King v. Harris, 464 F.Supp. 827 (1979): Defining the “Relevant Area” in Section 8 Site Selection

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KING V. HARRIS: DEFINING THE "RELEVANT AREA" IN SECTION 8 SITE SELECTION

Under the Section 8 Housing Assistance Payments Program, the Department of Housing and Urban Development (HUD) subsidizes newly constructed lower-income housing. In accordance with its


2. The statute identifies "lower income families" as those families with income not exceeding 80% of the local median income. 42 U.S.C. § 1437f(f)(1) (1976). The Secretary of HUD may raise or lower the 80% ceiling upon a finding that construction costs or family incomes in a particular area are extremely high or low. Id.


The statutory purpose of the Section 8 program is to aid "lower income families in obtaining a decent place to live and [to promote] economically mixed housing." 42 U.S.C. § 1437f(a)(1976).

Section 8 provides assistance to the owner or prospective owner of a building by compensating for the percentage of rent due above and beyond what the lower income tenant is required to pay. The tenant's rent may not exceed 25% of his gross income. The total rent (tenant's cost plus HUD compensation) may not usually equal more than 10% over the fair market rental for the unit as established by HUD. 42 U.S.C. § 1437f(c)(1), (c)(3)(1976). At least 30% of the assisted units are reserved for families that earn no more than 50% of the local median income. Id. § 1437f(f)(2), (c)(7).

Predecessor legislation to Section 8 in the field of subsidized rental public housing includes the Section 23 program of the Housing and Urban Development Act of 1965, Pub. L. No. 89-117, Title I, § 103(a), 79 Stat. 455 (omitted as superseded by Housing and Community Development Act of 1974, Pub. L. No. 93-383, Title II, § 201(a)) (allowing local housing authorities to lease units in private buildings and release them to qualified tenants); and the Section 236 program of the Housing and Development Act of 1968, 12 U.S.C. § 1715z-1 (1976 & Supp. I 1977), as amended by Pub. L. No. 95-406. § 1(e). 92 Stat. 879 (1978); Pub. L. No. 95-557, Title II, § 201(i), Title III,
statutory duty to promote integration in housing,4 HUD examines a relevant area encompassing a proposed project site to avoid subsidizing housing which would perpetuate minority or low-income concentration.5 To aid the examination, HUD proposed regulations in 1977 authorizing it to use the census tract surrounding the project site

§ 301(e), 92 Stat. 2087, 2096 (1978) (allowing apartment owners to receive mortgage subsidies for new construction from the federal government in exchange for a promise to keep rents below a ceiling set by the government). The legislative history of Section 8 indicates it is in part a modified extension of the Section 23 program, reflecting HUD's desire for a "direct cash assistance approach" to subsidized housing. S. Rep. No. 693, 93d Cong., 2d Sess., reprinted in [1974] U.S. CODE CONG. & AD. NEWS 4314-17.

For general discussions of Section 8 and the above programs, see Friedman and Krier, A New Lease on Life: Section 23 Housing and the Poor, 116 U. PA. L. REV. 611 (1968); Note, Housing the Poor under the Section 8 New Construction Program, 15 URBAN L. ANN. 281 (1978); Note, Federal Leased Housing Assistance in Private Accommodations: Section 8, 8 U. Mich. J. L. Ref. 676 (1975).

4. See Civil Rights Act of 1968, § 801, 42 U.S.C. § 3601 (1976), which states: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." See also Civil Rights Act of 1964, § 601, 42 U.S.C. § 2000d (1976): "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The 1968 statute requires HUD to carry out the fair housing policies. 42 U.S.C. § 3608(d)(5) (1976). These policies, in conjunction with the concept of spatial deconcentration, discussed in note 21 infra, have developed into an obligation for public agencies to promote racial and economic integration in housing. Regarding racial integration, see Otero v. New York City Hous. Auth., 484 F.2d 1122 (2d Cir. 1973) (policy of accommodating present or former site occupants in public housing project should be suspended when it violates the housing authority's duty to integrate); Banks v. Perk, 341 F. Supp. 1175 (N.D. Ohio 1972), aff'd in part, 473 F.2d 910 (6th Cir. 1973) (where a high percentage of those on waiting list for federally subsidized housing are black, housing authority's failure to put most new projects in white areas violates federal public housing and civil rights statutes); Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970) (change in urban renewal plan from owner occupied to rental units based on land use factors only, and with no study of the effect on racial concentration, violated 1949 Housing Act and 1964 and 1968 Civil Rights acts).

