Tea-21: Paving Over Efforts to Stem Urban Sprawl and Reduce America's Dependence on the Automobile

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On June 9, 1998, President Clinton signed the Transportation Equity Act for the 21st Century ("TEA-21"). TEA-21, the successor to the 1991 Intermodal Surface Transportation Efficiency Act ("ISTEA"), was hailed by many environmentalists as an environmental milestone in this country’s many attempts to address the ever-growing transportation problem and the ancillary effects of our reliance on the automobile. However, the Act’s focus on highway spending as opposed to spending for mass transit and other strategies designed to curb urban sprawl actually retards the efforts of urban planners and environmentalists to re-shape the transportation policy of the United States. Instead of curbing sprawl and reducing America’s dependency on the automobile, TEA-21 actually does the converse. By shortchanging mass transit and other transportation alternatives, and instead pouring money into highway improvements and new highway construction as well as new technology like Intelligent Transportation Systems, Congress has defined how America will move

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4 See e.g., TEA-21 is a "Home Run" for Transit, RAILWAY AGE, July 1998, at 25 ("[A]lthough most of TEA-21 will be used for highway programs, the American Public Transit Association nevertheless is calling it a ‘home run’...”).

5 An Intelligent Transportation System (ITS) is a computerized monitoring system that is intended to be used to direct the flow of traffic in such a way as to maximize the current
until 2003, and has reinforced the car, with all of its problems, as our primary means of transport.

In this Note, I will discuss how TEA-21 will stymie efforts to shape a national transportation policy designed to reduce commuters' reliance on the automobile as a primary source of transportation, as well as other ancillary problems such as urban sprawl and inner-city decay. Part I will focus on the highway spending provisions contained in TEA-21 as well as the areas in which TEA-21 has changed the substance of ISTEA. Part II will focus on the transit provisions of TEA-21. Part III will discuss the implications of TEA-21 as it relates to American transportation and planning policy. Part IV will present some ideas for a more sustainable transportation policy. Finally, Part V will conclude by suggesting that TEA-21 could have been the redefining moment in American transportation planning history by providing answers to the many lingering transportation problems facing the country.

I. HIGHWAY CONSTRUCTION: THE BULK OF TEA-21

A. Title I: Federal-Aid Highways

As the largest public works measure ever passed by Congress, TEA-21 authorizes $217 billion in transportation spending from 1998 to transportation infrastructure. The nature and application of the ITS will be discussed further infra notes 131-143 and accompanying text.

6 Some would say that this should not be the goal of any transportation bill. See, e.g., Joseph P. Thompson, ISTEA Reauthorization and the National Transportation Policy, 25 TRANSP. L. J. 87, 104 (1997) ("Solving inner-city decay, air pollution, unemployment, infrastructure entropy, poverty, discrimination or tax inequities are all admirable social goals, but adding to the cost of doing so to passenger and freight fares distorts the truth about transportation."). I would argue otherwise. Transportation is, in many respects, the underpinning of our society. To a large extent, it determines where we live, where (and if) we work, and the overall quality of life of the society we live in. Therefore, our transportation policy can (and should) be utilized as an important way in which to affect changes in our society.

7 While I feel that I discuss the major provisions of TEA-21 as they relate to this Note, this Note is by no means a complete and comprehensive overview of TEA-21, which, at over 400 pages of text, is a massive, complicated bill. However, the portions of TEA-21 that I focus on are the most influential portions of the bill and ones that will have a major impact on America's transportation policy until 2003.

Most of that money is set aside for road repair and new road construction. In fact, more than eighty percent of the money in TEA-21 will go toward highway funding, with more than twenty-five percent of that going to pay for new roads, not merely to repair the current infrastructure. The impact of this legislation will be enormous, as the federal government now plays the role of being the primary source of funds for all highway construction.

1. **Highway Funding**

Title I of TEA-21 changes the substance of ISTEA in three major areas: dramatically increasing overall spending for highway funding, streamlining the environmental review process and establishing new time periods for reviewing the environmental impacts of proposed highway and bridge projects.

To understand the funding of highways, one must understand the ratio of federal vs. state funding. As U.S. Representative Jim Oberstar (D-MN), ranking Democratic Member, House Transportation and Infrastructure Committee explained:

> [T]he transportation program has had a different history from other federally funded programs. They—the highway trust fund had two functions at its inception, one was to finance the interstate highway program on a 90% federal/10% state-matching basis and all other segments of the transportation program on a 50% federal/50% state basis.

> In 1982, we [Congress] shifted to—we kept the interstate [funding] at 90/10 and shifted to 70% federal/30% state non-federal state and local financing of non-interstate highway and bridge projects. And in 1991 [under ISTEA], we increased to 80/20, 80% federal/20% state for non-interstate, and the interstate program [under TEA-21] is now complete... so the 90/10 program is gone and we have all transportation projects funded at 80/20.

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*Talk of the Nation* (NPR radio broadcast, June 10, 1998) (transcript on file with the *William and Mary Environmental Law and Policy Review*). Thus, the fact that the 80/20 ratio remains the funding method for all highway spending illustrates how influential TEA-21 will be, as the massive expenditures authorized by the bill are given to the states for highway construction.

12. See, e.g., infra note 21 (discussing massive increases in funding for the STP).
transit projects; and changing the way that the Highway Trust Fund apportions money to the states.

Federal-aid highways received a dramatic increase in funds under Title I of TEA-21, which authorizes funds for highway programs throughout the country. ISTEA funded federal-aid highways at $108 billion over six years; under TEA-21, the overall funding for Title I exceeds $171 billion from now until 2003, a sixty-three percent increase.

Title I provides funds for the Interstate System and the National Highway System ("NHS"), the bridge program, the Interstate Maintenance Program, and the Surface Transportation Program. In addition, TEA-21

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14 See Stussman & Ichniowski, supra note 8, at 87.
16 See ISTEA § 1002(a).
18 See TEA-21 § 1106(b). The National Highway System is intended to “serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel.” Id. TEA-21 extended the maximum mileage of the system from 155,000 miles to 178,250 miles, effectively allowing 23,250 miles of new highways to be built. See id. The National Highway System is funded at over $28 billion from now until 2003. See TEA-21 § 1101(a)(2).
19 See TEA-21 § 1109. The bridge program is designed to repair or replace bridges on federal-aid highways and public highways not on the federal-aid program. It has total funding of $20 billion until 2003. See TEA-21 § 1101(a)(3).
20 See TEA-21 § 1107. The Interstate Maintenance System is designed to resurface, restore, rehabilitate or reconstruct roads on the Interstate System. It has total funding of almost $24 billion until 2003. See TEA-21 § 1101(a)(1).
21 See Transportation Equity Act for the 21st Century § 1108, Pub. L. No. 105-178, 112 Stat. 107, 138-41 (1998) (codified at 23 U.S.C.A. § 133 (West Supp. 1999)). Section 1108 of TEA-21 is an amorphous section encompassing many projects for which states can get money, including road construction. TEA-21 provides over $33 billion for the STP over the next six years, giving it the largest portion of funding of any program contained in the Act, see TEA-21 § 1101(a)(4), whereas ISTEA had provided the STP with only $24 billion. See Arnold W. Reitze, Jr., Improving Transportation-Related Air Quality Under the Clean Air Act’s Conformity Requirements and the Intermodal Surface
TEA-21: PAVING OVER EFFORTS

contains 1850 high priority projects distributed throughout all the states for which money must be used, including numerous projects to build new roads, bridges and interchanges. The funding for these high priority projects exceeds $9 billion. Funds available for the NHS will be distributed to states based upon the number of miles of federal-aid highways in the state (not including interstates) and vehicle miles traveled and the amount of diesel fuel used on those highways. Funds for the Interstate System will be distributed in much the same way.

In addition, TEA-21 authorizes at least $3 billion to be spent until 2003 on construction projects that will reduce highway perils and increase levels of safety at railroad crossings and other highway danger zones. Other worthy safety measures include over $580 million in incentives to increase seat belt use and the use of car seats for children, as well as another $500 million in incentives to encourage states to adopt a 0.08% blood alcohol concentration as the legal definition of driving while under the influence of alcohol.

