TRANSPORTATION FOR THE ABUNDANT SOCIETY

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A growing chorus known as the abundance movement seeks to overcome artificial scarcity in the built environment—especially housing. Yet this movement's signature goal of increasing housing production collides with a central driver of scarcity: development restrictions rooted in traffic concerns. Advocates often assume that building more housing will generate support for needed transportation reform. Experience suggests otherwise. In auto-dependent regions, adding housing without reconfiguring transportation tends to reinforce the logic of restriction. Unlocking abundance's promised feedback loops requires re-grounding transportation policy in its relationship to land use.

This Article makes two contributions. First, it introduces into legal analysis a core urban-planning framework: *transportation accessibility*, which evaluates system performance by users' ability to reach destinations. Though facially modest, anchoring policy in accessibility would depart sharply from a century of practice, with significant implications across state and local government law.

Second, drawing on 13 original interviews with current and former transportation officials, the Article develops a novel account of institutional barriers to reform. Far from the marble corridors and mahogany courtrooms where law is articulated, transportation policy is functionally made in the unglamorous offices of state and local government. We call this institutional crucible—shaped by agency culture and industry convention as well as hard law—"transportation policy linoleum." It helps explain why proven, seemingly unobjectionable reforms routinely wither. The Article closes with a policy playbook designed to help accessibility break through the linoleum and deliver abundance.

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CONTENTS

INTRODUCTION 3

I. ABUNDANCE AND TRANSPORTATION POLICY 6

A. The Rise of Abundance 7

B. Transportation as a Binding Constraint 10

II. THE PURPOSE OF TRANSPORTATION POLICY 17

A. What Counts as Success? 18

B. From Mobility to Access 20

C. Transportation Policy Spillovers 25
1. Housing affordability 25
2. Climate mitigation 28
3. Roadway safety 30

III. OPERATIONAL BARRIERS TO REFORM 32

A. Network Effects and System Interdependence 34

B. Operational Complexity and Risk 35

IV. LEGAL BARRIERS TO REFORM 37

A. NEPA and the Dawn of Conservation Primacy 37

B. Judges as Planners: California's CEQA Regime 41

C. Judges as Planners Around the Country 45
1. Minnesota and comprehensive planning 45
2. Washington, D.C. and density review 47
3. Montana and constitutional penumbra 47

V. TRANSPORTATION POLICY LINOLEUM 49

A. Policy "In Books" and "In Action": 13 Interviews 49

B. Fragmentation and Coordination Failures 50

C. Path Dependence and Institutional Lock-In 54

D. Legal Risk and Defensive Administration 56

VI. A POLICY PLAYBOOK FOR ACCESS 58

A. Behavioral Data as Participation 58
1. Ex ante participation 59
2. Ex post participation 60

B. Realistic Alternatives Modeling 60

C. A More Honest Cost-Benefit Analysis 61
1. Requiring cost-benefit discipline 62
2. Accounting for opportunity costs and externalities 64

CONCLUSION 65

Introduction

A central claim of the emerging "abundance agenda" is that in the physical world, more is more: more housing, more clean energy, and more infrastructure to support both. Abundance brings the American promise of plenty into policy, arguing that government should expand capacity—so that individuals can access the good life and society can advance climate goals, scientific discovery, and prosperity. In both its academic and popular expressions, the ideologically diverse movement[1] contends that law has created artificial scarcity[2] and that the remedy is to loosen outdated constraints and rebuild state capacity[3] so government can build and approve major projects—housing, transportation, energy, health—more quickly and reliably.

Abundance draws on a substantial literature diagnosing law-made supply constraints in American public policy. Its core question is pragmatic: how to clear regulatory blockages to enable more building. Scholars have long identified such blockages at the intersection of land use and transportation, from highways to high-speed rail. Yet even improved megaprojects would not meet most Americans' daily transportation needs. And the connection

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[1] A prominent journalistic expression of this idea is EZRA KLEIN & DEREK THOMPSON, ABUNDANCE (2025). Complementary recent works in history, political science, and public policy include MARC J. DUNKELMAN, WHY NOTHING WORKS: WHO KILLED PROGRESS—AND HOW TO BRING IT BACK (2025); YONI APPELBAUM, STUCK: HOW THE PRIVILEGED AND THE PROPERTIED BROKE THE ENGINE OF AMERICAN OPPORTUNITY (2025); and BRINK LINDSEY & STEVEN M. TELES, THE CAPTURED ECONOMY: HOW THE POWERFUL ENRICH THEMSELVES, SLOW DOWN GROWTH, AND INCREASE INEQUALITY (2017).

[2] *See, e.g.,* EZRA KLEIN & DEREK THOMPSON, ABUNDANCE 3 (2025) (arguing that "the story of America in the twenty-first century is the story of chosen scarcities).

