

William & Mary Environmental Law and Policy Review

Volume 42 (2017-2018)
Issue 2

Article 6

2-15-2018

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Ernesto Hernandez-Lopez

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Ernesto Hernandez-Lopez, *Bike Lanes, Not Cars: Mobility and the Legal Fight for Future Los Angeles*, 42 Wm. & Mary Env'tl L. & Pol'y Rev. 553 (2018), <https://scholarship.law.wm.edu/wmelpr/vol42/iss2/6>

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BIKE LANES, NOT CARS: MOBILITY AND THE LEGAL FIGHT FOR FUTURE LOS ANGELES

ERNESTO HERNANDEZ-LOPEZ*

ABSTRACT

In 2015, the City of Los Angeles adopted the controversial Mobility Plan 2035. The Plan restructures city transportation planning by emphasizing alternatives to cars for the next twenty years. Predictably, bike lanes became its most polemic aspect. The Plan envisions dramatic increases in bike lanes throughout car-obsessed Los Angeles. This bike lane increase was challenged in court, with objectors claiming that eliminating car lanes would increase congestion and compromise air quality. These arguments are ironic, since environmental justifications typically motivate bike projects.

The Mobility Plan illustrates how law supports and challenges bike lane projects. This Article argues that although this bike lane fight regards inches and miles of road space, the fight is primarily centered on how Angelinos will live in the future. As bike advocates attain popular and policy successes, they must confront legal contests driven by car-centric interests. Los Angeles shows how city planning achievements open a path for bike lane opposition armed with city governance, environmental, transportation, and land use doctrines.

INTRODUCTION

In August of 2015, the City of Los Angeles approved the controversial new Mobility Plan 2035 (“Mobility Plan” or “Plan”).¹ The City Council

* Professor of Law, Dale E. Fowler School of Law, Chapman University, ehernand@chapman.edu. This project was generously supported by Dean Tom Campbell, Dean Matthew Parlow, and Dean Kochan and the Hugh and Hazel Darling Law Library especially Sherry Leysen and Heather Joy. It has benefited from research assistance by Shawn Etemadi and comments from Alexandra Flynn, Sabeel Rahman, and participants at the International & Comparative Urban Law Conference Fordham Urban Law Center, University of Hong Kong; Conference of Asian Pacific American Law Faculty (CAPALF) and the Northeast People of Color Legal Scholarship Conference (NEPOC), Brooklyn Law School; ClassCrits IX, Loyola University Chicago School of Law; and State & Local Government Law Works-in-Progress Conference Golden Gate University School of Law.

¹ Ian Lovett, *A Los Angeles Plan to Reshape the Streetscape Sets Off Fears of Gridlock*, N.Y. TIMES (Sept. 7, 2015), <https://www.nytimes.com/2015/09/08/us/a-los-angeles-plan-to>

enacted this wide-ranging effort to restructure how Los Angeles makes transportation and land use decisions, and it places an emphasis on alternatives to automobiles.² Revising the transportation elements of the city's General Plan from 1999, the Mobility Plan envisions city support for walking; transit in the form of buses, trams, and rail; bike paths and other bicycle infrastructure; and intermodal connections between these transport methods.³ The Plan will guide Los Angeles's future decisions with an eye toward having a citywide vision implemented by 2035, in two decades. For this, the Mobility Plan anticipates increases in walking by 38%, public transit use by 56%, and bicycling by 170%.⁴

The Plan caught national attention, given Los Angeles's long-term preference for automobiles.⁵ In dramatic terms, it signaled how a local government de-emphasizes a city planning default for cars. This was not necessarily unique for cities, but it was a big change in Los Angeles.⁶ Unlike many cities its size in the United States and globally, Angelinos live amidst the idealized single-user car and fast-moving highway visions and the realities of gridlocked streets, traffic jammed freeways, and limited automobile parking.⁷ Los Angeles is described as having a love affair with cars, a product of the city's spatial expansion in the mid-twentieth century.⁸ This metropolitan development relied on government support for

-reshape-the-streetscape-sets-off-fears-of-gridlock.html [https://web.archive.org/web/*/https://www.nytimes.com/2015/09/08/us/a-los-angeles-plan-to-reshape-the-streetscape-sets-off-fears-of-gridlock.html]; David Zahniser, *L.A. will add bike and bus lanes, cut car lanes in sweeping policy shift*, L.A. TIMES (Aug. 11, 2015), <http://www.latimes.com/local/lanow/la-me-ln-mobility-plan-20150811-story.html> [https://perma.cc/3CQN-TAPX].

² L.A. DEP'T OF CITY PLANNING, MOBILITY PLAN 2035: AN ELEMENT OF THE GENERAL PLAN at 14, 31 (2015) [hereinafter MOBILITY PLAN 2035], <https://planning.lacity.org/eir/CrossroadHwd/deir/files/references/A08.pdf> [https://perma.cc/8RNN-T6YN].

³ *Id.* at 13–17, 31–32.

⁴ David Zahniser, *L.A. maps out sweeping transportation overhaul*, L.A. TIMES (Aug. 9, 2015), <http://www.latimes.com/local/california/la-me-mobility-debate-20150809-story.html> [https://perma.cc/HY2C-2B2V].

⁵ Irvin Dawid, *Los Angeles' Mobility Plan 2035 Slapped with Lawsuit*, PLANETIZEN (Sept. 14, 2015), <https://www.planetizen.com/node/80969/los-angeles-mobility-plan-2035-slapped-lawsuit> [https://perma.cc/VKC2-97EA]; Anai Ibarra, *Latest Update on LA Mobility Plan 2035*, AARP CAL. (Feb. 29, 2016), <http://states.aarp.org/read-about-the-latest-update-on-l-a-mobility-plan-2035/> [https://perma.cc/AY6F-VR5H]; Lovett, *supra* note 1; Alexander Nazaryan, *A Young Mayor's Fight to Save Los Angeles from its Gridlocked Self*, NEWSWEEK (Jan. 13, 2016), <http://www.newsweek.com/2016/01/22/los-angeles-mayor-eric-garcetti-traffic-cars-gridlock-sidewalks-414912.html> [https://perma.cc/Y8V6-XAT3].

⁶ Lovett, *supra* note 1; Nazaryan, *supra* note 5.

⁷ See Lovett, *supra* note 1.

⁸ The Mobility Plan states that "Los Angeles' reputation as a car culture is not unfounded" this "often ignore[s] the earlier and continued presence of pedestrians, bicyclists, trains,

single-family and suburban residences, highways to move commuting residents, cheap fuel, limited clean air regulations, and booms in road construction and auto manufacturing.

One commenter speculated that through the Mobility Plan, “the world’s first great automobile-oriented city could become the first city to de-orient itself from the automobile.”⁹ The Mobility Plan points to a dramatic shift away from city government support for automobiles through its emphasis on car alternatives and its institutional prioritization of walking, public transit, and bicycles.¹⁰ Fully implemented, the Plan will decrease car lanes on some streets;¹¹ however, only ten percent of the city’s major streets are targeted for these reductions.¹² As a blueprint for future planning decisions, the Plan does not directly impact freeways.

The Plan’s lofty goals were challenged in courts. The non-profit organization Fix The City quickly filed a lawsuit against the city, essentially arguing that the Mobility Plan will increase traffic and decrease the quality of life for Angelenos.¹³ Central to Fix The City’s argument is the view that the Plan will impact the environment by slowing automobile movement.¹⁴ Fix The City’s position prioritizes automobiles and attempts to protect their access to public space, in terms of roadways and parking.¹⁵ At the time this Article was written, this dispute has not reached trial, any decision, or settlement, but is eagerly followed by bike and transportation advocates, city planners and politicians, real estate developers, and car

streetcars, and delivery trucks.” See MOBILITY PLAN 2035, *supra* note 2, at 31; see also Christopher Hawthorne, *Mobility Plan 2035 May Be the Cornerstone of a New L.A.*, L.A. TIMES (Sept. 18, 2015), <http://www.latimes.com/entertainment/arts/la-ca-cm-hawthorne-notebook-20150920-column.html> [<https://perma.cc/5HRV-UAX2>].

⁹ Josh Stephens, *Mobility plan nudges Los Angeles towards new transportation modes*, CAL. PLAN. & DEV. REP., 2015 WLNR 33577080, Oct. 2015, at 11.

¹⁰ See MOBILITY PLAN 2035, *supra* note 2, at 13–17, 31–32.

¹¹ The Times Editorial Board, Editorial, *An L.A. Transit Plan with Vision*, L.A. TIMES (Aug. 11, 2015), <http://www.latimes.com/opinion/editorials/la-ed-mobility-plan-los-angeles-20150811-story.html> [<https://perma.cc/5J2H-B6HT>].

¹² *Id.*

¹³ See Verified Petition for Writ of Mandate and Complaint for Injunctive Relief at ¶¶ 2, 28, Fix the City, Inc. v. City of Los Angeles, No. BS157831 (Cal. Super. Ct. L.A. Cty. Sept. 9, 2015) [hereinafter Complaint Sept. 9]; Verified Petition for Writ of Mandate and Complaint for Injunctive Relief at ¶¶ 4, 39–40, Fix the City, Inc. v. City of Los Angeles, No. BS159574 (Cal. Super. Ct. L.A. Cty. Dec. 15, 2015) [hereinafter Complaint Dec. 15].

¹⁴ See David Zahniser, *Lawsuit says new L.A. streets plan creates more air pollution, not less*, L.A. TIMES (Sept. 9, 2015), <http://www.latimes.com/local/lanow/la-me-ln-mobility-plan-20150908-story.html> [<https://perma.cc/WGU7-HMHV>].

¹⁵ See *Project: Mobility Plan 2035*, FIX THE CITY—LOS ANGELES, http://fixthecity.org/?page_id=434 [<https://perma.cc/384E-SFBS>] (last visited Jan. 21, 2018).

advocates. For years, transportation and land use issues have influenced Los Angeles elections, suggesting that street use politics is understood in local terms by voters and consequently by policymakers.¹⁶ The Mobility Plan continues this.

This Article examines the Mobility Plan and the *Fix The City v. City of Los Angeles* lawsuit (“*Fix The City*”) as a case study of how local government law facilitates and challenges public efforts to implement bike lanes. The Article refers to this as the “bike lane fight.”¹⁷ This inquiry is important for two reasons. First, it illustrates the significance of law in transportation and urban planning. Law determines public obligations and how physical space will be used.¹⁸ Importantly, bike lanes and street planning encompass government choices about how to use public land.¹⁹ Bike and public transportation advocates argue that a series of legal mechanisms make automobiles the default in urban planning priorities.²⁰ Land

¹⁶ See Nazaryan, *supra* note 5 (discussing survey that indicates traffic is the number one concern among Angelenos).

¹⁷ This Article poses a general inquiry about how law informs bike lane policies, specifically proposed in the city’s Mobility Plan. It does not focus on larger issues involving bike storage; bike sharing; bikes on public transport; and laws about bikes and right of way, rider signals, or helmet requirements. The article does not focus on the other mobility aspects of the Mobility Plan such as walking or public transit, other than how they support policies on bike lanes and the Plan’s general approach. Similarly, this Article does not offer a normative position on how California Environmental Quality Act (“CEQA”) norms or Environmental Impact Review (“EIR”) procedures should resolve bike lane fights. Likewise, it does not side with *Fix The City* or Los Angeles in their dispute over the Mobility Plan. Instead, this Article relates biking scholarship and bike lane proposals to abstract larger lessons on local government law, local planning and bike lanes. Much of this analysis is positive and aims to benefit policy makers, advocates, and local stakeholders. For the sake of simplicity, this does not examine similar proposals by regional transit authorities, Los Angeles county, and other cities in the county.

¹⁸ Kenneth Stahl has argued that land use doctrine motivates suburban expansion while also limiting the zoning influence of neighborhoods. See generally Kenneth A. Stahl, *The Suburb as a Legal Concept: The Problem of Organization and the Fate of Municipalities in American Law*, 29 CARDOZO L. REV. 1193 (2008); Kenneth A. Stahl, *Neighborhood Empowerment and the Future of the City*, 161 U. PA. L. REV. 939 (2013). Sarah Schindler finds law as incapable of regulating how physical structures promote exclusion and segregation. See generally Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934 (2015).

¹⁹ See Ryan Seher, Comment, *I Want to Ride My Bicycle: Why and How Cities Plan for Bicycle Infrastructure*, 59 BUFF. L. REV. 585, 586–88 (2011).

²⁰ James Longhurst explains that the law protects bicyclists’ rights but automobile drivers are protected by car culture, physics, and road design and that government policies created an American preference for cars. JAMES LONGHURST, *BIKE BATTLES A HISTORY OF SHARING THE AMERICAN ROAD* at 3–6, 8, 11–12, 21 (2015). Zack Furness argues that American car culture was built by laws supporting road creation, industry lobbying, real estate zoning,

use doctrine, fossil fuel and automobile industry lobbying, and housing and transportation programs guard the local terrain automobiles enjoy.²¹ Law protects this privilege. This privilege appears in the form of car lanes, parking lots and regulations, residential housing, and urban development plans. However, these developments come at the expense of walkways, dedicated bus lanes, trams and subways, bike paths, bike share and bike parking infrastructure, and land devoted to high-density housing or public use. The side of the debate encompassed in the Mobility Plan idealizes bikes, public transportation, parks, and multi-unit housing. The other side of the debate, as argued by *Fix The City*, favors individual car use, streets and highways to freely move cars, dedicated space for parking lots, and single-unit homes.

Second, city policies reflect a new attention to addressing quality of life and public health issues.²² With efforts like the Mobility Plan, cities justify their objectives by pointing to environmental issues.²³ This is a particularly significant policy space given challenges at the federal and global stage to tackle these harms. Moreover, cities seek to attract or keep residents by addressing problems like air quality, traffic, health, and resident mobility. In this light, the Mobility Plan does not just reflect a Los Angeles effort to look like Copenhagen, Paris, Portland, or New York, but it illustrates local government law's constitutive role in these debates.²⁴ As described below, in Los Angeles this specific law regards environmental and city governance doctrines.

This Article argues three points about law's role in this and future bike lane fights. First, the *Fix The City* lawsuit focuses on environmental and city governance law with these norms fueling the bike lane fight. Second, the fight transpires essentially over designations of inches and feet of space over miles of roads, but it implicates how Los Angeles will live and move in the future. Accordingly, the lawsuit challenges the city's land use determinations. Third, as biking advocacy attracts more policy attention, its accomplishments will depend on how it confronts issues such as sustainability, traffic impacts, safety, fitness, lobbying, and electoral politics. Opponents of urban bike projects will look to the legal doctrines

automobile manufacturing, and underfunded public transportation. ZACK FURNESS, *ONE LESS CA: BICYCLING AND THE POLITICS OF AUTOMOBILITY* 5 (2010).

²¹ See FURNESS, *supra* note 20.

²² See generally Kenneth A. Stahl, *Local Home Rule in the Time of Globalization*, 2016 BYU L. REV. 177 (2016).