2. Environmental Review

Section 1309 alters the environmental review process required for any highway project by the National Environmental Policy Act of 1969.
or any other federal law. The section streamlines the review process, setting new time periods for reviewing the environmental impacts of federal-aid highway projects. In addition, the section requires that all environmental reviews be made concurrently, instead of sequentially. Finally, states are allowed to include their own environmental reviews in the federally-required processes.

The Department of Transportation states that the streamlining of environmental reviews will "address concerns relating to delays in implementing projects, unnecessary duplication of effort, and added costs often associated with the conventional process for reviewing and approving surface transportation projects." Although the process has yet to be implemented, concerns could legitimately be raised about the desire to cut corners under such a process. Critics of the streamlining process also worry that the opportunity for community organizations concerned about the environmental impacts of highway projects to participate in the new, shortened process will be reduced.

B. Method of Funding

In addition to the increase in highway spending and the environmental streamlining process, TEA-21 also changes the method by which the states receive funds from the Highway Trust Fund as well as the way that the Highway Trust Fund is used in the annual budget process. The Highway Trust Fund was established in 1956 to fund the newly initiated Eisenhower Interstate System. To fund the Interstate System, Congress authorized a four cent gas tax to be paid into the Highway Trust Fund by the states, which then make requests against the Fund to be spent

31 See TEA-21 § 1309.
34 See id.
36 See Wormser, supra note 26, at 10.
38 See Talk of the Nation, supra note 11.
on construction of the Interstate System.\textsuperscript{39} Then, in 1968, to offset the deficits caused by the escalation of the Vietnam War, Congress withheld some of the money in the Fund.\textsuperscript{40} This became the practice of Congress in every new budget cycle: withhold money from the Fund to overshadow a segment of the federal budget deficit.\textsuperscript{41} In addition, the money paid into the Fund by the states never corresponded to the amount of money the states actually received from the Fund for highway construction, with some states receiving far less return for every dollar sent to the Fund, and other states receiving far more.\textsuperscript{42}

Under TEA-21, this will all change. The Act will ensure that all money received into the Fund will be used solely for highway projects by decreeing that annual spending on highway projects will closely match the amount of funds collected by the states in fuel taxes.\textsuperscript{43} Under TEA-21, states are guaranteed at least 90.5 cents in highway funds for each dollar they contribute in fuel taxes.\textsuperscript{44}

\textsuperscript{39} See id.
\textsuperscript{40} See id.
\textsuperscript{41} See id.
\textsuperscript{42} See Robert Jay Dilger, \textit{TEA-21: Transportation Policy, Pork Barrel Politics, and American Federalism}, 28 PUBLIUS 49, 56 (1998). Dilger noted that in 1995, under ISTEA, South Carolina’s return for every dollar sent to the Fund was 56 cents, while Alaska’s return was $6.40. See id.
\textsuperscript{44} See Stussman & Ichniowski, \textit{supra} note 8, at 87.
II. TRANSIT PROVISIONS OF TEA-21

A. Urbanized Area Formula Grants Program

Title III, the transit provision of TEA-21, authorizes $41 billion for transit programs from now until 2003.\(^4\) Included in Title III is the Urbanized Area Formula Grants Program ("UAFGP"),\(^4\) which, at $17.28 billion,\(^4\) is the transit program that receives the most funding under TEA-21.\(^4\) The UAFGP provides transit capital and funding for operation costs to transit programs in urbanized areas with populations of more than 50,000.\(^4\) The UAFGP enacts a new "transit enhancements" program which requires that areas with populations over 200,000 must use 1% of all funds received under the Program for transit enhancements that are designed to enhance mass transportation service.\(^5\)

B. Transit Capital Investment Grants and Loans

The Capital Investment Grants and Loans provision of Title III\(^4\) provides funds for new fixed-guideway systems\(^5\) to be constructed, as

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well as extensions and modernizations to existing fixed-guideway systems. In considering whether to approve the grant or loan request, the Secretary of the Department of Transportation ("DOT") can consider whether the proposed project "increases the mobility of the mass transportation dependent population or promotes economic development." In addition, the DOT can consider the population density and current ridership of transit in the area requesting the grant or loan, the "cost of urban sprawl," as well as the costs, both direct and indirect, of any "relevant alternatives," among other factors. After duly considering all factors, the DOT will rate the project as "highly recommended," "recommended," or "not recommended."

Also included in the Transit Capital Investment Grants and Loans provision is a section providing grants for buses and bus facilities. Like

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52 A fixed guideway system is defined as a "mass transportation facility— (A) using and occupying a separate right-of-way or rail for the exclusive use of mass transportation and other high occupancy vehicles; or (B) using a fixed catenary system and a right-of-way usable by other forms of transportation." Transportation Equity Act for the 21st Century (TEA-21) sec. 3003, § 5302(a)(4), Pub. L. No. 105-178, 112 Stat. 107, 340 (1998) (codified at 49 U.S.C.A. § 5302(a)(4) (West Supp. 1999)). Examples of fixed guideway systems include high-speed rail, commuter rail, ferry boats and bus systems.

53 See TEA-21 sec. 3009(g), §§ 5309(m)(1)(A)-(B).

54 See TEA-21 sec. 3009(e), § 5309(e)(3)(D).

55 See TEA-21 sec. 3009(e), § 5309(e)(3)(E).

56 See TEA-21 sec. 3009(e), § 5309(e)(3)(C).

57 See TEA-21 sec. 3009(e), § 5309(e)(3)(A).

58 Other factors the DOT can take into consideration include current and future land use patterns; congestion relief, air pollution, noise pollution, and energy consumption; the technical capability of the local or state government to construct the proposed project; as well as any other factors the Secretary deems relevant. See Transportation Equity Act for the 21st Century (TEA-21) sec. 3009(e), § 5309(e)(3), Pub. L. No. 105-178, 112 Stat. 107, 353 (1998) (codified at 49 U.S.C.A. § 5309(e)(3)). This expands the inquiry DOT was required to make under ISTEA. Compare id. (directing the Secretary of Transportation to consider costs of alternatives, costs of other environmental factors, the cost of sprawl in light of current land use policy, increased mobility and economic development likely to result from the project, population density, capabilities of the grant recipient, adjustments due to different costs in different localities, and other appropriate factors) with earlier language in 49 U.S.C. § 5309(e)(3) (1994) (directing only that the Secretary consider costs of alternatives, costs of other environmental factors, current land use policy, increased mobility and economic development likely to result from the project, and other appropriate factors).

59 See TEA-21 sec. 3009(e), § 5309(e)(6).

60 See TEA-21 sec. 3009(g). Three and one half billion dollars are authorized to fund this section. See United States Department of Transportation, supra note 17.
the requests for funding for fixed-guideway systems, the Secretary of the DOT is responsible for approving these grants. In considering approval, the DOT "shall consider the age of buses, bus fleets, related equipment, and bus-related facilities."  

C. Clean Fuels Formula Grant Program  

The Clean Fuels Formula Grant Program provides funds for transit operators to purchase low-emission or zero-emission buses, modify existing buses for clean fuel technology, construct alternative fuel fueling facilities, and improve existing transit facilities to accommodate clean fuel buses. "Clean fuels" are defined as compressed natural gas, liquefied natural gas, biodiesel fuels, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel, or any other low or zero emissions technology. Up to $15 million is available as grants to transit operators in areas with populations of less than one million, and up to $25 million is available for areas with populations of more than one million. Up to $200 million is authorized for the program until 2003.  

D. Job Access and Reverse Commute Grants Program  

Recognizing that most new job creation is occurring in suburban areas, the Job Access and Reverse Commute Grants program provides grants to local governments and non-profit organizations to provide transportation to welfare recipients and other low income individuals to  

61 See TEA-21 sec. 3009(e), § 5309(f)(3).  
62 See TEA-21 sec. 3009(g), § 5309(m)(3)(A).  
63 See TEA-21 § 3008(a).  
65 See TEA-21 sec. 3008, § 5308(a)(1)(A).  
67 See id.  
68 See Jane Holtz Kay, Asphalt Nation: How the Automobile Took Over America, and How We Can Take it Back 39 (1997) ("For forty years two out of every three new jobs have been exported to the suburbs.").  
69 See TEA-21 § 3037.  
70 A "low-income individual" is defined as "an individual whose family income is at or below 150% of the poverty line . . . ." Transportation Equity Act for the 21st Century
III. ANALYSIS: TEA-21'S MISTAKEN TRANSPORTATION POLICY

As the largest public-works program ever authorized by Congress, TEA-21 will shape America's transportation policy, for better or worse, until 2003. Despite an increase in transit spending, the massive influx of highway dollars will increase American dependence on the automobile and will serve to accelerate urban sprawl. Other factors, such as the investment in Intelligent Transportation Systems, add to the effect of reinforcing the automobile as the American way to get to work.