5. The present regulations establishing site selection criteria for Section 8 newly constructed housing state that:

Proposed sites for new construction projects must be approved by HUD as meeting the following standards:

(b) The site and neighborhood shall be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 . . . , and HUD regulations issued pursuant thereto.

(c) The site shall not be located in:

(1) An area of minority concentration unless (i) sufficient, comparable oppor-
as the relevant area. In *King v. Harris,* the United States District Court for the Eastern District of New York declared that using the census tract to define the area, without considering local social and economic factors, violates the federal housing policies of integration and antidiscrimination.

In 1977, HUD approved a private developer's proposal to build...
low-income housing on Staten Island, New York under the Section 8 program. Various groups and individuals, objecting to the proposal, sued to enjoin construction of the project. On remand to HUD for further consideration, HUD reapproved the project, using the census tract encompassing the project site to determine minority concentration. The Eastern District subsequently enjoined HUD from using federal funds for the project, holding that HUD violated its duty to promote integration. Project approval not only would increase the volume of low-income housing in an area already inundated with such housing, but it also would cause the area to "tip" out of racial and economic balance, resulting in accelerated deterioration. The court found abuse of administrative discretion by

9. HUD previously had considered co-defendant Faymor Development's proposal for housing for the elderly at the same location. 464 F. Supp. at 831. Two of the six HUD divisions that review project proposals, the Equal Opportunity (EO) and Housing Management (HM) divisions, objected to that proposal, concluding that it would create an undue concentration of subsidized housing in the area. Id. All but the Economic and Market Analysis Division (EMAD), however, deemed the proposal at issue in King acceptable. EMAD had similar reservations as HM and EO had concerning the elderly project. It also criticized the use of 1970 census tract data as not reflective of present conditions. See note 11 infra.

10. Plaintiffs were Evelyn King, President of the Staten Island branch of the NAACP; Donald Asinobi and Amelia Hall, both of the Clifton Homeowners Association; Cynthia Mailman and Helen Rose of the Stapleton Civil Association; and Louis Wein of the Clayton Homeowners Association. Each sued as individuals and as organizational representatives. Id. at 827.

11. Id. at 832. The proposed project, Tenhill, was to be at a site in census tract 29, about 300 feet from tract 40 and adjacent to tract 27. A project called Stapleton Houses largely dominated tract 29; tract 40 encompassed five other complexes with high minority populations, all of which were near the proposed site. Id. at 833. Despite acknowledgment in HUD's report of an increased concentration of low-income and minority residents since 1970, HUD looked only to census tract 29, to determine the relevant area. Id. at 832. For example, by 1978 the Stapleton Houses project had a minority population of 74.9%; also by 1978, four of the census tract 40 complexes had a combined minority population of 61.9%. Id. at 833 n.15. The minority population in Stapleton Houses alone, in relation to the total 1978 population of census tract 29, made the minority population in that tract more than 43%, a figure above the minimum percentage required under HUD's proposed regulations for an area to be considered concentrated. See note 6 supra.


13. Id. at 841-44. See notes 27-30 and accompanying text infra.

14. Id. at 839-40. The scope of review for HUD decisions is based upon the Administrative Procedure Act, 5 U.S.C. § 706 (1976), which states in part, "the reviewing court shall . . . (2) hold unlawful and set aside agency actions, findings and conclu-
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HUD’s use of the census tract alone to define the relevant area.15

Since 1949, the federal government has actively supported racial integration in housing.16 The Civil Rights Acts of 196417 and 196818 facilitate that support through antidiscrimination and open housing policies.19 As an extension of this policy, the Housing and Community Development Act of 197420 attempts economic integration in an effort to disperse low-income housing.21

In compliance with the statutorily defined racial and economic integration policies, HUD has promulgated various regulations which establish standards for project site selection.22 Notwithstanding the occasions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

In Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971), the Supreme Court indicated that the standard for judicial review of administrative actions is a narrow one; as long as a decision was “based on a consideration of the relevant factors,” the court may not impose its own judgment. Id. at 416. See City of Lebanon v. HUD, 422 F. Supp. 803 (M.D. Pa. 1976) (review of HUD decision to subsidize elderly housing is extremely narrow).

