

Addressing Restrictive Zoning for Affordable Housing: Experiences in Four States

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(Received June 27, 2013; accepted January 19, 2014)

Affordable housing development in suburban locales is often constrained by zoning and other municipal land-use restrictions. This article explores experiences in four states that have been recognized for exemplary interventions that address “exclusionary zoning.” Using quantitative and qualitative methods, the article examines overall production levels resulting from the specific program, the extent to which such production is occurring in locales with more White residents and more higher-income residents, and the levels of compliance with state-specified goals, where such goals exist. When possible, cross-state comparisons are provided. Although there are clear signs of progress, with municipalities increasing their affordable housing stocks and with some of this production occurring in locales that probably would not have developed such housing without such state (or county) intervention, the pace has been slow. A number of recommendations are offered for these and other states contemplating strategies to address exclusionary land-use practices.

Keywords: exclusionary zoning; affordable housing; state land-use overrides; inclusionary zoning

Affordable housing development in suburban locales is often constrained by zoning and other municipal land-use restrictions. Indeed, many cities and towns across the country do not have any areas zoned for multifamily housing or for homes that can be built on small lots (Fisher, 2007; Glaeser, Schuetz, & Ward, 2006). For more than four decades, governmental commissions, professional organizations, and researchers have articulated serious concerns about so-called “exclusionary zoning.” For example, the 1968 report of the [National Commission on Urban Problems](#) recommended that state governments take actions to amend planning and zoning enabling statutes to ensure “the provision of adequate sites for housing persons of all income levels and to require that governments exercising the zoning power prepare plans showing how the community proposes to carry out such objectives in accordance with county or regional housing plans, so that within the region as a whole adequate provision of sites for all income levels is made” (p. 242).

Nevertheless, jurisdictions with higher percentages of upper-income and White households have continued to adopt restrictive land-use regulations (Ihlanfeldt, 2004; Mallach, 2009). A report published by the American Planning Association notes that exclusionary zoning is “a significant barrier to higher-density, multifamily housing in

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major metropolitan areas throughout the United States” (Knaap, Meck, Moore, & Parker, 2007, p. v). In an echo of the 1968 recommendations, state and regional governments are encouraged to provide oversight of local land-use policies.

Exclusionary zoning exacerbates social and racial segregation, which in turn are thought to limit educational and employment opportunities for lower-income households, while also contributing to sprawling land-use patterns (Hasse, Reiser, & Pichacz, 2011; Ihlanfeldt, 2004; Pendall, 2000; Rothwell & Massey, 2009). A recent study by Massey, Albright, Casciano, Derickson, and Kinsey (2013) concludes that “the development of affordable housing projects in affluent suburbs constitutes an efficacious means to lower levels of racial and class segregation while increasing social mobility for disadvantaged inner-city residents” (p. 193). More than a quarter-century earlier, Wilson (1987) argued that concentrated poverty in Black inner-city areas can undermine Black community institutions and contribute to a lack of positive role models for young Black workers and a disconnect from informal job networks.

The view that greater employment and educational opportunities would result from households relocating to lower-poverty areas contributed to the Moving to Opportunity program. However, evaluations have yielded mixed results. While there do not appear to have been major differences in employment, earnings, or educational outcomes, analysts conclude that there were positive results: increased feelings of safety and security, improved physical and mental health, and greater satisfaction with neighborhood environmental conditions (Briggs, Popkin, & Goering, 2010; Goetz & Chapple, 2010; Ludwig et al., 2013).²

There is evidence that inclusionary zoning programs are leading to positive outcomes. In a recent study that explored 11 such programs, researchers find that as of 2005–2009, more than three-quarters of the homes developed were located in low-poverty neighborhoods (Schwartz, Ecola, Leuschner, & Kofner, 2012). In addition, low-income students in Montgomery County, Maryland, whose parents had located there due to that locale’s inclusionary zoning program, and who attended low-poverty elementary schools, “significantly outperformed their peers in public housing who attended moderate-poverty schools in both math and reading” (Schwartz, 2010, p. 6). Moreover, with a high level of residential stability, positive benefits accumulated over time, markedly reducing the achievement gap between poor and nonpoor students who attended the most advantaged schools.

This study examines four exemplary state- and county-level efforts to overcome local land-use restrictions that limit or significantly discourage the production of a broad range of housing, including multifamily dwellings and lower-cost single-family homes, in upper-income areas. Threatening local control, such initiatives typically stimulate vehement opposition from municipal officials and residents. Arguments against new affordable housing typically focus on impacts on the environment; increases in traffic and crime; stresses on infrastructure; increases in school, police, and fire-protection costs; and adverse impacts on property values.³

In recent years, researchers have begun to compare the specific fears and concerns expressed by abutters and other community residents prior to the construction of an affordable housing development with the after-the-fact outcomes. Based on an investigation of four developments in the Boston metropolitan area, Bratt, DeGenova, Goodwin, Moriarty, and Robitaille (2012) find that virtually none of the predevelopment fears materialized. Massey et al. (2013) carried out an in-depth study of a single affordable housing development in Mount Laurel, New Jersey, and similarly detected

no effects of the project on trends in crime, taxes, or home values, either in adjacent neighborhoods or the township generally. . . . Despite all the agitation and emotion before the

fact, once the project opened, the reaction of neighbors was surprisingly muted, with nearly a third not even realizing that an affordable housing development existed right next door. (p. 5)

For each of the programs in our study, we asked the following questions:

- How much affordable housing has been produced per year since the statute became operational?
- Where has the affordable housing been produced? To what extent have locales that had little or no affordable housing added to their stock?
- If the state assigns affordable production goals to municipalities, to what extent is compliance being attained?
- Is affordable housing production correlated with race or income?⁴
- Are there differences (in terms of race and income) between municipalities that have been producing affordable housing and those that have not? Do differences exist between municipalities that have attained production goals (in states where they exist) and those that have not?

Types of Interventions: Framework of the Study

About half the states have enacted legislation to address “the significant impact local land use regulation can have on the availability of affordable housing” (Salsich, 2003, p. 27). Based on our survey of the literature and consistent with the analysis of Goetz, Chapple, and Lukermann (2004), we identified four types of state-based or regional governmental interventions in housing markets intended to promote more diverse housing opportunities across a region.

- (1) *Identical statewide goal for each city/town, with state zoning override*: This approach requires each municipality to attain an across-the-board goal of affordable housing, typically 10% of the year-round stock. We are aware of four states that have this type of intervention: Massachusetts, Connecticut, Illinois, and Rhode Island.
- (2) *Mandatory inclusionary zoning*: This is probably the most popular local strategy used to encourage the development of affordable housing. While most such statutes are created by local governments, a number of counties in Maryland and Virginia have enacted them. Inclusionary zoning requires builders or developers of developments of a specified size to set aside a fixed percentage of units for rent or for sale to lower-income households for some period of time. The Montgomery County, Maryland statute, is the most frequently cited and one of the oldest in the country. According to Mallach and Calavita (2010), by 2008, some 500 local governments in 25 states had an inclusionary housing program.
- (3) *Fair-share mandate*: A number of states have attempted to develop a formula whereby affordable housing goals are allocated according to some definition of local need. Minnesota’s Land Use Planning Act adopted a fair-share approach, combined with comprehensive planning, but the outcome has been disappointing and described as “virtually irrelevant” (Goetz et al., 2004, p. 72; see also Goetz, 2000). New Jersey and California require regional or state agencies to forecast regional demand for housing and determine a “fair share” for each locality in the region; local governments must identify suitable sites and adopt appropriate regulations (Basolo & Scally, 2008). However, California does not maintain a centralized database on affordable housing production by each municipality, thereby making quantitative comparisons impossible.⁵
- (4) *Mandated housing element as part of planning requirement*: In the United States, about 25 states mandate that localities adopt comprehensive plans with housing

elements, many of which require detailed information on how regional housing needs will be met, including the needs of diverse populations (Callies, King, Nicholas, & Barclay, 2011). However, only five states (California, Florida, New Jersey, Oregon, and Washington) appear to be doing this aggressively (Pendall, 2008).

The extent to which state-based efforts aimed at overcoming exclusionary zoning have created housing opportunities for lower-income and non-White households has been little researched. State agencies typically do not keep records on the characteristics of project occupants, and property owners are not required to report such information. However, Krefetz (2001) cites two studies from New Jersey (both more than 15 years old) that found little movement among low-income racial minorities to suburban housing. More recently, McClure (2010) finds that Low-Income Housing Tax Credit (LIHTC) developments are not being built in locations with a very low percentage of affordable units. The need for more information on the outcomes of antiexclusionary zoning programs, particularly in a comparative context, has been identified as a gap in our understanding of these initiatives (Stonefield, 2001).

Selection of Study Locales and Methods

This study was commissioned by a nonprofit housing advocacy organization in Boston, the Citizens' Housing and Planning Association. As such, inclusion of the Massachusetts antiexclusionary zoning program was a requirement for the comparative study. In view of the ongoing local opposition to this statute, there was a desire on the part of housing advocates and public officials to understand how the Massachusetts approach compares with other state-based strategies. Thus, our first criterion was to select additional programs that would provide important contrasts with the Massachusetts approach. The mentioned four-part framework was used to sort potential case-study locales. We also adopted three additional criteria:

- (1) As a group, the programs should offer a range of interventions. If possible, we wanted to include a program from each of the four categories identified above.
- (2) The statute must have a significant track record, defined as being operational for at least 10 years prior to the start of the study.
- (3) Key informants, and the available literature, must cite the program as being an exemplary model of overcoming exclusionary zoning.

Rhode Island's was selected as a second example of a state-wide statute with a zoning override. The statute is only invoked if a city or town has not attained the 10% affordable housing goal or has not adopted and received approval from the state for a comprehensive plan, including a housing element specifying how the housing goals will be met. This important variation from the Massachusetts statute made it a good candidate for further study. Montgomery County (Maryland) and New Jersey were also selected. Montgomery County is widely viewed as the preeminent example of inclusionary zoning, and New Jersey includes both a fair-share mandate and the housing-element requirement. California was also included in the study because of its strong reputation regarding the implementation of its housing-element requirement. However, it has been omitted from this article because the lack of a centralized database on affordable housing production by each municipality precluded the types of analyses that were performed in the other cases.

At the outset of the study, we hoped that the supervising agencies in the selected states would be able to provide the municipal-level data needed to answer the research questions. However, differences in state data-collection methods created challenges. For all locales, affordable housing data, by municipality, were requested from the start of the program or,

if that was not possible, from whatever point data were available, up to the period of the study (late 2000s). Thus, according to the framework articulated by Galster, Temkin, Walker, and Sawyer (2004), we used a postintervention absolute change approach, which explored changes in municipalities' affordable housing following the implementation of the specific land-use program.

The data we received did not always include all affordable housing built in the state. This was often (or especially) the case in municipalities already deemed to be in compliance with an affordable housing goal that were not being monitored by the state agency in charge of monitoring compliance. Under these circumstances, the "new affordable units" category includes LIHTC units not already included in the affordable housing database given to us by the state agency. We separately included LIHTC units for Massachusetts and New Jersey because they were already counted in the data provided for Rhode Island and Montgomery County. We only included the low-income units in the LIHTC developments as part of the affordable housing numbers.

Although the term *affordable housing* is problematic (because all housing is affordable to some household), we have retained this language because it is so frequently used. Each locale has its own name for its program, and each uses its own definition of what units count as "affordable." No effort was made to standardize the definitions or to count only those affordable units targeted to households at the same income level. The following is a summary of how each of the four locales defines affordable housing.

- (1) *Massachusetts*: Units must be affordable to households earning less than 80% of area median income (AMI). Following HUD's guideline, household affordability is based on rent/house payments of no more than 30% of income.
- (2) *Rhode Island*: Affordable units are referred to as low- and moderate-income housing (LMIH) and are targeted to households earning a maximum of 80% of the AMI for rental units. As of 2004, owner-occupied units may be considered part of a municipality's stock of LMIH if occupied by "moderate-income" buyers, defined as having incomes up to 120% of the AMI (up from 80%.)
- (3) *Montgomery County, Maryland*: To be eligible for a unit built through the Moderately Priced Dwelling Unit (MPDU) program, household income must be at most 65% of the AMI for rentals and at most 70% of the AMI for homeownership units.
- (4) *New Jersey*: At least 50% of the units addressing a municipality's fair-share obligation must be affordable to low-income households, defined as earning 50% or less of the AMI. The other units meeting this obligation must be affordable to moderate-income households, defined as earning between 50% and 80% of the AMI.

A common characteristic of the programs is that the units were built through some type of public program and are price-restricted for at least some period of time, if not in perpetuity. Thus, market-rate housing that may be affordable to lower-income groups is not included because those units are not restricted in their use, and changes in market conditions can render the units unaffordable to the targeted population. Also excluded are private-market units that become affordable with Housing Choice Vouchers.

All the cases were chosen at the same point in time. However, the cases were developed over the course of more than a year. Therefore, data were requested at different times during that period, and further, not all data that we received were up to date. As a result, the data analyses were based on somewhat different cutoff dates, depending on when the various cases were studied and the data that the relevant agency provided. For all four programs, 2000 census data were used to determine the race and income

characteristics of residents in municipalities. Since 2010 census data were not available when most of the quantitative analyses were carried out, we acknowledge that updated data might reveal somewhat different municipal-level characteristics and even slightly change the statistical findings. However, 2010 census data are included for the two states, Massachusetts and Rhode Island, where compliance is measured as a percentage of the year-round housing stock.