A. TEA-21 and the Daily Commute

There are more people driving to work than ever before. In 1990, 86% of Americans drove to work, with 73% of those driving alone. In

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72 See TEA-21 § 3037(b)(2).
73 Id.
74 See TEA-21 § 3037(f).
75 See Surface Transportation Policy Project, TEA-21: The Big Picture, supra note 45.
the same year, only 5% of Americans used some form of public transportation.\textsuperscript{78} Even cities that have invested heavily in mass transit have not seen the anticipated rise in its use or the corresponding decline in the use of single-occupancy vehicles.\textsuperscript{79}

Why is it so difficult for Americans to change their commuting habits? There are a variety of factors contributing to Americans' reluctance to give up their cars in favor of other transportation options. The most important, and most problematic, reason Americans forgo public transportation in favor of their cars is because of the development patterns which have shaped American land use since World War Two, particularly the growth of suburban areas.\textsuperscript{80} This growth of suburban housing has led

\textsuperscript{78} See id. The total is actually 5.3%. Three percent of Americans used a bus, 0.1% used a streetcar or trolley car, 1.5% used a subway or elevated train, 0.5% used a train, and less than 0.1% used a ferry. \textit{See id.} Inexplicably included in the public transportation count are people who commuted using a taxi (0.2%). \textit{See id.} Other methods besides cars and public transportation include motorcycles (0.2%), bicycles (0.4%), and walking (3.9%). \textit{See id.}

\textsuperscript{79} \textit{See United States Bureau of the Census, Travel to Work Characteristics for the 50 Largest Metropolitan Areas by Population in the U.S.: 1990 Census} (visited Oct. 6, 1999) <http://www.census.gov/population/socdemo/journey/msa50.txt>. Portland, Oregon has been touted as an example of a community that has taken the lead in policies to create a higher-density environment that is transit-friendly. While Portland's new transit policies have not been completely implemented, significant portions of them have been; yet the use of public transportation in the metropolitan area has remained at roughly six percent of all commuters. \textit{See Talk of the Nation, supra} note 76. A more encouraging statistic can be found in the percentage of people who commute using public transportation in the City of Portland proper: that proportion rises to 11%. \textit{See United States Bureau of the Census, supra.} Most people in Portland approve of the policies that the city is implementing, and are actively participating in some of the urban development projects (i.e., living in neighborhoods with higher population densities that are well-served by transit) yet still get up in the morning and drive to work. \textit{See Talk of the Nation, supra} note 76 (comments of Damian Kulash, President and CEO, ENO Transportation Foundation). This illustrates how difficult it is for Americans to break the automobile habit. An optimistic view is that Portland's policies have only been implemented for roughly five years, and people will eventually change their commuting habits.

\textsuperscript{80} \textit{See KAY, supra} note 68, at 227. The first large-scale suburbs were the Levittowns that sprang up immediately after the war outside New York City. \textit{See id.} The trend quickly spread south and west. \textit{See id.} at 228. \textit{See also G. SCOTT THOMAS, THE UNITED STATES OF SUBURBIA} 38 (1998) (stating that suburbanization was accelerated by the construction of the Interstate Highway System).
to a corresponding growth in suburban employment, with two out of every three new jobs created located in suburban areas.\[81\] As places of employment have been scattered throughout the suburban landscape, the loss of central employment areas has diminished the use of public transportation due to inconvenience as well as prohibitive cost.\[82\]

The issue is problematic due to the enormity of the dilemma we have gotten ourselves into: we cannot undo over fifty years of land use planning and construction overnight. However, we should not implement policies that will contribute to and exacerbate the problem, which is precisely what TEA-21 will do. As noted, Title I of TEA-21 injects over $171 billion into America’s highway network, by far the largest amount of funds approved under TEA-21.\[83\] By investing so heavily in highways, Congress has essentially determined that our transportation policy and the way it relates to land use will continue, thereby ensuring that the problem of urban sprawl will not be addressed by TEA-21.\[84\]

B. Funding Urban Sprawl

State Departments of Transportation (“SDOTs”) are given the primary role of determining where and on what projects federal money will be spent; and they are historically known to favor highway construction projects.\[85\] Under TEA-21, SDOTs are given the authority to

\[81\] See KAY, supra note 68, at 39. See also ANTHONY DOWNS, STUCK IN TRAFFIC: COPING WITH PEAK-HOUR TRAFFIC CONGESTION 19 (1992) (stating that a 1989 Coldwell Banker study found that the suburbs attracted 72% of the new office space built, and 74% of the office space actually absorbed).

\[82\] See DOWNS, supra note 81, at 19. “[S]uch dispersal also discourages the use of car pooling, van pooling, and other ride sharing.” Id.

\[83\] See supra note 17 and accompanying text.

\[84\] There are, not surprisingly, many other reasons sprawl occurs besides new road construction, and this Note is not meant to convince the reader that roads are the only evil. Other factors that have an influence on housing patterns, as well as on employers’ job-location decisions, include population growth, the affluence of groups of people, the desire of different groups to escape the city, and development patterns and the land use policies that accompany them. See Rogers Worthington, Money on the Move: State Report Ties Suburban Sprawl to Affluence, Not Roads, CHI. TRIB., Nov. 15, 1998, at 5P. However, the policies that support sprawl include, to a large extent, the notion that highways will be built to accommodate it.

\[85\] See Dilger, supra note 42, at 51. See, e.g., Preston Schiller, Editorial, Transportation Equity Promised but Hasn’t Arrived At Station, SEATTLE POST-INTELLIGENCER, June 24,
transfer up to half of the funds they receive away from highway projects and into transit projects and other alternative transportation projects. However, given the enormous amount of money that will be flowing to the states, SDOTs will be hard pressed to ignore road projects that have been on their agendas for years.

1. Atlanta, Georgia

TEA-21 will continue to support sprawl because the states receiving the greatest amount of highway funds are also the states with the greatest sprawl problems. Atlanta, Georgia has been placed at the top of the Sierra Club’s list of cities with the worst urban sprawl problems. The city is one of the fastest-growing urban areas in the nation and the urban growth rate and the corresponding land use there has been tremendous. Yet, despite the rate of growth and the parallel urban sprawl, Georgia was the state that received the fourth-highest amount of highway funds: an average of over $363 million a year every year until 2003, with another $240 million per year in STP funds. Of those funds, Atlanta is due to receive almost eighty-three percent of the total.

1998, at A11 (noting that the Washington State Department of Transportation spends almost all of its money on highways).

See Schiller, supra note 85.


See Sierra Club, Ten Most Sprawl-Threatened Large Cities: Atlanta (visited Oct. 6, 1999) <http://sierraclub.org/transportation/sprawl/sprawl_report/atlanta.htm>. Atlanta’s urban growth rate is such that every week, 500 acres of green space, forest and farmland surrounding the metro area are converted into developed areas. See id. The city’s urban land area grew by an astounding 47% between 1990 and 1996; and that growth followed a 25% land area growth rate the previous decade. See id. From 1990 to 1996 the population of the Atlanta metropolitan area increased by 40%, but the city proper only saw a population increase of 2%. See id. According to the Sierra Club, “[g]reen space is being gobbled up by sprawl faster than in any metro area in history . . . “ Id. See also Daniel Pedersen et al., Sprawling, Sprawling . . . , NEWSWEEK, July 19, 1999, at 22, 26 (noting that Atlantans drive 36.5 daily round-trip miles to work, the longest commute in the country).

See Sierra Club, supra note 88.

Coincidentally (or not), Newt Gingrich (R-GA) was Speaker of the House at the time.