The relevant factors which an agency must consider include any statutory requirements. See Schick v. Romney, 474 F.2d 309 (7th Cir. 1973) (informal agency action which doesn’t comply with statutory requirements may be set aside). See also the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1976), which places the requirement on federal agencies to consider possible environmental effects of their actions.

18. Id. §§ 3601-3631.
19. See note 4 supra.
22. See 24 C.F.R. § 880.112 (1979) and discussion at note 5 supra. As early as 1967, HUD implemented rules for site approval for low-rent housing, using Title VI
apparent legality of the regulations, courts have declared the agency's administrative actions inconsistent with the federal policies. In *Shannon v. HUD*, the Third Circuit held that changing the type of proposed housing in an urban renewal area from owner occupied to rental, without considering the effect on racial concentration, violated the 1964 and 1968 civil rights statutes. Under the court's ruling, HUD no longer could approve projects that would perpetuate minority concentration in an area and eventually result in urban blight.


In 1969 the new Secretary of HUD, George Romney, ordered new site selection regulations. These rules were published twice for comment. 36 Fed. Reg. 12032-38, 19316-20 (1971). HUD adopted the regulations in final form in 1972. Evaluation of Rent-Supplement Projects and Low-Rent Housing Assistance Applications, 37 Fed. Reg. 203 (1972). These regulations, now superseded by the regulations discussed below, were a response not only to Romney's initiative, but also to indications by courts that HUD should establish fixed criteria for site selection and approval. See notes 31-34 and accompanying text infra. For a criticism of the 1972 regulations, see Maxwell, *HUD's Project Selection Criteria—A Cure for "Impermissible Color Blindness"?*, 48 Notre Dame Law. 92 (1972). See also Comment, 7 Urban L. Ann. 336 (1974).

More recently, HUD assembled comprehensive regulations regarding project selection, in the form of an evaluation checklist for prospective projects. See 24 C.F.R. § 200.710 (1979). Compare these regulations with the regulations at 24 C.F.R. § 880.112 (1979), discussed in note 5 supra. The two sets of regulations coexist, and both exhibit the federal policy of deconcentration.

23. See notes 25-31 and accompanying text infra.


25. Id. at 820-21. The court considered land use, but not racial or social factors.

26. Id. See Warren, supra note 21.

27. 484 F.2d 1122 (2d Cir. 1973). The Otero court described the "tipping" point of an area as the "percentage of concentration of nonwhite residents in a given area that will cause white residents to flee." Id. at 1135. The notion of "tipping" was further amplified in Trinity Episcopal School Corp. v. Romney, 387 F. Supp. 1044 (S.D. N.Y. 1974), modified, 523 F.2d 88 (2d Cir. 1975). The district court established three criteria for determining if an area will tip: (1) the numbers of minority or other families which will likely affect the area in an adverse manner; (2) the quality of area facilities and services; and (3) the majority residents' attitudes as to the first two crite-
described the increase in minority concentration caused by accelerated majority flight and subsequent deterioration. Courts more recently have extended "tipping" to include low-income concentrations as well. Regardless of whether a project will cause a neighborhood
ria, which might influence their decision to remain in or leave the area. 387 F. Supp. at 1066.

28. The tipping doctrine evolved from a line of cases holding that building a project which will result in a disproportionate increase in minority concentration in an area is unacceptable under federal guidelines. Trinity Episcopal School Corp. v. Romney, 387 F. Supp. 1044, 1064 (S.D. N.Y. 1974). Cases leading up to Trinity include Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970), discussed in note 21 supra; Banks v. Perk, 341 F. Supp. 1175 (N.D. Ohio 1972), aff'd in part, 473 F.2d 910 (6th Cir. 1973) (where low-income projects were built only in predominantly black census tracts, the court ordered future construction in white areas); Blackshear Residents Organization v. Housing Auth. of City of Austin, 337 F. Supp. 1138 (W.D. Tex. 1971) (since procedures to choose and approve project site were inadequate, construction was enjoined until the area was shown not to be one of minority concentration).