There was an unavoidable temporal mismatch in the data: The census data came from a different year than the housing production data. Originally, we intended to construct ordinary least squares (OLS) regression models using the data gathered, to model the extent to which affordable housing production is predicted by certain selected factors. However, given the irregularity of the data, as well as the temporal mismatch, an OLS model was not appropriate, and other, nonparametric measures had to be used instead.

The Wilcoxon rank-sum test was used to check for statistically significant differences between municipalities with and without affordable housing. Spearman's correlation was used to check for correlations between the selected demographic characteristics and the amount of affordable housing produced. Of course, in presenting correlations, it is critical to keep in mind that these analyses do not reveal anything about causality. Therefore, the findings presented here cannot be interpreted to say, for example, that income levels or racial characteristics of municipalities are the *cause* of either the use or lack of use of any given program. Correlation findings only demonstrate whether a given variable is related to another variable.

Telephone interviews also were conducted with academics and with representatives of the public (state, local, or county government), nonprofit (community development or advocacy organizations), and private sectors (consultants and homebuilders). Interviewees were identified with the help of an advisory committee comprised of academics and practitioners, as well as through initial contacts who, in turn, recommended key people involved with the particular program. About 60 contacts were made, with about half being semistructured telephone interviews, which typically lasted about one hour. The other contacts were for informational purposes only, to clarify a point related to programmatic operations or to request additional information. All quotes from interviewees are cited with permission. Our mixed-methods approach enabled us to understand the programmatic outcomes, changes over time, and comparative strengths and weaknesses of the four programs.

Our assumption was that production patterns in municipalities with higher percentages of White residents and higher incomes (in comparison with municipalities that do not have production, or with lesser amounts) would be indicative of the program's making inroads on exclusionary land-use patterns. Concerning the race variable, we chose to use the "White" census category, which includes both Hispanic and non-Hispanic White households. Since the census categorizes Hispanic as an ethnicity and not a race, this group is included in both race categories we looked at. We struggled with the issue of how to best handle race; our decision was guided by the fact that discrimination against non-Whites, particularly Black households, was a driving force behind the creation of the programs included in our research. We recognize that this presents a much less comprehensive and nuanced picture of a municipality's racial makeup than would be optimally desirable. Developing more fine-tuned methodologies to explore the complex dynamics of race relations in an increasingly multicultural America represents a challenge for future researchers.

Massachusetts

Since its inception in 1969, the Massachusetts [Comprehensive Permit Act](#), referred to as Chapter 40B, has been viewed as a major mechanism for building affordable housing in

municipalities with zoning that severely restricts the development of multifamily housing and single-family homes on small lots. The statute directs each city and town to have at least 10% of its year-round housing stock designated as affordable. At the time of its enactment, much of the subsidized housing in Massachusetts was concentrated in 15 older, poorer cities. This was partly due to local exclusionary zoning, as well as federal housing policies that favored urban locations.

The statute made it easier to develop affordable housing in municipalities with a limited supply of this housing. A special approval process—the “comprehensive permit”—allows local zoning boards of appeal (ZBAs) to waive zoning and other land-use restrictions to facilitate the development of affordable and mixed-income housing. By streamlining the local process and eliminating the need to go to multiple boards, the ZBA coordinates the various permits, although separate environmental approvals are still required. Under Chapter 40B, a for-profit or nonprofit developer, or a public agency, can propose a development that does not conform to existing land-use regulations as long as at least 20–25% of the units are reserved for low- and moderate- income households (incomes up to 80% of the AMI) for at least 30 years, at an affordable rent or sale price, using a state-approved subsidy program.

Chapter 40B also created a state entity, the Housing Appeals Committee (HAC), to hear appeals from developers whose comprehensive permit was denied by the ZBA or approved with conditions that would make the project “uneconomic.” A developer may appeal to the HAC only with respect to proposed projects in localities with a subsidized housing inventory (SHI) smaller than 10% of its year-round housing stock. The HAC can modify or reverse a ZBA decision if it finds that the local concerns do not outweigh the regional need for affordable housing. Even if a municipality has met the 10% standard (or one of the alternatives, noted below), developers can (and often do) continue to use the Chapter 40B comprehensive permit process (abbreviated 40B/CPP), but in those municipalities, a negative local decision cannot be appealed to the HAC.

The vast majority of 40B/CPP applications are negotiated at the local level and eventually receive approval from the ZBA. Most cases appealed to the HAC are resolved prior to a formal decision by the HAC (CHAPA, 2011, p. 3). Of those proposals that have been decided by the HAC, reasonable projects generally have been approved.

Over the years, the state has made a number of changes to Chapter 40B in response to various criticisms. Specifically, it has broadened the reasons why municipalities may be exempted from an appeal to the HAC. These include if the municipality is making progress in providing affordable housing (defined as an increase in state-counted affordable housing units over the prior 12 months totaling at least 2% of the town’s year-round housing units), or if it has an approved “housing production plan” that describes how it will attain the 10% goal through annual increases in its affordable housing inventory and it has increased its affordable housing percentage by an amount equal to at least 0.5% of its year-round housing stock over the prior 12 months. Exemptions also may be granted if the project is very large (for larger municipalities, this means a project with a unit count exceeding the larger of 300 units or 2% of the municipality’s year-round housing stock).

Despite the incentive to develop a housing plan, as of early 2012, only one-third of the municipalities that had not yet met the 10% goal had submitted a plan. Of these 103 municipalities, about 40 had let them expire, including many that were still short of the 10% goal. This may be because many municipalities receive few, if any, comprehensive permit applications or because the 40B/CPP is primarily used in municipalities with restrictive zoning (generally suburban or rural municipalities). In addition, in the aftermath of the

decline in comprehensive permit applications following the 2007 downturn in the housing market, municipalities may have felt less pressure to adopt housing plans.

In determining how to count affordable units, Chapter 40B stipulates that all rental units built through the 40B/CPP count toward the 10% goal as long as at least 25% of them are affordable to households earning below 80% of the AMI. However, in mixed-income homeownership developments, only the income-restricted units count toward the 10% goal. The Massachusetts Department of Housing and Community Development (DHCD) maintains the SHI, which tracks the number of qualifying units, as well as the number of year-round housing units in each municipality as of the most recent decennial census.

The types of developments built through the 40B/CPP have varied over the years, depending on the sources and levels of subsidies available. Prior to the mid-1980s, there were no subsidy programs for homeownership units, and all comprehensive permit developments were rental; most were 100% affordable. In 1990, the state began to allow projects without direct state or federal funding to use the 40B/CPP as long as at least 20–25% of the units were affordable. This change made it possible to build affordable homeownership units in mixed-income developments. It also resulted in the building of rental housing without public subsidies in areas where a strong demand for market-rate units made it possible to include an affordable component if sufficient density was allowed (e.g., through local inclusionary housing statutes).

Often, the developer and municipal officials work on the proposal together, to make it more desirable to the city or town; these are called “friendly 40Bs.” Many developments also have been initiated by local governments through the Local Initiatives Program. The DHCD or the Massachusetts Housing Partnership, a quasi-public state agency, provides technical and financial support to assist municipalities in reviewing their comprehensive permit applications.⁶

The 10% goal and the availability of the 40B/CPP have raised municipal awareness of the need to provide affordable housing and encouraged the adoption of various proactive strategies. Some municipalities have revised their zoning, adopted inclusionary zoning, or created overlay districts that offer a density bonus in exchange for providing an affordable housing component.

Several of the non-Massachusetts interviewees offered unsolicited comments about Chapter 40B being a model state program aimed at stimulating the production of affordable housing. Nevertheless, within the state, it has been the subject of controversy and debate. Most recently, on November 2, 2010, a citizen-led ballot initiative that would have repealed Chapter 40B was put to a vote by the Massachusetts electorate. Opponents of Chapter 40B argued against the state’s ability to override local zoning decisions for the production of affordable housing and charged that the program is not consistent with planning principles.⁷ They also highlighted several instances when developers reaped profits beyond those allowed by the statute.⁸ In short, opponents consistently argue that the ends do not justify the means (Witten, 2003). However, advocates of Chapter 40B were successful in clarifying its record and articulating its many strengths; they prevailed, with nearly 60% of Massachusetts voters saying no to the repeal initiative.

Production

As of early 2010, the 40B/CPP had been used to produce nearly 58,000 housing units. Of these, 70% were rentals, and 30% were for homeownership. About 35% of total production was targeted to special-needs populations, including the elderly and disabled. Overall, about 53% of the units (30,703) built through the 40B/CPP were affordable; most (84%) were rentals.

Putting Chapter 40B production in a statewide context, between 1970 and 2010 there was a net increase of 855,988 year-round housing units. The 40B/CPP affordable units created during that period accounted for 3.6% of the total increase in the state's housing stock; all 40B/CPP production (whether affordable or not) accounted for 6.8% of the increase. Further, the 30,703 affordable units accounted for 26% of the statewide growth in the number of affordable units produced since 1972. Between 1997 and 2008, the 40B/CPP was used for 80% of the suburban units added to the SHI (excluding group-home beds).

Progress Toward the 10% Goal

While the 40B/CPP is only partially responsible for municipalities approaching or attaining the 10% goal, it probably played some role for all but the four municipalities that had attained the goal before the statute went into effect. In late 2010, based on year-round housing-stock figures from the 2000 census, 53 municipalities exceeded the 10% affordable housing goal. Subsequently, with the release of 2010 census data and the increase in year-round housing units, the number of municipalities that exceeded the 10% goal declined to 40.

Although the 2010 housing-stock figures resulted in a net reduction of 13 municipalities attaining the 10% goal, the number of affordable housing units recorded in each of these municipalities either did not change or went up slightly. Despite the small number of municipalities that have reached the 10% goal, the record reveals steady, albeit slow progress. As shown in Table 1, between 1972 and 2012 (using 2010 census figures), 36 additional municipalities crossed the 10% threshold. Further, a declining number of municipalities had no units listed in the state's SHI (55% in 1972 compared with 12% in 2012, accounting for less than 1% of the state's year-round housing stock). In addition, 22% were at 8% affordable or better, compared with only 2% in 1972. As of 2012, 45% of municipalities were at least halfway to the 10% goal, compared with 5% in 1972.

Interestingly, among the municipalities that have attained the 10% goal (both before and after the 2010 census counts) are three Boston suburbs that are among the 15 most affluent municipalities in the state (Concord, Lincoln, and Lexington). Clearly, affordable housing production is feasible even in some of the most exclusive areas.

Table 1. Massachusetts municipalities' progress toward meeting the 10% goal.

Percentage of housing stock counted as part of the SHI	1972		1983		1993		2001		2012 ^b	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
0	193	55	106	30	75	21	43	12	42	12
0.01–1.99	65	19	38	11	40	11	56	16	38	11
2.0–4.99	76	22	116	33	130	37	135	38	110	31
5.00–7.99	11	3	55	16	68	19	73	21	82	23
8.0–9.99	2	1	17	5	20	6	17	5	39	11
10 +	4	1	19	5	18	5	27	8	40	11
Total number of municipalities	351	100 ^a	351	100	351	100 ^a	351	100	351	100 ^a
Total SHI units	84,854		165,479		193,921		218,140		244,563	

Note. Subsidized housing inventory (SHI); Data from Ann Verrilli, Citizens' Housing and Planning Association director of research, 2011. *Source:* Department of Housing and Community Development. (2013). *Chapter 40B Subsidized Housing Inventory (SHI) as of April 30, 2013*. Retrieved from <http://www.mass.gov/hed/docs/dhcd/hd/shi/shiinventory.pdf>

^a Error due to rounding.

^b 2010 census.

Table 2. Comparison of median selected characteristics by municipalities' use of Massachusetts Chapter 40B ($N = 351$).

	Municipalities that have used Chapter 40B ($N = 246$)	Municipalities that have not used Chapter 40B ($N = 105$)
Percentage White	96%***	97%
Median income	\$57,716***	\$49,583
Percentage change in housing stock, 1970–2000	58%	61%
Percentage of affordable housing stock	6%***	1%

Note. Research team analysis based on data provided by the Citizens' Housing and Planning Association (Citizens' Housing and Planning Association. (2011). *Fact sheet on Chapter 40B: The state's affordable housing zoning law*. Boston, MA: Author. Retrieved from <http://www.chapa.org/sites/default/files/Fact%20Sheet%20on%20Chapter%2040B%202011%20update.pdf>); Department of Housing and Community Development. (2013). *Chapter 40B Subsidized Housing Inventory (SHI) as of April 30, 2013*. Retrieved from <http://www.mass.gov/hcd/docs/dhcd/hd/shi/shiinventory.pdf>; Census CD 1970 and Census CD 1980 in 2000 Boundaries (2002). The Geolytics information can be found as follows: <http://www.geolytics.com>; U.S. Census Bureau Summary File 1 (SF1) data, Tables P7, "Race (Total Population)," and GCT-PH1, "Population, Housing Units, Area, and Density: 2000"; and U.S. Census Bureau Summary File 3 (SF3) data, Table P53, "Median Household Income in 1999 (Dollars)." Census data retrieved using [American FactFinder](http://www.americanfactfinder.gov).

*** $p < .01$.

Demographic and Municipality Characteristics

The 30,703 affordable housing units built through the 40B/CPP were produced both by the 53 municipalities that had reached the 10% goal as of April 1, 2010, and by the 298 municipalities that had not, with the latter producing more than three-quarters of these units (78%).

A total of 70% of municipalities (246) had produced affordable housing using the 40B/CPP. Table 2 shows that these municipalities tend to have residents with higher median incomes and fewer White residents, compared with municipalities where no comprehensive permits have been issued. They also have a relatively larger affordable housing stock. An additional analysis (not shown), revealed that these municipalities tend to be located in metropolitan areas (i.e., urban or suburban). Those with no 40B development tend to be in rural or exurban locales (71 had populations below 5,000 in 2010), as well as older cities (including Boston) that have less restrictive zoning.