See Surface Transportation Policy Project, United States Department of Transportation, Average 1998-2003 Apportionment Estimates Pursuant to TEA-21 as Amended by the
2. Los Angeles-Long Beach, California

In California, the pattern is repeated. The Golden State received the largest portion of the highway funds distributed to the states, with an average of $864 million authorized every year, and another $590 million per year in STP funds. Of these funds, the sprawling Los Angeles-Long Beach metropolitan area is apportioned almost fifty percent. Given the broad flexibility that the state DOT is given to determine how the funds will be used, there is no guarantee that they will not fuel the fire that is Los Angeles' famed urban sprawl.

3. Kansas City, Missouri

Areas with high economic growth, and thus the capacity for additional sprawl, are also slated to receive large amounts of funding for highway improvement and construction. Kansas City has been listed as the city with the fifth-worst urban sprawl problem in the country. Major businesses have been relocating to suburban areas and the region has
more freeway lane miles per capita than any other large metropolitan area in the United States, with three times as many lane miles as Los Angeles. The wide network of highways has its benefits, as Kansas City is among the least traffic congested American cities. But the benefits of making commutes comfortable for drivers have their downsides as well. For instance, the 1990 census indicated that Kansas City exceeds the national average for people who drive to work alone, and the use of public transportation is among the lowest in the nation. Smooth commuting makes suburban sprawl easier to swallow for people who are not reminded of sprawl's disadvantages twice a day.

Despite the lack of congestion and the immense urban sprawl, city transportation planners and the state DOT proposed building the "21st Century Parkway," a two-lane (to have been upgraded to four lanes) outer-belt highway. The project has since been abandoned, but local governments in the region have many other new roads on their wish lists which TEA-21 will make possible. Missouri is authorized to receive an average of $234 million per year in highway funds under TEA-21, with

Large-scale development projects in the suburban fringe continue to occur. Sprint is building a 200-acre office campus near the southwest edge of the metro area to house most of its 14,000 employees. Harley-Davidson built a new plant at the north edge of the area using tax incentives intended for core city areas. A NASCAR racetrack and Land of Oz theme park are being planned at the western edge of the region.

Id. See also Kevin Helliker, Can Trees and Jogging Trails Lure Techies to Kansas?, WALL ST. J., Oct. 21, 1998, at B1 ("If it were incorporated, the [Sprint] campus's 14,500 daytime inhabitants would make it the 27th-largest municipality in Kansas.").


101 See Sierra Club, supra note 88. See also Adams, supra note 99, at A1. Eighty percent of Kansas City workers commuted alone in their cars, 12% commuted using rideshare, and only 2% used transit. See id.

102 See Lester & Spivak, supra note 100 (discussing a couple whose commute time from their home in the country, when totaled, equals one month a year, and explaining that the commuting is worth it to them because of their love of the open spaces and solitude).


104 See Sierra Club, supra note 97.
another $152 million in STP funds per year. Kansas City is authorized to receive thirty-three percent of those funds. Increased highway funding is likely to intensify the problem of sprawl and increased auto use in an area that can ill afford it.

4. Chicago, Illinois and Denver, Colorado

The pattern is now familiar. Illinois is authorized to receive an average of $341 million per year in highway funds, with an additional $216 million per year in STP funds. Under TEA-21, the Chicago metropolitan area is authorized 87% of that total. Between 1990 and 1996, the Chicago urban land area expanded 40%, outpacing actual population growth by 31%. Likewise, Colorado, the fifth-fastest growing state in the country, is authorized to receive an average of $137 million per year in highway funds, with an additional $84 million per year in STP funds. Of those funds, the Denver metropolitan area will receive 81%. In Denver, the pressure on urban boundaries is growing with little friction: “[u]pdated statistics from the U.S. Census Bureau . . . showed that Denver has issued more new building permits in the 1990s than all but seventeen areas in the United States . . . .” TEA-21 pours highway money into communities that have the worst sprawl in the nation. As a transportation policy, this is misguided.

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105 See Surface Transportation Policy Project, United States Department of Transportation, supra note 91.
106 See United States Department of Transportation, supra note 87.
107 See Surface Transportation Policy Project, United States Department of Transportation, supra note 91.
108 See United States Department of Transportation, supra note 87.
111 See Surface Transportation Policy Project, United States Department of Transportation, supra note 91.
112 See United States Department of Transportation, supra note 87.
C. Building Additional Highways is not the Solution

Building new highways or adding lanes and additional capacity to existing highways rarely relieves congestion and most frequently simply adds to the total volume of cars that use the highway.\textsuperscript{114} In addition, the expense of adding new highway capacity is not cheap: Florida DOT data compilations suggest that in 1990, the national average cost of adding two lanes to a two-lane highway was almost two million dollars per mile.\textsuperscript{115} Highway construction itself has numerous environmental consequences as well. These can be grouped into four broad areas:

(1) impacts associated with highway location (such as the loss of acreage, changes in flow and drainage patterns, changes in the subsurface water table, changes in indigenous vegetation or wildlife, and aesthetic changes); (2) impacts associated with highway construction (including disturbances caused by construction equipment, runoff and sedimentation, dredge and fill operations, and construction-related pollution); (3) impacts related to highway operation (such as runoff from salts and automobile-related pollutants, litter, noise and air pollution); and (4) impacts caused by activities undertaken because of the opportunities created by the highway (including secondary developments and the drainage of wetlands into highway drainage systems by adjacent landowners).\textsuperscript{116}

Far from being the solution to America’s transportation dilemma, as the reliance TEA-21 places on them suggests, highways in fact contribute to many of the problems that urban planners and environmental groups have been fighting to overcome. By targeting the bulk of TEA-


\textsuperscript{115} \textit{See id.} at 703 (citing FLORIDA DEPARTMENT OF TRANSPORTATION, 1991 TRANSPORTATION COSTS 4 (1991)).

21's funds to highways, Congress has ensured that Americans will continue to be affected by the ancillary effects of highways for years to come.

D. **TEA-21: Highways vs. Transit (Highways Win)**

TEA-21 represents a slight increase in transit spending over the previous ISTEA authorizations. However, the slight gains realized in transit funding are greatly overshadowed by TEA-21's reliance on highway spending. As an example, let us examine Kansas City, noted above as one of the cities with the greatest sprawl problem in the country. The city is authorized to receive approximately $127 million per year in combined highway and STP funds. This equals a total of approximately $672 million over the life of TEA-21. In contrast, the area is only authorized to receive an average of $7.5 million per year in Title I transit funding (excluding new starts and bus). The city will also acquire $30 million for a commuter rail system (under new starts), but will receive no money for buses. This equals a total of $75 million for the six years that TEA-21 is in effect. The disparity in Kansas City between highway spending and transit spending equals almost $600 million in a city that already has more highway miles per capita than any other city in the United States.

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117 See Surface Transportation Policy Project, United States Department of Transportation, *Spending the Money: What Happened to the ISTEA Programs?* (visited Oct. 8, 1999) <http://www.istea.org/guide/sm.htm>. Of all funding guaranteed under TEA-21, 18.1% is earmarked for highways compared to 17.3% of total funding under ISTEA. See id.