Some school desegregation cases reflect a different view, i.e., that the resulting possibility of majority emigration does not justify municipality's failure to carry out a court order of desegregation. See, e.g., United States v. Scotland Neck Bd. of Educ., 407 U.S. 484 (1972) and Monroe v. Board of Comm'rs, 391 U.S. 450 (1968) (both involved resistance to a court ordered duty to integrate). But see Higgins v. Board of Educ., 508 F.2d 779 (6th Cir. 1974), where the court said that a school board formulating a voluntary desegregation plan may take the probability of "white flight" into consideration. Id. at 794. Both points of view were recognized in Parent Ass'n of Andrew Jackson High School v. Ambach, 598 F.2d 705 (2d Cir. 1979). The court distinguished Higgins from Monroe and Scotland Neck on the voluntary/involuntary basis. Id. at 719. The court then likened the "tipping" point considerations discussed in this note and in note 25 supra to the voluntary integrative actions applied by the school board in Higgins. Id. at 720.

It is questionable whether that analogy was proper. Courts require involuntary desegregation when the municipality or school board affirmatively caused all or part of the segregation. See, e.g., Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406 (1977) (test for imposing remedial decree upon school board requires (1) proof of segregative intent on the part of the school board; (2) a showing that such intent caused a segregative effect; and (3) a remedy geared toward correcting any incremental segregative effect resulting from step 2, i.e., from governmentally caused segregation). But see Columbus Bd. of Educ. v. Penick, 443 U.S. 449, reh. denied, 444 U.S. 887 (1979) (Court may impose an affirmative duty to integrate schools regardless of past school board action). If HUD has an affirmative duty to integrate via statutory directive, its responsibility to do so is as strong as the constitutional duty to cure state-imposed school segregation. The court in Ambach may have erred, therefore, in analogizing the "tipping" doctrine only to voluntary desegregation cases.

29. In King, the court stated that the court in Trinity failed to recognize an economic "tipping" doctrine only because plaintiffs did not prove a correlation between minority and low-income populations. 464 F. Supp. at 844. But the court in King was willing to let a showing of such a correlation support a "tipping" approach. Id. For a discussion of the theory of economic "tipping", see Note, Economic Tipping: An Approach to a Balanced Neighborhood, 4 FORDHAM URB. L.J. 167 (1975).
to “tip,” a high concentration of minority or low-income persons is inconsistent with federal policies. 30

Such court decisions forced HUD to consider racial and socioeconomic factors in its site selection process. In Shannon, the court called on HUD to adopt an “institutionalized method” to examine these factors. 31 Having developed standardized methods, the Depart-

30. This view is consistent with the “spatial deconcentration” theory of the Housing and Community Development Act of 1974, as the cases in note 21 supra demonstrate. The National Environmental Policy Act of 1969 (NEPA) also has served as a basis for deciding low-income concentrations. See Karlen v. Harris, 590 F.2d 39 (2d Cir. 1978) rev’d sub nom., Strycker’s Bay Neighborhood Council, Inc. v. Karlen, 100 S. Ct. 497 (1980), a case spawned by the Second Circuit’s remand in Trinity. In rejecting a site proposal for a public housing project, the court reasoned that building a high rise apartment for low-income tenants in an area where a large percentage of low-income housing already existed, constituted unacceptable concentration. The court said that, “tipping” aside, the concentration created by such construction would violate the policies established in NEPA, 42 U.S.C. § 4321 (1976). 590 F.2d at 43.

While Karlen and Trinity dealt with the provisions of NEPA and their effects on concentration, the King court did not reach the NEPA issue. In a footnote, however, the court referred to plaintiffs’ post-trial memorandum and its claim that HUD violated NEPA by approving the project. Plaintiffs asserted that despite HUD’s claim that NEPA was inapplicable, HUD was indeed bound by the Act. See Trinity Episcopal School Corp. v. Romney, 387 F. Supp. 1044 (S.D. N.Y. 1974), modified, 523 F.2d 88 (2d Cir. 1975) (NEPA encompasses quality of urban life and environment); Hanly v. Mitchell, 460 F.2d 640 (2d Cir. 1972) (jail construction enjoined pending General Services Administration determination of whether the jail would significantly affect environment). See generally Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972) (establishes considerations for determining if agency action will significantly affect environment); Note, HUD’s NEPA Responsibilities Under the Housing and Community Development Act of 1974: Delegation or Derogation?, 10 Urban L. Ann. 179 (1975) (discussing HUD’s ability under the statute to give the basic responsibility for enforcing NEPA to grantee cities and counties). See also 24 C.F.R. § 880.208(e)(5) (1979), requiring HUD compliance with rules that list thresholds the agency must use to determine which projects will significantly affect quality of environment.

31. 436 F.2d at 821. The court suggested some considerations it would deem proper in analyzing the effect of site selection. These included the local public housing authority’s analysis of effects on concentration, prospective tenant selection methods, present location of low-income housing, and alternative sites for the proposed project. Id. at 821-22.

