-divided-on-right-solution/>.

141. Fine interview, *supra* note 38.

142. Letter from Adrian Scott Fine, Dir. of Advocacy, Los Angeles Conservancy, to Sergio Ibarra, City of Los Angeles Office of Major Projects, Jan. 25, 2013 (*Re: Final EIR for the Boyle Heights Mixed-Use Community Project, ENV-2008-2141-EIR*), https://www.laconservancy.org/sites/default/files/files/issues/Boyle_Hights_Mixed_Use_Project_Wyvernwood_LAC_comments.pdf.

Wyvernwood residents.¹⁴³ The East LA Community Corporation (ELACC) is staunchly opposed and has marched in protest alongside the LAC and El Comité de la Esperanza, a Wyvernwood tenant group.¹⁴⁴

When the CEQA-required environmental review process is complete, the City Council must decide whether to approve the project in its current shape. The final EIR, released in late 2012, recommended the project's approval. According to the LAC, the EIR is characterized by "misleading information, unsubstantiated analysis, [and] factually erroneous arguments."¹⁴⁵ For example, it claims that rehabilitating the complex according to a proposed preservation-focused alternative would cost two to three times more than what similar rehabilitation projects typically cost, but provides no explanation as to why that is the case.¹⁴⁶ If the City Council approves the project, the only remaining option for opponents will be litigation.

While historic preservationists, community development advocates, and tenant groups have for the most part found themselves united in opposition to the proposed redevelopment of Wyvernwood, the details of this project, namely, the promise of renovated amenities and covenanted affordable units, provide good examples of possible sources of discord. However, in this case, the historic preservationists' support of a modified plan that would add density and renovate units while preserving much of the development's historic character, and housing advocates' continued concern for the loss of irreplaceable LARSO units, has enabled these groups to remain allied.

V. Suggestions for Enhanced Collaboration

Based on insights gleaned from the examples discussed above and from interviews with historic preservationists, housing advocates, and city government officials, I have developed six suggestions for ways in which the two interest groups might expand their sphere of cooperation

143. Jose Huizar, *Joining with Community to Oppose Wyvernwood Project*, Mar. 31, 2011, <http://josehuizarblog.blogspot.com/2011/03/joining-with-community-to-oppose.html>.

144. Neal Broverman, *Preservationists and Boyle Heights Activists Fighting Huge Wyvernwood Redevelopment*, L.A. CURBED, Apr. 30, 2013, http://la.curbed.com/archives/2013/04/preservationists_and_boyle_heights_activists_fighting_huge_wyvernwood_redevelopment.php.

145. Letter from Adrian Scott Fine, Dir. of Advocacy, Los Angeles Conservancy, to City of Los Angeles City Planning Commission, May 20, 2013 (*Re: Boyle Heights Mixed Use Community Project (Wyvernwood), Summary of Concerns*), <https://www.laconservancy.org/sites/default/files/files/issues/LAC%20City%20Planning%20Commission%20Summary%20of%20Concerns%205%20of%202013%20asf.pdf>

146. *See id.*

and enhance their effectiveness at preserving historic rent-stabilized housing.

A. Joint Advocacy for Systemic Reform

Prospects for state-level reform of the Ellis Act or Costa-Hawkins Act appear dim at the moment.¹⁴⁷ However, there may be more appetite for local zoning modifications aimed at addressing Ellis evictions and the loss of rent-stabilized housing: in October 2015, the City Council adopted three motions related to “the enforcement of Ellis Act provisions and the preservation of the City’s rent-controlled housing stock.”¹⁴⁸ These motions instruct the Housing Community and Investment Department, the Department of City Planning, and other agencies to review how implementation of the Ellis Act is regulated in Los Angeles, develop a permitting process that would require HCID to approve plans for any alteration or demolition of a rent-controlled building, and study the feasibility of certain proposed regulations intended to preserve rent-controlled housing.¹⁴⁹

Housing advocates and historic preservationists should pinpoint the reforms being debated that benefit both groups and coordinate their advocacy efforts on those fronts. For example, modifying the Small Lot Subdivision Ordinance (SLS) to make the conversion of rent-stabilized apartment buildings more logistically difficult and/or less economically attractive to owners is a goal that seems to fall squarely within the area of overlap between the two groups’ interests, since owners that invoke the Ellis Act to take advantage of the SLS are, by definition, planning to demolish the original structures. By the same logic, housing advocates and historic preservationists would both probably find a yearly cap on the number of demolitions of rent-stabilized buildings to be an appealing prospect. There are almost certainly additional approaches that would fall within this sweet spot, and if the two groups communicated with each other they could be quickly identified.

B. Preemptive Pursuit of Historic-Cultural Monument Status

Tenants’ advocates should begin actively identifying historic rent-stabilized residences and pursue their designation as Historic-Cultural Monuments (HCMs), whether there is any inkling of an “Ellising” on the horizon. A preemptive strategy offers two key advantages over a reactive one. First, an HCM nomination submitted for a structure whose

147. See State Senator Mark Leno’s unsuccessful recent efforts on behalf of SB 364, a bill that would have required San Francisco landlords to own a rental property for at least five years before invoking the Ellis Act—a modest reform that was defeated two years in a row. Roland Li, *Why Ellis Act Reform Failed—Again*, S.F. Bus. J., Apr. 22, 2015, <http://www.bizjournals.com/sanfrancisco/blog/real-estate/2015/04/ellis-act-marc-benioff-ron-conway-realtors.html>.