²³ See MOBILITY PLAN 2035, *supra* note 2, at 141–48.

²⁴ See generally CITY CYCLING (John Pucher & Ralph Buehler eds., MIT Press 2012) [hereinafter Pucher & Buehler] (discussing efforts by some of the most bike friendly cities including Copenhagen, Paris, Portland, and New York).

corresponding with these issues when challenging bike lanes. In Los Angeles, state environmental law fuels opposition to city land use designations, implicit in bike lane and Mobility Plan projects. For future bike plans to succeed, bike advocates will have to address norms sourced in governance, environmental, transportation, and land use doctrines, at private, local, state, special district, and federal levels. Los Angeles biking experiments show how when projects move beyond traditional legal bike issues, like “right to bike” and “right of way,” they run into opposition fueled by city governance and the California Environmental Quality Act (“CEQA”) doctrines.²⁵ Meanwhile many non-biking issues, such as delays by California in issuing CEQA regulations and the Mobility Plan’s comprehensive scope, implicitly help bike lane opposition.

These three points illustrate the challenges cities face when they try to implement more bike lanes. The challenge is that on the one hand, lanes are easier to achieve politically with more comprehensive transit projects like LA’s Mobility Plan; however, on the other hand, this political success creates a legal risk with ensuing lawsuits. Since the Mobility Plan was approved, bike lane opposition armed with legal action has begun to destabilize political support in Los Angeles for bike lanes. Los Angeles’s opposition has focused on “road diets” and traffic, but in other cities or in the future, opposition could focus on other bike infrastructures like signage, bike sharing, or bike storage. Many local governments have had to face legal obstacles and popular opposition to bike lane projects.²⁶

LA’s bike lane fight is over public space, attempting to shift away from government support for cars, the usual default position.²⁷ To describe this, the Article looks to recent scholarship on biking policies. This

²⁵ See Liam Dillon, *Want a bike lane in your neighborhood? It’s not so simple in California*, L.A. TIMES (Apr. 7, 2016), <http://www.latimes.com/politics/la-pol-sac-enviro-bike-lanes-20160407-story.html> [<https://perma.cc/Z86J-J59Q>].

²⁶ See Luke Broadwater & Yvonne Wenger, *Bikemore drops lawsuit after city pledges not to demolish Canton bike lane*, BALT. SUN (June 28, 2017), <http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-bike-lane-settlement-20170628-story.html> [<https://perma.cc/F74P-U3JF>]; Selina Cheah, *Prospect Park West bike lane antagonists finally drop lawsuit*, CURBED N.Y. (Sept. 28, 2016), <https://ny.curbed.com/2016/9/28/13098378/prospect-park-west-bike-lane-lawsuit-dropped> [<https://perma.cc/9DLE-9JVA>]; Lolly Bowean, *Homeless advocacy group seeks to stop eviction of Uptown tent city*, CHIC. TRIBUNE (Aug. 29, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-viaduct-homeless-met-0829-20170828-story.html> [<https://perma.cc/3DWU-CMY5>]; Bill Chappel, *Family Trust Wins Supreme Court Fight Against Bike Trail*, NPR (Mar. 10, 2014), <https://www.npr.org/sections/thetwo-way/2014/03/10/288584936/family-trust-wins-supreme-court-fight-against-bike-trail> [<https://perma.cc/ZL3P-DDE5>].

²⁷ See LONGHURST, *supra* note 20.

scholarship offers a history of bike rights in the United States,²⁸ cultural analysis of biking as a political act,²⁹ comparative examination of efforts to increase urban biking,³⁰ and history of recent transportation developments in New York City.³¹ These perspectives help contextualize how law shapes the Mobility Plan's bike lane fight, which is part of a larger contest about the future of Los Angeles. These perspectives represent just a small part of the growing law,³² scholarly,³³ policy perspective,³⁴ planning,³⁵ and news literature³⁶ on biking. This Article uses a law and policy lens to make

²⁸ *Id.*

²⁹ FURNESS, *supra* note 20, at 1–2, 5.

³⁰ See Pucher & Buehler, *supra* note 24.

³¹ JANETTE SADIK-KHAN & SETH SOLOMONOW, *STREETFIGHT: HANDBOOK FOR AN URBAN REVOLUTION* (2016).

³² For examples of recent legal scholarship on biking issues see Jason J. Czarnezki, *New York City Rules! Regulatory Models for Environmental and Public Health*, 66 HASTINGS L.J. 1621 (2015); Daniel B. Rodriguez & Nadav Shoked, *Comparative Local Government Law in Motion: How Different Local Government Law Regimes Affect Global Cities' Bike Share Plans*, 42 FORDHAM URB. L.J. 123 (2014); Franklyn P. Salimbeni, *Seeking Peaceful Coexistence: Streetcars and Bicycles in the New Urban Environment*, 7 WAKE FOREST J.L. & POL'Y 365 (2017); Ken McLeod, *Bicycle Laws in the United States—Past, Present, and Future*, 42 FORDHAM URB. L.J. 869 (2015); Colleen Maker, *Strict Liability in Cycling Laws to Ready the Roads for Environmentally Friendly Commuting*, 42 B.C. ENVTL. AFF. L. REV. 473 (2015); Seher, *supra* note 19; Bruce Epperson, *The Great Schism: Federal Bicycle Safety Regulation and the Unraveling of American Bicycle Planning*, 37 TRANSP. L.J. 73 (2010); César Garcia Hernández, *Ready or Not, the Velorution Has Arrived: Critical Mass—An Experiment in Democracy*, 8 LOY. J. PUB. INT. LAW 133 (2007); Alexandra Flynn, *Regulating Critical Mass: Performativity and City Streets*, 37 W.R.L.S.I. 98 (2016).

³³ See LUIS A. VIVANCO, *RECONSIDERING THE BICYCLE* (2013) (providing an anthropological view, historic and comparative, of how bicycles change notions of mobility in cities); STEVEN FLEMING, *CYCLE SPACE* (2012) (describing how cyclists based on riding experience view different cities throughout the globe); BRUCE D. EPPERSON, *BICYCLES IN AMERICAN HIGHWAY PLANNING* (2014) (offering a history of how cyclists preferred riding on highways and how this influenced resistance to bike lanes on roads).

³⁴ JEFF MAPES, *PEDALING REVOLUTION* (2009) (offering a local politics journalist's perspective on how health, fitness, and social benefits are pushing riders and cities to change urban living).

³⁵ See, e.g., Ann Forsyth & Kevin Krizek, *Urban Design: Is There a Distinctive View from the Bicycle?*, 16 J. URB. DESIGN 531 (2011); Hilda Blanco et al., *Hot, Congested, Crowded and Diverse: Emerging Research Agendas in Planning*, 71 PROGRESS PLAN. 153 (2009).

³⁶ See Matthew Shaer, *Not Quite Copenhagen: Is New York too New York for bike lanes?*, N.Y. MAG. (Mar. 20, 2011), <http://nymag.com/news/features/bike-wars-2011-3/> [<https://perma.cc/3BEP-TWBZ>]; Niall McCarthy, *Which U.S. Cities Have the Most Bike Lanes?*, FORBES (Sept. 26, 2014), <https://www.forbes.com/sites/niallmccarthy/2014/09/26/which-u-s-cities-have-the-most-bike-lanes-infographic/#7b04850c7d7a> [<https://perma.cc/NPC6-GFR6>]; Maria Konnikova, *Cars vs. Bikes vs. Pedestrians*, NEW YORKER (Nov. 5, 2015), <https://www.newyorker.com/science/maria-konnikova/cars-vs-bikes-vs-pedestrians> [<https://perma.cc/67GW-TUHH>].

sense of law's role in a city government effort to shift its planning support from automobiles to bikes.

To identify this role, this Article focuses on bike lanes in the Mobility Plan, while not examining its walking, public transportation, and bike share objectives. This Article refers to bike paths and bike lanes as the same choice made by a government to protect the public space or to highlight the use of a road by bicycles.³⁷ Technically, city planners use different designations including bike paths, bike lanes, and various other separations.³⁸ These classifications demarcate what public space is exclusive, protected, reserved, or accessible for bikes or shared by bicycles, vehicles, and buses.³⁹ At times these infrastructure demarcations focus on paths in parks or lanes in urban streets. But for the sake of simplicity to make the larger point about legal support for bicycles on Los Angeles streets and future life in the city, this Article uses bike paths and bike lanes as synonymous, even if this is technically inaccurate. For this Article, bike lanes and bike paths refer to space devoted on a road or separate from the road for use by a bicycle, where automobiles are not allowed exclusive use. A similar case study could focus on different transportation means of the Mobility Plan, but for the sake of simplicity, this Article focuses on bike lanes, policy decisions, and law's role in how these two meet.

This Article's focus on bike lanes in Los Angeles takes inspiration from two strains of scholarly thought regarding Los Angeles. These include contests about public land use regarding car parking and sidewalks and how the city's geographic sprawl reflects larger socio-economic, cultural, and political challenges. In *The High Cost of Free Parking*, Donald Shoup argues that when cities provide free streetside car parking, they indirectly subsidizes car use, pushing people away from public transit and increasing the costs for goods and services that rely on automobiles.⁴⁰ This viewpoint has been applied to examine recent housing challenges in Los Angeles.⁴¹ In *Sidewalks: Conflict and Negotiation over Public Space*, Anastasia Loukaitou-Sideris and Renia Ehrenfeucht illustrate how local

³⁷ L.A. DEPT. OF CITY PLANNING, CITY OF LOS ANGELES COMPLETE STREETS DESIGN GUIDE 120–32 (2015), <https://planning.lacity.org/documents/policy/CompleteStreetDesignGuide.pdf> [<https://perma.cc/WV9S-VBMB>] [hereinafter COMPLETE STREETS DESIGN GUIDE]; MOBILITY PLAN 2035, *supra* note 2, at 83.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ DONALD C. SHOUP, *THE HIGH COST OF FREE PARKING* (2005).

⁴¹ Michael Manville, Alex Beata, & Donald Shoup, *Turning Housing into Driving: Parking Requirements and Density in Los Angeles and New York*, 42 HOUSING POLICY DEBATE 350 (2013).

regulation of sidewalks, usually assumed as minimal terrain, illustrates what localities prioritize, whether it is pedestrian mobility, abutting property owners interests, or other factors.⁴² This Article applies a similar approach to the bike lanes. Like with sidewalks and parking spaces, the struggle to implement bike lanes in Los Angeles demonstrates how a local planning default for cars has traffic and environmental impacts. Fix The City's legal position is made from an ideological dashboard that assumes that automobiles should be protected from any limits on their road use.

Similarly, bike lanes have the potential to recreate urban geography in Los Angeles. Scholars of Los Angeles have emphasized how its layout, often criticized as unplanned and endless sprawling, is structured to meet socio-economic and cultural objectives, such as mid-century suburban housing, discrimination, and industrial needs.⁴³ The "LA School" argues that urban geography is not neutral and often suits private industry, racist, classist, and social control goals.⁴⁴ LA School authors see actual locations as important actors in socio-economic change. Locations and physical settings are intentionally utilized to benefit public and private interests. This Article argues that bike lanes and the Mobility Plan reflect a bold political attempt to modify the city's geography and that opposition emphasizes the privilege cars enjoy for roads and city mindsets. The heated and repeated fights over feet of road space, for bikes or cars, reflect what Edward Soja calls a "spatial-justice" dispute.⁴⁵

Part I of the Article focuses on the Mobility Plan describing its basics and how it seeks to reallocate road use to increase bike paths. Part II presents the legal arguments in the *Fix The City* dispute. Fix The City argues that deprioritizing car lanes on roads has a negative impact on the environment, and that as such, the Mobility Plan should not have been approved.⁴⁶ In doctrinal terms, the dispute regards environmental law and city governance claims. Part III applies analysis from bicycling scholarship

⁴² RENIA EHRENFEUCHT & ANASTASIA LOUKAITOU-SIDERIS, *SIDEWALKS: CONFLICT AND NEGOTIATION OVER PUBLIC SPACE* (MIT Press, 2009).

⁴³ For examples of these studies, see REYNER BANHAM, *LOS ANGELES: THE ARCHITECTURE OF FOUR ECOLOGIES* (2nd ed., 2009); GREGORY HISE, *MAGNETIC LOS ANGELES: PLANNING THE TWENTIETH-CENTURY METROPOLIS* (1999); WILLIAM B. FULTON, *THE RELUCTANT METROPOLIS: THE POLITICS OF URBAN GROWTH IN LOS ANGELES* (1997).

⁴⁴ For descriptions of the LA School, see Michael Dear, *Los Angeles and the Chicago School: Invitation to Debate*, 1 CITY AND COMMUNITY 1 (March, 2002); Walter J. Nicholls, *The Los Angeles School: Difference, Politics, City*, 35 INT'L JOURNAL OF URBAN AND REGIONAL RESH. 189 (January, 2011); Michael Dear & Nicholas Dahmann, *Urban Politics and the Los Angeles School of Urbanism*, 44 URBAN AFFAIRS REV. 266–79 (2008).

⁴⁵ EDWARD SOJA, *SEEKING SPATIAL JUSTICE* (Univ. Minnesota Press, 2010).

⁴⁶ Zahniser, *supra* note 4.

to make sense of LA's bike lane fight. Part IV abstracts law and policy lessons from Los Angeles to apply in other cities, referring to approaches to bikes as vehicles and the policy privilege automobiles enjoy. The Article's methodology examines city planning reports, court papers in the *Fix The City* lawsuit, and cycling scholarship from history, cultural studies, urban planning, and transportation disciplines. This qualitative analysis identifies law's role in Los Angeles's ongoing bike lane fight. Ideally, it will guide future bike lane fights in other metropolitan governments.

I. THE MOBILITY PLAN DRIVES CARS AWAY FROM A TRANSPORTATION DEFAULT

Distributed as a two-hundred-page document for public reading, the Mobility Plan is a comprehensive revision of the 1999 City of Los Angeles Transportation Element of the General Plan.⁴⁷ Sixteen years earlier, the city's main mobility focus was to prioritize cars moving as quickly as possible, often by widening streets at the expense of walking and other transportation means.⁴⁸ Since then, public transit and bike ridership have increased in Los Angeles.⁴⁹ The Mobility Plan offers a policy foundation guiding transport decisions through 2035. It aims to achieve a transportation system that takes into account the needs of all road users.⁵⁰ Specifically, this is done with new goals, objectives, and policies. The Mobility Plan lays out a strategy for city authorities to determine how streets will be used.⁵¹ The city's Planning Department is charged with implementing this vision.⁵² This vision includes 117 miles of bus-only lanes, 120 miles of bus-only lanes during rush hour, 300 miles of protected bicycle lanes, and traffic calming measures.⁵³ Moreover, this plan is formulated to work with nine other local transportation plans from the county, transportation agencies, and the region.⁵⁴ The city's prior 2010 Bicycle Plan was incorporated into the Mobility Plan in order to seek multimodal goals with future walking, public transit, and biking plans interconnected.⁵⁵

⁴⁷ California law requires a city's General Plan to provide concrete direction on at least seven elements which are internally consistent, including transportation, housing, conservation, open space, noise, and safety. MOBILITY PLAN 2035, *supra* note 2, at 16.