Looking only at those municipalities with at least some affordable housing, Table 3 shows that municipalities where a greater share of the affordable housing was built using

Table 3. Correlations between selected characteristics and percentage of affordable units built using Massachusetts Chapter 40B for all municipalities with affordable housing ($N = 316$).^a

	Percentage of affordable units built using Chapter 40B
Percentage White	0.12**
Median income	0.37***
Percentage change in housing stock, 1970–2000	0.29***
Percentage of affordable housing stock	–0.03

Note. For data sources, see Table 2.

^aThere are slight differences in record-keeping methods between Citizens' Housing and Planning Association (CHAPA) and the Department of Housing and Community Development (DHCD). This accounts for the small discrepancy with the data presented in Table 1 (for 2012), which is based on DHCD's Subsidized Housing Inventory and shows 42 municipalities without any affordable housing, rather than the 35 used in this analysis, based on CHAPA data.

** $p < .05$. *** $p < .01$.

Table 4. Comparison of median selected characteristics of Massachusetts municipalities by attainment of 10% affordable housing goal, based on 2000 census housing units ($N = 351$).

	Municipalities that had attained the 10% affordable housing goal ($N = 53$)	Municipalities that had not attained the 10% affordable housing goal ($N = 298$)
Percentage White	90%***	97%
Median income	\$47,979***	\$54,761
Percentage change in housing stock, 1970–2000	37%***	63%
Percentage of affordable housing stock	12%***	4%

Note. For data sources, see Table 2.

*** $p < .01$.

the 40B/CPP have more White residents and higher median incomes and grew at a faster rate than municipalities that have lower percentages of affordable housing built with the 40B/CPP. This suggests that Chapter 40B is being used in the types of municipalities at which the program was aimed.

As shown in Table 4, municipalities that had attained the 10% goal as of April 1, 2010, have smaller White populations and lower incomes than those that had not. The former municipalities also grew at a significantly slower rate between 1970 and 2000, suggesting that these are the more built-out cities and towns and inner-ring suburbs. Not surprisingly, municipalities that attained the 10% goal exhibit more overall 40B/CPP activity than municipalities that had not, in terms of higher median number of comprehensive permits issued and a higher median number of units built through the 40B/CPP (analysis not shown).

Table 2 revealed that municipalities with 40B/CPP activity have higher median incomes than those with less activity. Table 4 shows that municipalities that attained the 10% goal have lower median incomes than locales that had not. These findings are consistent: Many of the locales in which at least 10% of the housing stock is affordable are the large cities, which have larger low-income populations. In contrast, municipalities that are working to attain the 10% goal and using the 40B comprehensive permit process tend to be more affluent. In addition, as would be expected, Table 4 shows more affordable housing in municipalities that attained the 10% threshold than in those that had not.

A further analysis (not shown) revealed that municipalities that had attained the 10% affordable housing goal as of April 1, 2010, using the 40B/CPP have significantly higher median incomes and higher housing growth rates than do municipalities that attained the 10% goal without using this process. Thus, municipalities where the 40B/CPP has been used to the extent that the 10% threshold was attained have characteristics that are associated with more exclusionary locales.

Overall Assessment

For more than 40 years, Chapter 40B has been a major contributor to the state's affordable housing agenda and continues to be a critical tool in producing housing throughout the state. The 10% affordable housing goal is easy to understand, and there is a sense of equity and simplicity in its being a statewide goal, applicable to all municipalities. The HAC serves as a nonjudicial forum, which allows developers a mechanism to appeal local zoning decisions with minimal cost; it also represents an important threat that often stimulates a negotiated settlement between the developer and the municipality. Changes in Chapter 40B over the

years have created various incentives for municipalities to receive immunity from HAC overrides if they are making progress toward meeting affordable housing goals.

Although any given municipality's attainment of the 10% affordable housing goal can change with each decennial census as the year-round housing unit count is updated, the more-than-40-year history of the program demonstrates slow and steady progress by municipalities.

Chapter 40B was probably the key stimulus for affordable housing production in numerous cities and towns; on their own, they would have been unlikely to host such development. While Chapter 40B has helped mitigate exclusionary zoning patterns in Massachusetts, the story is complex. On the one hand, municipalities that have produced affordable housing through the 40B/CPP tend to have higher median incomes and a larger percentage of the housing stock that is affordable than do municipalities without this housing. Further, among only those municipalities that have some affordable housing, the greater the share of the affordable housing that was built through the 40B/CPP, the higher the median incomes and the larger the White population. These municipalities also grew at a faster rate than municipalities with lower percentages of affordable housing built through the 40B/CPP. Finally, municipalities that attained the 10% goal through the 40B/CPP have significantly higher median incomes and higher housing growth rates than do municipalities that attained the 10% goal without this process.

On the other hand, municipalities that have produced affordable housing through the 40B/CPP are associated with smaller White populations than municipalities without this housing are. As noted previously, this may be partially explained by the fact that municipalities that do not have these projects tend to be smaller and rural, with typically larger White populations. In addition, municipalities that attained the 10% goal (which include all of the largest cities in the state, with more low-income and fewer White households) are associated with smaller White populations and lower incomes than those that have not attained the goal are.

Rhode Island

The Rhode Island Low and Moderate Income Housing Act of 1991 has many similarities to Massachusetts's Chapter 40B, with the former also directing all municipalities to attain a 10% (of their overall housing stock) LMIH threshold.⁹ Here, too, nonprofit, for-profit, and limited-dividend developers may apply to a municipality for a single comprehensive permit for a rental or owner-occupied housing development (in lieu of seeking permits from all the relevant boards separately) as long as at least 20% of the units are subsidized by a federal or state program. Both states also have state-level appeals entities. Applications that are denied or granted by the local review board with conditions or requirements that would make the development infeasible may be appealed to Rhode Island's State Housing Appeals Board (SHAB), which has the authority to override a local board's rejection of the comprehensive permit.

The municipality's review board may deny a request for a permit if the municipality has an approved affordable housing plan, is meeting housing needs, and the proposal is inconsistent with the local plan; or if the proposal is not consistent with local needs. Additional reasons for rejection include the municipality's attainment of the 10% affordable housing goal or if the municipality has attained the state goal through an alternative way: in the case of an urban town or city, out of at least 5,000 occupied-year-round units, there must be at least 25% rental units, and the LMIH units must comprise 15% or more of the rental stock. Further, a plan may be rejected if concerns for the environment or the health and safety of current residents have not been adequately addressed.

If the SHAB finds that the proposed development is consistent with the municipality's plan, considering the state's overall need for affordable housing, the SHAB may overrule the local decision and grant approval of the development. As in Massachusetts, the statute has been revised several times since its enactment, and immunity from a state-level override has been expanded to enable more municipalities to achieve immunity for reasons other than meeting the 10% threshold.

The SHAB typically does not reject plans; rather, it asks for revisions, and there is an iterative process between the municipality and the SHAB until the plan is approved. Between 1991 and 2011, only 36 cases were appealed to the SHAB. SHAB rulings can be appealed at both the Superior Court and Supreme Court levels, but these are time-consuming processes.

There are a number of important differences between the Rhode Island statute and Massachusetts's Chapter 40B. First, mandatory community comprehensive plans, with a housing element, are an important component of Rhode Island's approach to dealing with exclusionary zoning. The housing element must detail how the state-mandated LMIH goals will be attained (if below the 10% threshold), and all zoning decisions must be consistent with the plan. Second, the SHAB has a legislative mandate to consider conformance of the local decision with the local affordable housing plan; in Massachusetts, no such requirement is placed on the HAC.¹⁰ In practice, the SHAB has not overturned any municipality's decision with a finding that a developer proposal that had been denied was, in fact, in compliance with the municipality's plan.

A third difference between the two states' statutes is that in Rhode Island there is no attempt at regulating developer profits under the act. (On the other hand, the profit limits under 40B have been used in Rhode Island as a guideline.) Fourth, any aggrieved party, including abutters, may appeal a SHAB approval (or an approval with conditions) of a comprehensive permit. Massachusetts's HAC does, however, allow other parties to participate in the hearing on an appeal.

A key question about the Rhode Island statute relates to whether having an approved housing plan and making "adequate progress" toward meeting a municipality's housing goals will, in fact, exempt municipalities from a SHAB override. Although there is no case law specifically stating this point, the consensus from state officials is that only reaching the 10% goal provides immunity. For example, Annette Bourne, assistant director of policy at Rhode Island Housing,¹¹ observed,

Steps the municipality has taken do not necessarily protect them from a comprehensive permit. There is reference in the law to promulgating zoning, so if they have passed actual ordinances that are strategic to produce LMIH that would help; however nothing exempts them from the law until they reach 10%. Ultimately, the SHAB is the final arbiter.

A municipality's comprehensive plan must be a realistic document, in terms of the municipality's ability to produce the housing it has proposed, given its current land-use regulations. The Rhode Island Comprehensive Planning and Land Use Act, as amended in 2011 directs each municipality to ensure consistency between its zoning ordinance and map and its comprehensive plan.¹² Although the new law took effect upon passage, municipalities have until June 1, 2016, to bring their comprehensive plans into conformance. After that, plans may lose state approval.

Housing Production and Progress Toward the 10% Goal

The 2009 LMIH database provided by Rhode Island Housing covers production as of the program's first year, 1991, including LIHTC units. The number of LMIH units reflects the

net change in units rather than gross affordable housing production. This probably results in undercounting the construction of new LMIH units.

There was a net increase of 5,301 LMIH units (not including beds in group homes) between 1991 and 2009, or about 11% of the increase in the total number of housing units in Rhode Island during that period (48,844 units). When the housing act was passed in 1991, five cities or towns (out of 39) had met the 10% goal; one additional (particularly affluent) town, New Shoreham (also known as Block Island), has since reached 10%. In addition to these exempt municipalities, another five became exempt (as of 1999) by attaining the state goal in an alternative way. Because of the size of their rental/LMIH stock (see note 9). Further, 52% of all LMIH units are located in the five original municipalities that reached the 10% goal, while they contain only 30% of the housing units in the state. Not including New Shoreham, the 10 municipalities in compliance as of 2009 were the most urban, with 75% of the total number of LMIH units in the state.¹³

New Shoreham's exceptional record was partly due to a change in how the denominator of the 10% calculation is derived. Amendments adopted in 2004 stipulated that only year-round housing units were to be counted when calculating the basis on which the 10% goal is assessed, thereby eliminating the many vacation units in that town. However, the town's significant efforts to produce LMIH are also noteworthy.

As of 2011, five additional municipalities were close to the 10% LMIH goal, with at least 8% of their housing stock devoted to LMIH; 12 more municipalities had at least 5%. Thus, more than half (59%) of Rhode Island's municipalities were at least halfway toward meeting the 10% goal.¹⁴ Although there are clear signs of progress, nearly three-quarters of municipalities (28, or 72%) were relatively far from meeting the state goal, with less than 8% of their year-round housing stocks counting as affordable. All municipalities had at least some LMIH.

Table 5 shows that the level of production was nearly equal among the 10 municipalities that had not met one of the state's housing goals prior to 2009 and those that had (2,547 and 2,754 units, respectively). Between 1991 and 2009, 36 of the state's 39 municipalities produced LMIH units.

Table 5. Net low and moderate income housing (LMIH) production by Rhode Island municipalities, by attainment of state LMIH thresholds, 1991–2009.

	Municipalities that had not met the state LMIH threshold prior to 2009	Municipalities that had met the state LMIH threshold prior to 2009	Overall
Number (%) of municipalities	29 (74%)	10 (26%)	39 (100%)
Number (%) of new LMIH units completed, 1991–2009 (includes LIHTC units)	2,547 (48%)	2,754 (52%)	5,301 (100%)
Number (%) of municipalities with new LMIH units completed	27 (75%)	9 (25%)	36 (100%) ^a
Median number of new LMIH units	56	56	56
Median number of new LMIH units per 10,000 residents	40	10	31

Note. Research team analysis based on data provided by Rhode Island Housing Resources Commission. (2006). Rhode Island five year strategic housing plan: 2006–2010. http://www.planning.ri.gov/documents/guide_plan/shp06.pdf and U.S. Census Bureau Summary Tape File (STF1) 1990 data, Table H001, "Housing Units"; U.S. Census Bureau Summary File 1 (SF1) 2000 data, Table P7, "Race (Total Population)." Census data retrieved using American FactFinder.

^aThree municipalities did not produce any LMIH units.

Based on the housing goals that municipalities had projected in plans submitted between 2005 and 2009, New Shoreham was the only municipality that attained 100% of its goal; no other municipality attained more than 80% of its goal. Only four municipalities (14%) attained more than half of their goals; five municipalities did not build any of the LMIH units that had been designated in their plans.¹⁵

The Rhode Island Housing Resources Commission's 2006 strategic housing plan projected a deficit of nearly 13,000 new LMIH units, with 5,000 needed over the following 5 years for each municipality to meet the 10% LMIH. With the report acknowledging that available state resources could only meet one-quarter of this goal, it is not surprising that production levels have not kept up with the state's target.

Demographic and Municipality Characteristics

Table 6 reveals that the municipalities that have met either of the state's housing goals have smaller White populations and lower median incomes and grew at a slower rate in the 1990s, compared with municipalities that have not met either housing goal. They also have more LMIH overall. Generally, the municipalities that have complied with the state's LMIH mandate are urban and inner-ring suburban communities, which are typically associated with LMIH production.