148. LACC Housing Committee Report, *supra* note 1.

149. City Council motions 15-0728, 14-0268-S5, 14-0268-S4 (Nov. 10, 2015).

owner has no plans to demolish and redevelop it will probably arouse less controversy and be more likely to succeed than a nomination that has dedicated opponents. While the Cultural Heritage Commission is apolitical, HCM nominations ultimately must be approved by the City Council. Second, speculators inclined to purchase a LARSO-protected property in order to raze and redevelop it are unlikely to set their sights on an HCM: a building's HCM status ensures, at the very least, that the redevelopment process will be longer, more complicated, and more contentious—with no guarantee that the redeveloper will be granted permission to demolish the structure. Securing HCM status for qualifying multi-family residences in tranquil times means that its tenants are far less likely to face the ordeal of mass eviction in the future.

Thanks to the Office of Historic Resources, advocates now have access to all of the tools necessary to efficiently implement such a strategy. SurveyLA is nearly complete, and www.historicplacesla.com, which displays the results of the historic resources inventory on a manipulatable map, is online and fully functional. This means that advocates could quickly compile a list of rent-stabilized multi-family residences that have been identified by the OHR as possessing historic-cultural value and prioritize their efforts around buildings whose HCM nominations are the likeliest to receive approval, and/or buildings that are, by virtue of their location, most vulnerable to being targeted for conversion.

Both Ken Bernstein at the OHR and Adrian Scott Fine at the LAC emphasized that their institutions would support campaigns only for sites with legitimate historic or cultural value.¹⁵⁰ If the OHR or the LAC were willing to step in any time any building was threatened with demolition, they would compromise their reputations as principled preservation experts and would have diminished clout to wield in controversies involving places with genuine historic-cultural merit. Fine explained that the LAC's influence would be significantly weakened if it were viewed as "anti-development," a politically toxic label. In light of this reality, any proposal involving lowering standards to allow more residences to qualify for historic protection would be a non-starter. However, with the number of LARSO properties at 630,000 (at least), there are almost certainly plenty of qualifying buildings to keep advocates and activists busy for the foreseeable future.

C. Historic Preservation Training for Tenants' Advocates

According to the California Office for Historic Preservation's brief guide to CEQA, "[i]t cannot be emphasized enough the importance of educating yourself prior to a preservation emergency arising."¹⁵¹ CEQA is a

150. Bernstein interview, *supra* note 70; Fine interview, *supra* note 38.

151. California Office of Historic Preservation, *Technical Assistance Series #1*, *supra* note 82.

complex state law with strict controls on comment periods and statutes of limitations for litigation, and it is not the only layer of regulation that a would-be preservation activist must contend with. The process for achieving local historic designation is also relatively complicated and even more so when the interplay between city planning and building departments is factored in. As demonstrated by Edinburgh, when time is of the essence, familiarity—and mutual trust—with the relevant bureaucratic apparatus can mean the difference between demolition and preservation.

Upon request, the LAC will present a workshop on CEQA and local preservation for groups of ten or more people who are working on an “active preservation advocacy issue.”¹⁵² The LAC should consider offering these workshops to housing advocacy organizations that are not already in the midst of a preservation battle. Housing attorneys and groups like Tenants Together, the Coalition for Economic Survival, the L.A. Tenants Union, and the Los Angeles Community Action Network could all profit from enhanced knowledge of CEQA and the preservation process.¹⁵³ Not only would these advocates benefit from such training when a crisis clearly involving preservation issues arose in the future, they would also be more likely to consider the creative use of preservation as a tool in any situation if that tool was already in their belts.

D. Data Sharing

According to Ken Bernstein at the OHR and Claudia Monterrosa, the director of policy, planning, and research at the Housing, Community, and Investment Department (HCID), these two city agencies rarely communicate.¹⁵⁴ However, if HCID were willing to develop a way to quickly and promptly share with the OHR the data it collects on recently “Ellised” properties, the OHR could identify under-the-radar historical resources at risk of being demolished at a very early stage in the process, improving both the chances of saving the property from destruction as well as sparing its tenants from eviction.