In Croskey Street Concerned Citizens v. Romney, 335 F. Supp. 1251 (E.D. Pa. 1971), aff’d, 459 F.2d 109 (3d Cir. 1972), the court said that HUD did consider the factors relevant to racial concentration. HUD regulations precluded the agency from approving housing in areas of racial concentration unless “alternative or additional sites in other areas provide a balanced distribution of the proposed housing.” 24 C.F.R. § 1.4(b)(2)(i). The agency approved a site for elderly housing in a concentrated area noting that HUD had analyzed the racial composition of the area, had provided that projects would also be located outside concentrated areas, and had determined that elderly housing in concentrated areas is more integrated than the sur-
ment had sometimes managed to shield itself from judicial review. In *Jones v. Tully*; 32 HUD allowed a project in a predominantly black area after considering the factors relevant to concentration. 33 Since HUD had acted within its administrative discretion, the court refused to substitute its own judgment for the agency’s 34 and upheld HUD’s action.

While *Shannon* and *Jones* considered the effects of site selection on minority and low-income concentration, 35 only one court prior to *King* addressed the specific issue of relevant area definition. 36 In *Blackshear Residents Organization v. Housing Authority of the City of Austin*, 37 the district court held that HUD failed to consider federal antidiscrimination and open housing objectives when it had approved a project site. 38 Consistent with other site selection cases, 39 the court interpreted HUD’s regulations to require an analysis of the effects site would have on concentration. 40 For that analysis, the *Blackshear* court suggested guidelines to define the relevant area by

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33. 378 F. Supp. at 292-93. The court and evidently HUD believed that certain factors may “outweigh the disadvantages of racial concentration,” and that “low-income housing and racial concentration at a particular site are not mutually exclusive if justified by the relevant housing factors.” *Id.* at 293. Here the apparent relevant factors were the need for both more low-income housing in the area and the rehabilitation of a blighted neighborhood. *Id.* Compare these rationales with the exceptions in the HUD regulations which allow sites in concentrated areas. See note 5 supra.
34. 378 F. Supp. at 292-93. The court followed the *Volpe* and *Schicke* approaches discussed in note 14 supra.
35. See notes 21 & 27-30 supra.
37. *Id.*
38. *Id.* at 1148.
39. See notes 31-34 supra.
40. 347 F. Supp. at 1145-46. HUD’s regulations at the time did not allow the location of federally financed public housing in a racially concentrated area without an actual showing that no acceptable sites exist outside the area. The court cited HUD’s *Low Rent Housing Preconstruction Handbook*, RHA 7410.1, Chap. 1, § 1(2)(g). Since the regulation was the agency’s interpretation of the civil rights laws, the court held HUD’s administrative actions “judicially reviewable under the standard” set forth in the regulations. 347 F. Supp. at 1147.
considering the proximity of the project site to community facilities serving local residents.\textsuperscript{41}

Relying only partially on \textit{Blackshear}, the court in \textit{King} cited several groups of cases to support its holding. The first group was school desegregation cases in which the courts stressed the importance of \textit{ad hoc} determinations in framing effective remedies for \textit{de jure} segregation.\textsuperscript{42} Although the \textit{King} court used this broad doctrine merely to point out the value of considering relevant social factors, one case provides a close parallel to \textit{King}.\textsuperscript{43} \textit{Swann v. Charlotte-Mecklenburg Board of Education}\textsuperscript{44} involved a segregated school system characterized by high concentrations of black students.\textsuperscript{45} The Supreme Court, in ordering further desegregation, held local authorities and the district court responsible for the prevention of new school construction tending to encourage segregation.\textsuperscript{46}

In addition to applying analyses from the school desegregation

\textsuperscript{41} \textit{Id.} at 1148-49. Some of the facilities the court referred to were schools, parks, hospitals, libraries and community centers. \textit{Id. Compare} the use of community facilities by the \textit{Blackshear} court in defining the relevant area with HUD's proposed site selection regulations, \textit{ supra} note 6.

The court's "definition" of relevant area was only one of several factors the court suggested HUD might consider in determining effects on concentration. The other factors were similar to those the \textit{Shannon} court listed. \textit{See} note 31 \textit{ supra}.

