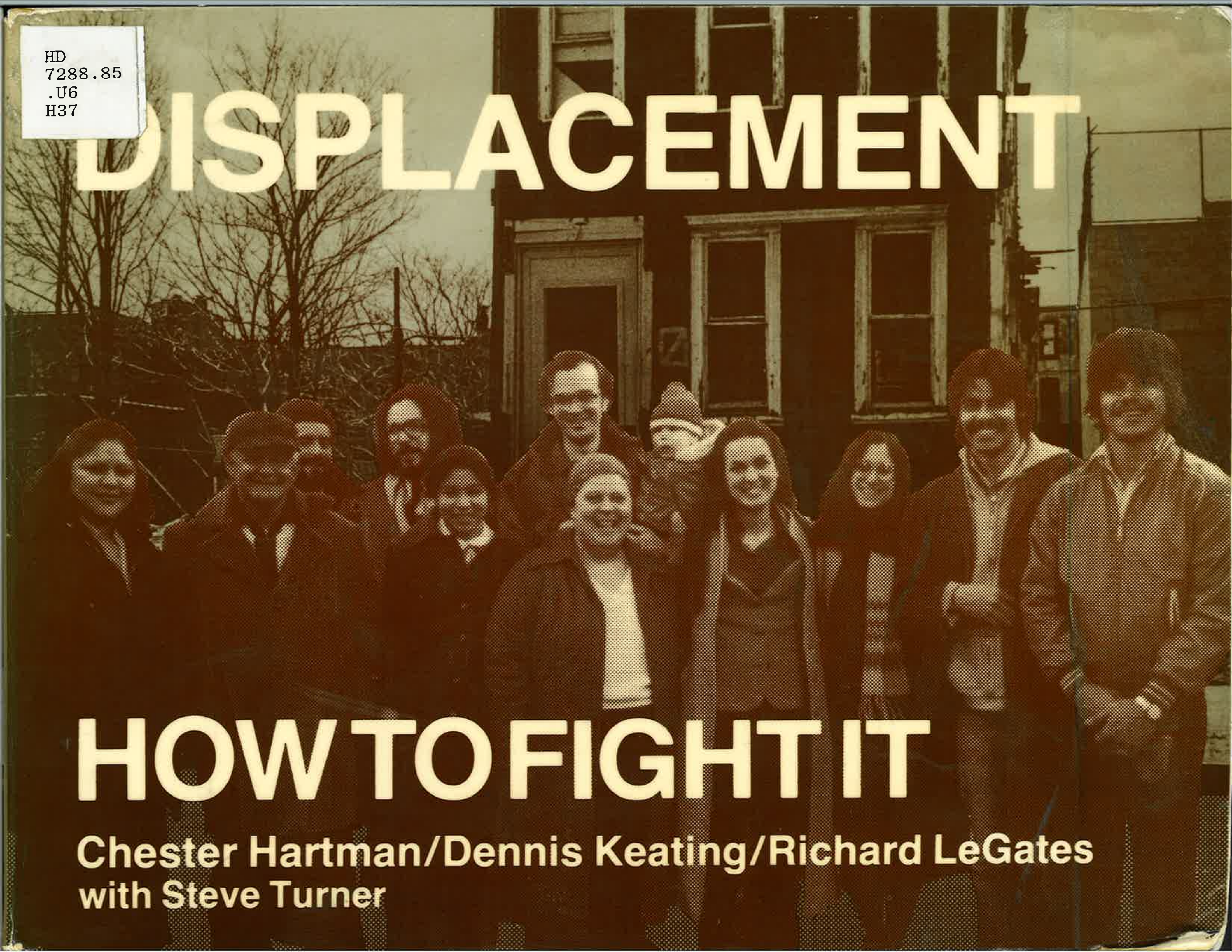
DISPLACEMENT



HOW TO FIGHT IT

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tion from the property's assessed value, for up to twelve years, of the increased value caused by the rehab work. The other is abatement of whatever taxes are due on the property, in an amount equal to 90% of the rehab costs for non-luxury items. This abatement can be taken for 12-20 years, with a maximum of 8⅓% of the total cost written off in any one year. The post-rehab rents of buildings which receive the rehab tax abatement are controlled under the city's rent stabilization ordinance for the length of the abatement period. But the abatement provision pushes owners to overspend on their renovation work, which leads to higher rents. And there is no protection for tenants who are displaced as result of this locally-subsidized rehabilitation. Since one of the major uses of J-51 has been to convert single room occupancy (SRO) hotels into luxury apartments and coops, displacement of lower-income people is built into the program. Developers harass the elderly and poor who live in these hotels, trying to push them out so that conversion and rehab can move ahead. A New York City Councillor, as reported in the New York *Times,* cited the case of "an 89-year-old woman living in a [SRO] hotel in Greenwich Village . . . on the fifth floor, [who] had been left without heat, running water or elevator service for two months. He asserted that her toilet had been deliberately stuffed with newspaper, the electricity had been sporadic and the landlord's agents had set off the fire alarm almost every night."

Property tax abatement and exemption programs of this sort can easily get out of hand. In New York City, much is given to subsidize rehabilitation in upper-income areas that would have been undertaken without this subsidy. In one well publicized example, a building right across from City Hall was converted from offices to coops selling for $72,000-$112,000 and received an abatement on rehab costs amounting to $276,000 a year, $3.3 million over the 12-year life of the abatement. "Tax expenditures," as these are known, tend not to be scrutinized closely and just mount up: a recent report by the New York City Council President showed the total value of J-51 abatements to date is over $1 billion. Loss of this tax revenue means reduced municipal services and increased financial burdens on those who do not receive such benefits.

If these programs are to benefit lower-income households, they must be accompanied by displacement controls and a pinpointing of benefits to lower-income neighborhoods. Their help to low-income tenants in taking over landlord-abandoned tax delinquent buildings, as described in Chapter 7, has been one effective example of how this subsidy has been used.