The change in LMIH production was not statistically significant between municipalities that had attained one of the two housing goals and those that had not, although the median production numbers were much higher for municipalities that had not attained a state-mandated housing goal than for those that had. The lack of a statistically significant difference may be due to the small sample size. If that is the explanation, we may have an indication that those areas that have not attained the LMIH goals are moving in the right direction, by at least keeping pace with, if not out-producing, those locales that have a track record of LMIH production.

Table 7 shows a positive correlation between new LMIH units produced and the percentage of a municipality's housing stock that is LMIH. Thus, a higher net change in the amount of LMIH is associated with more of a municipality's housing stock that is

Table 6. Comparison of median selected characteristics for Rhode Island municipalities by attainment of either low and moderate income housing (LMIH) goal, 2010.

	Municipalities that had attained either goal (<i>N</i> = 11)	Municipalities that had not attained either goal (<i>N</i> = 28)
Percentage White	86%***	97%
Median income	\$39,505***	\$55,495
Percentage change in housing stock, 1990–2000	2%***	12%
Net median change in LMIH units, 1991–2009	40	58
Percentage LMIH units	11%***	5%
Net change in LMIH units per 10,000 residents, 1991–2000	10	39

Note. For data sources, see Table 5; GCT-PH1, "Population, Housing Units, Area, and Density: 2000"; and U.S. Census Bureau Summary File 2000 3 (SF3) data, Table P53, "Median Household Income in 1999 (Dollars)". Census data retrieved using American FactFinder.

****p* < .01.

Table 7. Correlations between selected characteristics and low and moderate income housing (LMIH) production for all Rhode Island municipalities ($N = 39$).

	Correlation with all new LMIH units	Correlation with all new LMIH units per 10,000 residents
Percentage White	0.00	0.37**
Median income	-0.25	0.13
Percentage change in housing stock, 1990-2000	-0.10	0.27
Percentage LMIH units	0.36**	0.14
Either state housing goal attained	0.05	-0.26

Note. For data sources, see Table 5.

** $p < .05$.

affordable. There is also a positive correlation between the size of a municipality's White population and its LMIH production per 10,000 residents. This further suggests that the Rhode Island statute is associated with LMIH production in areas that have typically excluded such housing.

Overall Assessment

While the implementation of municipalities' plans has been slow, the Rhode Island statute is playing an important role in educating the population about the importance of affordable housing. Several interviewees noted, for example, that the 2006 Building Homes Rhode Island bond bill, which supports LMIH, was approved by all 39 Rhode Island municipalities. Nevertheless, interviewees also pointed out that NIMBY issues are still a concern and that the statute does not have sharp enough "teeth" to produce the needed LMIH units.

While a key aspect of the law is that it requires each municipality to include a housing element as part of its comprehensive plan, a number of important questions have yet to be resolved. What specific efforts toward attainment of the housing goal are sufficient to protect a municipality from unwanted development under the statute and provide immunity from a SHAB override? What type of divergence from a municipality's comprehensive plan would constitute grounds for a developer's proposal to be deemed out of conformance and subject to an override by the SHAB? Will the state enforce the Comprehensive Planning and Land Use Act's stipulation that zoning must be consistent with each municipality's comprehensive plan?

In terms of the LMIH statute's record in encouraging municipalities that are typically associated with exclusionary land-use patterns (more White and higher-median-income residents), the picture is mixed. On the one hand, there is modest evidence (although not all statistically significant) that those areas that have not attained the LMIH goals are, indeed, adding to their stock of LMIH. Another positive finding, that LMIH production is associated with higher-income municipalities where a larger share of the population is White, provides additional evidence that the Rhode Island statute is encouraging LMIH production in areas that have typically excluded such housing.

On the other hand, the finding of no significant difference in the amount of LMIH produced between municipalities that have attained one of the two housing goals and those that have not suggests that the latter municipalities have not been more successful in building

LMIH. In addition, municipalities that have met the state's housing goal have smaller White populations and lower median incomes than do municipalities that have not met either housing goal. This could be an indication of a continuation of exclusionary patterns. However, as in Massachusetts, the municipalities that have reached the 10% goal include all of the largest cities in the state, which have large populations of low-income and non-White households.

Montgomery County, Maryland

Launched in 1974 (L.M.C., ch. 17, § 1), the MPDU program in Montgomery County, Maryland, is one of the most frequently cited examples of a successful affordable housing initiative. Although it operates countywide rather than statewide, it stands out as an important example of a program being implemented above the municipal level. As an inclusionary zoning effort, the MPDU program provides a mechanism for addressing exclusionary land-use practices throughout the county by requiring all developments of a certain size to earmark a portion of their new housing as affordable to low- and moderate-income households. To compensate developers for any loss in profits, a density bonus is provided. The basic MPDU program does not involve any public subsidy.

Through 2010, the MPDU program was responsible for the creation of some 13,133 units of affordable housing. However, because of inadequate affordability restriction periods during the early years of the program, less than one-third of these units (including units that were subsequently purchased by the countywide housing authority, the Housing Opportunities Commission [HOC]), are still under affordability restrictions. MPDU owners could resell their units at market prices, and the earliest rental developments only required that units remain affordable for 5 years; subsequently, rental prices were set by the builder. Time limits have been steadily lengthened through the years; for-sale units must now be kept affordable for a minimum of 30 years and rental units for 99 years, from the date of initial sale or rental.

Richard Nelson, director of Montgomery County's Department of Housing and Community Affairs, commented on the overall success of the MPDU program:

If it had not been for the MPDU program, 8,000 households would not have had a chance to purchase. And we would not have had as many moderate-income units spread throughout the county. And even after the units left the program, after the control period, the prices were not typically as high as other houses in those areas. MPDU homes are generally smaller, or without garages, for example. So, those homes have continued to provide relatively more affordable housing options than elsewhere in the neighborhood.

Thus, although MPDUs may be somewhat distinguishable, they are generally attractive, of high quality, and fit in well with other homes in the area. And, over time, units appear to have become less distinctive. According to Sally Roman, an HOC commissioner:

In the early years, there were some pretty cheap units that were clearly MPDUs. More recently, MPDUs may be identifiable because ... they are the only townhouses in a development of single-family detached market rate housing. When the county created a compatibility allowance, developers were allowed to charge up to 10% more for MPDUs to make them more compatible with the surrounding houses. Sometimes you can't distinguish the MPDU units at all.

In addition to changes in the length of time units had to remain affordable, several other program requirements have been debated and changed throughout the years: the size of the developments that should fall under the statute, the number of affordable units that should be set aside as affordable, and whether developers should have the option to "buy

out” of producing MPDUs on-site and instead donate money for moderate-priced units to be built elsewhere. Currently, developments that are served by public water and sewer and have 20 or more units must set aside between 12.5% and 15% of the units as affordable for moderate-income households. This requirement pertains even to lots of half an acre or less.

Between 1989 and 2003, 19 developments were allowed to exercise a buy-out provision. However, the in-lieu payments failed to produce as many units as would have been required by the MPDU program without the buy-out option. Currently, there are virtually no exceptions to the MPDU program; buy-outs are allowed only if conditions exist that would make the on-site units unaffordable for MPDU residents or if the inclusion of the MPDUs would be economically infeasible because of environmental constraints.

Eligible households must have incomes of no more than 65% of the AMI for rental MPDUs and no more than 70% of the AMI for homeownership units. Although the MPDU program was never aimed at assisting very-low- or low-income households, interviewees noted that the program typically reaches households earning in the range of 55–60% of the AMI.

To accommodate even lower-income groups, the HOC was given the right to purchase up to 40% of the MPDUs in each development to be set aside for rental housing. However, because of insufficient funds and other considerations, only between one-quarter and one-fifth of the total possible number of units that could have been set aside in this way are under HOC ownership. Even so, these entities have been able to purchase over 1,700 MPDUs, thereby contributing to the county’s permanent supply of low-income housing. An additional 231 MPDUs are owned by nonprofits.

While the MPDU program enjoyed substantial support through its first several decades, in recent years it has become far more contentious. Private developers have become increasingly concerned about whether MPDU requirements will threaten the viability and profitability of projects. Tensions are also arising as some MPDU condo owners are having difficulty paying the condo fees in the newer luxury high-rise developments. Additionally, as with all inclusionary zoning programs, the MPDU program is dependent on a robust private housing market. When the economy weakens and private housing development stalls, affordable units are not built.

Production

Housing production data was provided by the Montgomery County Planning Department and the Maryland Department of Housing and Community Affairs in two different GIS shapefiles. In view of the overlap between the two databases and the total number of entries in each, we believe that this analysis captures somewhere between 65% and 80% of all MPDUs ever built, including virtually all that are still affordable. Most of Montgomery County is unincorporated, so simply matching housing production data to municipal and demographic information was not an option. We used census-designated places (CDPs) as our unit of analysis. Various assumptions and adjustments had to be made in order to assign each MPDU to a CDP. Historical (pre-1990) housing unit numbers were gathered from Geolytics, using data normalized to 2000 political boundaries, where feasible.

Placing the record of the MPDU program in the context of overall affordable housing production in the county, between 1974 and 2010 it was responsible for about half of these units. Between 1980 and 2010, MPDU production accounted for 7.6% of the total number of housing units produced. About 71% of all MPDUs produced were for sale. However, in recent years, there has been a marked shift toward rental housing production; from 2008 to 2010, rental housing represented 62% of MPDU production.

This analysis includes 8,210 MPDUs and 1,711 HOC (former MPDU) units. Although rental units accounted for only about 29% of the total MPDU inventory, [Table 8](#) shows

Table 8. Description of total housing production under Montgomery County, Maryland's Moderately Priced Dwelling Unit (MPDU) program and the subset of data used in this analysis.

	Units included in this analysis			Total MPDU inventory, ^a 1976–2007	Percentage of MPDU inventory captured in this analysis
	Still affordable	No longer price controlled	Total		
MPDU home-ownership	1,416	5,790	7,206	8,947	81%
MPDU rental	878	126	1,004	3,573	28%
MPDU total	2,294	5,916	8,210	12,520	66%

Note. Research team analysis based on data provided by the Department of Housing and Community Affairs, Montgomery County Planning Department, "All MPDUs," October 2009.

^a Between 2008 and 2010, an additional 613 MPDUs were added, bringing the total to 13,133 units, as noted in the text. See: Montgomery County Department of Housing and Community Affairs, "Number of MPDUs Produced Since 1976," including data through 2010. However, all analyses are based on the above totals.

that they represent 38% (878/2,294) of the units still being monitored for compliance under the MPDU program, based on the database used in this analysis. In addition, data were available, and included in this analysis, for a far higher percentage of the for-sale units than for the rental units (81% and 28%, respectively). Our data indicate that a far higher percentage of rental units built under the MPDU program are still price controlled (878/1,004 = 87%) and therefore affordable under the MPDU program's guidelines, in comparison with homeownership units (1,416/7,206 = 20%).¹⁶

In addition, affordability has been preserved for all 1,711 rental units built under the MPDU program and recorded in the HOC database and for which we were able to map and assign a location. Because our data include virtually all MPDUs that were still affordable as of 2009, 18% (2,294/12,520) of MPDUs produced were, at that time, still monitored for affordability within the MPDU program, and nearly 14% (1,711/12,520) have their affordability permanently maintained by the HOC, for a total of 32% of all units (4,005/12,520).¹⁷

Subsequent data provided by the Montgomery County Department of Housing and Community Affairs (2010) showed an addition of 613 MPDUs between 2008 and 2010, bringing total MPDU production, as noted earlier, to 13,133 units. However, as of 2010, a total of only 2,361 units were still under price controls (1,236 for-sale units and 1,125 rental units), not including the 1,711 HOC units. These changes resulted in a new total of 4,072 still-affordable MPDUs, a net increase of 67 such units, but a lower percentage of still-affordable MPDUs (4,005 + 67 = 4,072; 4,072/13,133 = 31%). However, the analyses used here are based on 32% of the MPDUs retaining their affordability.

Demographic and Municipality Characteristics

Slightly more than half (27) of the 51 CDPs have had MPDUs at some point in time; this results in a fairly low overall median number of MPDUs per locale (10). As shown in Table 9, CDPs with no MPDUs have significantly higher percentages of White residents and residents with higher median household incomes than do CDPs that have MPDUs. Thus, although some interviewees noted that the MPDU program has increased diversity, MPDU production is correlated with locales that are less diverse. Further, the housing stock of CDPs with no MPDUs grew more slowly than those with MPDUs.

The data presented in Table 10 are similar: MPDU and HOC units (the latter being a subset of all MPDUs) are more often situated in CDPs with lower percentages of White

Table 9. Comparison of median selected characteristics by production of Montgomery County, Maryland, Moderately Priced Dwelling Units (MDPUs).

	Median value for census-designated places with no MPDUs ($N = 24$)	Median value for census-designated places with MPDUs ($N = 27$)
Percentage White	95%***	76%
Median income	\$100,784***	\$72,614
Percentage change in housing stock, 1980–2000	10%***	80%

Note. For data sources, see Table 8; plus U.S. Census Bureau Summary File 1 (SF1) data, Tables P7, “Race (Total Population),” P11, “Hispanic or Latino (Total Population),” and GCT-PH1, “Population, Housing Units, Area, and Density: 2000”; and U.S. Census Bureau Summary File 3 (SF3) data, Table P53, “Median Household Income in 1999 (Dollars).” Census data retrieved from American FactFinder (for all census-designated places partly or fully contained in Montgomery County).

*** $p < .01$.

Table 10. Correlations between selected characteristics and number of Montgomery County, Maryland, Moderately Priced Dwelling Units (MPDUs) built or number of MPDU and Housing Opportunities Commission (HOC; former MPDU) units still affordable ($N = 51$).