Although other cases have stated the need for a "relevant area" determination, they have done so in a more general fashion than the \textit{Blackshear} court. \textit{ Cf. Otero v. New York City Hous. Auth.}, 484 F.2d 1122, 1137 (2d Cir. 1973) (parties may introduce evidence necessary to ascertain the "relevant community" for purposes of discovering whether "tipping" will occur); \textit{Trinity Episcopal School Corp. v. Romney}, 387 F. Supp. 1044, 1066-69 (S.D.N.Y. 1974) (district court used such evidence as the \textit{Otero} court discussed in its "tipping" consideration). The \textit{Trinity} court accepted the West Side renewal district as the relevant area, but qualified its acceptance by stating that the relevant community must be "measured against some standard or norm." \textit{Id.} at 1066. The court did not elaborate upon the factors a court might use to establish such a norm; nevertheless, an official of the New York City Housing Authority testified that a norm is necessary.


\textsuperscript{45} The Fourth Circuit approved the district court's desegregation plan for the secondary schools in question, but vacated and remanded on the issue of remedy regarding the elementary schools. The Supreme Court reinstated the district court's order in its entirety. 402 U.S. at 31.

\textsuperscript{46} The Court stated that school location may influence residential development
area, the King court adopted a general “relevant factor” analysis for 
housing, implying a strong correlation between neighborhood defini-
tion and the achievement of residential integration.\textsuperscript{47} Since neigh-
borhood definition requires consideration of many unique abstract 
factors, the court mandated an \textit{ad hoc} definition in each case.\textsuperscript{48} Ele-
ments which might enter the consideration include common public 
facilities, shared perceptions, social and economic status of residents, 
and physical and ephemeral boundaries.\textsuperscript{49}

The King court reinforced its argument by explaining that courts\textsuperscript{50} in an urban area and may have a strong impact on the make-up of inner-city neigh-
borhoods. \textit{Id.} at 20-21.

In reaching its conclusion, the Swann court relied on Green v. County School Bd. 
of New Kent, 391 U.S. 430 (1968). Green involved a freedom-of-choice school pro-
gram which the lower court found maintained a dual system. Overturning the school 
board’s plan, the Court stated that each desegregation case must promise “immediate 
progress,” and that the lower courts should consider if that goal has been reached “\textit{in light of the facts at hand} and in light of any alternatives which may be shown as 
feasible and more promising in their effectiveness.” (Emphasis added) \textit{Id.} at 439.


\textsuperscript{48} \textit{Id.} at 839, 841.

\textsuperscript{49} \textit{Id.} at 839.

\textsuperscript{50} Gautreaux v. City of Chicago, 480 F.2d 210 (7th Cir. 1973), \textit{cert. denied}, 414 
U.S. 1144 (1974) (metropolitan area remedy for segregation in inner city); Henry v. 
Clarksdale Mun. Separate School Dist., 409 F.2d 682 (5th Cir. 1969), \textit{cert. denied}, 396 
U.S. 940 (1969) (school zone boundaries maintaining segregated system were held 
impermissible); Resident Advisory Bd. v. Rizzo, 425 F. \textit{Supp.} 987 (E.D. Pa. 1976), 
\textit{modified}, 564 F.2d 126 (3d Cir. 1977) (“freedom-of-choice” housing plan which led in 
practice to concentration of public housing in black areas was invalid); Blackshear 
Residents Organization v. Housing Auth. of City of Austin, 347 F. Supp. 1138 (W.D. 
Tex. 1972), discussed in notes 31-34 and accompanying text supra; Banks v. Perk, 341 
F. \textit{Supp.} 1175 (N.D. Ohio 1972), \textit{aff'd in part}, 473 F.2d 910 (6th Cir. 1973) (history of 
locating public housing in predominantly black census tracts was inconsistent with 
national housing policy).

Gautreaux is one of several cases extending from the same nucleus of facts. Claim-
ing the Chicago Housing Authority (CHA) site selection process for public housing 
was unconstitutional, black tenants in and applicants for that housing sued HUD and 
CHA in separate lawsuits. In 1969, the district court upheld plaintiffs’ motion for 
summary judgment in the CHA suit, finding the CHA violated plaintiffs’ constituti-

tional rights by choosing sites on the basis of race. Gautreaux v. CHA, 296 F. \textit{Supp.} 
907 (N.D. Ill. 1969). The court ordered CHA to build a certain number and percent-
age of public housing units in white areas. Ignoring the city’s boundaries, the court 
included the Chicago metropolitan area in the remedial plan. Gautreaux v. CHA, 