Recent amendments to the J-51 program passed by the New York City Council eliminate its future use in some of Manhattan's "hot" real estate districts. But the Council would not eliminate its use throughout Manhattan for conversion of SRO hotels. It did, however, require that SRO tenants be given a lease, and agreed to finance a legal advocacy and education program to assist SRO tenants in resisting illegal eviction attempts by converters. The severity of the SRO displacement problem due to use of J-51 tax abatements was such that Terence Cardinal Cooke of New York took the unusual step of overtly intervening in a City Hall political matter by urging passage of protective legislation.

(See the related discussion of SRO hotels in Chapter 6.)

HISTORIC PRESERVATION

Historic preservation through neighborhood conservation and rehabilitation has enjoyed increasing popularity in recent years. The National Historic Preservation Act of 1966 established an Advisory Council on Historic Preservation to coordinate federal historic preservation activities, which include placing buildings and sites on the protective National Register of Historic Places. Additionally, preservationists have relied heavily on the National Environmental Policy Act (NEPA) to challenge the destruction of historic buildings and districts.

On the whole, historic preservation laws are far more protective of buildings than of the tenants inside them. Thus, it is not surprising that, unless carefully structured, these efforts to conserve our historical heritage may wind up imposing severe displacement costs on the lower-income people to whom these buildings have "trickled down."

The Tax Reform Act of 1976 gives "accelerated depreciation" tax shelters for rehabilitation by owners of historic properties, regardless of what income group is being served by the rehabbed units, and no anti-displacement protections or compensations whatsoever accompany work encouraged this way. Add on the special state and local property tax abatements often given for historic preservation activities, and all the speculative benefits of quick repair and resale (see discussion in Chapter 4), and it becomes clear that historic preservation can easily generate profiteering displacement. An historic rehabber can get a building certified as an historic structure, evict low-income tenants, convert the building into luxury rental housing, condos or commercial use, and enjoy substantial tax shelter and resale profits.