	Correlation with MPDUs	Correlation with still-affordable MPDUs	Correlation with HOC units
Percentage White	−0.61***	−0.58***	−0.61***
Median income	−0.39***	−0.38	−0.33**
Percentage change in housing stock, 1980–2000	0.57***	0.51***	0.51***

Note. For data sources, see Table 9, plus data for HOC-owned properties, January 2010.

** $p < .05$. *** $p < .01$.

residents, higher percentages of lower-income households, and higher rates of growth of housing units. These results may suggest that when left up to the private sector, and where there is no government influence on where affordable units get built, wealthier locales, with higher percentages of White residents, are less likely to produce affordable units. However, the above patterns also may be the result of the county’s historical development patterns. Many of the more established municipalities were essentially built out prior to the 1974 implementation of the MPDU law, which is reflected in MPDU production being associated with locales with more rapidly growing housing stocks.

Overall Assessment

Inclusionary zoning has become a popular approach for producing housing that is affordable to low- and moderate-income households. From the perspective of the public sector, this strategy is particularly attractive because it relies primarily on the private housing market rather than on public subsidies. Yet, as noted above, therein lies a key weakness: When there is little private market activity, the program stalls or shuts down. Further, it is only a viable strategy in markets that have a generally robust housing market with high consumer demand.

The Montgomery County experience also underscores that buy-out provisions can be disappointing; financial payments were not adequate to allow for a 1:1 construction of units that would have been required under the MPDU program.

As with the other programs, there are mixed conclusions. On the one hand, the MPDU program can boast a strong production record, with slightly more than half of Montgomery

County's 51 CDPs having produced MPDUs and/or HOC-owned (former MPDU) units. On the other hand, due to inadequate affordability restrictions in the early years of the program, about two-thirds of the units produced are no longer available to low- or moderate-income households. Perhaps not surprisingly, rental units have had a better record of maintaining their affordability than for-sale units. In addition, CDPs with no MPDUs and no HOC units have significantly more White residents and significantly higher median household incomes than do CDPs that have MPDUs and HOC units.

New Jersey

New Jersey's statute, the Fair Housing Act (1985), emerged from the *Mount Laurel* decisions (*Southern Burlington County NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 336 A.2d 713 (1975), referred to as Mt. Laurel I, and *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92 N.J. 158, 456 A.2d 390 (1983), referred to as Mt. Laurel II) rendered by the state's Supreme Court, which determined that a municipality's land-use regulations must provide opportunities for a range of housing options for all people who might want to live there. The New Jersey statute is, arguably, the best known of the state-based interventions aimed at overcoming local exclusionary zoning, and a great deal has been written on this initiative (see, e.g., Mallach & Calavita, 2010, one of the most recent and particularly noteworthy contributions).

A key aspect of the New Jersey strategy involves the "builder's remedy." A developer who demonstrates that a municipality's zoning is exclusionary and who commits to a set-aside of low-to-moderate-income units is able to seek permission from the court to build more market-rate units than allowed under existing zoning, as long as the site and project meet certain planning and environmental standards. A municipality that does not produce zoning changes to accommodate a range of housing options could be subject to a court mandate, which might include voiding its existing zoning, as well as other sanctions impacting development. A municipality can be granted immunity from the builder's remedy by submitting a realistic plan to the Council on Affordable Housing (COAH), the administrative branch of government charged with enforcing the statute. Such a plan would have to include, for example, adequate zoning, the identification of suitable sites, and designation of financial resources to produce the needed housing.

The COAH attempts to evaluate housing needs across the state and strives to develop a rational "fair-share" distribution. Although all localities are required to develop zoning that is appropriate for affordable housing development, filing of plans with the COAH is voluntary, and municipalities that are fully built-up, intensely urban, or far from a major urban center often do not do so. However, there are two compelling reasons to comply. First, once a municipality's plan has been certified by the COAH, it is immune from builder's remedy lawsuits for the duration of the COAH cycle. Second, a COAH-approved plan enables a municipality to retain developer fees. If there is no such plan, these monies are contributed to the statewide trust fund.¹⁸ All plans submitted to the COAH must indicate that there are realistic opportunities for affordable housing development.

If a municipality neither has filed a plan with the COAH nor is under court jurisdiction,¹⁹ a developer may prevail in *Mount Laurel* litigation. This, in turn, could result in rezoning, thereby allowing the development. The COAH also has the authority to grant a builder's remedy. While this is not referred to as "overturning" the zoning, the COAH directs the municipality to change the zoning to accommodate the proposed housing. However, this authority has rarely been exercised; only about 10 builder's remedy court decisions have required rezoning. The great majority of cases are not decided in the courts; developers and

municipalities typically reach an agreement before trial. Nevertheless, interviewees noted that because there is a perception of far more such court decisions, the builder's remedy continues to serve as a powerful threat from developers.²⁰

There have been a number of changes in the implementation of the various judicial and legislative mandates, most of which have been contested. When the COAH was launched in 1986, the agency developed "fair-share" goals to be attained over a 6-year cycle. The first round covered 1987–1993 and the second 1993–1999. However, not all 566 cities and towns were assigned a new construction obligation (e.g., urban municipalities, with high poverty rates and low tax revenues, were generally viewed as already "doing their share"). By the end of the second 6-year cycle, the COAH had not yet published new housing-need figures for the third round. Yet, despite the delays and controversies, interviewees generally agreed that the system had been working reasonably well up to that point. For example, Alan Mallach, who has held a variety of state and local government positions in New Jersey, observed that "although people were not exactly happy, most suburbs were participating; units were getting built."

As the second round was ending, a new way of meeting affordable housing obligations was developed to guide the third round. "Growth-share" rules, which were connected to both residential and nonresidential growth, stated that municipalities only needed to build affordable housing to the extent that they actually grew; one new affordable unit was required for every 10 market-rate units produced or for every 30 jobs created. However, these rules were not adopted until 2004 and, again, were contested, including in several court cases. Many of the criticisms, from both advocates and the development community, revolved around the accuracy of the numerical targets developed by the COAH.

Another version of the third-round rules, released 4 years later, took into account the various criticisms. But, again, neither the formula nor its implementation was simple. As of early 2009, about one-third of the municipalities that should have filed plans had not done so.²¹

In October 2010, the New Jersey Appellate Division threw out the revised third-round, "growth-share" rules. For the next 3 years, third-round plans were, for the most part, not being processed, even for municipalities that had submitted plans, due to the general level of uncertainty. In late September 2013, the State Supreme Court finally decided the case. In a major blow to Governor Chris Christie's Administration, and with a great deal of satisfaction voiced by affordable housing advocates, the third-round rules were declared invalid, and the court directed the state to adopt, within 5 months, new rules in compliance with the *Mount Laurel* doctrine (National Low Income Housing Coalition, 2013).

The 1985 Fair Housing Law also created the "regional contribution agreement" (RCA) to assist municipalities in meeting their "fair-share" housing allocations. Until mid-2008, when this strategy was eliminated, a municipality could transfer up to half of its target to another municipality within its region, so long as the latter was able to provide a realistic opportunity for affordable housing production consistent with sound planning. The "sending" municipality was required to make payments to the "receiving" municipality. However, per-unit payments were never enough to create an actual unit. Although Alan Mallach was not personally in favor of RCAs, he offered that

in practice, they were not a disaster. From a political standpoint, RCAs served as a bit of a safety valve. More communities that might have been opposed used it as a way to meet their obligations. Since towns were able to pocket the healthy developer fee money and pass the money on to the receiving municipality, in most cases the sending municipality was able to execute the RCAs at no net cost. It was a nice system for them.

Taking the place of RCAs, a new strategy was created that provides municipalities in certain parts of the state, which already have a regional planning body, the opportunity to be credited for half of their affordable housing obligations. However, obligations cannot be transferred to certain high-poverty municipalities, making this system very different from RCAs.

Housing Production

The COAH provided computerized information on affordable housing production from 1980 through March 2009. However, the COAH's records only include municipalities that have filed plans with them or whose plans have been approved by the Superior Court; affordable housing production in other municipalities is typically not counted by the COAH. Additional data on affordable housing production were compiled from the U.S. Department of Housing and Urban Development's (HUD's) LIHTC database.

In developing production figures, only actual production is counted; not included are "credits" that the State of New Jersey allocates to municipalities based on various alternative strategies for compliance, such as the RCA method, described above.²² Thus, municipalities may be in some degree of compliance with the state's affordable housing goals without themselves producing the number of units that the state has designated as their affordable housing obligation.

As shown in [Table 11](#), affordable housing production in municipalities that had filed plans with either the COAH or the Superior Court, plus completed LIHTC units, totaled 62,071 units. An additional 28,672 COAH units were either approved for construction or in the pipeline and likely to be built.

Between 1980 and 2010, there was a net addition of 853,596 units across the state. The COAH's 52,160 units accounted for 6.1% of total production. Including the LIHTC units, the percentage equals 7.3% affordable units out of overall production.

[Table 11](#) shows that 494 municipalities (87%) were assigned an affordable housing production target. This "prior-round obligation" was based on the two prior-round obligation numbers, as well as the new "growth share" number, reduced by affordable housing production and credits during those periods. As already noted, 72 municipalities did not have this obligation. Proportionally, more municipalities without a prior-round obligation built affordable housing (69%) than did those that were required to do so (59%). Although municipalities with an obligation produced more total housing, the median number of units produced was lower than in municipalities without an obligation, both overall and per 10,000 residents.

Further, [Table 11](#) shows that the 43,161 new units completed by municipalities with prior-round obligations fulfilled half of the statewide prior-round obligation goal. These municipalities completed 70% of all new units produced, while municipalities without prior-round obligations completed 30%. These 43,161 units were completed by 293 of the 494 municipalities with prior-round obligations, but 201 municipalities in this group built no affordable housing. A total of 18,910 affordable units (COAH plus LIHTC) were produced by 50 out of the 72 municipalities without a prior-round obligation. Counting all affordable units produced (COAH plus LIHTC), the total comes to 62,071 units; 30% were produced by municipalities without prior-round obligations.

Adding all the new units produced, as well as the approved units in all municipalities (90,743 with and without prior-round obligations), municipalities may be able to exceed the total prior-round obligation; 23% of the total would be provided by municipalities that were not assigned a prior-round obligation.

Table 11. Affordable housing production by New Jersey municipalities with and without prior-round obligations, 1980 to March 2009.

	Municipalities with prior-round obligations	Municipalities without prior-round obligations	Overall
Number of municipalities	494	72	566
Percentage of all municipalities	87%	13%	100%
Number of municipalities with new units completed	293	50	343
Percentage of municipalities with new units completed	59%	69%	60%
Units mandated under prior-round obligation, 1987–1999	85,964	n/a	85,964
Number of new affordable units completed, 1980–2009 (COAH units only)	43,161	8,999	52,160
Number of new affordable units completed, 1980–2009 (includes LIHTC units)	43,161	18,910	62,071
Percent of all new units completed	70%	30%	100%
Percentage of obligation attained	50%	n/a	63%
Median number of new affordable units	11	68	13
Median number of new affordable units per 10,000 residents	22	33	18
Total new and approved units ^a	69,697	21,046	90,743
Percentage of obligation to be attained if all approved units are built	81%	n/a	–
Percentage total new and approved units	77%	23%	100%

Note. COAH = Council on Affordable Housing; LIHTC = Low-Income Housing Tax Credit. Research team analysis based on data provided by the COAH, “All Projects Summary,” March 2009, and “Rehabilitation Share, Prior Round Obligation & Growth Projections,” October 20, 2008.

^aIncludes new and approved COAH units in all municipalities and new LIHTC units only in non-prior-round-obligation municipalities (where not all LIHTC units are COAH units). Data were not readily available on approved but unbuilt non-COAH LIHTC units.

Third-round “fair-share” numbers indicated a statewide need for 115,566 new affordable units to be added between 1999 and 2018 (New Jersey Council on Affordable Housing, 2008). Plans submitted by municipalities as part of the third round indicated anticipated production of 39,189 units. Plans that were still in the process of being developed (when the data were collected) would add another 7,243 units, for a total of 46,432 homes. This is far short (only about 40%) of the total statewide need for affordable housing (Gordon, 2009).

In view of the 2013 decision by the New Jersey Supreme Court, it is unclear whether Governor Christie will still be committed to undermining the fair-share mandate and abolishing the COAH.²³ For about a decade, municipalities and developers did not have a clear road map as to their obligations (Smith, 2012). It remains to be seen whether the outcome of the case, which clarifies the acceptable methodology for calculating municipal affordable housing obligations, will provide a renewed impetus for state officials and for New Jersey’s municipalities to comply with the *Mount Laurel* doctrine.

Compliance With State-Mandated Prior-Round Obligations

All production from 1980 through March 2009 is credited toward compliance with the prior-round obligation. This presentation of the production record is necessitated by the COAH’s record-keeping method, which does not distinguish between production that occurred before the two prior rounds (1980–1987), or that was built during the first or

Table 12. Extent to which prior-round obligation was attained by New Jersey municipalities with this obligation, 1980 to March 2009 ($N = 494$).

	Municipalities with completed affordable units		Municipalities with completed and approved affordable units	
	<i>N</i>	%	<i>N</i>	%
Percentage of prior-round obligation attained				
0 (no affordable housing completed)	201	40.7	137	27.7
1–39.99%	102	21.7	60	13.2
40–49.99%	28	5.6	21	4.3
50–59.99%	21	3.4	24	4.3
60–79.99%	19	4.0	41	8.1
80–99.99%	25	4.7	26	5.9
100% or more	98	19.8	185	36.6
Total municipalities with prior-round obligations	494	100	494	100

Note. For data sources, see Table 11.

second round (1987–1999), or that has been built since the official end of the first two rounds (2000–2009).²⁴

Table 12 presents a breakdown of the extent to which the 494 municipalities with a prior-round obligation attained the goal set by the state (using the guidelines of the present analysis). Of these municipalities, nearly 41% built no new affordable units. Including these municipalities, over 80% did not produce affordable housing at the targeted level, and 68% attained less than 50% of their obligation. At the other extreme, almost 20% of municipalities with a prior-round obligation fulfilled their goal, and close to 5% of additional municipalities completed over 80% of their goals.