118 See supra notes 96-106 and accompanying text.

119 See Adams, supra note 103, at C2.


123 See supra note 99 and accompanying text.
In Atlanta the disparity, although somewhat less disturbing, is still high. The city with the nation's worst sprawl problem\textsuperscript{124} is authorized to receive an average of approximately $500 million per year in combined highway and STP funds.\textsuperscript{125} This equals almost $3 billion in funds between 1998 and 2003. Transit funding in Atlanta, in contrast to Kansas City, is fairly high, but with the city guaranteed to receive a total of almost $378 million of funds for the life of TEA-21,\textsuperscript{126} with an additional $22.5 million for buses for 1999 and 2000,\textsuperscript{127} it is still inadequate. At $2.6 billion, the disparity between highway funds and transit funds are enormous; however, as a perennial violator of health standards for ozone smog, Atlanta is prohibited from spending federal money on new roads until it conceives a plan to lower emissions.\textsuperscript{128} Therefore, Atlanta officials are stating that they are committed to rail for the future of Atlanta, and the TEA-21 provisions allowing up to half of the money from highway funds to be used for transit may be the answer for this smoggy, sprawling city.\textsuperscript{129} Yet, the state DOT has recently stated that they opposed using gas tax money for anything but roads, leaving open the question of whether Atlanta will be able to use the highway money for transit projects.\textsuperscript{130}

E. TEA-21 and the Myth of Intelligent Transportation Systems

Intelligent Transportation Systems ("ITSS") are high-technology systems to monitor and control traffic flow with a goal to reduce traffic

\textsuperscript{124} See supra note 88 and accompanying text.
\textsuperscript{125} See supra notes 90-91 and accompanying text.
\textsuperscript{126} See Federal Transit Administration, United States Department of Transportation, Guaranteed Authorizations (visited Nov. 9, 1999) <http://www.fta.dot.gov/library/policy/t21g6.htm>. This $378 million is earmarked specifically for fixed guideway modernization and urban formula grants. See id.
\textsuperscript{127} See Federal Transit Administration, supra note 122.
\textsuperscript{129} See id.
\textsuperscript{130} See David Goldberg, DOT Emphatic About Role in Train Service for Ga., ATLANTA J.-ATLANTA CONST., Aug. 31, 1998, at E3 ("[T]he state Department of Transportation board vowed that only it would decide whether, when and how train service would be launched in Georgia."). See also Pedersen et al., supra note 88, at 26 (stating that Georgia's new Democratic governor, Roy Barnes, who was elected in 1998 after promising to do something about sprawl, has created the Georgia Regional Transportation Authority, which will attempt to extend "Atlanta's feeble mass-transit system to the suburban counties that have always resisted it").
congestion. Although the term “ITS” encompasses a wide variety of technologies and services aimed at reducing traffic congestion, the general idea is the same. Utilizing monitoring devices and communications systems installed in cars, the system will transmit data about traffic flow to a central processing agency which would then pass on the information to drivers, who conceivably would then take alternate routes. The purpose of ITS is ostensibly to avoid building new roads by effectively using the transportation infrastructure already in place. However, there are problems with this reasoning. First, even if effectively implemented, the technology will eventually reach its limit, and the infrastructure it was designed to use more efficiently will have to be expanded. Second, in the interim, people will be re-routed to other roads, possibly extending trip time and increasing the number of trips made. Third, while it is working, an ITS will reduce the demand for alternative methods of transportation, delaying the possible implementation of other, more effective transportation choices until the technological limits have been reached.

TEA-21 invests almost $1.3 billion into ITS technology over the life of the Act. While this amount is negligible compared to the total

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132 See Philip E. Agre, Reasoning About the Future: The Technology and Institutions of Intelligent Transportation Systems, 11 SANTA CLARA COMPUTER & HIGH TECH. L.J. 129, 130 (1995) (“Although it would be desirable for these technologies and services to be designed to common standards, various segments of the industry may acquire their own momentum independently of the others.”).
133 See CARLSON ET AL., supra note 131, at 82.
134 See id.
135 See id.
136 See id.
137 See id. There are other worries about ITSs; specifically the privacy concerns of monitoring peoples’ movements. For discussions concerning the privacy concerns of ITSs, see Christopher Slobogin, Technologically-Assisted Physical Surveillance: The American Bar Association’s Tentative Draft Standards, 10 HARV. J.L. & TECH 383, 405-07 (1997). See generally Symposium, Transportation, Technology and Privacy, 11 SANTA CLARA COMPUTER & HIGH TECH. L.J. 3 (1995).

[Providing] for the research, development, and operational testing of Intelligent Transportation Systems (ITS) aimed at solving congestion...
amount of funding in the Act, the investment is misguided. While ITSSs are an admirable attempt to solve the congestion that clogs most American urban areas, in the end, TEA-21’s support of ITSSs have the effect of making the car more convenient, thus diminishing the desirability of transit options. What ITSS demonstrates about America’s transportation policy is that our number one concern is simply to get traffic moving safely and swiftly. This emphasis on making our single-passenger automobile commutes easier negates efforts to promote public transit as a convenient and pleasant way to commute.

The movement to increase automobile commuting efficiency overlooks the real costs of focusing on automobile commuting as opposed to transit-based solutions. The direct, personal costs of automobile transportation account for 15-20% of the gross domestic product, while the costs of transit-based transportation account for only 5-10% of GDP. In addition, the environmental costs of increased automobile use is equally


139 Even the truth of this misguided rationale is questionable. Some commentators argue that ITSS systems will not ease overcrowding. See, e.g., ANTHONY DOWNS, STUCK IN TRAFFIC: COPING WITH PEAK-HOUR TRAFFIC CONGESTION 74 (1992) ("[D]rivers informed that route A is unusually crowded will shift to route B, overcrowding it too.").

140 See Burrington, *supra* note 114, at 694-99.

In most states and municipalities, transportation policy is, by and large, traffic policy. This means that transportation agencies concern themselves primarily or exclusively with streets and roads, and treat streets and roads simply as conduits for motor vehicle traffic. The American Association of State Highway and Transportation Officials’ *A Policy on Geometric Design of Highways and Streets*—the bible of conventional street and road design—states that the goal of design is “to provide operational efficiency, comfort, safety, and convenience for the motorist.”

*Id.* at 694 (footnote omitted).

 Automobiles account for one-third of America's carbon dioxide emissions, while in the rest of the world, they do not even account for 10% of total carbon dioxide emissions. Furthermore, while U.S. emissions fell below 1989 levels in 1995, they are expected to reach levels exceeding 130% of 1989 levels by 2009. TEA-21's ITS provisions ignore these ancillary effects of an easier commute.

F. TEA-21 and Metropolitan Planning

Continuing the tradition begun by ISTEA, TEA-21 gives metropolitan planning organizations ("MPOs") responsibility for determining what transportation investments best suit their communities, and require each MPO to adopt a transportation plan. The Act states:

—The metropolitan planning process for a metropolitan area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety and security of the transportation system for motorized and non motorized users;

(C) increase the accessibility and mobility options available to people and for freight;

(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

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(E) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
(F) promote efficient system management and operation; and
(G) emphasize the preservation of the existing transportation system.145

The planning process contained in TEA-21 has been streamlined considerably from that contained in ISTEA.146 Instead of a total of thirty-nine factors, the TEA-21 list now contains only seven.147 However, it fails to include factors that will actually change American transportation policy and reduce auto dependence in favor of other transportation alternatives. A truly sustainable transportation policy needs to include factors reflecting intelligent land-use choices that local and state governments are required to follow.

IV. WHERE TEA-21 WENT WRONG: A PROPOSAL FOR A TRULY SUSTAINABLE TRANSPORTATION POLICY FOR AMERICA

A. Equalize Highway and Transit Spending

Increased transit use has many benefits. Yet, when transit programs are presented for voter-approval, the overriding concern among tax-weary voters is cost. This concern is misplaced, however, as the primary drain on public funds is automobile use, which ends up costing every man, woman and child in America over four thousand dollars per year.148 Public transportation, by comparison, is an extremely efficient

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145 TEA-21 § 1203(f).
146 See Wormser, supra note 26 (stating that planners will like the TEA-21 planning requirements because they replace 16 metropolitan and 23 state planning factors that had to be considered under ISTEA.).
147 See id.
148 See Benfield, supra note 141. According to Benfield, “the direct, personal costs of automobile travel account for about 15% to 20% of the Gross Domestic Product.” Id. When all the costs of passenger ground transportation are added, it ends up costing the American public $1.2 to $1.6 trillion every year. See id. In addition, the indirect subsidies for automobile use far exceed the direct subsidies for public transportation, although because they are not as readily obvious as transit subsidies, they are rarely attacked. See id.
allocator of costs. In addition, a community’s investment in public transportation tends to reap many economic benefits such as urban revitalization; access to jobs, health care and services; savings in public assistance such as Aid to Families With Dependent Children; fuel savings and improved air quality.

Unfortunately, the problem of increasing ridership has been historically difficult and has never been adequately addressed by lawmakers for one simple reason: legislative proclamations intending to change personal behavior rarely have the success of programs regulating industry. An obvious solution to the problem is to make transit options more desirable than driving alone to work. However, this has historically been a complex proposition. The popularity of the automobile has long been the bane of urban planners who wish to increase transit ridership. This preference for the convenience and freedom that the automobile represents has contributed to decreased transit ridership since the 1920s. By the 1950s, America’s transportation policy strongly favored the automobile and highway construction as the primary mode of transportation. Increasing ridership is problematic, but with the right mixture of programs to make transit a more appealing option, TEA-21 could have made the difference.