The court grouped Henry, a school desegregation case, with the cases ignoring ex-
isting boundaries. The Henry court held that as long as all-black or all-white schools 
exist, the desegregation plan was unconstitutional, and the local school board must 
redraw its attendance zone boundaries. 409 F.2d at 690. Ignoring existing bounda-
often ignore existing physical and designated boundaries in defining the relevant area for integration. In *Banks v. Perk*, the local housing authority consistently built projects in census tracts having primarily black populations. Devising a remedy to disperse public housing, the court ordered the authority to compensate for its past actions by building projects in predominantly white areas. The Supreme Court reaffirmed the goal of dispersion in *Hills v. Gautreaux*. Since both HUD and the local housing authority had regional jurisdiction, the Court upheld a remedial order which

ries, however, especially in the desegregation context, is merely one application of the *ad hoc* determination doctrine. See notes 42-46 and accompanying text supra.

The *Henry* court cited *Braxton v. Board of Pub. Instruction of Duval*, 303 F. Supp. 958 (M.D. Fla. 1967), for the proposition that school boards may not use zone boundaries which maintain segregated school systems. 409 F.2d at 690. *Accord, United States v. Texas Educ. Agency*, 467 F.2d 848 (5th Cir. 1972) (where attendance zones were drawn sending almost all students to schools where they composed either a large racial majority or a small racial minority, court made the school board abandon its present system).


52. *Id.* The court held that the local housing authority and the city, by allowing revocation of permits for projects in predominantly white areas, denied plaintiffs equal protection. 341 F. Supp. at 1179. The court in *King v. Harris* did not reach a constitutional issue, nor was one presented by the parties. For a case which explicitly considered the constitutionality of site selection, see *Hicks v. Weaver*, 302 F. Supp. 619 (E.D. La. 1969). The court in *Hicks* said that where the purpose for choosing a particular site was to perpetuate segregation, HUD approval of the site violated not only the 1964 Civil Rights Act, but also the Fourteenth Amendment. *Id.* at 623.

53. 341 F. Supp. at 1184. The court acknowledged that “dispersal” was susceptible of many definitions. The definition the court adopted was “that if historically housing has been built primarily in one area or section of the city, housing must be built in other areas or sections of the city until such time as all the public housing in the city is dispersed.” *Id.* Compare *Banks with Resident Advisory Bd. v. Rizzo*, 425 F. Supp. 987 (E.D. Pa. 1976), *modified*, 564 F.2d 126 (3d Cir. 1977) (housing authority had an affirmative duty to work toward dispersing public housing).

54. 341 F. Supp. 1175, 1184. It is unclear which “boundary” the *King* court perceived in the *Banks* situation. It is likely the boundaries in question were census tract divisions, since, by the end of 1964, nine of 11 public housing estates in the city of Cleveland reflected the racial composition of the surrounding census tracts. 341 F. Supp. at 1181.

For a school case analogous to *Banks*, see *Columbus Bd. of Educ. v. Penick*, 99 S. Ct. 2941 (1979) (Supreme Court approved lower court’s reliance on board’s school site selection and construction patterns in finding school system segregated).

55. 425 U.S. 284 (1976). This is the parallel case to *Gautreaux* v. City of Chicago, discussed in note 50 supra. In another *Gautreaux* case, after the district court originally granted HUD’s motion for dismissal, the Seventh Circuit reversed and ordered summary judgment for plaintiffs on the grounds that HUD violated the Fifth Amendment and the Civil Rights Act of 1964 by supporting CHA’s program. *Gautreaux v.*
transcended the boundaries of the offending city.\textsuperscript{56} Dispersing low-income housing throughout the metropolitan market would, according to the \textit{Gautreaux} Court, best fulfill the goal of integration.\textsuperscript{57}

The court in \textit{King} thus borrowed doctrine from several lines of cases to argue that the isolated use of census tracts constituted an abuse of HUD's administrative discretion.\textsuperscript{58} The defendants argued to the contrary, that previous agency reliance on census tract data should similarly allow reliance by HUD in the \textit{King} situation.\textsuperscript{59} The court refuted that argument on two grounds. First, defendants did not prove such reliance; the local HUD field office did not agree upon the appropriate criteria to apply.\textsuperscript{60} Second, the court clarified that it was not eliminating census tract analysis as a tool for defining the relevant area; rather, it held that using census tract data alone is insufficient.\textsuperscript{61}

By adopting an \textit{ad hoc} test to define a relevant area\textsuperscript{62} and by refus-
ing to sanction construction which would accelerate minority- or low-income concentration within the relevant area, the King court consistently reasserted HUD's duty to promote integration in public housing. The decision is also consistent with sociological and economic analyses by urban geographers who have studied residents' perceptions of their neighborhoods, and have used these perceptions to construct models for community planning and development. Economic studies of neighborhoods indicate that blight and disinvestment do not fit within the lines drawn by census tract divisions.