For 22 of the 72 municipalities that were not given a prior-round obligation, the reasons were unrelated to their high poverty status or high affordable housing stocks. Therefore, a total of 148 municipalities (98 + 50, or 26% of all municipalities) appear to be fulfilling the state's expectations concerning affordable housing production.

If approved units are counted, the record looks significantly more positive. Only about 28% of municipalities with prior-round obligations are slated to contribute no new affordable housing units, and nearly 37% could be in full compliance, attaining 100% of their goal. Nevertheless, over 60% of municipalities will not have fulfilled their goals, even under the generous assumption that all approved units will actually get built.

Demographic and Municipality Characteristics

For all municipalities (those with and those without prior-round obligations), those with new affordable units tend to have proportionally smaller White populations but higher median incomes; their housing stock also grew at a faster rate between 1980 and 2000 than did municipalities with no new affordable housing (see Table 13). A correlation analysis (not shown) revealed similar results.

As discussed previously, most of the municipalities that did not have a prior-round obligation are urban and, therefore, likely to have higher poverty rates than the rest of the state. Our data (analysis not shown) confirmed that residents in these areas have lower median incomes and are less likely to be White than those in municipalities with prior-

Table 13. Comparison of median selected characteristics by New Jersey production of affordable (COAH or LIHTC) units ($N = 566$).

	Municipalities with new affordable units ($N = 343$)	Municipalities with no new affordable units ($N = 223$) ^a
Percentage White	89%	92%***
Median income	\$64,444	\$52,550***
Percentage change in housing stock, 1980–2000	19%	12%***
New affordable units	82	0***
New affordable units per 10,000 residents	69	0***
Percentage change in housing stock accounted for by new affordable units	9%	0%***

Note. COAH = Council on Affordable Housing. LIHTC = Low-Income Housing Tax Credit. For data sources, see Table 11, plus Geolytics Census CD 1970 and Census CD 1980 in 2000 Boundaries (2002); U.S. Census Bureau Summary File 1 (SF1) data, Tables P7, “Race (Total Population),” and GCT-PH1, “Population, Housing Units, Area, and Density: 2000”; and U.S. Census Bureau Summary File 3 (SF3) data, Table P53, “Median Household Income in 1999 (Dollars); and LIHTC data for municipalities with no prior-round obligation from huduser.org. Census data retrieved from American FactFinder.

^aThis number is slightly higher than the number presented in Table 12, indicating that there were 201 municipalities without any affordable housing. That figure is based on only those municipalities with a prior-round obligation, while this figure includes all municipalities. As explained in the text, 22 municipalities did not have a prior-round obligation for reasons other than already having a significant affordable housing stock. In fact, these municipalities had no affordable housing, bringing the total to 223.

*** $p < .01$.

round obligations. In addition, growth in the housing stock is lower than in municipalities with prior-round obligations.

Table 14 looks only at municipalities that had prior-round obligations and compares the characteristics of those that met their obligations with those that did not. The former had somewhat fewer White residents. Also interesting is that, although the municipalities in compliance seemed to be adding to their overall housing stock at a faster rate (between

Table 14. Comparison of median selected characteristics of New Jersey municipalities with prior-round obligations, by compliance ($N = 494$).

	Municipalities in compliance ($N = 98$)	Municipalities not in compliance ($N = 396$)
Percentage White	89%***	92%
Median income	\$63,985	\$60,990
Percentage change in housing stock, 1980–2000	26%	19%
New affordable units	138***	0
New affordable units per 10,000 residents	118***	0

Note. For data sources, see Table 11.

*** $p < .01$.

1980 and 2000) than those municipalities not in compliance, that difference is not statistically significant.

Overall Assessment

Affordable housing production in New Jersey has not occurred easily. Everything about the process has been complex—from-how “fair-share” or “growth share” figures have

been calculated to how the state has provided various bonuses and credits to municipalities. Numerous court cases also have stalled affordable housing development. In view of the difficulties encountered, in 2011 the New Jersey Legislature passed legislation that would have instituted an across-the-board 10% affordable housing goal, similar to that of Massachusetts and Rhode Island, but it was vetoed by Governor Christie. As of 2013, the governor and the legislature were at an impasse.

Although immunity from the builder's remedy is provided to municipalities that have submitted plans, this has been more of a threat than a reality, with only about 10 cases where the state has overruled local zoning to provide housing permits to developers. The builder's remedy has provided a point of leverage for reaching an agreement that is satisfactory to all parties.

The New Jersey experience in implementing the *Mount Laurel* decisions and, later, its Fair Housing Act presents a mixed record. On the one hand, tens of thousands of units have been produced. In addition, municipalities with new affordable units are associated with higher-median-income residents.

On the other hand, over 80% of the municipalities with prior-round obligations have not produced affordable housing within their own jurisdictions at the level specified in their goals, and municipalities with new affordable units are associated with proportionally smaller White populations. In addition, municipalities that met their prior-round obligation are associated with somewhat fewer White residents, compared with municipalities that did not. Further, municipalities that built no housing have higher percentages of White residents and lower-median-income residents, compared with municipalities that built at least some housing. Municipalities with smaller White populations are associated with compliance with their prior-round obligations. Thus, municipalities with larger White populations are associated with building less affordable housing.

Despite the September 2013 mandate from the State Supreme Court, which directed the state to work toward compliance with the *Mount Laurel* decisions, Governor Christie's strong opposition to the COAH suggests that the New Jersey affordable housing agenda is still facing an uncertain future.

Cross-State Comparisons and Recommendations

Each of the programs discussed represents a strong statewide (or countywide) commitment to encouraging the development of affordable housing in locales that would otherwise be unlikely to produce such housing. Each program has evolved over many years, making many modifications since its inception to make it more responsive to articulated concerns. However, the many programmatic changes have resulted in increasing levels of complexity. There is no such thing as the proverbial "magic bullet" when it comes to devising a state- or county-level strategy for overcoming local land-use patterns that limit the opportunities for lower-income households to find decent, affordable homes in a wide array of locales across a region.

Although full compliance with the statutes has been disappointing, we find that affordable housing production is indeed occurring in municipalities that are typically associated with more exclusionary locales. Several analyses revealed positive correlations between progress toward attaining statewide goals and higher-income residents and more White residents.

Referring specifically to a "high-end town" that, like the rest of the county, experienced a development boom in the 1970s and 1980s, Tedi Osias, director of legislative and public affairs at the Montgomery County HOC, offered this observation:

There was a huge amount of upper-middle-class housing built, including MPDUs. Without the MPDU program, there would not be any kind of economic integration. It just would not have happened naturally. This is a real strength of the program.

Interviewees repeatedly emphasized that locales are learning from one another and using the experiences of other states to inform and, in some cases, to modify their own initiatives. It will be recalled that the New Jersey legislature attempted to institute the same affordable housing goal as in Massachusetts and Rhode Island: a 10% across-the-board mandate. Additionally, over the past several years, Massachusetts has incorporated some of the aspects of the Rhode Island statute, by encouraging municipalities to prepare housing production plans, with incentives for making progress toward meeting those targets.

This project encountered several challenges. In retrospect, perhaps the assumption that a cross-state quantitative comparison would be possible was overly ambitious. Different data-collection methods, missing data, and other methodological issues made analysis difficult. We also were not able to explore the extent to which variations in market conditions have impacted the various locales. In addition, although the “suburbanization of poverty” (Kneebone & Garr, 2010) is far more prominent in some places than others, this study did not consider the extent to which such changes are occurring within each locale.

This study underscores the importance of states playing a leadership role in encouraging affordable housing development. Consistent with the recommendation offered by Scally and Koenig (2012), there is a need for “high-level coordination of multiple programs in support of a delineated, comprehensive strategy for housing. . . . State governments are strategically positioned to rise to this challenge” (p. 454).

Although not highlighted in the cases, many interviewees commented on the need for more resources, both to properly administer the various programs and to make long-term affordable housing opportunities more robust. In Montgomery County, Maryland, for example, we found that many more units could have been purchased and safeguarded for long-term affordability by the HOC if more funding had been available. Therefore, an overriding recommendation is that public funding for housing that is affordable to a broad range of the population, particularly those who are least able to afford market prices, is essential to cover the capital costs of creating affordable units, ongoing maintenance, and program administration. While programs to address local exclusionary land-use patterns are extremely important, without adequate federal as well as state subsidies, municipalities will probably not be able to meet affordable housing needs. Resources for rental housing should be a major priority, along with subsidies to promote homeownership for those households who are able to assume that responsibility.

The following sections restate the five research questions and summarize our key findings and observations. Where appropriate, recommendations are offered that relate to these points as well as to prior discussions.

Overall Affordable Housing Production and Long-Term Affordability

- How much affordable housing has been produced per year since the statute became operational?

Findings/Observations

Although the first research question seems straightforward, it can be answered in a number of ways. First, Massachusetts had the best record of total affordable housing production as a percentage of the growth in the statewide (or countywide for

Montgomery County) housing stock from the start of the program (13.7%); Rhode Island had the second-best record (see Table 15 for this and the remainder of the findings/observations in this section).

Second, while Montgomery County's MPDU program had the highest affordable housing production record per 10,000 residents (143), only 45 units per 10,000 residents are still affordable. In contrast, according to state officials, virtually 100% of the units produced through the other three programs (those of Massachusetts, New Jersey, and Rhode Island) continue to be affordable. Counting only the still-affordable units, the MPDU program drops to last place, with New Jersey (62) edging out Rhode Island (51) and Massachusetts (48).

Third, adding all affordable housing production (whether or not through the program), with respect to production per 10,000 residents, Montgomery County again had the best record. However, this number must, again, be modified by the loss of affordable MPDU units. Assuming that 45 MPDUs per 10,000 residents are still affordable and that all of the other affordable housing (non-MPDU) production is still affordable (although we do not, in fact, have any information on the latter number), the Massachusetts and Montgomery County totals are very similar (185 and 188, respectively), with New Jersey's and Rhode Island's much lower (74 and 51, respectively).

Fourth, Massachusetts had by far the highest total production and annual production of affordable units (117,150 and 2,789, respectively), including both program and other units. Montgomery County, Maryland, had the highest annual affordable housing production per 10,000 residents, followed by Massachusetts (8.9 and 4.4, respectively).

Recommendations

- *Long-term affordability restrictions are critical.* The problems associated with units' losing their affordability because of short-term restrictions have been well understood for decades. The Montgomery County experience underscores this point: Short restriction periods (5 years at the start of the program) have resulted in the loss of most of the units produced under the MPDU program. So, while that initiative was successful in producing the largest number of affordable units per 10,000 residents, the lack of long-term affordability restrictions has been a serious problem.
- *A consistent format for tracking affordable housing production should be developed.* The ways in which each state collects data hampered both our ability to present a comprehensive view of each initiative and our ability to draw comparisons. HUD could play a useful role in developing a consistent record-keeping system and then provide modest funds to encourage states to institute it. The states with the most comprehensive record-keeping systems could provide guidance on how to develop a nationwide database.
- *All states should adopt HUD's terminology and guidelines for what constitutes affordable housing.* As noted at the outset, we relied on the definition of affordable housing used in each locale; a standard definition would be desirable and facilitate comparative analyses.

Municipality Involvement in the Programs and Progress Toward Meeting Goals

- Where has the affordable housing been produced? To what extent have locales that had little or no affordable housing added to their stock?

Table 15. Production comparison.

	Massachusetts	Rhode Island	Montgomery County, Maryland	New Jersey
Year program started ^a	1968 (data start in 1969)	1991	1974	1975 (data start in 1980)
Total number of municipalities in state (census-designated places in the case of Montgomery County)	351	39	51	566
Units produced through the program	57,798	5,301 ^b	12,520	52,160
Affordable units produced through the program	30,703	5,301	12,520 ^c	52,160
Total affordable units produced (program and other) since start of program ^d	117,150	5,301	25,000 ^e	62,071 ^f
Total affordable housing production (program and other) as a percentage of the growth in the statewide (or countywide for Montgomery County) housing stock from the start of the program to 2010 ^g	13.7%	10.9%	7.6% (still affordable: 2.4%)	7.3%
Affordable (program only) units produced per 10,000 residents (2000 population) since start of program ^h	48	51	143 (still affordable: 45)	62
Affordable (program and other) units produced per 10,000 residents (2000 population) since start of program	185	51	286 (still affordable: at most 188 ⁱ)	74
Annual affordable production (program and other) since start of program (through most recent year for which data were available)	2,789	279	781	2,140
Annual affordable production per 10,000 residents as of 2000 population (program and other) since start of program	4.4	2.7	8.9	2.5

^a The years in place for a statute and the number of years used in analyses are often different because we did not always have data for all years.

^b The Rhode Island number is not a production number but a net change number, as explained earlier in the text.

^c Montgomery County's affordable housing production record is tempered by the high number of units that are no longer affordable. Our calculations reveal that only about 4,005 moderately priced dwelling units (MPDUs) are still affordable (32%). This includes former MPDUs that were purchased by the Housing Opportunities Commission (based on 2007 and 2010 data, respectively). We do not have any data indicating the loss of any affordable units for New Jersey, Rhode Island, or Massachusetts. Based on information from interviewees, all affordable units listed are still affordable.