The National Commission on Neighborhoods recognized the displacement problem posed by federal tax policies which ". . . created incentives for historic district restoration . . . often . . . at the expense of low and moderate income residents of those newly discovered historic neighborhoods, many of whom have been displaced by more affluent homeowners." The majority of the Commission recommended to Congress:

> While the Commission would not end the movement of affluent people back into the cities, it does not believe that the Federal Tax Code should give special benefits to those who eject the poor from their neighborhoods under the banner of historic preservation. The Commission therefore recommends that § 191 of the Code be allowed to expire in 1981. Removal of this special tax benefit for restoration by the affluent would not put an end to displacement but it would at least put an end to an important incentive to the displacement presently in the Tax Code.

(The National Commission on Neighborhoods' 1979 Final Report, *People, Building Neighborhoods,* is available for $7.50 from the U.S. Government Printing Office, Washington, DC)

SAVANNAH LANDMARKS: TRYING TO MINIMIZE DISPLACEMENT

Like preservation laws, preservationist organizations traditionally have been concerned about the fate of buildings rather than their occupants. In many situations, preservationists have ruthlessly removed low-income tenants in the course of saving the architecture of the past. A 1971 study of the preservation activities of the Pittsburgh History and Landmarks Foundation by Arthur P. Ziegler, Jr., concluded:

> . . . preservationists have been as indifferent (perhaps even more indifferent) to community self-determination as have redevelopment authorities. Historic preservation groups across the country from the 1930s up until today remorselessly removed neighborhood residents regardless of their longevity in the proposed historic district or their commitment to that area. They simply replaced them with well-to-do residents who could understand the value of the structure and who could afford to restore and maintain them.

Some shifting in that attitude is beginning to appear, however. As one example, the National Trust for Historic Preservation and the Interior Department have recently put together a small ($1 million) fund to help non-profit groups in historic neighborhoods develop low-income rental housing. The National Trust will select groups in 10-12 neighborhoods which either are listed or eligible for listing on the National Register of Historic Places, and will offer low-interest loans and grants, on a matching basis, to acquire and rehabilitate multi-family housing for rental to low-income households. The Trust also will work with the Federal Home Loan Bank Board in locating mortgage funds. For more information on this program, contact the Inner Cities Ventures Fund, National Trust for Historic Preservation, 1785 Massachusetts Ave. NW, Washington, DC 20036.

Perhaps the most notable example of this change in consciousness is Savannah Landmarks, a reformed offshoot of the Historic Savannah Foundation which restored the Historic District in that Georgia city in the early 1970s. Currently, the Savannah Landmarks Rehabilitation Project is restoring 1,200 units in the Victorian District — 89% Black and mostly lower-income in population — and is trying to guarantee that at least half the rehabbed units are kept available for current residents. The effort relies on a variety of rehab subsidy programs — HUD's Section 8 and 312 programs and Savannah's Homeowner Rehabilitation Program — in combination with UDAG money and private foundation funds. Without the subsidies, rent and mortgage increases resulting from rehab costs would probably displace most of the residents.

It is too early to tell if this benevolent approach can succeed in promoting historic preservation without displacement. Shortages in the availability of subsidy funds are likely to grow worse, and the limitations of the subsidy programs themselves may cripple the attempt. Moreover, since the other half of the units in the District will be rehabbed without subsidy, and since the neighboring Savannah Historic District has been largely gentrified through rehab, uncontrolled market forces may undo what good Savannah Landmarks does accomplish. There are no municipal rent, eviction, and resale controls. There are no guarantees that Section 8 contracts will be renegotiated when they expire. So it is a question of wait-and-see whether the Landmarks approach establishes a precedent for combining anti-displacement goals with large-scale historic preservation rehab programs. (For more information on the Savannah experience, contact the Savannah Landmarks Rehabilitation Project, Box 8801, Savannah, GA 31412.)