⁴⁸ *Id.* at 31.

⁴⁹ *Id.* at 44.

⁵⁰ *Id.* at 13.

⁵¹ *Id.* at 17.

⁵² *Id.*

⁵³ Zahniser, *supra* note 4.

⁵⁴ Stephens, *supra* note 9.

⁵⁵ MOBILITY PLAN 2035, *supra* note 2, at 15.

As a blueprint for future city planning choices, the Mobility Plan articulates its forward-looking vision with five goals: 1) Safety First; 2) World-Class Infrastructure; 3) Access for all Angelinos; 4) Collaboration, Communication, and Informed Choices; and 5) Clean Environments and Healthy Communities.⁵⁶ These five goals structure the Plan's chapters. The Plan is supplemented with an Introduction, Action Plan with multiple network maps and 160 relevant city programs, and appendices.⁵⁷ Each of the Mobility Plan's goals contains objectives, used as targets, to measure implementation progress. Each goal describes specific policies to strategize how the objectives are enacted and goals eventually reached. In sum, goals refer to a future condition the plan envisions.⁵⁸ Objectives serve as aspirational measurements to reach goals. Policies provide a clear course of action for decision makers. Describing a series of maps and programs, the Action Plan presents methods to prioritize implementation taking into account costs, resources, feasibility, and the discretionary nature of most policies.⁵⁹

The Mobility Plan's purpose is to guide future development of the city's transportation system by maximizing efficient use of infrastructure, employing advanced technology, reducing vehicle trips, and focusing on proximity to public transit.⁶⁰ It provides a blueprint for later projects to be proposed and then implemented, and it is designed to meet changing mobility, air quality, and health challenges in Los Angeles. An important aspect of the Plan is having different modes of transportation linked with "first-mile and last-mile solutions," which facilitate getting people out of their cars with easy ways to use transit close to their homes and work, a distance that is usually only a mile.⁶¹ With this comprehensive approach, the Mobility Plan correlates what is usually seen as transportation questions, regarding bus routes or road size, with larger issues about health and safety, access to city services and public space, environmental and air quality concerns, and support for the local economy. As proposed and adopted, the Mobility Plan is aspirational and suggests road changes and various other programs in the future. Each later project has to be implemented and often this requires public outreach, education and feedback, and studying the impacts of potential projects by neighborhood planning and public safety officials.⁶²

⁵⁶ *Id.* at 13.

⁵⁷ *Id.* at 7.

⁵⁸ *Id.* at 15.

⁵⁹ *Id.* at 15–16.

⁶⁰ *Id.* at 13–14, 17.

⁶¹ MOBILITY PLAN 2035, *supra* note 2, at 92, 106.

⁶² The Times Editorial Board, *supra* note 11; Zahniser, *supra* note 4.

The Mobility Plan refers to two general perspectives that spur most of its controversy: “complete streets”⁶³ and reducing car trips.⁶⁴ The complete streets approach seeks to accommodate multiple users of streets versus streets used just by cars, trucks, and buses. Examples of complete streets use a combination of widened sidewalks and cross walks, different kinds of bike paths, bus lanes, street level shopping, and benches and greenery. With complete streets, roads have utility in addition to automobiles. In 2008, California passed the Complete Streets Act which requires that cities consider the needs of all transportation users.⁶⁵ This act requires localities to plan for multimodal transportation for the needs of “all users of streets, roads, and highways” including “motorists, pedestrians, bicyclists, children, persons with disabilities, seniors, movers of commercial goods, and users of public transportation.”⁶⁶

The Mobility Plan has been described as applying complete streets approaches to the entire city’s street grid. This starts with the premise that built-out cities should not widen streets anymore.⁶⁷

Complete street approaches emphasize use of streets by various transportation methods (not just cars) and connections between different modes of travel.⁶⁸ The focus is to not only make streets more inviting and used, but also to have a policy vision shared by agencies that work with roads and specific steps to implement these policies.⁶⁹ One organization that is advocating for complete streets is the National Complete Streets Campaign.⁷⁰ Improvements in health, recreation, sustainability, and increasing street-level eating and shopping motivate many cities to develop these projects. Implementing complete streets for many cities implies challenges in terms of legal authority and lawsuits, city agency politics, stakeholder buy-in, and local legislating.⁷¹

⁶³ COMPLETE STREETS DESIGN GUIDE, *supra* note 37, at 3.

⁶⁴ MOBILITY PLAN 2035, *supra* note 2, at 145.

⁶⁵ California Complete Streets Act of 2008, Assemb. B. 1358, 2008 Leg., 2007–2008 Sess. (Cal. 2008), 2008 Cal. Stat. 4515 (codified as amended at CAL. GOV’T CODE §§ 65040.2, 65302).

⁶⁶ MOBILITY PLAN 2035, *supra* note 2, at 13.

⁶⁷ Stephens, *supra* note 9 (quoting Seleta Reynolds, Director of L.A. Dep’t of Transp.).

⁶⁸ *National Complete Streets Coalition, Elements of an Ideal Complete Streets Policy*, SMART GROWTH AM., <https://www.smartgrowthamerica.org/app/legacy/documents/cs/policy/cs-policyelements.pdf> [<https://perma.cc/T69M-KTGJ>] (last visited Jan. 21, 2018).

⁶⁹ *Id.*

⁷⁰ *National Complete Streets Coalition*, SMART GROWTH AM., <https://smartgrowthamerica.org/program/national-complete-streets-coalition/> [<https://perma.cc/A4J9-XY89>] (last visited Jan. 21, 2018).

⁷¹ For a description of the diverse challenges see Sebastian Przbyla, Finding the Right of

The next controversial measure is that the Mobility Plan attempts to decrease congestion by reducing car trips and by facilitating other modes of transportation such as public transit, walking, or biking. The Plan states that its primary emphasis is “maximizing the efficiency of existing and proposed transportation infrastructure through advanced transportation technology, through reduction of vehicle trips, and through focusing growth in proximity to public transit.”⁷² The Plan’s common objective is to take people out of their cars.⁷³ For this reason, the Mobility Plan seeks to increase sidewalks widths, add bike lanes, and dedicate transit only road lanes. This contrasts a common perspective that widening streets will lessen congestion. The Plan’s approach is that transportation resources are limited and that more efficient uses would support walking, biking, and public transportation.⁷⁴ It responds to the commonly held but mistaken assumption that adding car lanes to streets, widening streets, or lessening sidewalks decreases traffic.⁷⁵ Similarly, the Plan slows down car traffic in some locations by eliminating car lanes. Slower car movement achieves added safety and can often accommodate more cars in an area.

Many of these aspects are described as implementing “road diets.” These project are referred to as “road diets” because they shrink the road space reserved for moving or parked cars.⁷⁶ Road diets are criticized for contracting the space devoted for cars and this is argued to increase congestion. The Federal Highway Administration explains that the four-lane road became the norm in the United States without much engineering guidance and that many such roads had less volume than four lanes requires.⁷⁷ Supporters of road diets point to the traffic calming effect of making streets safer, the ease with which such projects can be implemented with normal road maintenance, and that public costs are limited to just painting the road.⁷⁸ The Federal Highway Administration describes

Way: Implementing Complete Streets Programs, 33 No. 10 Zoning and Planning Law report 1, Nov. 2010.

⁷² MOBILITY PLAN 2035, *supra* note 2, at 17.

⁷³ *Id.*

⁷⁴ *Id.* at 126.

⁷⁵ *Id.* at 94, 145.

⁷⁶ The Federal Highway Administration refers to this definition of “road diet” as removal of “travel lanes from a roadway and utilizing the space for other uses or travel modes.” FED. HIGHWAY ADMIN., *Road Diet Informational Guide* at 1.1 (2014), https://safety.fhwa.dot.gov/road_diets/guidance/info_guide/ch1.cfm [<https://perma.cc/6MBU-VHGY>] (citing JENNIFER ROSALES, ROAD DIET HANDBOOK (2006)).

⁷⁷ *Id.* at 1.2.

⁷⁸ Eric Jaffe, *So What Exactly is a Road Diet?*, CITYLAB (Sep. 12, 2014), <https://www.citylab.com/design/2014/09/so-what-exactly-is-a-road-diet/379975/> [<https://perma.cc/G9AB-MG9R>].

road diets as “one of the transportation safety field’s greatest success stories,” noting experiences in small and large cities.⁷⁹ In Los Angeles, road diets have been a point of legal and popular contention, both before and after the Mobility Plan.⁸⁰ This contention is such that bike advocacy generates debate beyond biking rights, and into areas such as city governance, traffic analysis, and environmental impacts.

One way the Mobility Plan seeks to implement its street vision is by reclassifying arterial streets to permit for a variety of widths. The new classification has five arterial street categories: Boulevard I, Boulevard II, Avenue I, Avenue II, and Avenue III.⁸¹ The previous breakdown only contained three category of roads, i.e., Major Highway Class I, Major Highway Class II, and Secondary Highway.⁸² The new scheme allows for greater variations and reflects how roads are currently being used. The aim is for roads to be designed for target operating speed of automobile movement. For instance, the prior-used Secondary Highway now includes Avenue I and Avenue II. Avenue I streets are designed to be 70 feet wide and with

⁷⁹ LIBBY THOMAS, FED. HIGHWAY ADMIN., ROAD DIET CONVERSIONS (2013), http://www.pedbikeinfo.org/cms/downloads/WhitePaper_RoadDiets_PBIC.pdf [https://perma.cc/6PPV-KV35].

⁸⁰ Catherine Liberty Feliciano, *LA City Council votes to move proposed Westwood Boulevard bike lane*, DAILY BRUIN (May 16, 2016), <http://dailybruin.com/2016/05/16/la-city-council-votes-to-move-proposed-westwood-boulevard-bike-lane/> [https://perma.cc/R8FE-MAKU]; Dave Goodsmith & Ben Van Dyke, Opinion, *Despite the controversy, Silver Lake’s ‘Road Diet’ worked*, L.A. TIMES (Sept. 29, 2016), <http://www.latimes.com/opinion/livable-city/la-ol-rowena-silver-lake-road-diet-20160929-snap-story.html> [https://perma.cc/4ZX7-CGS4]; Alice Walton, *Silver Lake’s leads to road rage, captured on video*, L.A. TIMES (Sept. 30, 2015), <http://www.latimes.com/local/lanow/la-me-ln-silver-lake-road-rage-htmlstory.html> [https://perma.cc/c26F4-L2B6]; Bianca Barragan, *Data Scientists Say Controversial Rowena ‘Road Diet’ actually worked*, CURBED (Sept. 29, 2016), <https://la.curbed.com/2016/9/29/13113142/rowena-road-diet-success-data> [https://perma.cc/KNQ9-HF8V]; *Is Silver Lake’s Rowena Road Diet a Disaster?*, EASTSIDER (May 21, 2015), <http://www.theeastsiderla.com/2015/05/is-silver-lakes-rowena-road-diet-a-disaster/> [https://perma.cc/6ASA-VEHK]; Laura J. Nelson, *L.A. Has Been Sued Again Over Traffic Lane Reductions in Playa del Rey*, L.A. TIMES (Aug. 11, 2017), <http://www.latimes.com/local/lanow/la-me-ln-playa-del-rey-lawsuit-20170810-story.html> [https://perma.cc/Y24C-8NFG]; Elija Chiland, *Drivers Aren’t Happy About Pedestrian-Friendly Changes in Playa del Rey*, CURBED (June 7, 2017), <https://la.curbed.com/2017/6/7/15758036/playa-del-rey-safe-streets-bonin-vista-del-mar-traffic> [https://perma.cc/G8QV-39QU]; Matt Tinoco, *Bike Haters Can’t Stop Bike Lanes Coming to Westwood and South L.A.*, LAIST (Feb. 11, 2016), http://laist.com/2016/02/11/despite_opposition_city_chooses_to.php [https://perma.cc/P7MX-SJHK]; Hoa Quach, *South LA Protestors Bach Councilman Price’s Bike Proposal*, MYNEWSLA (Feb. 9, 2016), <https://mynews1a.com/government/2016/02/09/south-la-protesters-bash-councilman-prices-bike-proposal/> [https://perma.cc/A2KZ-TFPQ].

⁸¹ MOBILITY PLAN 2035, *supra* note 2, at 18–19.

⁸² *Id.*

a right-of-way width of 100 feet, 1–2 lanes in each direction, sidewalks 15 feet wide, and a targeted operating speed of 35 miles per hour. While Avenue II streets are geared to less movement with a roadway width of 56 feet, right-of-way width of 86 feet, and targeted operating speed of 30 miles per hour, their number of lanes and sidewalk widths are similar to those of Avenue I streets. The street standards reflect the approach of the National Association of City Transportation Officials (“NACTO”) Urban Bikeway Design Guide.⁸³

Each of the Mobility Plan’s five goals refers to objectives and policies specific to biking. The goal of Safety First describes many of these. These include Vision Zero, a city effort to eliminate transportation fatalities to zero by 2025; enacting speed control measures in reference to the Complete Street Design Guide; applying speed controls to school zones; and increasing female bicycle ridership.⁸⁴ Here, the Mobility Plan notes that roadway users such as walkers, children, the elderly, the mobility-impaired, and bikers can be highly vulnerable.⁸⁵ The Plan seeks to implement complete street concepts using layered network approaches, with different modes of travel operating at one location. These modes include transit, bicycle, and vehicle networks.⁸⁶ This approach also attempts to increase connectivity between transit modes. At certain locations or at specified times, these plans may prioritize a particular mode.

The policy of designing safe speeds aims to avoid traffic fatalities. Key to this policy is that streets are designed with Targeted Operating Speeds, as defined in the Complete Streets Design Guide.⁸⁷ Faster car speeds dramatically increase the likelihood of a fatality in a collision. There is an eighty percent chance of death when a vehicle travels forty miles per hour or higher, but a collision at twenty miles per hour or slower only has a five percent chance of fatality.⁸⁸ As such, layered approaches to biking and walking along with vehicles can increase safety, depending on what mode of travel the street is designed to prioritize.⁸⁹

The Plan guides the city’s mobility planning decisions in conjunction with the city’s separate street safety initiative called Vision Zero. Announced by the Mayor in August of 2015, Vision Zero seeks to eliminate traffic fatalities by coordinating various local efforts such as street design,

⁸³ *Id.*

⁸⁴ *Id.* at 61.

⁸⁵ *Id.* at 62.

⁸⁶ *Id.* at 63.

⁸⁷ MOBILITY PLAN 2035, *supra* note 2, at 65.