^d For Montgomery County and Rhode Island, the number includes program units only (with an assumption that this covers all production). For Massachusetts, we use the net change in units as listed in the state's Subsidized Housing Inventory, starting in 1972. For New Jersey, we include units recorded by the Council on Affordable Housing (COAH) plus Low-Income Housing Tax Credit (LIHTC) units.

^e This was an estimate from a document provided by one of the interviewees, Roman (2008).

^f This includes affordable housing production that is not part of the COAH's database, especially the LIHTC developments that have been built in urban areas that do not have affordable housing goal obligations.

^g Here we provide updated numbers, using 2010 census figures.

^h Population figures from 2000 census are as follows: Massachusetts = 6,349,097; Rhode Island = 1,048,319; Montgomery County = 873,341; and New Jersey = 8,414,350.

ⁱ While we know that about 45 MPDUs/10,000 residents are still affordable, we do not know what percentage of the other affordable units (produced not using the MPDU program) are still affordable. At most, the figure would be $143 + 45 = 188$.

- If the state assigns affordable production goals to municipalities, to what extent is compliance being attained?

Findings/Observations

First, even in locales where some jurisdictions may be exempt from the state statute (as in Massachusetts, New Jersey, and Rhode Island), primarily because they already provide a significant amount of affordable housing, affordable units have continued to be produced.

Second, more specifically, since the programs became operational, there has been an increase in the number of municipalities producing and/or experiencing a net increase in affordable housing (see [Table 16](#)). Rhode Island had the best record, followed by Massachusetts (92% and 72%, respectively). Of course, it is possible that some percentage of municipalities would have produced as much affordable housing even without the programs. But it is noteworthy that in all four locales, more than half of the municipalities that had not met their obligations or goals at the start of the programs utilized the program. Again, Rhode Island was the leader, with Massachusetts and New Jersey in the second and third spots, respectively.

Third, in Massachusetts, Rhode Island, and New Jersey, local jurisdictions are expected to meet state-mandated goals. However, attainment of these goals is a work in progress. As shown in [Table 16](#), in the two locales that have a 10% affordable housing goal (Massachusetts and Rhode Island), only a minority of municipalities have attained the goal (11% and 28%, respectively). In New Jersey, with its “fair-share” goal, only 30% of municipalities have attained the state goal.

Fourth, in terms of the extent to which the program contributed to municipalities’ attainment of the state’s goals, New Jersey had the best record (20%), followed by Massachusetts (10%). Massachusetts and Rhode Island had about the same number of municipalities attaining at least 50% of program goals. Despite New Jersey’s achievement, we see a trade-off between how well a program is targeted to each municipality’s housing needs and how easy it is to administer. While it is conceptually appealing to devise a formula that takes into account localized housing needs and the growth pattern of each city and town, this study underscores the difficulties in developing targets that are viewed as fair and appropriate. Therefore, our first recommendation, below, weighs heavily on our qualitative findings.

Recommendations

- *A single statewide affordable housing goal is probably preferable to individual “fair-share” mandates.* Massachusetts, Rhode Island, and Montgomery County, Maryland, provide examples of uniform approaches, whereas New Jersey has repeatedly tried to craft plans that reflect different communities’ needs. Yet, the methods by which the “fair-share” allocations of affordable housing were assigned are complex and have been the object of much debate and contestation. The uniformity and simplicity of Massachusetts’s and Rhode Island’s 10% affordable housing goals means that municipalities do not have to engage in ongoing, protracted battles with the state, or the courts, to define “local need.” On the other hand, the 10% goal is arbitrary, in that it does not reflect actual housing needs in any given locale.
- *Proactive enforcement mechanisms, as well as the opportunity for any interested parties to file a complaint, are important.* In Massachusetts, Rhode Island, and New Jersey, the state does not have the power to enforce its mandate proactively. A

Table 16. Municipality involvement with the program and attainment of goals comparison.

	Massachusetts	Rhode Island	Montgomery County, Maryland	New Jersey
Total number of municipalities with goal	351	39	51	494 ^a
Number of municipalities that had not met the goal at start of the program or with the obligation (number that had met the goal at the start of the program)	347 (4)	34 (5)	N/A ^b	494
Number (percentage) of municipalities that have produced and/or experienced a net increase in affordable housing (out of the total number of municipalities with goal)	254 (72%)	36 (92%)	27 (53%)	343 (69%)
Number of municipalities that have utilized the program (out of the total number of municipalities that had not met the goal at start of the program or with the obligation)	246 (71%)	26 (76%)	27 (53%)	343 (69%)
Number (percentage) of municipalities that attained the state goal overall (out of the total number of municipalities with goal)	40 (11%)	11 (28%) ^c	N/A	148 (30%)
Number (percentage) of municipalities that, prior to the program, had not attained the state goal but attained the goal through the program (out of the total number of municipalities with goal)	36 (10%)	1 (3%)	N/A	98 (20%)
Number (percentage) of municipalities that, prior to the program, had not attained the state goal but attained 50% or more of the program goal (out of the total number of municipalities with goal)	157 (45%)	18 (46%) ^d	N/A	163 (33%)
Number (percentage) of municipalities that, prior to the program, had not attained the state goal but attained 80% or more of the program goal (out of the total number of municipalities with goal)	75 (21%)	6 (15%) ^d	N/A	123 (25%)

Note. N/A = not applicable.

^aThere are a total of 566 municipalities in New Jersey, but 72 did not have the obligation.

^bCensus-designated places and municipalities in Montgomery County did not have a county-mandated goal. In the following two calculations, the denominator is the total number of census-designated places in the county.

^cAs noted in Table 5, only six of these municipalities attained the 10% goal. The text explains that five additional municipalities achieved the state goal through an alternative method.

^dFor these calculations, we are using the state's 10% goal, not the alternative method for attaining compliance. Two of the five municipalities that have met the state goal through the alternative method have at least 5% low- and moderate-income housing.

complaint or court case, which is time consuming and costly, must be filed by an individual or entity with “standing” to protest a specific action by the local jurisdiction. In New Jersey, for example, the COAH or the courts may act only on the request of a locality, a developer, or a fair housing organization or other nonprofit. Several interviewees noted that the inability of all stakeholders to file a complaint concerning the lack of availability of affordable housing was problematic. Providing this right could create more public awareness of the need for affordable housing and stimulate additional production.

- *A state-level appeals entity is important.* Several interviewees noted that Massachusetts’s HAC is a highly effective tool for a state to implement its affordable housing goals. Rhode Island’s SHAB, modeled after the HAC, has similar functions. In addition, the SHAB has a legislative mandate to consider whether the proposal being discussed is in conformance with the local affordable housing plan, while no such guideline is required of the HAC. In New Jersey, which relies on the courts rather than on an administrative agency (e.g., HAC or SHAB) to implement the statewide statute, the process has often gotten bogged down in legal proceedings.
- *State aid should be more closely linked to attainment of housing goals; significant sanctions for not attaining goals should be instituted.* The various strategies to encourage the attainment of statewide goals primarily serve as threats, albeit important ones; very few cases actually come before the Massachusetts HAC, the Rhode Island SHAB, or the New Jersey courts. The various appeal mechanisms encourage developers and local jurisdictions to come to a resolution through negotiation.
- A number of interviewees emphasized that greater compliance with state housing goals could be attained if state funding for roads, infrastructure improvements, and parks or open space, for example, were withheld or reduced. However, this could mean lower-income municipalities’ bearing a disproportionate burden because wealthier municipalities may not be as concerned about a loss of state aid.
- *Progress toward meeting housing goals should render a municipality exempt from sanctions for nonattainment of the goal; guidelines should clearly articulate what, exactly, constitutes compliance with the plan and how progress toward attaining the statewide goal will be measured.* In New Jersey, immunity from the builder’s remedy is provided to municipalities that have submitted plans. Massachusetts provides municipalities with immunity from state zoning overrides, if progress is being made toward attaining the 10% affordable housing goal. The Rhode Island statute also has such a provision. However, in the latter case, it is unclear exactly what constitutes progress and whether it will be sufficient to preclude state intervention in local land-use decisions. With the needed clarification, this type of incentive is likely to be a desirable strategy for encouraging local compliance with statewide housing goals.
- *The development of affordable rental housing should be encouraged, and set-aside appropriations are needed to enable rental units to be purchased by public housing authorities or nonprofits.* In Montgomery County, rental housing represents a disproportionately larger share of the still-affordable housing stock than homeownership units. This suggests that there may be less pressure on rental housing to be converted to market-rate units and that public policies should promote rental housing as a key strategy for creating a long-term stock of affordable housing. In addition, Montgomery County’s funding for housing authority purchases of a

percentage of the inclusionary units developed appears to work best for rental units, since a public housing set-aside within a condominium development would also need a significant annual subsidy to help cover the condo fees, which are likely to be problematic for low-income households.

Associations Between Production and Race and Income

- Is affordable housing production correlated with race or income?
- Are there differences between municipalities that have been producing affordable housing (in terms of race and income) and those that have not? Do differences exist between municipalities that have attained production goals (in states where they exist) and those that have not?

Findings/Observations

All the programs studied were aimed at increasing the affordable housing stock in areas that had little such housing. These areas are often associated with more White and higher-income households. Our analyses did not explore the extent to which some higher-income areas also have certain characteristics that would make them more likely to produce housing, such as available land, or appropriate infrastructure, such as municipal water and sewer. In addition, as discussed previously, the quantitative analyses often yielded mixed results for the extent to which the new units are being located in areas of higher-income or higher percentages of White residents.

We found evidence that municipalities that are working toward their statewide goals have characteristics associated with more exclusionary areas. First, in both Massachusetts and New Jersey, affordable housing production is positively correlated with higher median incomes.

Second, in the Massachusetts municipalities that have some affordable housing, the greater the share of the affordable housing that was built using the Chapter 40B comprehensive permit process, the larger the White population. Similarly, in Rhode Island, there is a significant positive correlation between LMIH production per 10,000 residents and the percentage of White residents.

Third, Massachusetts municipalities that attained the 10% goal with the use of the 40B/CPP have significantly higher median incomes and higher housing growth rates than do municipalities that attained the 10% goal without using this program.

Fourth, in Rhode Island, although the difference in LMIH production between municipalities that had attained one of the two housing goals and those that had not was not statistically significant, the median production numbers were much higher for the latter. If small sample size is the reason for the lack of significance, we may be seeing some indication that municipalities that have not attained the LMIH goals are, nevertheless, making good progress, by adding to their LMIH stocks.

Yet, our data also suggest that despite the various interventions, exclusionary patterns remain. In particular, municipalities that have attained their statewide goals or obligations are those that are historically associated with producing more affordable housing—residents with lower incomes and fewer White households—than municipalities that have not reached the state goal. This was the case in Massachusetts and Rhode Island, where both relationships prevailed. In New Jersey, municipalities that had met their prior-round obligations tended to have lower percentages of White residents, compared with municipalities that had not. Also, in New Jersey, municipalities with new affordable housing are associated with proportionally smaller White populations.²⁵ In Montgomery

County, MPDUs tended to be built in locales where there were fewer White residents and households had lower median incomes.

Recommendations

Several previous recommendations are relevant to these findings, particularly the importance of statutes having real sanctions for municipalities that are making progress in expanding housing opportunities in diverse locales. In addition:

- *In-lieu payments and other arrangements for off-site housing generally should not be supported.* These types of initiatives may result in some amount of affordable housing, but in the programs studied here, payments have not resulted in 1:1 development. For example, in New Jersey, fewer units were produced than what would have been required by the statute. Similarly, in Montgomery County, contributions per unit were inadequate to provide an actual housing unit as would have been required under the MPDU program. In addition, letting localities pay “receiving” cities and towns to produce affordable housing runs counter to the spirit of statewide mandates to provide opportunities to households at a range of income levels in diverse socioeconomic communities. Therefore, allowing a municipality to get credit for affordable housing production that does not occur within its boundaries should be discouraged. On the other hand, if off-site construction of affordable housing is allowed within the same municipality as the original development, such an arrangement may be desirable, if the per-unit contributions are sufficient to produce a unit of housing.

Zoning and Comprehensive Planning

Although this study did not articulate any research questions about zoning and comprehensive planning, a number of findings and observations emerged.

Findings/Observations

Mandated comprehensive planning, with a housing element that requires localities to detail how they will meet the housing needs of residents at all income levels, is a powerful tool, particularly if it is accompanied by a threat to negate all local zoning. Although not discussed in this article, several interviewees noted that the California courts have the power to suspend all local zoning in any municipality that is not in compliance with the housing-element law. Even though it has been used infrequently, California’s ability to essentially stop all local development until the specified housing goals are attained appears to be a significant threat.²⁶

Massachusetts, New Jersey, and Rhode Island have linked progress toward attaining affordable housing goals with immunity from a state override. In Rhode Island, the housing plan requirement is important; localities must detail how state-mandated LMIH goals will be attained, and all zoning decisions must be consistent with the plan.

Recommendations

- *States should require municipalities to develop and submit comprehensive plans, including detailed housing goals for addressing a full range of housing needs. As part of this, comprehensive plans for housing must be consistent with local zoning.*

States should hold municipalities responsible for actually executing their plans and meeting housing goals. States have developed various ways of relating to their municipalities. Some states provide local governments with considerable leeway; other states are more restrictive in allowing local governments to exercise powers. Nevertheless, the state legislature has the ability to alter the prevailing patterns and to provide local governments with the level of autonomy or control that it feels would best meet its overall land-use agenda.