As King rejects methods which fail to consider relevant features of the particular project area, the proposed site selection regulations violate King to the extent they allow HUD to define an area by the


64. See notes 5 & 23-29 and accompanying text supra.


67. Two of the studies cited in note 66 supra are especially helpful in understanding how planners explore and apply people's perceptions of their environments. The Pittsburgh study presents an excellent social science construct of the actual process of perception, and then applies the analysis to a number of variables in the neighborhood context, e.g., life styles, familial ties, social stratification, and housing densities. The Richman and Chapin study, on the other hand, relies more on the work of prominent planning analysts, and uses their work on neighborhood structure as a springboard for their own approach to residential planning. People's perceptions, however, also play an important part in their study. See A. Richman & E. Chapin, supra note 66, at 7-17.


69. 464 F. Supp. 827, 839 (E.D. N.Y. 1979). "While census tracts may provide HUD with a general indication of residential patterns, they are inadequate as the sole indicators of the racial or economic composition of housing in a neighborhood." Id.
surrounding census tract. The regulations, however, also allow HUD to use as an alternative method, an area for which racial composition data is available, and which HUD determines is appropriate in light of "functional considerations." Such a test might well remain consistent with King.

King's consistency with strong national policy should win the holding further judicial support. Nevertheless, the case may create problems on two levels. First, HUD is likely to argue that the ambiguity of the King decision, by failing to require specific criteria for defining the relevant area, may leave the agency open to attacks on its administrative discretion. The typical limitation on that discretion, arbitrariness and capriciousness, however, will be exercised only if HUD ignores the federal housing policies in making its decisions. The importance of King may be to effectuate HUD's examination of social and economic indicia when determining the make-up of a relevant area.

More generally, the case questions the use of census tracts and census data in administrative decisionmaking. HUD and other agencies use the data to obtain information about neighborhoods and communities because it is reliable and administratively convenient to do

70. Compare the proposed regulations, supra note 6, with the court's comment cited in note 64 supra.


72. The Second Circuit has consistently supported policies of integration, deconcentration and dispersal of public housing. See, e.g., Karlen v. Harris, 590 F.2d 39 (2d Cir. 1978) (building low-income project in area with high percentage of low-income persons violates deconcentration policy); Otero v. New York City Hous. Auth., 484 F.2d 1122 (2d Cir. 1973) (policy of providing space for former site occupants must be suspended when it violates housing authority's duty to integrate); Trinity Episcopal School Corp. v. Romney, 387 F. Supp. 1044 (S.D. N.Y. 1974), modified, 523 F.2d 88 (2d Cir. 1975) (building project in area already mainly low-income violates policy of the National Environmental Policy Act of 1969).

73. But the agency's discretion has been recognized as extremely wide. See, e.g., South East Chicago Comm'n v. HUD, 488 F.2d 1119 (7th Cir. 1973). HUD made a decision to maintain a commitment to a federally subsidized housing project, based on the conclusions that 1) the project would probably be integrated when rented, 2) even if not, no significant impact on local stability or on racial concentration of the area would result, and 3) the project was needed by low-income residents of the area. The Seventh Circuit held that these considerations alone proved that HUD did not make its decision in ignorance of the particular facts of the situation. Id. at 1129-30. See also Jones v. Tully, discussed in notes 32-34 and accompanying text supra.

74. See note 15 supra.

so.\textsuperscript{76} \textit{King} requires the federal government to develop more sensitive mechanisms for defining and studying neighborhood characteristics in those situations in which reliance on census tracts might violate the federal policies of antidiscrimination and integration.

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\textsuperscript{76} For an excellent example of the many uses to which census data is put, see the \textbf{DATA USER NEWS}, published by the Bureau of the Census. The publication regularly describes programs undertaken by the Bureau in conjunction with federal agencies and departments.