⁸⁸ *Id.*

⁸⁹ *Id.*

traffic lights, law enforcement data gathering, and others.⁹⁰ Many of the Mobility Plan's benefits, such as increasing street calming and city biking, look to Vision Zero efforts for support. Vision Zero aims to address specific Los Angeles challenges such as the second highest rate of pedestrian deaths by motor vehicles and a pedestrian fatality rate nearly four times the national average, representing more than half of all traffic collision fatalities.⁹¹

Vision Zero is premised on the ideas that deaths due to traffic collisions are unacceptable and that street design can contribute to unsafe streets and be utilized to reduce fatalities.⁹² Vision Zero design includes traffic light coordination, vehicle speed, enforcing right of way and speed rules, and street calming such as bike lanes, greenery, and resident activity on sidewalks. Vision Zero's Action Plan was released in January of 2017, with maps and listings of which corridors and intersections carry the highest risk of collision.⁹³ Central to the Action Plan are statistics, also referred to the Mobility Plan, that show that there is a five percent likelihood of a death for a pedestrian hit by a car traveling twenty miles per hour, but this increases to forty five percent for cars traveling thirty miles per hour.⁹⁴ When this initiative was announced, six percent of the city's street mileage accounted for sixty five percent of pedestrian and cyclist deaths and severe injuries.⁹⁵ The initiative's goals are to reduce traffic fatalities by twenty percent by 2017 and eliminate them by 2025.⁹⁶ Its effort began in earnest in 2017 when the City allocated \$27 million to fund Vision Zero projects including an essential \$8.3 million for infrastructure improvements.⁹⁷ This funding was originally slated to be far less, only \$3 million, before city voters approved a sales tax measure in November of

⁹⁰ Eric Garcetti, Mayor of the City of L.A., Executive Directive No. 10 at 1–2 (2015), https://www.lamayor.org/sites/g/files/wph446/f/page/file/Mayor_Garcetti_File_Executive_Directive_10_Vision_Zero.pdf?1440454405 [<https://perma.cc/YW7X-TVVB>].

⁹¹ *Id.* at 1.

⁹² See generally Alissa Walker, *Why Do City Leaders Want to Keep LA's Streets Dangerous?*, CURBED (May 17, 2017), <https://la.curbed.com/2017/5/17/15644618/vision-zero-traffic-deaths-budget-bonin-ryu> [<https://perma.cc/3U3W-B8BS>] (describing the need for Vision Zero in Los Angeles and its funding challenges).

⁹³ CITY OF L.A., VISION ZERO ACTION PLAN at 18–19, 21 (2017), <http://visionzero.lacity.org/wp-content/uploads/2017/04/VisionZeroActionPlan-2017.pdf> [<https://perma.cc/T6PM-ND9Y>].

⁹⁴ Garcetti, *supra* note 90, at 2.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Alissa Walker, *City Council votes to dedicate \$27M to Vision Zero, its plan to end traffic deaths*, CURBED (May 18, 2017), <https://la.curbed.com/2017/5/18/15660082/vision-zero-walking-biking-budget-bonin> [<https://perma.cc/7UXN-XRA6>].

2016 for infrastructure.⁹⁸ Los Angeles's Vision Zero initiative is similar to efforts by cities worldwide, which have succeeded in reducing deaths for walkers and bike riders but never fully eliminated them.⁹⁹ Los Angeles Vision Zero projects like road diets and traffic calming attract much of the same public opposition as do bike lanes and other projects envisioned by the Mobility Plan.¹⁰⁰

Advocates for Complete Street approaches, road diets, and bike lanes sight numerous empirical studies that essentially conclude that bike infrastructure, including bike lanes and other means like street demarcations and signage, along with slowing automobiles, lessen biking injuries, collisions, and fatalities.¹⁰¹ In Los Angeles, critics of bike lanes essentially argue that they take away road use that should be devoted to cars and that planned road diets will make things worse.¹⁰² In 2017,

⁹⁸ *Id.*

⁹⁹ Susan Carpenter, *Inside the Audacious Plan to Eliminate Traffic Deaths in L.A.*, L.A. MAG. (Aug. 21, 2017), <http://www.lamag.com/mag-features/vision-zero/> [<https://perma.cc/5GKD-LKNV>].

¹⁰⁰ *Id.*

¹⁰¹ There are many examples of these studies. John Pucher and Ralph Buehler, conclude that in ten American and Canadian cities with improved biking infrastructure, for the 2000–2015 and 2005–2015 periods, there has been a reduction in cyclist crashes and serious injuries, see John Pucher & Ralph Buehler, *Safer Cycling Through Improved Infrastructure*, 106 AM. J. PUB. HEALTH 2171 (2016). Felipe E. Pedroso et al find that after bike infrastructure improvements in Boston during 2009–2012 the total percentage of bike accidents with injuries “diminished significantly,” see F. E. Pedroso et al., *Bicycling Use and Cyclist Safety Following Boston's Bicycle Infrastructure Expansion, 2009–2012*, 106 AM. J. PUB. HEALTH 2171 (2016). Dave Goldsmith argues that bike collisions in Los Angeles can be predicted and their root causes identified, since the city is a world leader in open data. This proposes solutions to Vision Zero perspectives that roads designed for cars cause bike accidents. See Dave Goodsmith, *How we can use data to prevent cycling deaths in Los Angeles*, L.A. TIMES (Dec. 18, 2015), <http://www.latimes.com/opinion/livable-city/la-ol-livable-data-prevent-cycling-deaths-20151217-htmlstory.html> [<https://perma.cc/8FYD-U6QP>]. Harris et al. finds that bike lanes and traffic diversion makes bike riding safer by separating cyclists from cars and reducing car speeds, see M. Anne Harris et al., *Comparing the effects of infrastructure on bicycling injury at intersections and non-intersections using a case-crossover design*, 19 INJ. PREV. 303 (2013). Li Chen et al. finds that in New York City increases in bike lanes and the number of cyclists did not increase the number of crashes and that reduced vehicle speeds and separating cars from bikes explains this, see Li Chen et al., *Evaluating the Safety Effects of Bicycle Lanes in New York*, 102 AM. J. PUB. HEALTH 1120 (2012). In 2009 after reviewing a series of studies, Conor CO Reynolds et al. concluded that biking infrastructure likely reduces bike crashes and injuries and that transport engineers should develop cycling safety guidelines, see Conor C. Reynolds et al., *The impact of transportation infrastructure on bicycling injuries and crashes: a review of the literature*, 8 ENVTL. HEALTH 47 (2009).

¹⁰² See Alexis Garcia, *L.A. Is Creating Traffic Jams to Push Commuters to Ride Bikes and*

some council members sought measures to limit bike lanes. This came after local opposition to individual bike lanes, which began in 2015, lead to lawsuits and political challenges for council members.¹⁰³ The city has on several occasions installed bike lanes after lawsuits from cyclists injuries or death, accounting for \$22 million in six cases since 2014.¹⁰⁴

The Mobility Plan's next objectives of a World-Class Infrastructure goal focus mostly on non-bike networks, but also include public outreach for completing bike lanes and neighborhood enhanced networks.¹⁰⁵ This infrastructure goal lists four kinds of policies that would include bike lanes.¹⁰⁶ Most obvious is policy 2.6 Bicycle Network. It describes biking as important to both long and short distances and encompasses both protected bike lanes and bike paths.¹⁰⁷ Bike lanes are dedicated roadways only for bicycle use, often found in parks or in open spaces. Bike paths refer to space reserved for bicycle use, whether exclusive or not, on a road that is used by other transportation modes, such as vehicles or buses. The Complete Streets Design Guide explains the various bike treatments and when they work best.¹⁰⁸ Importantly, it notes that many cities have increased bike ridership and lessened traffic delays by employing street calming measures such as bike lanes.¹⁰⁹ Biking policies support health, safety, and equity factors of mobility planning. For policy makers, these factors can be prioritized using data-driven choices, as described in policy 4.6 from Plan's chapter 4.¹¹⁰ Two other infrastructure policies encompass bike lanes; the Complete Streets Design Guide and Neighborhood Enhancement Network. The Complete Streets Design Guide acts as a toolkit to design streets, aiming for safety, increased vitality, and access.¹¹¹ Bike lanes are incorporated as a mode of transportation prioritized on a street to decrease vehicle speed and to increase public access to roads. The

Rail, REASON (Nov. 20, 2017), <http://reason.com/reasontv/2017/11/20/los-angeles-war-on-commuters-road-diet> [<https://perma.cc/J25H-MK8T>].

¹⁰³ See Joe Linton, *How Councilmembers Englander and Krekorian Could Respond To Collision Lawsuits*, LASTREETS BLOG (Oct. 26, 2017), <https://la.streetsblog.org/2017/10/26/how-councilmembers-englander-and-krekorian-could-respond-to-collision-lawsuits/> [<https://perma.cc/U62Y-E9RJ>].

¹⁰⁴ *Id.*

¹⁰⁵ MOBILITY PLAN 2035, *supra* note 2, at 76.

¹⁰⁶ *Id.* at 77.

¹⁰⁷ *Id.* at 83.

¹⁰⁸ *Id.* at 79.

¹⁰⁹ *Id.* at 83.

¹¹⁰ *Id.*

¹¹¹ COMPLETE STREETS DESIGN GUIDE, *supra* note 37, at 4, 210.

Neighborhood Enhancement Network seeks to do the same in locally serving streets. In both settings bike paths add to street life, calm car speeds, and reduce the need for car trips.¹¹²

In the Access for all Angelenos goal, the Mobility Plan describes two biking objectives. First, the Plan prioritizes proximity to biking infrastructure.¹¹³ It states that ninety percent of households should be within one-half mile of bike lanes, bike paths, or neighborhood enhanced streets. Next, the Plan aims for half of all households to have access to bike sharing within one quarter miles. An important policy for these are “first-mile and last-mile solutions,” which ensures that users have a way to get to public transit, be it a transit station or a bus stop.¹¹⁴ Bike lanes and bike sharing are useful for filling this gap. This is an example of multimodal transportation planning.

The Mobility Plan’s Collaboration, Communication, and Informed Choices goal seeks to inform the public, employ electronic technologies, and rely on data-based policy choices.¹¹⁵ It includes the simple biking objective to implement wayfinding on all parts of the Bicycle Enhancement Network.¹¹⁶ Wayfinding is the system of street signs and easy to decipher signals indicating where paths continue, connect, and turn. Most policies for this goal utilize outreach, private-public cooperation, and digital means to provide information and track mobility choices.

The Mobility Plan’s Policy 4.6 Data-Driven Prioritization of Projects contains what is the most legally debated aspect of the Mobility Plan.¹¹⁷ This policy explains that a “data-driven process” identifies the most impact a project can have.¹¹⁸ This is important since financial resources are limited and leaders should seek to strategically prioritize improvements.¹¹⁹ Projects may achieve multiple objectives and benefits, while having a wider appeal to funding sources. This policy guidance can be interpreted as framing how non-automobile modes are more attractive than automobile modes. Policy 4.6 explains that this requires “considering a wider array of data beyond vehicular throughput,” which has “traditionally been the primary factor guiding transportation investments.”¹²⁰

¹¹² MOBILITY PLAN 2035, *supra* note 2, at 81.

¹¹³ *Id.* at 100.

¹¹⁴ *Id.* at 106.

¹¹⁵ *Id.* at 119.

¹¹⁶ *Id.* at 126.

¹¹⁷ *See infra* Part III notes.

¹¹⁸ MOBILITY PLAN 2035, *supra* note 2, at 126.

¹¹⁹ *Id.*

¹²⁰ *Id.*

By doing this, the Mobility Plan aims to change the transportation policy focus away from being a default or priority for cars. It suggests asking how a policy eliminates car trips, lessens vehicle speeds, invites public use, helps air quality or public health, and supports bikes, walking, or transit modes.¹²¹ This is a different policy lens than asking simply how much faster or slower cars travel when a city transportation decision is made. This prioritization contained in Policy 4.6 points to the legal debate between Los Angeles and Fix The City over a host of issues, starting with how many feet cars are excluded from, but also encompassing air quality, CEQA regulations, and the benefit of lessening auto trips versus the burden of traffic calming.

This changed approach to assessing the impact of transportation programs also appears in the Clean Environments and Healthy Communities goal. Here, a central objective is to decrease Vehicle Miles Traveled (“VMT”) per capita by five percent every five years to twenty percent.¹²² This means that there is an aim to reduce car trips by twenty percent. Policies to enact this and other environmental objectives include sustainable transportation, VMT, and alternative metrics. Bike lanes are just one source of many sustainable transportation methods, but biking in general can only be publicly supported with data-based justifications. For this reason, the policies on VMT and metrics are so significant.

In sum, the Mobility Plan includes adding new bike lanes to Los Angeles as part of a larger project to prioritize safety and travel options for city residents, targeting about ten percent of the city’s streets with lane reductions. This is part of the Plan’s larger effort to balance the needs of all transportation means. As a blueprint for future transportation and urban planning city goals, the Plan guides choices on what type of projects will be implemented in the future. Its environmental benefits, produced by decreased car use, should be reflected in future environmental metrics for traffic analysis.

II. THE BIKE LANE FIGHT OVER ENVIRONMENTAL IMPACTS AND CITY GOVERNANCE

Environmental law and city governance norms frame the bike lane fight over the Mobility Plan and how Angelenos will live and move

¹²¹ *Id.* at 127.

¹²² *Id.* at 143.

in the future. Soon after the City Council approved the Mobility Plan in 2015, Fix The City filed a lawsuit arguing that the city failed to properly take into account how the Mobility Plan would increase car congestion, causing air pollution and compromising public safety, and moreover, that the Mayor and City Planning Commission had not reviewed Plan amendments. The suit alleges that the Plan will produce increased car traffic on streets, since bikes and buses will occupy lanes previously used by cars.¹²³ This increase will result in more emissions and less air quality.¹²⁴ Moreover, the purported increased gridlock will interfere with emergency responders' ability to rescue city residents. Fix The City avers that these facts necessitate additional environmental review and more public comment.¹²⁵ It characterizes the Plan as forcing riders out of their cars and into massive auto congestion because of the city's shift to support public transit, walking, and biking.

This litigation strategy focusing on CEQA review and procedural infractions in related EIR and city legislative and executive approvals characterize bike lane fights, past, present, and for the future.¹²⁶ The Mobility Plan has been embroiled in a lawsuit since then and similar legal action has developed against new bike lanes recently installed.¹²⁷ Los Angeles's bike lane fight is part of a larger effort to restructure mobility and living in the city, but in litigation and implementation terms it follows the contested course San Francisco battled with for its Bike Plan a decade before.¹²⁸

This Article refers to the Mobility Plan adopted by the City Council on January 20, 2016 and approved by the City Planning Commission on December 17, 2015.¹²⁹ This is the Plan that the City will implement, to guide how mobility projects including bike lanes are enacted. But a prior version of the Plan had been approved by the city just a few months before.¹³⁰ It gave rise to the *Fix The City* lawsuit.

¹²³ First Am. Verified Pet. for Writ of Mandate and Compl. for Injunctive and Declaratory Relief at ¶ 44, *Fix the City, Inc. v. City of Los Angeles* (Cal. Super. Ct. L.A. County Feb. 19, 2016) (No. BS159574) [hereinafter Amended Complaint].