- *Zoning should allow for multifamily housing development. States could mandate that each city and town set aside a certain percentage of land that could be developed “as of right” for multifamily housing, preferably along with set-asides for affordable housing.* Municipalities can be in charge of their own development and avoid situations where unwanted projects are proposed (and approved) if they create zoning ordinances that allow for diverse development opportunities. To the extent that they do not zone for multifamily housing, states can require them to do so.
- *Requiring an inventory of available land is a desirable part of a planning effort.* As part of such a comprehensive planning requirement, several interviewees offered the suggestion that locales be required to inventory all available land and to make sure that these parcels are zoned so a wide array of housing types could be built as of right. If there is little vacant land available, municipalities should assess which locales would be appropriate for rezoning, thereby accommodating the needed housing.

Suggestions for Further Research

Given the time and resources available for this project, many questions remain unaddressed. Following are some suggestions for future quantitative and qualitative studies.

First, as noted above, if states kept better and more consistent records concerning housing production, all future research on the impacts of efforts to overcome exclusionary zoning would be much easier to carry out and the ability to do comparative studies would be enhanced.

Second, researchers could consider other ways to quantify the differences between the urban areas that have traditionally been the main providers of affordable housing and the suburbs that have typically avoided such housing. In this study, we looked for correlations between housing production and selected demographic characteristics, on the assumption that areas with smaller White populations and more low-income households were indicative of urban areas, while all other areas were where more affordable housing needed to be built. This approach may have missed important information (e.g., many rural areas, which are not the target of antiexclusionary zoning policies, have large White and lower-income populations).

Third, and related to the above point, new research could explore how the “suburbanization of poverty” in various metropolitan areas relates to exclusionary zoning. Optimum strategies for overcoming zoning barriers may differ depending on the demographic patterns in various locales. Some, for example, are seeing much higher concentrations of poor people in suburban areas than ever before. To what extent do state and regional governments need to better target their policies to locales that continue to be exclusionary, as opposed to suburban municipalities that may already have large concentrations of lower-income and non-White residents?

A fourth effort could involve attempting to quantify a community’s exclusivity (e.g., median income compared with the state median) before and after a policy’s enactment (see Vladeck, 2010, for such an example).

Fifth, by including one or more “control” states that have not adopted antiexclusionary zoning policies, it might be possible to provide guesstimates concerning what production in the states we examined might have been without the interventions they adopted years ago. Or, going forward, tracking the production records of states with and without antiexclusionary zoning initiatives could yield useful results.

Sixth, given the highly nonnormal distribution of the affordable housing production numbers examined in this study, an OLS regression model was inappropriate. However, other statistical tests that are able to build models by categorizing the dependent variable (e.g., affordable housing production) could be explored (for a discussion of these tests, see Vladeck, 2010).

Seventh, further research could benefit from analyses using geographic information systems, whereby locations would be mapped with the amount of affordable housing production, combined with data on various demographic characteristics.

Eighth, researchers may want to gather comparative information on states’ specific experiences:

- How long has it taken for localities to get approval for plans or housing elements (where states have that requirement)? How well are those plans monitored? How do planning requirements, where they exist, relate to actual production?
- How does the development physically fit in with the surrounding neighborhood, and does it conform with smart growth principles, including town center locations and access to public transportation?
- How can housing production data be further normalized with reference to contextual variables such as employment rates? This would enhance our understanding of how housing production relates to general changes in the area’s economic growth.
- How have locales in states with antiexclusionary zoning ordinances dealt with NIMBY arguments from local residents?
- What has been the experience with various efforts to promote long-term affordability of units produced through anti-exclusionary zoning mechanisms (e.g., permanent use restrictions and sales of units to public housing authorities and nonprofit organizations)?

Ninth, it could be useful to explore the extent to which various types of incentives or sanctions are encouraging locales to produce affordable housing. Massachusetts’s Community Preservation Act and its Chapter 40R and Chapter 40S programs,²⁷ as well as New Jersey’s recent regional planning initiative, which attempts to coordinate affordable housing production among several municipalities, should be closely watched and evaluated. The California threat to negate all local zoning in municipalities that have not achieved specified housing goals could be another important area of research.

Finally, and also in the general category of “best practices,” researchers could explore how some communities, particularly those that may be viewed as “exclusionary,” have managed to meet state affordable housing goals. What is the importance of various factors, such as the availability of sites suitable for development, and how have infrastructure constraints been overcome, such as the lack of water and sewer hookups in many outer suburban and rural areas? To what extent have innovative and cost-effective technologies made the development of higher-density housing feasible?

In conclusion, all four programs studied deserve praise. In each case, the problems created by exclusionary zoning were acknowledged, and a bold set of strategies were developed, often over several decades and often overcoming significant opposition. Also,

in each locale, a substantial number of affordable housing units were produced in areas that probably would not have experienced this growth if the statute had not been in force. Yet, these antiexclusionary zoning programs are still not creating the desired racial and economic diversity. Hopefully, this work will serve to further the debate and discussion about how the housing needs of all residents can be met through a joint effort among all levels of government and with the support of nonprofit and philanthropic organizations, as well the for-profit development community.

Acknowledgments

Thanks to the Citizens' Housing and Planning Association for providing funding for this project and to present and prior staff members: Brenda Clement, Aaron Gornstein, Ann Verrilli, and Karen Wiener. Thanks, too, to advisory committee members: Keri-Nicole Dillman, Lynn Fisher, Phil Herr, Sharon Krefetz, Peter Lowitt, Jennifer Raitt, and Clark Ziegler. Special thanks to the scores of people we interviewed or contacted and, in particular, to several people we bothered repeatedly: Chris Anderson, Annette Bourne, Cathy Creswell, Adam Gordon, David Kinsey, Alan Mallach, Kathy McGlinchy, Sally Roman, and Rob Wiener. Thanks to Tom Sanchez for his strong support of this work, the anonymous reviewers for their helpful comments, and Derek Hyra for his early encouragement to submit the work to *Housing Policy Debate*. Tufts faculty members, Mary Davis and Barbara Parmenter, were very helpful, as was the project's first research assistant, Kara Hubbard. At the time this project was undertaken, Abi Vladeck was a graduate student research assistant at Tufts and was responsible for designing and carrying out the quantitative analyses.

Notes

1. Current address: Special Assistant in Capital Planning, Office of Budget Management, City of Boston, MA, USA.
2. In addition to the Moving to Opportunity program, researchers and policymakers have considered the extent to which various federal housing subsidy programs promote racial and economic integration. Concerns that these programs have supported housing development in predominantly non-White, poor neighborhoods prompted federal regulations that encourage development in more diverse and more affluent areas (Tegeler, 2005). A recent study on the location of LIHTC units in New York City and seven surrounding counties found that 71% of the affordable units built through this program were located in areas of high or extreme poverty concentration and that 77% were located in minority areas (Kawitzky, Freiberg, Houk, & Hankins, 2013).
3. A full review of the literature on these impacts is beyond the scope of this article. However, concerning the property-value issue, a number of studies have found that the property values of nearby homes are not negatively impacted if subsidized housing is attractively designed, is of high quality, fits in with the surrounding neighborhood, and is managed well (Deng, 2011; Ellen, 2008; Nguyen, 2005; Pollakowski, Ritchay, & Weinrobe, 2005). Deng and others underscore the importance of context as a key factor contributing to differential outcomes. Funderburg and MacDonald (2010) found some negative impacts on property values, but these were small and not statistically significant for all projects. Galster, Levy, Sawyer, Temkin, and Walker (2005) found that community development corporation investments in affordable housing and commercial retail facilities can lead to substantial increases in property values.
4. The study also included analyses on the density of municipalities in which affordable housing production had occurred. However, the measures we used were not sufficiently fine-tuned to reach definitive conclusions and have been omitted from this article.
5. Qualitative information was collected on California's housing-element approach, but with the exception of a few passing comments, that information is not presented here (see Bratt, 2012).
6. Funding for the Massachusetts Housing Partnership (MHP) derives from a 1990 Massachusetts interstate banking act, which requires companies that acquire Massachusetts banks to make funds available to the MHP for affordable housing.
7. Massachusetts currently does not enforce its local comprehensive planning requirement, mandate that municipalities adopt growth management plans, or require consistency between

local plans and zoning. Efforts have been ongoing to enact zoning reform legislation. A proposed bill would further encourage master planning, and the adoption of such a plan would be used as a basis for determining consistency with zoning ordinances. Inclusionary zoning also would be encouraged, and new guidelines for encouraging smart growth, including housing development districts, are outlined (“Summary of Zoning Reform Bill,” 2013).

8. In 2006, the state’s inspector general investigated alleged abuses in the cost certification process used by developers under the Chapter 40B program. Although most of the inspector general’s findings were refuted, the DHCD made various administrative changes in its oversight of the Chapter 40B program (letter from Aaron Gornstein, Executive Director, Citizens’ Housing and Planning Association, to Inspector General’s office, October 7, 2006; Flores, 2009).
9. For Rhode Island, we refer to “low- and moderate-income housing” instead of “affordable housing” because the former is the statutorily defined term.
10. While there is no statutory mandate under Chapter 40B to consider affordable housing plans, regulations adopted in 2002 provide immunity (for 1 or 2 years) for municipalities that have produced a certain number of units in accordance with their plan, as described in the text.
11. Annette Bourne is no longer employed at the agency. She is currently the administrator of Rhode Island’s Department of Human Services.
12. The Rhode Island Supreme Court ruled in *West v. McDonald* (2011) that the comprehensive plan takes precedence if there are conflicts with a municipality’s zoning law.
13. Based on 2013 data presented in municipality profiles at HousingWorksRI (<http://www.housingworksri.org/cities-towns>), the same number of municipalities (six) had attained the 10% goal.
14. This includes Pawtucket and West Warwick, two out of the five municipalities that have met the state’s housing goal through the alternative rental housing threshold.
15. Research team analysis based on data provided by Rhode Island Housing, “LMIH production since AHPs.”
16. Other data provided by the Montgomery County Department of Housing and Community Affairs (2010) show that (1) an even higher percentage of the still-price-controlled MPDUs are rentals (48%), and (2) 13% of the homeownership MPDUs ever built and 28% of the rental units ever built are still price controlled.
17. Various data that were made available to the research team revealed some minor discrepancies in the still-affordable tallies. However, the method used in our analysis to determine the total number of MPDUs and still-affordable units was based on recommendations from two Montgomery County employees: Christopher Anderson, manager of single family housing programs, Montgomery County Department of Housing and Community Affairs; and Sharon Suarez, coordinator for housing research and policy, Montgomery County Planning Department. In addition, although there is a possibility of some overlap in the MPDU and HOC databases, the weight of the evidence, and information from interviewees, consistently pointed to about 32% or less of the MPDUs ever built retaining their affordability.
18. In 1985, a statewide developer fee earmarked for affordable housing development was instituted. Municipalities that had developer fees in place prior to 2008 were (for the most part) given permission to keep these funds. The ability of municipalities to charge fees to developers has been a major area of controversy.
19. Kevin Walsh, associate director of the Fair Share Housing Center, explained that some municipalities file plans with the courts rather than with the COAH “since the courts are viewed as being somewhat more flexible than COAH.” Further, municipalities may feel that they “have a better chance of controlling the review process.” For towns that have been sued, the courts may feel more convenient. Regardless, court decisions are required to conform with the COAH’s regulations whenever practicable.
20. An important “stick,” although one that also has been used infrequently, allows a trial judge to replace the town’s planning board with a court-appointed master who is charged with developing new zoning ordinances consistent with the municipality’s fair-share obligation.
21. Out of the state’s 566 municipalities, 248 filed plans with the COAH, 32 had a case pending in the courts, and 19 were expected to file with the courts. Excluded from the total number of municipalities were 53 that had received a 1-year extension and 72 that did not have a prior-round obligation. Many, if not most, of the latter do not choose to file plans. Thus, 299/441=68% (Gordon, 2009).

22. Of the 18,910 units produced in municipalities without prior-round obligations, 3,029 (16%) were produced through the RCA program. In this analysis, these units are “credited” only to the municipalities in which they were constructed. Data provided by the COAH: “All Projects Summary,” March 2009, and “Rehabilitation Share, Prior Round Obligation and Growth Projections,” October 20, 2008.
23. The future of the COAH is, itself, to be decided by the New Jersey Supreme Court.
24. For some municipalities, this would include surplus units (i.e., units produced in excess of the targets specified in the first two rounds) that could be applied to the third round.
25. Another mixed finding is that municipalities that built no affordable housing have higher percentages of White residents, but the median income is lower than municipalities that built at least some housing.
26. California has been a leader in demanding that local jurisdictions adopt zoning ordinances that can accommodate the housing needs of all residents. While locales are responsible for providing the appropriate land-use framework to enable development to occur, they are not accountable for whether the housing market responds. Creating opportunities for higher-density development does not automatically translate into producing affordable housing units or, indeed, serving the range of income levels specified in the housing element. Perceptions concerning the effectiveness of the California statute must be tempered by the lack of a centralized housing production database that would provide information on each jurisdiction’s housing needs, as specified in the housing elements, compared with housing production outcomes.
27. Under the Community Preservation Act (CPA), enacted in 2000, local governments have the option to create their own new tax (up to a 3% surcharge on the property tax), the proceeds of which are partially matched by state funds. At least 10% of each municipality’s CPA funds must go to each of three areas: open space, historic preservation, and affordable housing. Chapter 40R, enacted in 2004, encourages municipalities to create special zoning overlay districts that allow for increased housing densities, so long as the zoning requires that at least 20% of the units are affordable and that they combine mixed uses. Financial incentives for this rezoning are provided by the state. Chapter 40S, enacted 1 year later, provides state subsidies to local governments to cover the net increase in education costs resulting from the development of affordable housing built under the Chapter 40R program.

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