Landlords are required to follow certain procedures when withdrawing units from the rental market under the Ellis Act. First, they must notify HCID in writing of their intentions. Within five days of notifying HCID, they must inform their tenants. From this point, tenants without special needs have 120 days to vacate the premises; tenants over sixty-two years of age and tenants with disabilities have an entire year.¹⁵⁵ If HCID shared the list of newly-Ellised properties with the OHR on a weekly basis, the OHR could check this list against the historic resources

152. Los Angeles Conservancy, *Using CEQA to Protect Your Community*, *supra* note 84.

153. Telephone Interview with Denise McGranahan, Senior Attorney at LAFLA, Dec. 3, 2015.

154. Bernstein interview, *supra* note 70; Monterrosa interview, *supra* note 27.

155. L.A. MUN. CODE § 151.23.

survey to flag any historic but not-yet-landmarked buildings at least four months ahead of the earliest possible moment the buildings could be demolished. At such an early stage, many options would be available to the OHR. It could simply notify the owner that the building has been identified as a historic resource, opening a dialogue in order to get a read on the situation, or perhaps persuade an amenable landlord to revise any plans involving demolition. It could inform its non-governmental preservation colleagues about the situation, allowing them to take the lead in midwifing a community-supported HCM nomination. Or, if the OHR thought the situation called for swift and decisive action, it could initiate its own nomination.

When I presented this idea to Ken Bernstein, he reacted positively and confirmed that access to this information would be useful to the OHR. Claudia Monterrosa of HCID responded with less enthusiasm. She pointed out that HCID already shares its Ellis notification information with the Department of City Planning, which uploads it into the Zoning Information and Map Access System (ZIMAS), an online database accessible to the public. However, it is not clear how frequently HCID shares this information with Planning, or how often Planning updates ZIMAS. Weeks could potentially elapse, and the later this information reaches OHR the less helpful it will be. Furthermore, there is no way to bring up a list of recently Ellised properties in ZIMAS because the search function allows users to look up only one specific property at a time.¹⁵⁶

If HCID is already sharing Ellis information with the Department of City Planning, there is no reason it cannot share it with the OHR (an office within Planning) at the same time, or with minimal additional effort. However, as mentioned, it is unclear how regularly HCID provides this data to the department. If the OHR wants timely access to this information, it will have to take the initiative in establishing a regular channel of communication with HCID.

E. Multi-Disciplinary Working Group or Conference

The people best able to identify opportunities for cooperation among preservationists and housing advocates are preservationists and housing advocates. If they are rarely in the same space with each other, however, conversations will not happen and connections will be missed. A carefully selected working group that includes fifteen or so local leaders and strategists from both communities would not only allow advocates to identify shared objectives and complementary capacities, if all else fails, it would at the very least allow people deeply invested in similar issues to get to know one another.¹⁵⁷ Someone is much more likely to think to pick up

156. ZIMAS, <http://zimas.lacity.org>.

157. Adrian Scott Fine of the LAC pointed out that environmental groups' objectives concerning the destruction of rent-stabilized housing also overlap with

the phone or send an email to consult with a person if the two have already had a conversation.

An event like this requires a sponsor and organizer, most likely city government or private philanthropy. A nonprofit foundation concerned with housing and culture in Los Angeles could take on both of these roles or provide a grant to one of the participating organizations to design and plan the event.

F. Community Landlord Awards

Everybody likes to feel appreciated, and there is no reason to think landlords are any different. While there are no doubt plenty of conscientious, public-spirited landlords in the community, they often are not the ones that the public is introduced to in the news. Housing and tenants' organizations like the ones mentioned above could partner with various local neighborhood preservation groups, of which there are dozens,¹⁵⁸ to identify and celebrate exemplary landlords of historic, rent-stabilized buildings. This kind of joint initiative would not only help build relationships between the two advocacy groups, it would also connect these groups with community members whose input would naturally be sought in selecting nominees and winners.

Moreover, positive attention of this sort drawn to landlords in general could act as a counterweight to more venal incentives and serve to deepen or reorient landlords' investment in the community and in their reputation. As with the LAC's recognition of Aimco, a well-timed award could solidify a landlord's loyalties and reinforce good behavior.

While the sincere primary purpose of an initiative like this would be to cultivate connections and generate good feelings, it also creates a silver lining in the case of a lauded landlord who disappoints—"Award-Winning Landlord Evicts Tenants" is a headline that is bound to generate more attention than such stories usually receive, as suggested by the widespread press coverage of Matthew Jacobs, the affordable-housing official turned landlord-profiteer.

VI. Conclusion

To best address the destruction of rent-controlled housing in Los Angeles on a systemic scale would require reform or repeal of the Ellis Act, and any effective approach to easing the affordable housing crisis must involve the construction of new affordable housing. Saving historic rent-stabilized residences is admittedly a narrowly targeted strategy, but it is

those of preservationists and housing advocates. It would be worthwhile to bring these three groups together and see what happens. Denise McGranahan of LAFLA mentioned the annual Housing California Conference in Sacramento as a possible venue, <http://www.housingca.org/#!annual-conference/c1v9k>.

158. Office of Historic Resources, *List of Local Preservation Groups*, <http://preservation.lacity.org/sites/default/files/Historical%20Society%20List.pdf>.

a goal toward which concerned community members, tenants, and advocates can immediately take concrete steps. Every rent-stabilized building is irreplaceable, and each unit matters in a crisis as acute as our current one. Moreover, as described above, sometimes preserving one historic complex means saving 800 or even 1,200 units, and the preservation of Los Angeles' historic structures is a valuable end in itself. Historic preservationists and housing advocates may not always end up on the same side of every controversy that arises, but when their interests overlap Los Angeles can only benefit from their close collaboration and mutual reinforcement.