¹²⁴ *Id.* ¶ 44.

¹²⁵ *Id.* ¶ 53.

¹²⁶ *Id.* ¶¶ 51–62, 82–90.

¹²⁷ Nelson, *supra* note 80.

¹²⁸ See Rachel Gordon, *Judge puts city's bicycle plan on hold/injunction imposed until project's review process examined*, SF GATE (June 24, 2006), <http://www.sfgate.com/bayarea/article/SAN-FRANCISCO-Judge-puts-city-s-bicycle-plan-on-2494121.php> [https://perma.cc/8YA8-NK4C].

¹²⁹ MOBILITY PLAN 2035, *supra* note 2.

¹³⁰ Complaint Sept. 9, *supra* note 13, at ¶ 2.

A brief description of these steps offers a look into how the Mobility Plan became the subject of litigation.¹³¹ On August 11, 2015 the City Council adopted the first version of Mobility Plan and certified its corresponding EIR, which the City Planning Commission had been working on since 2013.¹³² Fix The City filed its first complaint, alleging CEQA and city governance claims, on September 9.¹³³ Purportedly in response to this, the City Council initiated a motion to rescind the Mobility Plan on October 30.¹³⁴ On November 25, the City Council rescinded the first version of the Mobility Plan adopted on August 11.¹³⁵ On December 17, the City Planning Commission held a public hearing on amendments to the Mobility Plan, as approved in August by the City Council. Fix The City filed a new complaint on December 15.¹³⁶ The City Council adopted the second version of the Mobility Plan on January 20, 2016.¹³⁷

Fix The City's complaint presented its CEQA and city governance claims.¹³⁸ The lawsuit was not a surprise the organization had provided public and written testimony against the Mobility Plan during several phases of the EIR and in city agency and council hearings. Over the years, it attracted much public attention in Los Angeles for lawsuits filed against high-density housing, public infrastructure, and mixed-use development projects. For the Mobility Plan dispute, its later complaints refer to procedural infractions created by rescinding the first version of the Plan and not conducting a new EIR.¹³⁹

Fix The City describes itself as a nonprofit public benefit corporation with a mission focused on quality of life and public safety.¹⁴⁰ Its objectives include neighborhood improvements and protection, local infrastructure, local government efficiency, and environmental advocacy in Los Angeles.¹⁴¹ Its webpage refers to its effort not as "anti-development" but as "pro-public

¹³¹ This history is described in Complaint Sept. 9, *supra* note 13, at ¶¶ 2,4, 11–24; Complaint Dec. 15, *supra* note 13, at ¶¶ 2–5, 12–34; Amended Complaint, *supra* note 123, at ¶¶ 2–5, 12–36.

¹³² Complaint Sept. 9, *supra* note 13, at ¶ 2.

¹³³ *Id.*

¹³⁴ Complaint Dec. 15, *supra* note 13, at ¶ 27.

¹³⁵ *Id.* ¶ 35.

¹³⁶ See generally Complaint Dec. 15, *supra* note 13.

¹³⁷ MOBILITY PLAN 2035, *supra* note 2.

¹³⁸ See Complaint Dec. 15, *supra* note 13, at ¶¶ 48–90.

¹³⁹ *Id.*

¹⁴⁰ FIX THE CITY—LOS ANGELES, http://fixthecity.org/?page_id=283 [https://perma.cc/JU3N-LLTL] (last visited Jan. 21, 2018).

¹⁴¹ *Id.*

safety, pro-livability, and pro-‘rules matter.’”¹⁴² This mission is painted as monitoring government policies so the “type, amount and location of development” correlates with “adequate supporting infrastructure and services.”¹⁴³ In addition to the Mobility Plan, active projects include seeking high-density development in West Los Angeles and Hollywood are consistent with community plans.¹⁴⁴ Traditionally the group garners public attention for trying to stop or modify development in Los Angeles, while recently criticism focus on how Fix The City settles with developers to attain money and pursue its other projects.¹⁴⁵

In its first cause of action, Fix The City claims that the Mobility Plan violates the CEQA, since the Environmental Impact Report (“EIR”) used to support the Plan was outdated and omitted important relevant information.¹⁴⁶ Enacted in 1970, CEQA created a comprehensive scheme seeking to ensure California agencies: examine the environmental effects of state projects, inform themselves and the public of these potential harms, and make efforts to avoid or reduce these harms.¹⁴⁷ CEQA requires agencies to review if there will be a significant adverse effect to the environment caused by the project, then an EIR must be prepared, certified, and reviewed by the agency before any approval of the project.¹⁴⁸ “Significant effect” is defined as substantial or potentially substantial adverse change to the environment, referring to “physical conditions . . . affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, [and] objects of historic and aesthetic significance.”¹⁴⁹ An EIR has the objective of serving as a way for agencies and the public to receive information about a project and the environment and methods to avoid or lessen these impacts.¹⁵⁰ The EIR should be prepared to support decisions that intelligently take into account environmental consequences of a project. This includes identifying the effects of a project and how they can be avoided, litigated,

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Project: Hollywood Community Plan Update*, FIX THE CITY—LOS ANGELES, http://fixthecity.org/?page_id=13 [<https://perma.cc/C8J3-JXA6>] (last visited Jan. 21, 2018).

¹⁴⁵ David Zahniser, *When Developers Strike Deals with Homeowner Groups: ‘Hush Money,’ or a Way to Defend L.A. Neighborhoods?*, L.A. TIMES (Apr. 4, 2017), <http://www.latimes.com/local/lanow/la-me-ln-homeowner-developer-pacts-20170330-story.html> [<https://perma.cc/37Q2-7MR2>].

¹⁴⁶ Complaint Dec. 15, *supra* note 13, at ¶ 50.

¹⁴⁷ California Environmental Quality Act, CAL. PUB. RES. CODE §§ 2100–21189.57 (West 2016 & Supp. 2017); CAL. CODE REGS., tit. 14, § 15002 (2017).

¹⁴⁸ *Id.* at § 21002.1.

¹⁴⁹ *Id.* at § 21068.

¹⁵⁰ *Id.* at § 21002.1.

substantially lessened or minimized, and if alternatives to project, included not proceeding with the project, exist.¹⁵¹ This process of identifying effects and how to lessen or avoid them allows for the state agency to make an intelligent decision about the project.¹⁵² The “core of the EIR” is in the mitigation and alternatives sections.¹⁵³

In April 2013, Los Angeles issued a notice to prepare an EIR.¹⁵⁴ The Department of City Planning released its Draft Environmental Impact Report (“DEIR”) on February 13, 2014 and a Revised Draft Environmental Impact Report (“RDEIR”) six days later.¹⁵⁵ The Final Environmental Impact Report (“FEIR”) was published in May of 2015.¹⁵⁶ The FEIR totals over 300 pages and includes sections for Findings of Fact, Mitigation Monitoring Plan, and a Statement of Overriding Consideration.¹⁵⁷ Importantly, it includes general and itemized responses to public inquiries and comments from the DEIR, which is over 900 pages.

In its lawsuit, Fix The City’s CEQA arguments focus on the EIR, in its three phases, and how Los Angeles City Council, Mayor, Planning Department, and council committees referred to the EIR in approving the Mobility Plan.¹⁵⁸ This argumentation regards purported environmental harms caused by the Mobility Plan and then procedural deficiencies with the City Council and the Mayor decision not to add to the EIR or begin a new EIR.¹⁵⁹ Fix The City argues in its complaint, and has contended since the DEIR was issued, that the Mobility Plan: increases congestion by taking car lanes away for transit, bikes, and walking; makes claims about reducing Green House Gases (“GHG”) that are unproven; relies on outdated traffic data; uses the wrong methodology to examine traffic congestion by relying on VMT versus vehicle hours; ignores significant impact to response times for emergency services caused by eliminating car lanes; and ignores alternatives.¹⁶⁰

Fix The City’s more particular CEQA claims focus on the FEIR and the procedure used to approve the Mobility Plan. The City did not prepare a new EIR after the September 2015 certification and referred

¹⁵¹ PUB. RES. § 21002; CAL. CODE REG. tit. 14, §§ 15126, 15143 (2017).

¹⁵² PUB. RES. §§ 21002.1(a), 21061.

¹⁵³ *In re Bay-Delta Programmatic Env'tl. Impact Report Coordinated Proceedings*, 184 P.3d 709, 722 (Cal. 2008).

¹⁵⁴ Complaint Dec. 15, *supra* note 13, at ¶ 13.

¹⁵⁵ *Id.* ¶ 16.

¹⁵⁶ *Id.* ¶ 20.

¹⁵⁷ *Id.* ¶ 21.

¹⁵⁸ *Id.* ¶¶ 50–54, 57–60.

¹⁵⁹ *Id.*

¹⁶⁰ Complaint Dec. 15, *supra* note 13, at ¶ 39.

to CEQA Guidelines section 15162.¹⁶¹ This Guideline only requires a subsequent EIR when the lead agency determines “substantial changes” due to “new significant environmental effects,” “increase in the severity,” changed “circumstances,” or “new information of substantial importance, which was not known or could have been known.”¹⁶² This determination needs to be based on “substantial evidence in light of the whole record.”¹⁶³ Fix The City argues that a finding of fact was needed to rely on this determination. It contends that new evidence arose between the RDEIR and later the FEIR regarding first response times of emergency services and that this should have been reviewed.¹⁶⁴ Moreover, it argues that a new EIR should have looked into the City Council adding the implementation criteria of equity and public safety and designating itself as lead agency to implement the Mobility Plan.

The second kind of argument made by Fix The City focuses on the City Council’s process in approving the Plan.¹⁶⁵ Specifically, it refers to sections 555, 556, and 558 of the Los Angeles City Charter (“LACC”), Section 11.5.6 of the Los Angeles Municipal Code (“LAMC”), and Government Code 65400.5.¹⁶⁶ Section 555 of LACC requires that the City Council attain approval from the City Planning Commission and the Mayor for amendments to the city’s General Plan, which the Mobility Plan is.¹⁶⁷ While sections 556 and 558 of the Charter refer to consistency with the city’s General Plan and to consistencies for city ordinances, orders, and resolutions, respectively.¹⁶⁸

Specific to the Section 555 claim, Fix The City refers to how the City Council repealed the Mobility Plan without obtaining review from City Planning Commission and the Mayor, argued to be required by Section 555(c).¹⁶⁹ This likely refers to the November 25, 2015 council action rescinding the original Mobility Plan from September of that year. Next, Fix The City refers to further procedural infractions of Los Angeles Municipal

¹⁶¹ CAL. CODE. REGS., tit. 14, § 15162 (2017).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Amended Complaint, *supra* note 123, at ¶ 56.

¹⁶⁵ *Id.* ¶¶ 66–73.

¹⁶⁶ *Id.* ¶¶ 69–71.

¹⁶⁷ L.A., CAL., CITY CHARTER, art. V, § 555 (2015), [http://library.amlegal.com/nxt/gateway.dll/California/laac/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:losangeles_ca_mc](http://library.amlegal.com/nxt/gateway.dll/California/laac/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:losangeles_ca_mc) [[https://web.archive.org/web/*/http://library.amlegal.com/nxt/gateway.dll/California/laac/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:losangeles_ca_mc](https://web.archive.org/web/*/http://library.amlegal.com/nxt/gateway.dll/California/laac/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:losangeles_ca_mc)] (last visited Jan. 21, 2018).

¹⁶⁸ *Id.* §§ 556, 558.

¹⁶⁹ Amended Complaint, *supra* note 123, at ¶ 69.

Code section 11.5.6.¹⁷⁰ It argues that the Council could only take action within a seventy-five-day window after recommendation from the City Planning Commission and the Mayor.¹⁷¹ Here it is argued that the Council could not approve the version of the Mobility Plan from November since the window had expired.¹⁷² Lastly, Fix The City argues that the Mobility Plan is inconsistent with Los Angeles's thirty five community plans, which require a reduction in automobile congestion, and with the city's requirements to provide police and fire services.¹⁷³ This allegedly violates the City Charter sections 556 and 588 and Government Code 65300.5.¹⁷⁴

Fix the City's CEQA legal arguments hit at the most significant stumbling block for urban bike planning projects in California. Many cities, including Los Angeles, Oakland, San Diego, San Francisco, and Berkeley, have found that CEQA is a roadblock to developing bike plans, creating bike lanes, or installing bike infrastructure.¹⁷⁵ CEQA offers a four decade-old regime mandating analysis of environmental effects, mitigation and alternatives; public disclosure and discussion of this; and certification by a lead agency.¹⁷⁶ For many urban planners and bike advocates, this environmental law creates the greatest challenge for bike plans.¹⁷⁷ The irony is that urban biking projects are sought because of their environmental benefits, but CEQA's strict procedural mandates, guaranteed public participation, and private standing secure a legal avenue for opposition. By examining how projects delay automobile travel and thus impact the environment, CEQA is often in tension with state requirements to decrease greenhouse gas emissions.¹⁷⁸ CEQA's transportation analysis often encourages car trips and these vehicle miles traveled pose a historic challenge for meeting California's greenhouse gas

¹⁷⁰ L.A., CAL., MUN. CODE § 11.5.6 (current through June 30, 2017).

¹⁷¹ Amended Complaint, *supra* note 123, at ¶ 70.

¹⁷² *Id.*

¹⁷³ *Id.* ¶¶ 79, 81.

¹⁷⁴ L.A., CAL., CITY CHARTER, art. V, §§ 556, 558 (2015); CAL. GOV'T CODE § 65300.5 (West 2016).

¹⁷⁵ Liam Dillon, *Want a Bike Lane in Your Neighborhood? It's Not So Simple in California*, L.A. TIMES (Apr. 7, 2016), <http://www.latimes.com/politics/la-pol-sac-enviro-bike-lanes-20160407-story.html> [<https://perma.cc/G87Q-S2QJ>].

¹⁷⁶ See generally California Environmental Quality Act, CAL. PUB. RES. CODE §§ 2100–21189.57 (West 2016 & Supp. 2017).

¹⁷⁷ Justin Ewers, *There's a Better Way than CEQA: Urban Planner's Perspective*, CAL. ECON. SUMMIT (Jan. 31, 2013), <http://www.caeconomy.org/reporting/entry/theres-a-better-way-than-ceqa-urban-planners-perspective> [<https://perma.cc/43J9-MYFY>].

¹⁷⁸ Martha Bridegam, *LOS to VMT: The Arguments Have Begun*, CAL. DEV. & PLAN. REP. (Aug. 27, 2014), <http://www.cp-dr.com/articles/node-3560> [<https://perma.cc/UJ38-AE8Q>].

emission reduction targets.¹⁷⁹ Moreover, Fix the City's claims regarding city governance complement the CEQA arguments, with both doctrines mandating procedural steps and information disclosure. The Mobility Plan is a long-term guide for land use determination, but the litigation challenging it capitalizes on environmental law and informational disclosures.