STRATEGIES FOR RESISTING DISPLACEMENT FROM HISTORIC PRESERVATION

Historic preservation situations call for the same anti-displacement strategies as other rehab threats to lower-income residents: market controls, rent subsidies, and the right of former residents to return. Where CDBG funds are used to support preservation rehab — a use specifically allowed in the 1974 Housing and Community Development Act — then the general anti-displacement strategies and defenses outlined in Chapter 12 come into play. Because historic preservation laws and their users usually differ somewhat from other rehab situations, however, resistance often must take slightly different forms. One thing that remains constant, of course, is the need for organization and information. The sub-sections below suggest some additional tactics to employ — along with whatever responses are appropriate to the government programs which the preservation effort may use. Following those suggestions are two cases of creative use of preservation laws to prevent displacement.

Form alliances. Alliances between anti-displacement groups and preservationist organizations can be important. Even if preservationists are not at first sympathetic to neighborhood demands, they may be persuaded to assist residents who are well organized, because the coalition can prove mutually beneficial. Neighborhood groups could offer to support litigation to prevent demolition of historically or architecturally valuable buildings, or to cooperate with historic designation applications sponsored by preservationists, but only on condition that the preservationists agree to do whatever proves necessary to prevent displacement once rehab begins. Preservation groups, which often have prestigious and powerful memberships, may prove influential in obtaining displacement protection as well as rehab funding from government and private foundations.

Demand participation. Community groups should use their political prowess and pressure to get adequate representation on all preservation planning committees, both neighborhood-level and citywide. Even with "friendly" preservationist groups, quite a struggle may be needed to gain effective participation in planning and guiding anti-displacement aspects of rehab projects.

Challenge historic designations. If a proposed historic designation seems likely to invite speculators and preservationist rehab specialists, and thus cause displacement, neighborhood groups can oppose the site designation and its listing on the National Register of Historic Places and parallel state and local registers. While displacement is not a factor normally considered in the designation process, it may be productive to try to make this an issue. After a building or neighborhood has been nominated, opponents can file comments, first with state historic preservation officials, and then with the Office of Archeology and Historic Preservation of the National Park Service (U.S. Department of the Interior) and the Advisory Council on Historic Preservation. For the details of the certification process, contact a local historic preservation society. The National Trust for Historic Preservation (1785 Massachusetts Ave. NW, Washington, DC 20036) and their 1980 *Directory of Private Nonprofit Preservation Organizations* should be helpful resources.

On the building-by-building level, opposing historic structure certification can delay and frustrate the tax shelter the owner almost certainly wants to get. Tenants can use this tactic as a basis for negotiations — agreeing to support the certification application in exchange for legally binding and recorded covenants by the owner recognizing tenants' rights to remain or return, limiting rents and/or promising to apply for rent subsidies, agreeing to pay any temporary moving expenses, etc. Revised federal rules for certifying buildings eligible for historic preservation rehab tax breaks, together with review and appeals procedures, were published in the December 19, 1980 *Federal Register.*

Take to the streets. Often, public protests against the gentrification-oriented activities of historic preservationists can be quite effective. As an example, the Anti-Displacement Committee of Boerum Hill/Gowanus in Brooklyn, New York, mounted a demonstration against the 15th Annual Boerum Hill House Tour. The tour is supported by the real estate brokers, the Brooklyn Union Gas Company and various banks, and is an event whose overt purpose is to show off the neighborhood's architectural gems, but which serves as well to arouse gentrifiers' instincts among the house tourists. The neighborhood group rented a flatbed truck, decorated it with banners and signs and travelled through the neighborhood, leafletting. They also held a speak-out on the displacement problem and how such house tours added to gentrification pressures. Events of this type can serve to prick the consciences of some tourists, scare others away, and assist in building a local anti-displacement movement. (For further information on this approach, contact the Anti-Displacement

Committee of Boerum Hill/Gowanus, 151 Bond St., Brooklyn, NY.)