Ignoring the benefits of transit, TEA-21 favors highways over transit at nearly five-to-one: for every five dollars authorized by the bill for

149 See DEBORAH GORDON, STEERING A NEW COURSE: TRANSPORTATION, ENERGY, AND THE ENVIRONMENT 35 (1991) (showing that Btu per passenger-mile for automobiles are up to seven times higher than for transit options such as vanpool, transit rail, commuter rail and bus).
150 See, e.g., Hannibal B. Johnson, Making the Case for Transit: Emphasizing the "Public" in Public Transportation, 27 URB. LAW. 1009, 1010 (1995) (explaining that for every one dollar invested in Tulsa, Oklahoma’s public transportation system, the community obtained seven dollars in a wide spectrum of savings).
152 See DAVID J. ST. CLAIR, THE MOTORIZATION OF AMERICAN CITIES 82-84 (1986).
153 See id. at 8-9.
154 This favor was exemplified by President Eisenhower's Interstate Highway System, created by the Federal-Aid Highway Act of 1956, ch. 462, 70 Stat. 374 (codified as amended in scattered sections of 23 U.S.C.), which began the process of building large interstates to handle the increasing number of automobiles in use. See D. Brennen Keene, Transportation Conformity and Land-Use Planning: Understanding the Inconsistencies, 30 U. RICH. L. REV. 1135, 1140 (1996).
highways, one dollar is thrown in for transit. In addition, eighteen percent of the funds for transit are not guaranteed; meaning that Congress could further reduce the commitment to transit. While state DOTs are permitted to transfer up to half of their highway funds into transit programs, pressures against doing so are usually too strong to resist. A difficult and perhaps politically impossible task (given legislators' desire to bring funds to their districts) should have been undertaken at the time of debate: the existing highway system should have been repaired and only the most pressing new road projects should have been funded. Specifically allocated transit funds should then have been dramatically increased to put them on a par with highway spending. At the same time, incentives in the form of large-scale funding should have been integrated with the transit provisions to increase public transportation participation.

These incentives could have been authorized for communities to invest in land-use policies that encouraged transit ridership, and additional incentives could have been offered for communities that increased ridership by a stated amount within a stated amount of time. For example, encouraging land-use patterns that cluster mixed-use development close to transit stations, offering expanded transit service to popular locations, and revitalizing urban residential neighborhoods that are easily served by public transportation. Studies have shown that by placing shopping, residential and service options near transit stations, ridership on public transit has increased dramatically. Additionally, providing incentives to increase employment opportunities near transit stations would dramatically increase the use of transit. Combined with measures that slow suburban job growth, locating new job growth near

155 See United States Department of Transportation, Guaranteed Funding Fact Sheet (last visited Oct. 12, 1999) <http://www.fhwa.dot.gov/tea21/factsheets/guarfund.htm> (comparing highway and transit funding under TEA-21.)


157 See supra note 85 and accompanying text.

158 The practice of legislators bringing funds home, of course, is not restricted to highway funds. A pleasant scenario could be imagined: members fighting over who could have brought the most transit and sustainable development funds home.

159 See KAY, supra note 68, at 306-08, 315 (“In a nation where 53% of the population lives within two miles of public transportation, the connection of bus and streetcar, foot and ferry, train and bicycle in so-called intermodal linkages could return us to such once scorned means of circulation.”).

existing suburban transit centers and building new transit centers near existing large employers or large employment centers will increase ridership.\textsuperscript{161}

B. Reinstate Amtrak Funding

America lags far behind Japan and Europe in the utilization of trains as efficient passenger carriers.\textsuperscript{162} As a national rail system, Amtrak is an embarrassing example of America’s short-sighted and automobile-dominated transportation policy. Decreased funding imposed by politicians and presidential administrations hostile to its existence\textsuperscript{163} have made its growth extremely difficult, and, as a result, its usefulness as a major carrier has been stymied.\textsuperscript{164} However, as a foundation of a viable national passenger rail system, Amtrak has been illustrative. Many of Amtrak’s intercity routes have seen steadily increasing ridership, and trip times have been reduced through the introduction of new, faster trains and technical improvements to older trains.\textsuperscript{165}

Those in Congress who are infuriated with Amtrak’s overall unprofitability are demanding that Amtrak becomes profitable “or else.” However, calls by fiscal conservatives to privatize Amtrak and let it sink

\textsuperscript{161} See id. at 221.
\textsuperscript{162} For an excellent introduction to Japanese and European rail utilization as compared to the American use of trains, see generally Brian Kingsley Krumm, Note, \textit{High-Speed Ground Transportation Systems: A Future Component of America’s Intermodal System?}, 22 TRANSP. L. J. 309 (1994).
\textsuperscript{163} For example, since its inception 28 years ago in 1971, Amtrak has garnered roughly $22 billion in federal money. See \textit{US Projects a $304m Deficit for Amtrak in 2003}, BOSTON GLOBE, Dec. 2, 1998, at A9. In comparison, TEA-21 guarantees $171 billion in highway funding alone for the next six years, spending almost eight times as much in 1/4 of the time. See \textit{supra} note 17 and accompanying text. See also Linda Baker, \textit{End of the Line}, 21 TRANSPORTATION 23 (describing how Congress in 1996 cut transit funding by 30% and how hundreds of regional transit agencies lost up to 50% of their federal operating assistance).
\textsuperscript{164} Amtrak’s woes have not gone away. In 1997, Congress passed legislation that will have the effect of ending federal support of Amtrak in 2002. See \textit{US Projects a $304m Deficit for Amtrak in 2003, supra} note 163. In addition, the Transportation Department’s Inspector General released a report in 1998 indicating that Amtrak will have a $304 million to $535 million cash deficit the year that federal funding ends. See \textit{id}.
\textsuperscript{165} See Schiller, \textit{supra} note 85, at A11 (stating that the Seattle-Portland route has been trimmed from four hours to three hours, and thirty minutes, and that overall train ridership in the Seattle-Portland-Vancouver, B.C. region has increased by 31%).
or swim are unreasonable.\textsuperscript{166} Congress has never demanded that highways earn a profit, yet we continue to subsidize all that the automobile requires, from highways to military spending to protect foreign oil reserves.\textsuperscript{167} In addition, Amtrak provides crucial services throughout the United States. For example, the New York to Washington route carries as many passengers as the airlines,\textsuperscript{168} and one commentator has noted that an additional fifty-five airline flights per day between the two cities would be required to make up the shortfall if Amtrak were to be dismantled.\textsuperscript{169} Amtrak also provides a significant service to those in rural America, where

\textsuperscript{166} See Robert Cohen, \textit{Amtrak Gets An Ultimatum; Congress Orders it to Turn a Profit or Face Extinction}, CLEVELAND PLAIN DEALER, June 4, 1998, at 9B. Others are also calling for an end to support for rail, most notably the regional airlines that compete with Amtrak or would compete with a proposed high-speed rail line for the passenger traffic between regional cities. See e.g., George Foster, \textit{On Track to the Future; Trains Could Relieve Northwest's Traffic Congestion}, SEATTLE POST-INTELLIGENCER, Oct. 6, 1998, at A1 (describing Northwest regional airline Horizon Air and its opposition to government support of rail: "[i]t is odd to us that the government would take the taxpayers' money and use it to compete" with airlines). For another example of disputes between regional airlines and rail proponents, see generally Kathy Fox Powell, Comment, \textit{Southwest Airlines v. High-Speed Rail: More Powerful Than a Locomotive?}, 60 J. AIR L. & COM. 1091 (1995). Southwest Airlines sued the Texas High-Speed Rail Authority concerning a proposed government-supported high-speed rail line connecting Dallas-Fort Worth, Houston, Austin, and San Antonio. See id. at 1094. The lawsuit eventually failed, but enough time was wasted that the Texas High-Speed Rail Authority failed to meet its deadlines and ultimately failed. See id. Many commentators give Southwest the credit for killing high-speed rail in Texas. See id. at 1095.