Fix the City's litigation strategy focused on the EIR and CEQA is very similar to the lawsuit that challenged San Francisco's Bike Plan from 2005 to 2013.¹⁸⁰ In 2005, city leaders in San Francisco approved a comprehensive plan increasing the number of bike lanes in the city and permitting bikes on public transport. Groups called the Coalition for Adequate Review and Ninety-Nine Percent and an individual Rob Anderson filed a lawsuit in 2005, challenging the bike plan and seeking an EIR as mandated by CEQA.¹⁸¹ A court enjoined the Bike Plan in November of 2006 because it lacked an EIR.¹⁸² The city had argued that a prior EIR from 1997 was sufficient. It contended that the 2005 Bike Plan merely amended the prior bike plan.¹⁸³ In addition to bike lanes, this 2005 amendment tried to: eliminate city use of Level of Service ("LOS") measures for car congestion, make bikes a priority in city planning and land use decisions, and require consistency in land use and mobility decisions with the bike plan.¹⁸⁴ In 2009 a new EIR was certified by city leaders, with an over 2,000 page report, 36,000 pages of administrative record, and 60 projects ready to be completed.¹⁸⁵ The next year in 2010 the trial court sided with the city, but Rob Anderson appealed this trial court order and won.¹⁸⁶ In January of 2013, the appeals court found that despite the EIR the city had not made the proper findings about the Bike Plan's infeasibility.¹⁸⁷

¹⁷⁹ Joanna D. Malaczynski & Timothy P. Duane, *Reducing Greenhouse Gas Emissions from Vehicle Miles Traveled: Integrating the California Environmental Quality Act with California Global Warming Solutions Act*, 36 *ECOLOGY L.Q.* 71 (2009).

¹⁸⁰ For a description of the Bike Plan content and the various steps in approval, litigation, EIR, and appeals, see *Environmental Impact Report for Upgrade of San Francisco Bicycle Plan Satisfied California Environmental Quality Act, Although Board Must Make Required Findings*, 65 *PLAN. & ENVTL. L.* 121 (2013). For details on what motivated the lead plaintiff Rob Anderson see Phred Dvorak, *One man's crusade puts brakes on SF's bicycle plans*, *PRESS DEMOCRAT* (Aug. 23, 2008), <http://www.pressdemocrat.com/news/2203132-181/one-mans-crusade-puts-brakes> [<https://perma.cc/U2ZD-4F2Q>].

¹⁸¹ Dvorak, *supra* note 180.

¹⁸² *Id.*

¹⁸³ See *Rob Anderson v. City and Cnty. of San Francisco*, No. A129910, 2013 WL 144915, at *1 (Cal. Ct. App. Jan 14, 2013).

¹⁸⁴ *Id.* at *2.

¹⁸⁵ *Id.* at *1.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

Eventually, much of the bike plan was implemented, which has been argued by some as litigation delays and by others as CEQA-mandated analysis of environmental impacts. Had San Francisco initially conducted an EIR in 2005, it could have avoided the costly litigation and delays. San Francisco's experience, with city planning efforts supporting bikes at cars expense and a resultant CEQA-focused dispute, illuminates the challenges Los Angeles faces.

Since then California has made two significant changes to CEQA involving bike projects in particular and how transportation projects are measured to have environmental impacts.¹⁸⁸ First, the state amended CEQA to greater facilitate city efforts to install bike lanes and develop urban bike plans. The San Francisco experience with the 2005 Bike Plan motivated new exemptions to CEQA for cities and bikes.¹⁸⁹ Effective in 2014, CEQA exempted EIR requirements for bicycle transportation plans in urbanized areas and for bike lane projects in urbanized areas consistent with a local bicycle transportation plan.¹⁹⁰ The first exemption focused on transportation plans mentions restriping roads for bike lanes, bike parking, signal timing, and other signage.¹⁹¹ The second exemption focused just on the projects of restriping roads for bike lanes.¹⁹² While an EIR is not required for these plans and lanes, agencies must still hold public hearings, seek resident input, and prepare a report about traffic and safety impacts along with mitigation measures.¹⁹³ If the project or plan is approved, then the agency must file a notice with state and county clerks, providing an analysis of traffic and safety impacts. These two exemptions were renewed in July of 2017, with their effectiveness extended until January 1, 2021.¹⁹⁴

¹⁸⁸ Sara Dudley, *Use It or Lose It? CEQA's Bicycle Transportation Exemptions and Legislative Efforts to Preserve Them*, REMY MOOSE MANLEY (May 30, 2017), <http://www.rmmenviolaw.com/2017/05/use-it-or-lose-it-ceqa-bicycle-transportation-exemptions-and-legislative-efforts-to-preserve-them/> [<https://perma.cc/WCL9-AET5>].

¹⁸⁹ CAL. S. COMM. ENVTL. QUALITY, BILL ANALYSIS ASSEMB. B1218, 2017–2018, at 1–2 (June 21, 2017); Dudley, *supra* note 188.

¹⁹⁰ PUB. RES. CODE §§ 21080.1 (exempting bike transportation plans), 21080.25 (exempting bike lanes). In 2013, AB 417 originally amended the Public Resources Code to create these exemptions. *See* Assemb. B. 417, 2013 Leg., 2013–2014 Reg. Sess. (Cal. 2013), 2013 Cal. Stat. 4896. They were set to expire January 1, 2018, but were extended until January 1, 2021 by AB 1218 without any changes to each section. *See* Assemb. B. 1218, 2017 Leg., 2017–2018 Reg. Sess. (Cal. 2017), 2017 Cal. Legis. Serv. Ch. 149 (West).

¹⁹¹ PUB. RES. § 21080.20.

¹⁹² *Id.* § 21080.20.5.

¹⁹³ *Id.* §§ 21080.20, 21080.20.5.

¹⁹⁴ *Id.*; Assemb. B. 1218; Liam Dillon, *Gov. Brown Signs Bill Making It Easier to Create Bike Lanes—But Not That Much Easier*, L.A. TIMES (July 31, 2017), <http://www.latimes>

Larger reforms lie ahead for CEQA and bike lanes, specific to determining how transportation choices impact urban expansion and the use of automobiles. These changes by no means focus on bicycles, but they stand to greatly impact how EIRs will measure the benefits and drawbacks of bike lanes. On September 12, 2013 the legislature passed SB 743 which for transit project analysis replaced LOS measurements with VMT measurements.¹⁹⁵ The basic argument is that LOS focuses too much on a delay in car travel and encourages urban sprawl with wider roads and requiring road construction for cars.¹⁹⁶ LOS examines the number of vehicles that travel through an intersection at a given time.¹⁹⁷ By contrast, VMT analysis prioritizes projects which decrease the number of trips taken by automobiles. VMT evaluates vehicle usage rather than congestion.¹⁹⁸ Even though SB 743 is over four years old, regulations specifically regarding VMT have not been formally been issued by California. The Governor's Office of Planning and Research ("OPR") released proposals in January 2014 and January 2016, but final regulations have not been issued by the state's Natural Resources Agency.¹⁹⁹ Final VMT regulations has been complicated by delays, commentary, and formalizing what metrics within VMT will be required. As this Article is written, new proposals for VMT regulations are pending and anticipated to be implemented in 2018.²⁰⁰

These changes in California's environmental law point to an optimistic policy path for bike lanes, even though CEQA poses the most significant legal challenge for Los Angeles's Mobility Plan currently. This points to the ambivalent progress of urban bike advocacy. For decades, biking groups have sought or have been urged by health and environmental

.com/politics/essential/la-pol-ca-essential-politics-updates-governor-signs-bill-making-it-easier-to-1501536252-htmstory.html [https://perma.cc/9UQH-Z3FW].

¹⁹⁵ PUB. RES. § 21099.

¹⁹⁶ Mitchell M. Tsai, *Concerns About a CEQA Reform That Favors Multimodal Transportation*, L.A. LAW. MAG. 36, 36 (Jan. 2015); Bridegam, *supra* note 178.

¹⁹⁷ Donald E. Sobelman & Kathryn L. Oehlschlager, *The End (of LOS) is Nigh: OPR's Revised Proposal on Analysis of Transportation Impacts*, CEQA CHRONICLES (Apr. 5, 2016), <http://www.ceqachronicles.com/2016/04/the-end-of-los-is-nigh-oprs-revised-proposal-on-analysis-of-transportation-impacts/> [https://perma.cc/YU2A-F9ET]; *SB 743 Implementation*, CAL. DEP'T. OF TRANSP., <http://www.dot.ca.gov/hq/tpp/sb743.html> [https://perma.cc/GZ8E-PC5P] (last visited Jan. 21, 2018).

¹⁹⁸ Sobelman & Oehlschlager, *supra* note 197.

¹⁹⁹ *Id.*; *SB 743 Implementation*, *supra* note 197.

²⁰⁰ See Liam Dillon, *California regulators hope new rules will spur more bike lanes, housing near transit*, L.A. TIMES (Nov. 27, 2017), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-regulators-hope-new-rules-1511810701-htmstory.html>.

interests not to focus only on biking issues but instead seek coalition support for broader change. The Mobility Plan exemplifies such an end result. The Mobility Plan coordinates bike lanes with pedestrian plans and multimodal transportation means. It emphasizes bike lanes as part of a bike network sharing the city with vehicle and public transit networks, justified by sustainability and health benefits. This change in approach makes it easier for such projects to attain approval from community, policy maker, and local government levels.

For this Mobility Plan though, non-biking issues pose the largest legal challenges. The Mobility Plan's policy successes and its shift beyond bike lanes also set the course for legal disputes. The *Fix The City* lawsuit shows this in two ways. The Mobility Plan cannot fully rely on EIR exemptions for bike lanes or from the advantages of VMT metrics in traffic analysis. Both of these changes to CEQA promise to make bike lane implementation easier, but are not fully applicable to the Mobility Plan's legal defense.

Since the Mobility Plan is far more encompassing than bike lanes or a city bike plan, it cannot benefit from the EIR exemptions created by AB 417 in 2012. These exemptions allow bike lane projects to evade the more rigorous parts of CEQA and substitute a full EIR process with just public hearings and a negative declaration. *Fix The City's* CEQA claims brought up against the city focus on alleged deficiencies in the EIR for the Mobility Plan. For this, the Mobility Plan reforms much more than just bikes lanes in Los Angeles, this may have a larger impact on the city and make bike projects more feasible in local politics. But this expanded scope precludes the bike lane and bike plan exemptions California enacted specific to EIRs.

With a similar effect, CEQA changes to the determination of the environmental effect of traffic patterns cannot yet benefit the Mobility Plan. VMT is expected to make EIR scrutiny less daunting for replacing car lanes with bike lanes. Bike lanes lessen the number of cars on the road and this should result in less vehicle miles traveled, thus fairing well under VMT metrics.²⁰¹ The Mobility Plan EIR explains that it must use LOS, which essentially focuses on how a project impacts car delays, since VMT regulations had not yet been issued.²⁰² It explains that future

²⁰¹ Zahniser, *supra* note 4.

²⁰² CITY OF L.A., DEP'T OF CITY PLANNING, FINAL ENVIRONMENTAL IMPACT REPORT: CITY OF LOS ANGELES MOBILITY PLAN 2035, No. ENV-2013-0911-EIR, at 1–3 (May 2015), <http://planning.lacity.org/eir/mobilityplan/FEIR/feirmay12.pdf> [<https://perma.cc/P8DE-Q2FM>].

projects that the Mobility Plan guides should fare better with VMT.²⁰³ Bike plans in cities are just one of many types of projects that must undergo an EIR in California. This reaches far beyond transportation projects. Accordingly, VMT promises to impact far more than just bike lanes and transportation plans.²⁰⁴ For this reason, the opposition to VMT has been so substantial and it explains why VMT guidelines have been delayed by nearly five years. In this light, issues outside biking, such as housing and real estate development, defer VMT's implementation.

The *Fix The City* lawsuit and the changes to CEQA point to a shift in how law supports and challenges bike planning. As Fix the City sued Los Angeles in 2015, the city devised its plan and conducted its EIR. Well before most Mobility Plan projects were enacted, California was reinventing how to measure the negative impact of cars, bikes, and infrastructure use. Meanwhile other California cities have moved to use VMT to support the reorganization of transportation planning.²⁰⁵ In sum, the LA's bike lane fight looks to the future with Mobility Plan-inspired projects and VMT regulations for CEQA, but prior approaches to analyzing the environmental impact of traffic still fuel current litigation.

Meanwhile at the street and neighborhood level, the bike lane fight continues as a debate about road diets. Local opposition argues that bike lanes eliminate spaces for cars resulting in an increase in traffic.²⁰⁶ Bike advocates and city leaders point to the safety benefits of bike lanes and traffic calming.²⁰⁷ They also explain that many bike lanes are implemented after significant study and are responses to bike or pedestrian fatalities and consequential lawsuits.²⁰⁸ This resistance has had a political impact with many city council members doubting the need to support Vision Zero and bike lanes.²⁰⁹ This pattern of a bike lane fight

²⁰³ *Id.*

²⁰⁴ *Id.* at 1–2.

²⁰⁵ Josh Stephens, *Pasadena Ushers in Era of VMT Metrics*, CAL. PLAN. & DEV. REP. (2015), <http://www.cp-dr.com/articles/node-3713> [<https://perma.cc/H4CY-HLKM>].

²⁰⁶ See Laura J. Nelson, *L.A. reverses course on lane reductions that 'most people outright hated'*, L.A. TIMES (July 27, 2017), <http://www.latimes.com/local/lanow/la-me-ln-vista-del-mar-lanes-20170726-story.html> [<http://perma.cc/YB6X-DN75>].

²⁰⁷ See *id.*; Linton, *supra* note 103.

²⁰⁸ See Nelson, *supra* note 206; Linton, *supra* note 103.

²⁰⁹ See Hillel Aron, *Is L.A.'s Ambitious Plan to End Traffic Fatalities Already Dead?*, LA WEEKLY, Nov. 3, 2017, available at <http://www.laweekly.com/news/vision-zero-las-plan-to-eliminate-all-traffic-fatalities-by-2025-is-having-a-hard-time-8812716> [<http://perma.cc/Z5S5-FVAW>]. One bike lane fight even led to a recall effort of one city council members, see Laura J. Nelson, *Critics frustrated by 'road diets' launch effort to recall L.A. Councilman*

and resulting erosion of political support for bike lanes has repeated itself in various locations in Los Angeles in the last years.²¹⁰

III. LAW'S FORCE IN SECURING ROAD SPACE FOR BIKES

To help identify how law specifically facilitates and challenges city efforts to enact bike lanes, this Article looks to recent scholarship on bike policies from the history, cultural studies, urban planning, and transportation planning disciplines. Specifically, these books are *Bike Battles: a History of Sharing the American Road* by environmental historian James Longhurst;²¹¹ *One Less Car: Bicycling and the Politics of Automobility* by cultural studies Professor Zack Furness;²¹² *City Cycling* edited by urban planners John Pucher and Ralph Buehler;²¹³ and *Streetfight: Handbook for an Urban Revolution* by Janette Sadik-Khan and Seth Solomonow²¹⁴ who both worked in the New York City Department of Transportation as Commissioner and Chief Media Strategist, respectively. These four studies provide different lenses into developing bike policies. They do this specific to their focus on biking rights, resistance by cyclists, city planning decisions, and transportation policies. These viewpoints help contextualize what develops in legal terms as Los Angeles defends and proceeds to implement the Mobility Plan.