CREATIVE USE OF HISTORIC PRESERVATION LAWS TO PREVENT DISPLACEMENT

COLONIAL VILLAGE, VIRGINIA

Colonial Village is a huge (1,095 unit) rental complex in Arlington County, Virginia, the initial section of which was built in 1935 as the nation's first FHA-insured large-scale housing complex. In 1977, the 42-acre complex, along with some surrounding land, was purchased by a subsidiary of Mobil Land Development Corporation, triggering fears by residents that the complex would be demolished for other development, condominiumized, or otherwise drastically changed. The Village's prime location — near a new Washington subway line and between a commercial district and some high-rise offices — gave ample cause for such fears.

Because of the age and significance of the complex, tenants decided to try a defense through Arlington County's recently enacted historic preservation ordinance. Among other protections, this law requires an owner who wishes to demolish an historic structure to first offer the property to any interested group that would preserve it. The tenants of Colonial Village immediately formed a tenants' association to be that purchaser, if need be. The County's Historical Landmark Review Board unanimously accepted the tenants' petition that the Village be accorded landmark certification, based on its historical status with respect to FHA programs, its status as the first large-scale rental complex in Arlington County, and its widely copied architectural features — low-densities, staggered setbacks, separation of pedestrian and auto traffic, undeveloped interior greenbelts and clustering of apartments in courtyards, all features previously found only in single-family home developments.

In the face of threatened legal action by the new owner, a compromise was worked out that includes the following elements:

- Acceptance of the original 276-unit section of the Village as an historic district.

- Retention of 951 of the units, under the following plan: 75 are to be sold to a quasi-public housing corporation, which is seeking Section 8 subsidies to convert them into moderate-income cooperatives; 74 are to be sold to a limited-equity cooperative sponsored by Colonial Village tenants; 100 will be sold as condominiums to existing occupants at below-market prices; 114 will be kept as rental units until at least 1994; and 588 will be kept as rental units until at least 1984, at which time they can be sold as condos. One hundred and forty-four of the units will be demolished for an office complex, and 500-600 new units will be built on a site adjacent to the Village.
- Assurances that no one who wants to stay will be displaced from the Village, and that those whose units are being torn down or sold will be relocated as renters in other parts of the Village.

While clearly not an all-out victory for the residents, the story does show some of the ways historical preservation laws can be imaginatively used to protect needed housing. Nor is the battle over. The Colonial Village tenants' association continues to press for greater protections. It has just persuaded the Virginia Register of Historic Places to designate all of Colonial Village, except the portion nearest the subway stop, an historic landmark. While only an honorary designation that cannot change the local government's decision, this step makes the property eligible for the National Register of Historic Places, which in turn creates tax disincentives for an owner who wishes to tear such a structure down.

THE INTERNATIONAL HOTEL, SAN FRANCISCO

Another instance where historical preservation laws have been used to combat displacement occurred in San Francisco, during the effort to protect the International Hotel (see page 56 for further description of this struggle). Aided by the local office of the National Trust for Historic Preservation, those fighting to save this residential hotel succeeded in having it placed on the National Register of Historic Places, not because of any architectural merit but strictly because of social considerations — its long-term history as a home for immigrating Filipinos, and its function as communal housing for these immigrants on their periodic returns to the city from agricultural, mining, and maritime work. While this designation did not prevent eventual eviction of the tenants and demolition of their building, it did pave the way for a grant from the National Trust, joined by a local foundation, to develop a plan for new low-rent housing and community facilities on the site of the demolished hotel. This plan is now working its way slowly through the city's bureaucratic machinery.

REFERENCES

LOCAL REHAB DISPLACEMENT STRUGGLES

Salem, Massachusetts' Point Neighborhood: Information on the Salem community campaign can be obtained from North Shore Community Action Programs, 17 Sewall St., Peabody, MA 01960; and the Massachusetts Law Reform Institute, 2 Park Sq., Boston, MA 02116.