The airlines forward the argument that the government should not support another mode of transportation that directly competes with the regional airlines. However, this argument lacks credibility because, like automobiles, federal support of airlines is substantial. From air-traffic control to support for airport construction, airlines could not make it without the support of the federal government. See Foster, supra, at A1. See also Baker, supra note 163 (stating that in 1998, Congress budgeted almost $10 billion for the Federal Aviation Administration, ten times the amount for rail).

\textsuperscript{167} See Michael E. Lewyn, \textit{The Urban Crisis: Made in Washington}, 4 J. L. & POL'Y 513, 524 (1996) ("Dependency on Middle Eastern oil costs American taxpayers roughly fifty billion dollars a year in military spending to protect Persian Gulf oil and about 500 million dollars per year for the Strategic Petroleum Reserve.").


some cities and towns have little or no airline service and where brutal winters limit driving.\textsuperscript{170}

Some will say that the market should determine whether Amtrak survives, and if the market does not support it, then it should be allowed to die a quick death. However, for America to develop a truly intermodal transportation system, passenger trains must be subsidized. Like planes\textsuperscript{171} and automobiles,\textsuperscript{172} which garnered significant governmental support in their infancy to spur their development as our primary sources for passenger transportation, trains need to be nurtured back to health to again become a vibrant component of America’s transportation system. America needs a national passenger rail service, yet TEA-21 is completely silent concerning Amtrak. Transportation equity is not achievable without a viable national rail service.

C. \textit{Change the Focus of the Metropolitan Planning Organizations}

The MPOs need to be required to develop truly sustainable urban growth and transportation plans for their communities. Those plans need to reflect a conscious desire to move away from the traditional automobile and road-based transportation policy that has been the norm since the 1950s, and begin to move towards a transportation policy that encourages alternative forms of transportation and more compact, mixed-use growth schemes.

\textsuperscript{170} See David Patch, \textit{Will the Whistle Stop? Critics, Supporters Wonder If There’s Still Steam Behind Amtrak’s Cross-Country Rail Travel}, PITTSBURGH POST-GAZETTE, Dec. 23, 1998, at E1 (“in places like Devil’s Lake [N.D.], Minot [N.D.], and Cut Bank, Mont.—cities that have little, if any, airline service and are hundreds of miles from population centers - the train continues to fill a vital transportation role”). See also Paul Stephen Demsey, \textit{The Dark Side of Deregulation: Its Impact on Small Communities}, 39 ADMIN. L. REV. 445, 453 (1987) (“Of the communities served by Amtrak, 119 have no scheduled airline service . . . Another 96 Amtrak-served communities have no scheduled intercity bus service; 40 have neither air nor bus service.”).

\textsuperscript{171} After 1934, federal funds became the primary source of airport funding. Paul Stephen Demsey, \textit{The State of the Airline, Airport & Aviation Industries}, 21 TRANS. L. J. 129, 136 (1992). Later, following World War II, the airline industry was nurtured by presidential administrations. See Kay, \textit{supra} note 68 at 243

\textsuperscript{172} In the early 1900s and in the years following World War II, various state and federal agencies saw the automobile as a prime means of transportation and lobbied (successfully) to build more roads to accommodate the increasing numbers of cars in America). See Kay, \textit{supra} note 67 at 147, 150, 226.
1. **MPOs Should Encourage Alternative (or Natural) Means of Transportation**

In a culture dominated by the automobile, a walk or bike-ride to the store can be a hazardous and time-consuming undertaking. Pedestrians and cyclists encounter dangers including six-lane highways and busy suburban streets with no sidewalks, and physical obstacles such as overpasses and enormous parking lots. The automobile culture demands that the car be king, subjecting the pedestrian or cyclist to the role of hapless serf. TEA-21 should have addressed this imbalance, creating pedestrian and bicycle-friendly communities in which other, more natural modes of transportation are on an equal level with the automobile. While TEA-21 does provide an average of $27 million for transit enhancements, which include pedestrian walkways and bicycle access, these funds are miniscule compared to the massive outlay for highway spending. Guaranteed funding for bike lanes and sidewalks should have been included in TEA-21. By encouraging foot and bicycle traffic in urban areas, urban planners revitalize areas choked with traffic, generate additional revenues, and bring liveliness to downtown sections devastated by decades of suburban growth.

To facilitate a move towards pedestrian-friendly communities, traffic-calming measures such as street-narrowing projects, speedbumps and traffic circles in residential areas should have been funded, all of which make walking and cycling safer and more enjoyable. And while

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173 See United States Department of Transportation, *Transit Enhancements Fact Sheet* (last modified Sept. 14, 1998) <http://www.fhwa.dot.gov/tea21/factsheets/transenh.htm>. Along with bicycle access to transit facilities and pedestrian walkways, “transit enhancements” include public art, landscaping, signage and bus shelters. See Transportation Equity Act for the 21st Century (TEA-21) sec. 3003, § 5302(a)(15) (codified at 49 U.S.C.A. § 5302(a)(15) (West Supp. 1999)). Because all of these worthy projects are lumped into the same section with minimal funding, proposals for pedestrian and bicycle access compete with other proposals which fall into the same section, thereby raising the possibility that they will not receive any funding at all.

174 See Fong, *supra* note 143, at 468 (explaining that roadways that have been converted to pedestrian use in Munich, Germany; Boston, Massachusetts; and Denver and Boulder, Colorado see up to a 25% increase in revenue from their commercial spaces, and help to energize the areas with activities such as the arts and other cultural amenities). The Boston example is described in Daniel Carlson et al., *supra* note 131, at 11.

175 See Robert H. Freilich, *The Land-Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 Urb. Law. 547, 557 (1998) (stating that narrow streets are utilized as traffic calming measures
the implementation of bike lanes and pedestrian walkways would likely be most utilized in higher-density urban areas, less dense suburban areas will also benefit from their implementation by allowing suburbanites to walk or bike for short trips that would have otherwise been taken in a car. By virtually ignoring the pedestrian and cyclist, TEA-21 reinforces the automobile's dominance in the nation's transportation policy.

2. MPOs Should Develop Land-Use Policies That Curb Urban Sprawl and Revitalize Urban Areas

TEA-21 lacks a primary element of a truly sustainable transportation policy: failing to contain the twin evils of suburban sprawl and urban decay. By increasing highway spending in areas that have the worst urban sprawl problems in the nation, TEA-21 has exasperated efforts by urban planners and environmentalists to curb urban sprawl and the rapid erosion of rural areas that accompany it. Rather than merely

and are easier to cross on foot than wide streets with heavy traffic volumes). See e.g., Burrington, supra note 114, at 706 ("Traffic speed affects not just safety itself, but perceptions of safety and willingness to walk or bicycle . . . . '[T]raffic calming' measures undertaken in several German towns reduced average vehicle speeds from 25 miles per hour to 12 miles per hour on residential streets . . . .").

176 Ironically, the administration that signed TEA-21 into law now has a plan to curtail the ill effects that it will produce, with Vice President Al Gore announcing on January 11, 1999 a $10 billion bond program to help communities control growth. See Judith Havemann, Gore Proposal Aims at Urban Sprawl, WASH. POST, Jan. 11, 1999, at A2.

177 See supra notes 87-113 and accompanying text.

178 Federal highway funds are not the only dilemma, as many communities have instituted programs that compel developers to build the infrastructure needed to support their developments, such as new roads leading to the developed areas. See Rachel M. Janutis, Nollan and Dolan: "Taking" A Link Out of the Development Chain, 1994 U. ILL. L. REV. 981 (1994) (stating that as development grew and local funding diminished, municipalities began to shift some of the costs, in the form of impact fees, of infrastructure development to developers); Judith Welch Wegner, Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals, 65 N.C. L. REV. 957, 1026 (1987) (stating that a nexus is needed between the projects to be paid for by the funds generated by impact fees and the impact of the development on the local infrastructure). This policy has the effect of promoting sprawl in a manner that reduces the local government's financial outlays associated with the new development, be it housing or commercial space, thereby eliminating much of the immediate costs associated with sprawl. These policies therefore make sprawl easier to swallow. As noted above, TEA-21 funds should have been made available for local governments to promote development programs that reduce sprawl, not encourage it.
providing funds for road construction to serve outlying areas, thus encouraging more sprawl, TEA-21 could have instituted funding programs to redevelop areas already within the urban boundaries: areas that are more conveniently served by public transportation. Such programs will have the effect of redeveloping areas devastated by the urban blight caused by sprawl. By redeveloping such areas, land-use patterns may begin to be shifted back towards denser, mixed-use communities that are less dependent upon the car for their transportation needs.