In *Bike Battles*, James Longhurst, an environmental historian, provides a long-term history of biking rights, charting legal cases since the late nineteenth century before cars existed to interest in fitness biking in the 1970s.²¹⁵ During this long journey, cyclists have had to defend their legal rights to use roads, as cars have acquired and then defended their protected road privilege.²¹⁶ This history develops broadly as a series of "battles." The first battle was to have bikes legally classified as vehicles and therefore able to be used on public roads in 1895. Second, bicycles became reflective of white and upper class notions of independence during the turn of the century. Third, bikes faced increased exclusions by vehicle codes and rising popularity of cars and freeways before World War II.

Mike Bonin, L.A. TIMES (Sept. 15 2017), <http://www.latimes.com/local/lanow/la-me-ln-bonin-recall-20170915-story.html> [<http://perma.cc/KPF2-D8JG>].

²¹⁰ For descriptions of this pattern see Aron, *supra* note 209; Linton, *supra* note 103.

²¹¹ LONGHURST, *supra* note 20.

²¹² FURNESS, *supra* note 20.

²¹³ Pucher & Buehler, *supra* note 24.

²¹⁴ SADIK-KHAN & SOLOMONOW, *supra* note 31.

²¹⁵ See generally LONGHURST, *supra* note 20.

²¹⁶ *Id.* at 4.

These trends only increased with suburban expansion, federal highway spending, and booms in cheap fuel and car manufacturing in the 1950s and 1960s. Finally, there were renewed biking interests with calls for fuel efficiency and fitness in the 1970s.²¹⁷ Since the 1930s, bike riding has been challenged by societal stereotyping of bikes as for children and automobiles as preferred for adults. For example, model vehicle codes protect road access for cars, and road construction tied to gasoline tax effectively subsidizes cars on roadways.²¹⁸

Bike Battles argues that in the United States roadways privilege cars over bicycles, but that bikes have to fight and refight for their legal right to access public roads. These contests are framed by land use decisions creating path dependency, wherein current policy debates are framed by past policy determinations.²¹⁹ Bike access to public roads as vehicles has been challenged in an evolving context since the early twentieth century. Longhurst explains that currently three factors frame path dependency: gasoline taxes from car use fund road construction; various model codes for city planning deprioritize, if not exclude, bicycles from local policy determinations; and building bike lanes is seen as expensive.²²⁰

Applying these *Bike Battles* insights to Los Angeles, the Mobility Plan represents a local government's effort to shift path dependency from a default planning privilege for automobiles to a diverse transport support for biking, walking, public transit, and intermodal connections between these options.²²¹ Importantly, this city planning project is aspirational and forward-looking, with a vision for 2035, while it is also political with the city council, the planning department, and stakeholders working on the Plan.²²² Key to the Plan is the city explicitly balancing the interests of many modes of transportation and not just prioritizing the needs of automobiles.²²³

Looking to the lessons described in *Bike Battles*, the *Fix The City* lawsuit emphasizes that the legal debate is about city authority to enact mobility plans and not about the legal right cyclists or bicycles have to use roads. In this light, the city's political project and long-term aspects of the Mobility Plan stand out as attempts to break the path dependency

²¹⁷ *Id.* at x.

²¹⁸ *Id.* at 237.

²¹⁹ *Id.* at 20.

²²⁰ *Id.* at 238.

²²¹ MOBILITY PLAN 2035, *supra* note 2, at 14.

²²² *Id.* at 53.

²²³ *Id.* at 13.

and privilege for cars. The Mobility Plan justifications of health, environment, and access add to the traditional needs advocated by cyclists. In sum, *Bike Battles* helps frame the legal fight for bike paths, envisioned by the Mobility Plan, as something more comprehensive, long-term, and politically focused on how to live in Los Angeles. The debated future of Los Angeles is not limited to cyclist rights, bike access to roads, or only protecting road space for automobiles.

In *One Less Car: Bicycling and the Politics of Automobility*, Zack Furness analyzes how biking is intrinsically a political act with riders forced to contest the dominant cultural narrative and political protection afforded to cars.²²⁴ Examining a history of bike advocacy, Furness describes how since bicycles were first manufactured, riders have had to fight for access to public space, with roads and municipal facilities denied.²²⁵ Central to his cultural studies approach, Furness illustrates that technology, in this case bicycles and automobiles, is not politically neutral.²²⁶ Vehicles in the form of bikes or cars benefit from political and economic support, such as access to public space in road, infrastructure subsidies, and land use priorities made by local authorities.²²⁷

One Less Car describes two aspects of this bike advocacy relevant to the Mobility Plan dispute. First, in the 1960–70s bike activism articulated a “right to the city” position.²²⁸ Starting in Amsterdam, Netherlands, but later in other large European and North American cities, riders protested to raise urban awareness and to push local leaders to make cities safer to bike within.²²⁹ Furness refers to Henri Lefebvre’s call for a “right to the city” as the right to “participate in urbanity, the right to appropriate the city not merely as an economic unit, but as a home and an expression of lived experience.”²³⁰ This fight was not just to have bike lanes or have biking rights legally recognized in urban and metropolitan settings. These movements were reactions to how urban space, especially in city centers, had been reconceived to support cars, with automobile movement and parking prioritized. After mass manufacturing of cars began in the 1920s, city planners prioritized space and infrastructure to accommodate cars. Automobiles could rely on a host of industries and lobbying to help

²²⁴ FURNESS, *supra* note 20, at 5.

²²⁵ *Id.* at 10.

²²⁶ *Id.*

²²⁷ *Id.* at 5, 52.

²²⁸ *Id.* at 47–48.

²²⁹ FURNESS, *supra* note 20, at 5.

²³⁰ ANDY MERRIFIELD, DIALECTICAL URBANISM: SOCIAL STRUGGLES IN THE CAPITALIST CITY 156 (2002).

craft land use policies, vehicle codes, infrastructure development, and housing and city planning to benefit cars. In reaction, bike advocacy movements importantly articulated their vision, not just for access to roadways, but as a right to the city.²³¹

Also importantly, Furness presents the cultural biases challenging bike advocacy.²³² The media presents bikes as abnormal, different, or riders as weird, when compared to the idealized automobile. Movies and social stereotypes prioritize individuals owning and using cars. These two factors, city planning and cultural stigma, explain why biking is an act of resistance. This transpires in urban areas and influences how cities are planned, building on a cultural trope that productive and desired residents use cars for transportation, own cars, and cities facilitate this.

Looking at the Mobility Plan, the insights from *One Less Car* point to the city presenting benefits of biking in a different light, as less directly in conflict with cars and more as alleviating congestion, environmental, and public health harms. Central to this is how it is a “Mobility” Plan and not just a transportation project or bike plan.²³³ A “transportation” plan would emphasize bus, rail, tram, and subway modes. But “mobility” is more inclusive, including biking and walking. Moreover, “mobility” suggests residents can move and chose what method to achieve this, with the person having options and being active in their selection while the “transport” label is more focused on the means and services. These policy and presentation foci, regarding how the Mobility Plan was developed, illustrate how bike path advocacy can be less directly in conflict with city planners and automobile interests. Employing these approaches the long-term resistance cyclists face, as Furness describes, is mitigated. Resistance and stereotyping lessen when bike paths are part of a more comprehensive approach (including health, environment, and congestion concerns).

The Mobility Plan’s “complete streets” approach demonstrates another way to deflect the cultural stigma attached to biking, described by Furness.²³⁴ By pointing to streets as inviting leisure, walking, commercial, and social activities, complete streets reframe the conflict between bikes and vehicles. Previously, the two modes were seen as a contest literally over feet and inches on streets. Complete streets diffuses this tension by adding public life to street planning, beyond just automobile

²³¹ FURNESS, *supra* note 20, at 76.

²³² *Id.* at 109.

²³³ MOBILITY PLAN 2035, *supra* note 2, at 13.

²³⁴ *Id.* at 13–14.

movement. This recasts how streets are used, but in reference to Furness's lens it paints streets as open to many urban life uses, with one being bike lanes. This shifts a debate about bikes in cultural and political resistance to an optimistic view of how streets can be used for many activities.

The *Fix The City* lawsuit's focus on environmental law and council governance claims illustrates that a doctrinal contest is really about city authority and not just cars. The Mobility Plan articulates this authority with a lens to balance mobility needs of different users. *Fix The City* seeks to stop these determinations by local government, arguing they cause congestion, lessen air quality, and were improperly made. Seen in a *One Less Car*'s lens, this legal contest aims to decouple the city's street planning vision from the benefits of mobility and complete streets approach.

In *City Cycling*, editors John Pucher and Ralph Buehler offer a comparative analysis of how cities worldwide develop policies to support utilitarian biking.²³⁵ This form of bicycle riding is not merely for fitness or recreation, but also for the rider to commute, run errands, and to use in daily travel.²³⁶ Urban planning professors Pucher and Buehler provide a variety of chapters analyzing utility biking as well as global trends, health benefits, technical innovation in equipment, safety, utility biking's connection to public transportation, bikesharing programs, and results in different-sized cities worldwide.²³⁷ The book's schematic organization examines what kind of bike lanes, safety regulation, cycle storage, and public transportation connections work.²³⁸ A central theme of the edited volume is how the Netherlands, Denmark, and other European countries achieve between fifteen and twenty-six percent of resident travel on bikes, while the highest percentages in North America never reach these levels.²³⁹ Similarly, *City Cycling* shows that successful biking policies are local but that national level influence regarding biking goals and infrastructure funding greatly helps facilitate city biking achievements.²⁴⁰

Pucher and Buehler find that success in increasing utility biking depends on a package of mutually supportive bike infrastructure, bike programs, and bike policies. Infrastructure includes bike lanes and signage, connections to public transportation, and bike storage.²⁴¹ Bike programs

²³⁵ Pucher & Buehler, *supra* note 24, at 2.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* at 9.

²⁴⁰ *Id.* at 19, 20.

²⁴¹ Pucher & Buehler, *supra* note 24, at 349.

aim to have the city or region specifically address biking needs, seek input from cyclists, and encourage residents to ride.²⁴² Policies are essential to enforce safety requirements; encourage car awareness of bike riders; guide car, transit, and walker movement; calm traffic; invite the use of public space for transportation modes other than cars; and safety education.²⁴³ This comprehensive approach increases utility biking by discouraging car use and making biking an easier, more sustainable, cheaper, and safer travel method. This approach encourages residents to ride, facilitates riding, and increasing the costs of traveling inside a city by a car.²⁴⁴ For advocates and policy makers pushing for more bike use, Pucher and Buehler argue that a successful approach goes beyond bike rights.²⁴⁵ Utility biking increases when the policy narrative seeks coalitions with other stakeholders (such as environmental and health advocates), to minimize traffic congestion, and to employ data (about safety, use, and traffic) to support policy positions.

The Los Angeles Mobility Plan clearly illustrates Pucher and Buehler's point that local politics is where utility cycling is most contested. The Los Angeles City Council acted. The city's Planning Department sought community support and input. The lawsuit is fought with local and state doctrines, on environmental and procedural norms. Similarly, the Mobility Plan points to Pucher and Buehler's advocacy suggestions of working with other groups and issues, such as a complete streets approach, providing alternatives to cars, making bike use easier and cheaper, calming streets, and finding common causes with environmental, public health, and fitness interests.

In *Streetfight: Handbook for an Urban Revolution*, Janette Sadik-Khan and Seth Solomonow describe the experiences and lessons from the New York City Transportation Commission.²⁴⁶ Starting in 2007, the Commission implemented a series of measures making the city's streets more accessible to urban life, deprioritizing cars, and reflecting many of the changes envisioned in the Los Angeles Mobility Plan 2035.²⁴⁷ This includes bike lanes, a bike share program, converting street intersections into plazas and parks, and making sidewalks pedestrian friendly. City Transportation Commissioner Sadik-Khan lead these efforts.²⁴⁸

²⁴² *Id.* at 350.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 360.

²⁴⁶ SADIK-KHAN & SOLOMONOW, *supra* note 31, at xvi, 4.

²⁴⁷ *Id.* at 1–5.

²⁴⁸ *Id.* at xi.

She describes her approach as combining Robert Moses' vision and Jane Jacobs' action, referencing the highly followed urban planning debate of the 1960s.²⁴⁹ As parks commissioner, Moses led New York's projects to make the city more car friendly with highways and bridges, to aid suburban commutes while controversially destroying historic city neighborhoods. Jacobs, a sociologist, described pedestrian life and city neighborhoods as how cities actually move. Jacobs led a popular protest stopping Moses' plan to build a highway crossing through Manhattan which would have destroyed much of Soho and Greenwich Village. *Streetfight* explains that Moses' vision to build for future projects can be executed by capitalizing on the way city residents actually use streets, versus attempting to help automobiles move with larger roads.

Incorporating urban theory and policy experience, Sadik-Khan emphasizes that prior urban design focused on moving automobiles by creating wide roads and highways.²⁵⁰ Continued street widening, at the expense of supporting public transport, bikes, or sidewalks, does not decrease traffic.²⁵¹ It is wrong to assume that eliminating car lanes increases traffic. These lanes will always be filled by cars if they exist. What decreases traffic is getting people not to take the car trip and to instead choose walking, public transit, or biking.²⁵² Making the street more inviting to life and non-car modes of transportation takes people out of cars. This last point explains how landscaping, plaza seating, street dividers, leisure space, and street level commerce fit into city transportation choices.

Streetfight explains an easy way to carve out space for bike lanes in common street layouts. Streets as currently used offer space to reallocate car movement, parking, and bike lanes. Car parking can be used to calm the street and protect bike lanes. Bike lanes are significantly narrower than car lanes. Most city streets are too wide, with 12 feet allocated for each car lane, but most cars are only 6 feet wide and most trucks are only 8.5 feet wide. This creates 20 feet of excess street width, which is not needed for most city streets. For arterial streets, cars and trucks need this width, but for other streets there is room to include bike lanes with a separation from cars. *Streetfight* explains how these measures are done in tandem with cross walk extensions and street calming measures, like greenery and benches, all of which invite walking and decrease red light times.²⁵³

²⁴⁹ *Id.* at 8–9.

²⁵⁰ *Id.* at 4.

²⁵¹ *Id.* at xvi, 47, 62.

²⁵² SADIK-KHAN & SOLOMONOW, *supra* note 31, at 58, 62, 64.

²⁵³ *Id.* at 49–54.