A good report on the Salem challenge and its successes is contained in issue #4, 1980, of *Shelterforce,* available from 380 Main St., East Orange, NJ 07018.

Jersey City, New Jersey — the Montgomery Gateway struggle: Further information and copies of relevant documents are available from the Montgomery Gateway Residents Committee, c/o St. Bridget's Convent, 370 Montgomery St., Jersey City, NJ 07302; and from Hudson County Legal Services, 574 Newark Ave., Jersey City, NJ 07306, attn: Steve St. Hilaire.

Jersey City's Anti-Displacement Strategy: a detailed case study is available from Rick Cohen & Associates, 904 Hudson St., Hoboken, NJ 07030.

REHAB DISPLACEMENT PROTECTION THROUGH RENT CONTROL AND OTHER TYPES OF LEGISLATION

"Residential Rehabilitation and Rent Control: The Massachusetts Priority" examines challenges to rehab exemptions in rent control laws on the grounds that they controvert the laws' basic purpose. It appears in Volume 11 of the *Urban Law Annual* (1976), available for reading or copying at local law libraries.

Washington, D.C.'s "Right to Return" clause under rent control: Section 707 of the city's rent control ordinance, entitled "Tenant's Right to Re-rent," is worth examining for groups seeking similar legislation. The District of Columbia Rental Housing Act of 1977 can be found in Volume 24 of the District of Columbia Register, available at most law libraries.

Proposed new law on displacees' right to return and requirement for phased development: copies of a New Jersey bill on these matters are available from Hudson County Legal Services, 574 Newark Ave., Jersey City, NJ 07306.

SECTION 223(f) MORTGAGE REFINANCING

"Housing and Central Cities: A Conservation Approach," by Kenneth Phillips and Michael Agelasto, offers a detailed explanation of the Section 223(f) program. It appears in Volume 4 of the *Ecology Law Quarterly* (1975), available for reading or copying at most law libraries.

Further information on Section 223(f) and its applications is available from the Housing Conservation Project, Earl Warren Legal Institute, 396 Boalt Hall, University of California, Berkeley, CA 94720.

MUNICIPAL REHAB TAX EXEMPTION AND ABATEMENT PROGRAMS

San Francisco's Rehabilitation Assistance Program (RAP): a critical analysis of this program appears in a report by the San Francisco Bay Area Planners' Network, *RAP in the Tenderloin: The Dangers We See and Our Recommendations for Revising the Program* (1977), available from the Planners Network, 360 Elizabeth St., San Francisco, CA 94114.

New York City's J-51 Program: a good description of this program appears in "Revitalization of Inner City Housing through Property Tax Exemption and Abatement: New York City's J-51 to the Rescue," by Janice Griffith, in Volume 18 of the *Urban Law Annual* (1980), available for reading or copying at most law libraries.

CODE ENFORCEMENT REHAB DISPLACEMENT

"Municipal Housing Code Enforcement and Low-Income Tenants," by Chester Hartman, Rob Kessler and Richard LeGates, addresses this issue. It appears in the March, 1974 issue of the *Journal of the American Institute of Planners,* available for reading or copying in most university city planning or urban studies libraries, and in the Second Edition of *Housing Urban America,* edited by Jon Pynoos et al. (Aldine, 1980), available in bookstores and libraries.

MANUALS ON REHAB PROGRAMS AND DISPLACEMENT PROBLEMS

Innovations in Housing Preservation: Techniques for Financing the Moderate and Substantial Rehabilitation of Multifamily Buildings (1979), discusses rehab financing, including HUD's Section 8 and Section 312 programs. $15.

Saving Rental Housing: Strategies for Preserving Older Residential Buildings (1980), discusses tax policies, code enforcement, social services, refinancing, and alternative forms of ownership and management in rental rehab programs. $15.