Other incentives should have been provided to encourage communities to institute urban growth boundaries ("UGBs") that limit the expansion of urban growth and preserve rural areas such as farmlands and undeveloped greenspaces. In cities like Portland, Oregon and Seattle, Washington, UGBs have slowly begun to make a difference in the patterns of growth that have taken place since their establishment. For example,

179 An interesting development, but one that is beyond the scope of this Note, is the evolution of "brownfields laws" that encourage cleanup and revitalization of contaminated industrial areas by developers who are then protected from legal liability for contamination caused by previous owners. See e.g., John W. Frece & Andrea Leahy-Fucheck, Smart Growth and Neighborhood Conservation, 13 NAT. RESOURCES & ENV'T 319, 323 (1998) (describing how the Maryland brownfields law encouraged the redevelopment of a Baltimore industrial site, which will now house restaurants, retail stores and office space in buildings that have been empty since 1985). For a detailed analysis of Maryland’s brownfield law, see John Fitzgerald Dougherty, Maryland Brownfields Law Provides "Carrot" to Encourage Cleanup of Contaminated Properties, 6 U. BALTIMORE. ENVTL. L. 156 (1997). This trend towards brownfields laws has largely been brought about by the realization that the liability imposed by Superfund, see Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675 (1994 & Supp. IV 1998), has had the inadvertent effect of dissuading developers from revitalizing former industrial areas within urban boundaries. See Matthew W. Ward, Kenneth A. Brown & David B. Lieb, National Incentives for Smart Growth Communities, 13 NAT. RESOURCES & ENV'T 325, 326 (1998).

180 In 1973, Portland, Oregon was the first city to institute a UGB. See James H. Wickersham, Note, The Quiet Revolution Continues: The Emerging New Model For State Growth Management Statutes, 18 HARV. ENVTL. L. REV. 489, 523-46 (1994). For a detailed analysis of the Oregon and Washington UGB statutes, see generally id.

181 See Timothy Egan, Portland: A Lesson in Good Growth Doesn’t Have to be Synonymous with Sprawl, as Portland and Other Cities in Oregon Have Shown, GREENSBORO NEWS & REC., Feb. 16, 1997, at F1. The effects have been impressive, as Portland has attracted numerous high-tech and industrial employers and contained residential growth, all within the UGB. See id. As a result, Oregon is losing only 2,000 acres of farmland per year, while Colorado, which has not instituted any form of UGBs, is losing almost 50,000 acres per year. See id. There are some negative effects from the
the institution of UGBs have forced the redevelopment of deteriorated inner-city areas, as the open space outside the boundaries are off-limits to new development. UGBs encourage higher-density development within the boundary, allowing mixed-use development which is more easily served by public transportation. By requiring that communities achieve such amorphous goals such as supporting “the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency,” and not focusing on concrete requirements that compel communities to develop land use policies that further the goals of redevelopment and transit-based planning, TEA-21 has missed an opportunity to effectively change local land-use policies for the better.

Of course, a perennial problem is that people just prefer to live in areas in which they can partake in the traditional version of the American Dream: a single-family home on a large lot with a yard and a two-car garage away from urban areas. However, this issue needs to be addressed if America is going to move towards a sustainable transportation policy.

UGBs, however, as median home prices have risen in both Seattle and Portland as a result (critics say) of the UGBs. See id.

182 See id.

183 See David R. Fiore & John M. Stafford, Intermodal Transportation Planning for the Environment: Social, Cultural, and Economic Considerations for an Interdisciplinary Solution for Change, 23 TRANSP. L. J. 237, 246 n.29 (1995). Although some commentators doubt that halting suburban development and replacing it with higher-density development would be politically feasible, given the patterns of development that have been in place for the last 50 years as well as the current pattern of large, single-family subdivisions, see id., I suggest that the Portland model would be politically feasible in other areas of the country if gradually phased in and left in place long enough to realize its benefits. In fact, many Americans list urban sprawl and loss of open space as two of their main concerns, which was reflected by the fact that almost 200 initiatives dealing with these issues were on ballots in many municipalities around the country in the 1998 election, with over 70% of them passing. See Havemann, supra note 176, at A2. Therefore, the political will may have already arrived. Nothing will change overnight, however, and incentives in the form of funds from TEA-21 were needed to ensure that the current model of growth would begin to be stemmed now so that more environmentally and socially acceptable forms of land-use patterns could develop in the future. It is precisely this lack of vision and foresight that prevents TEA-21 from being a sustainable transportation policy.

that includes a necessary reexamination of our current land use trends. Understanding that we will probably never eliminate new development, TEA-21 should have included a meaningful step in that direction by guaranteeing funds targeted towards developing and implementing strategies for new, inevitable areas of low-density development that are

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185 The root of the problem, especially when it comes to low-density development, is the pattern of development that was established by the landmark zoning case of Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Reflecting the Progressive attitude of the times regarding higher-density, mixed use development, Justice Sutherland said this about apartment houses coexisting with single-family homes:

In such sections very often the apartment house is a mere parasite, constructed to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, . . . until finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circumstances, apartment houses, which in a different environment would not only be entirely unobjectionable but highly desirable, come very near to being nuisances.

Id. at 394-95. Justice Sutherland relied on State v. City of New Orleans, 154 La. 271, 282-83 (1923), to support his views about businesses intermingled in residential neighborhoods:

A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion . . . .

[P]laces of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc.

Village of Euclid, 272 U.S. at 393.

This type of segregated residential development contributed to the explosion of auto sales after the end of the Second World War, which in turn led to further sprawling development inconvenient to employment, goods, and services. See Stephen Day, Comment, Suburban Sprawl or Suburban Villages? Defining Planning Principles for New Land Development in Indonesia, 5 PAC. RIM L. & POL’Y J. 331, 340 (1996). While I am not advocating allowing drycleaners to move into cul-de-sacs, I do feel that a different direction needs to be taken by communities when making decisions as to how new development is to take place.
more effectively served by mass transit. By providing funds for communities to plan and implement new development policies that locate clusters of new single-family homes in areas that are convenient to transit centers, employment, and shopping, American cities and towns could have instituted development strategies that move beyond the outmoded Euclidian zoning model and toward strategies that reflect the awareness that land-use planning is one of the most formidable obstacles to implementing a truly sustainable transportation policy.186

V. CONCLUSION: A WASTED OPPORTUNITY

Far from being legislation that will develop a truly sustainable transportation policy for the next millennium, TEA-21 generally continues the same automobile-dependent transportation policy that has dominated the political and social landscape since the end of the Second World War. Funding highways at the expense of transit, rail and sustainable land use policies further ingains the mistaken approaches of the past, while it ignores the real costs of automobile dependence and the benefits of increased transit utilization and enlightened land-use policies.

By equalizing highway and transit funding and instead focusing on repairing our existing highway infrastructure, TEA-21 could have initialized the beginning of a shift away from a transportation policy dependent upon the automobile. In addition, funding for Amtrak should have been reinstated, providing America with a viable national rail system and an alternative to driving or flying for millions of people who are unable or unwilling to do either. Finally, metropolitan planning organizations should have been required to encourage alternative methods of transportation and to institute development schemes that move away from the Euclidian form of zoning and toward land-use planning principles that recognize that the road towards a sustainable national transportation policy requires communities to shape themselves in a manner conducive to that goal.

186 One proposal that is eventually needed, but that was outside the political realities of TEA-21, is raising the gas tax. While an important component of a sustainable transportation policy, a meaningful hike in the gas tax should not occur until the groundwork is laid for increasing the utilization of transit and other alternative means of transportation. For a concise argument for raising gas taxes, see KAY, supra note 68 at 347-48.
While TEA-21 does make some improvements over ISTEA, particularly increasing transit funding, it does not nearly go far enough. Only by significantly restructuring the way we move people and plan our communities will we move beyond the absolute dependence America has on the automobile and towards a new paradigm for our transportation policy.