But when bike paths are added, the reallocation of the street space is viewed as a “war on cars” and “New York City’s Public Enemy No. 1.”²⁵⁴ New York City’s experience illustrates how for decades streets have not been designed for cyclists. The tensions, traffic, and injuries are products of how streets have been designed for a century.²⁵⁵ At one point, tensions boil when the assumed and taken for granted space for car is reallocated. *Streetfight* describes highly public contests over bike lanes on Broadway in Manhattan and Bedford Avenue and Prospect Park West in Brooklyn, fueled by ideas that lanes take away parking spaces, slow down traffic, or make streets more dangerous by inviting bike ridership.²⁵⁶ These street fights grab governmental, news, and stakeholder attention. Bike lane tensions reach a tipping-point, gaining the most attention and momentum, when they symbolize a package of changes in city planning. Bike lanes gain the most criticism after a series of transformations.

Streetfight describes the significance in data-driven bike planning on New York streets, an approach shared with the Los Angeles Mobility Plan. This significance of this data is encapsulated in the saying, “In God we trust. Everyone else, bring data.”²⁵⁷ Urban planning is intrinsically local and affects people’s daily lives. Opinions about city projects are usually only viewed through the lens of personal needs. This feeds the emotional reaction many city residents and businesses have to bike lanes and reorganizing street layouts.²⁵⁸ Data about the impacts of street changes provides a way for city officials and leaders to see the larger picture with less localized or personal lenses. *Streetfight* describes how data about injuries, traffic flow, and economic impacts on real estate and commercial sales were vital to changing local impressions about bike lanes and bike sharing. Bike injuries decrease when riders, walkers, and vehicles have a designated terrain on streets, wherein each means of transportation creates predictable behaviors on the road. With riders and walkers spending more time on streets, instead of in automobiles, they spend more time in shops, restaurants, and services.²⁵⁹

Applying these *Streetfight* lessons to Los Angeles, four points stand out. First, the Mobility Plan attempts a big project for the future. In this regard, it resembles Sadik-Khan’s inspiration from Moses, but

²⁵⁴ *Id.* at 144.

²⁵⁵ *Id.* at 150.

²⁵⁶ *Id.* at 148.

²⁵⁷ *Id.* at 251.

²⁵⁸ SADIK-KHAN & SOLOMONOW, *supra* note 31, at 252.

²⁵⁹ *Id.* at 257.

like with the New York experience it seeks to maximize how street space is used to reduce traffic. Key to this point is taking persons out of their cars and facilitating their selection of other mobility modes. This is envisioned for 2035 and changes how residents live in Los Angeles. Second, similar to *Streetfight*'s recent inspiration from Jacobs, the Mobility Plan closely looks at how streets are used. For this, the Plan seeks "complete streets" solutions and to prioritize the mobility needs of all street users. For this reason, it includes bike enhanced, neighborhood, and vehicle networks laid out over the city. Streets have varied uses, depending on their location and typography. This variation can help focus street planning and most efficiently allocate mobility options. Third, the Mobility Plan's Policy 4.6 emphasizes the data-based approaches mentioned in *Streetfight*. Numeric analysis helps to make sense of how streets are used, who uses them, timing delays, speeds, and accidents. This becomes powerful when comparing program costs. Sadik-Khan explains that this approach was vital to formulating and then defending policies.

Lastly, *Streetfight* presents a picture of how heated the fight over bike lanes can become. In Los Angeles, it is expected that *Fix The City* will persist with the lawsuit and seek public support for its position by presenting cars as in conflict with bike lanes. Already, major public relations and political contests have altered how bike lanes can be used in various parts of West Los Angeles, where population density is lower and car traffic is an issue on many residents' minds. *Streetfight* describes how a boiling point and inevitable public opinion coalesce on one proposal. The fight is not just about the proposed lane or shifts in parking or car lanes, but it is about larger transport and planning issues. In Los Angeles, the strict procedural and evidentiary requirements of CEQA shape this debate. In New York, environmental law did not place as many limits, thus the street fight was articulated differently.

IV. BIKES BETWEEN VEHICLE PHILOSOPHY AND AUTOMOBILITY

Bike lane fights are not limited to Los Angeles. Los Angeles has learned from progress in American cities and various examples worldwide. Bike lanes will surely become agenda items for more municipalities. Cities will try to employ bike lanes and other bike infrastructure resulting in social, political, and legal challenges. These jurisdictions will benefit from noting how urban biking can move away from vehicular cycling and automobility with comprehensive efforts like the Mobility Plan or with specific projects to install bike sharing, bike storage, or bike

lanes. Vehicular cycling is a riding philosophy, arguing that bikes should not receive special space on roads and that cyclists should become better educated when riding to avoid accidents with cars.²⁶⁰ Automobility is the socio-economic term used to identify how cars benefit from a system of default protective status in society.²⁶¹

These two concepts help to identify what progress bike advocacy achieves, looking at how cyclists use city streets and how privilege for automobiles may change. Vehicular cycling looks at the options for bikes, while automobility examines the systemic challenges bikes must face. The notion of vehicular cycling helps identify what urban riding options exist without efforts like the Mobility Plan. Vehicular cycling is a concept created by cyclists that emphasizes that riders should use streets as if they were cars and without seeking any specific protections in the forms of bikes lane or right of way guarantees.²⁶² Vehicular cycling emphasizes that riders are responsible for their movements and should not seek protections from urban planners.

Tom Babin describes vehicular cycling as a dying philosophy pitting cars against cyclists.²⁶³ The Mobility Plan dramatically shifts biking options away from vehicular cycling. It views roads not only for automobile movement but also for different mobility modes. When fully implemented, the city will have overlapping bike, transit, and vehicles networks.²⁶⁴ Bike lanes are one of many mechanisms the Mobility Plan uses to de-prioritize street planning for cars. Vision Zero highlights the fatal risks of not extending protections to bikes and of ignoring foreseeable harms caused by cars on city roads.²⁶⁵ In sum, efforts like the Mobility Plan are

²⁶⁰ Vehicular cycling is mostly associated with John Forester's 1976 book, *EFFECTIVE CYCLING*, published in its seventh edition in 2012.

²⁶¹ Mimi Sheller and John Urry use "automobility" to identify how important cars are to urban planning in response to the incorrect assumptions that cars represent neutral technology, recreate inevitable living patterns, and primarily eliminate prior urban patterns, *The City and the Car*, 24 INT'L J. URB & REG. RES. 737, 738 (2000).

²⁶² For recent descriptions of the applicability of vehicular cycling, see Brooks, *Forester's Effective Cycling*, THE RETROGROUCH (Jan. 22, 2014), <http://bikeretrogrouch.blogspot.com/2014/01/foresters-effective-cycling.html> [<https://perma.cc/66XN-CHZJ>]; John Forester, *Review of the Great Schism: Federal Bicycle Regulations and Unraveling of American Bicycling Planning*, 39 TRANSP. L. J. 21 (2011); John Forester, *The Bicycle Transportation Controversy*, 55 TRANSP. QUART. 7 (2001).

²⁶³ Tom Babin, *The philosophy that has pitted cars against cyclists for the last 40 years is finally dying*, L.A. TIMES (July 12, 2016), <http://www.latimes.com/opinion/livable-city/la-oe-babin-protected-bike-lane-20160712-snap-story.html> [<https://perma.cc/T6PM-QBJ4>].

²⁶⁴ MOBILITY PLAN 2035, *supra* note 2, at 65.

²⁶⁵ *Id.* at 59–60.

a major shift from the laissez-faire approach to vehicular cycling and a lack of bike infrastructure, developing from increased regulation of roads securing road space for non-car users.

Automobility is a term that combines the notions of autonomy and mobility, to emphasize how cars as social and technical objects can chart their own futures.²⁶⁶ John Urry refers to the notion of automobility to analyze the complex set of private economic, governmental, and cultural assumptions that make cars a default.²⁶⁷ Cars have attained a privileged status in American society not just because of their popularity as a means of transportation, their governmental support, or their technical capacities for movement.²⁶⁸ Instead, a set of socio-economic forces make cars the policy preference. Six factors permit cars to rise to this privileged role. These are: the automobile manufacturing process involves several industries; cars provide their owners social status; various industries, like fossil fuels and home construction, depend heavily on automobile use; the use of cars subordinates other mobility means like walking and biking; cars culturally symbolize freedom, the good life, and citizenship; and cars are the most significant cause of environmental resource use.²⁶⁹

Urban bike plans can be assessed by examining how many of these interrelated forces they impact. Automobility is not a locked-in system with a path dependent future.²⁷⁰ Instead, progress away from its systemic primacy becomes possible as the links between automobility factors are broken.²⁷¹ For instance, the LA Mobility Plan explicitly deprioritizes automobiles by balancing the needs of various means of transportation, emphasizing multimodal transit systems, and dividing up urban roads into different networks.²⁷² It seeks to address the cultural and social aspects of automobility with Vision Zero, highlighting the harms caused by cars and reconfiguring public use of streets through the “complete streets” approach.²⁷³ Likewise, the Mobility Plan counters the environmental

²⁶⁶ See generally Mike Featherstone, *Automobiles: an Introduction*, 21 THEORY, CULTURE & SOC'Y 1 (2004).

²⁶⁷ See John Urry, *The “System” of Automobility*, 21 THEORY, CULTURE & SOC'Y 25, 26 (2004).

²⁶⁸ For descriptions of this privileged role for cars and their influence on city planning, see JOSEPH F.C. DiMENTO & CLIFF ELLIS, *CHANGING LANES: VISIONS AND HISTORIES OF URBAN FREEWAYS* (2013); COTTEN SEILER, *REPUBLIC OF DRIVERS: A CULTURAL HISTORY OF AUTOMOBILITY IN AMERICA* (2008); CLAY McSHANE, *DOWN THE ASPHALT PATH* (1994).

²⁶⁹ These six interlocking components are paraphrased from SEILER, *supra* note 268.

²⁷⁰ See generally Katherine J. Goodwin, *Reconstructing Automobility: The Making and Breaking of Modern Transportation*, 10 GLOB. ENVTL. POL. 60 (2010).

²⁷¹ See *id.*

²⁷² MOBILITY PLAN 2035, *supra* note 2, at 13.

²⁷³ *Id.* at 59–60.

expense of automobiles with justifications that public transit and bikes reduce greenhouse gas emissions and its overarching goals of reducing car trips.²⁷⁴ In sum, these two concepts, which focus on bikers and the system that benefits cars, serve as a way to evaluate the progress of urban biking plans.

CONCLUSION

This Article has made three arguments about law's role in bike lane fights. First, in the *Fix The City* lawsuit, norms in environmental and city governance law laid the foundation for Los Angeles's bike lane battle. At initial glance the *Fix The City* case mostly involves governmental procedures, environmental assessments, and information disclosures.²⁷⁵ But far more is riding on this case. Second, as litigants argue over the demarcations of inches and feet over miles of urban roads what is at stake is how the Angelinos will live in the future. The bike lane fight reflects a larger contest between car-centric and alternative visions of city life which prioritize bikes, walking, and public transit. LA's bike lane fight represents more than street space for bikes.

Third, when biking advocacy succeeds politically, as it has through the Mobility Plan, it will confront new forms of opposition. Opponents will look to lobbying, electoral politics, and legal options in governance, environmental, transportation, and land use doctrines, at private, local, state, special district, and federal levels. In Los Angeles, this has focused on state-level CEQA and city-level and community-level procedures.²⁷⁶ Encompassing concerns beyond bike issues made the Mobility Plan a policy success in city agencies, committees, and the council. But this achievement and an expansive mobility scope challenge bike lanes. Non-biking issues implicitly bolster its legal opposition. The Mobility Plan could not benefit from CEQA exemptions for bike lanes and bike plans in SB 417, since the bill encompasses far more than bike lanes.²⁷⁷ Similarly, favorable environmental impact analysis of traffic patterns, with VMT metrics, have not yet been able to support the Mobility Plan. VMT guidelines have been delayed by a variety of issues beyond bikes.²⁷⁸ In sum, policy achievements for bike lanes open the road for opposition armed with non-biking legal claims.

²⁷⁴ *Id.* at 143.

²⁷⁵ See *supra* notes 147–61 and accompanying text.

²⁷⁶ See *id.*

²⁷⁷ See *supra* notes 189–94 and accompanying text.

²⁷⁸ See *supra* notes 195–203 and accompanying text.

These three aspects stand out when the Mobility Plan and the *Fix The City* lawsuit are examined with scholarly lessons on bikes. Environmental history, cultural studies, urban planning, and transportation disciplines emphasize that city bike battles are not limited to issues like right of way or status as vehicles. Instead the effort to secure bike lanes implies social and cultural changes for city life, shaped by the land use and transportation decisions of municipal authorities. Longhurst presents the historic arc of how bikes challenge implicit exclusions in land use policies on public roads.²⁷⁹ Furness explains that bike advocacy must combat not only political privilege for cars but also the social assumptions that urban life excludes bikes.²⁸⁰ Pucher and Buehler emphasize that bike projects succeed when coalitions are built with other interest groups, focused on sustainability, fitness, and public health.²⁸¹ Sadik-Khan and Seth Salomonow describe how bike lane issues become the pathway to express resident opposition to reinvigorating public life on streets.²⁸²

Bike lanes in Los Angeles reflect on these scholarly suggestions. The *Fix The City* lawsuit continues the bike battles Longhurst describes, with legal argumentation focused on city procedures and environmental assessments.²⁸³ The Mobility Plan counters automobile privilege with the central priority of balancing various mobility modes.²⁸⁴ Similarly, the Mobility Plan exemplifies policy success, with support from the Mayor, various committees, and the city council, because it speaks to various urban interests not just bike lanes.²⁸⁵ The *Fix The City* dispute functions as a vehicle to express rejection especially in less dense West Los Angeles.²⁸⁶

In conclusion, the Mobility Plan 2035 illustrates what is at stake when cities attempt to implement bike lanes on their streets. In Los Angeles, city leaders, bike advocates, environmentalists, real estate developers, and residents fight over public designations of inches and feet regarding street widths. This is a debate that includes the metrics of traffic analysis, required environmental disclosures, and competing sources of public authority—all extremely technical. Moreover, localized sentiment from residents, transit users, homeowners, and drivers fuel these

²⁷⁹ See *supra* notes 215–23 and accompanying text.

²⁸⁰ See *supra* notes 224, 229–34 and accompanying text.

²⁸¹ See *supra* notes 235–45 and accompanying text.

²⁸² See *supra* notes 246–58 and accompanying text.

²⁸³ See *supra* notes 147–61 and accompanying text.

²⁸⁴ See MOBILITY PLAN 2035, *supra* note 2, at 13.

²⁸⁵ See *id.*

²⁸⁶ See *supra* notes 80 and 123 and accompanying text.

tensions. This is influential because it is emotional and easily understood by so many Angelinos, who relate to gridlock and mounting commute times.

The bike lane fight is not just over who has guaranteed access to streets, it is about how city governments influence future urban living. Recent scholarship points to the intrinsic political nature of bike riding. In Los Angeles, the Mobility Plan reflects how this is about city identity. As Mobility Plan projects are implemented and its future is fought out in courts, local government law has the capacity to provide cyclists an option other than free-for-all vehicular mindsets and the status quo of car-centric privileges.