[3] *See generally* Nicholas Bagley & David Schleicher, *The State Capacity Crisis*, 66 B.C. L. REV. 2301 (2025); Zachary D. Liscow, *State Capacity for Building Infrastructure*, YALE L. & ECON. RSCH. PAPER (Jan. 23, 2025 version), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5045644. The idea has received support from libertarians as well. *E.g.,* Tyler Cowen, *What Libertarianism Has Become and Will Become—State Capacity Libertarianism*, MARGINAL REVOLUTION, January 1, 2020, https://marginalrevolution.com/marginalrevolution/2020/01/what-libertarianism-has-become-and-will-become-state-capacity-libertarianism.html.

between transportation policy and abundance remains underdeveloped, even as political interest grows.[4]

We argue that transportation policy needs a new North Star. For decades it has maximized vehicle throughput. It should instead prioritize connecting people to the destinations they value. In urban planning, this objective is known as "transportation accessibility," but it has not been integrated into abundance debates. Shifting from throughput to access would be transformative. Metrics shape outcomes; transportation "success" should be measured by access, not movement. Without that shift, abundance risks undermining its own aims.

This Article describes the problem and proposes a path forward. Drawing on state and local government law, planning, and economics, it argues that transportation reform is a necessary condition for abundance. The same legal institutions that have impeded reform can, if reoriented, help deliver it.

Any theory must specify its limits. Abundance must clarify both (1) what should be increased[5] and (2) what else is required to make those increases succeed. The movement's call for "more" is most persuasive in sectors like housing and energy. It is less useful in others. Few would argue that simply adding urban highway lane-miles advances the good life.

Intracity transportation[6] is essential to abundance's ends but poorly suited to its usual means and largely neglected in the abundance debate. Expanding infrastructure supply can, in many cases, frustrate abundance's goals. Transportation's true role is as an enabling system—part of the answer to the second question of what else is needed. Infrastructure design often limits housing growth. These theoretical questions are therefore practical and urgent. Without attention to them, abundance risks reproducing the regulatory "blockages"[7] and other unintended consequences it seeks to overcome.

Transportation is a prime example of policy overhang.[8] For nearly a century, planning has centered on movement—especially automotive movement.[9] That orientation shapes investment and land use, constraining

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[4] *See* Part I, *infra*; Eleanor Mueller, *The 'Abundance' Movement's Next Front: Transportation*, SEMAFOR (Jul 1, 2025), https://www.semafor.com/article/07/01/2025/the-abundance-movements-next-front-transportation.

[5] An economist might describe this as defining the objective function of abundance.

[6] We use the terms "intracity," "urban," and "local" transportation policy interchangeably, and—as is customary in transportation planning—we distinguish them from *intercity* transportation like air and rail.

[7] *Id.* at 3.

[8] Klein and Thompson frame abundance as a way of addressing "the [policy] overhang of the past into the present." KLEIN & THOMPSON, ABUNDANCE 3.

[9] *See, e.g.,* Jonathan Levine & Gregory H. Shill, *First Principles in Transportation Law*

housing where demand is strongest. Congestion concerns encourage roadway expansion and low-density zoning in high-value areas. Legal mandates requiring public participation in land use decisions[10] provide a second layer of defense against densification in in-demand areas. Housing shifts to the periphery, away from jobs and transit. Arterial roads are built for cars, not pedestrians, undermining walkability and extending trip distances. Traffic fears fuel opposition to new housing, creating a negative feedback loop in which the specter of new neighbors moving in validates, in the eyes of neighborhood defenders,[11] the logic of development restrictions.

These constraints should not be deferred as tomorrow's problem. Abundance itself warns that well-intended reforms can generate future scarcity. Intracity transportation policy (as distinguished from intercity transportation)[12] poses such a risk. Its barriers should be addressed before they block the abundant society.

This Article asks what "more" should mean in transportation. We argue that the answer is measurable: does an intervention increase access? Our analysis draws on planning scholarship, local government law, and best practices, and is informed by 13 original interviews with current and former transportation officials. The first-ever account that emerges suggests that transportation reformers have a big job to do, but also a key role to play in abundance.

Abundance also requires closer alignment between transportation and land use and a stronger conception of state capacity—the ability to build or permit others to build. Capacity is partly a matter of institutional will. Interviewees emphasized the need for agencies to "exercise[e] your jurisdiction"[13] i.e., to be bolder in pursuing persuasion and policy

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and Policy in A RESEARCH AGENDA FOR LAND USE AND PLANNING LAW (John Infranca & Sarah Schindler eds., 2023).

[10] For example, the Federal Highway Administration requires "[o]ne or more public hearings or the opportunity for hearing(s) to be held [for] any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest." 23 CFR § 771.111(h).

[11] *See generally* DAVID M. GLICK, KATHERINE LEVINE EINSTEIN & MAXWELL PALMER, NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS (2019) (discussing this concept in the context of housing).

[12] The main focus of abundance discourse on transportation has been on its intercity dimension. *See* KLEIN & THOMPSON, ABUNDANCE 71–74 (discussing the California High-Speed Rail saga). This is a bit puzzling as intercity transport has only a minimal impact on the day-to-day lives of Americans.

[13] *See* Interview 11.

entrepreneurship,[14] and to accept controversy when necessary. Persistent reluctance reflects political and career incentives,[15] but it demands explanation.

The Article proceeds in six Parts. Part I explains transportation's role in the abundant society.[16] Part II identifies gaps between theory and practice and links transportation to housing, climate, and safety. In particular, it argues that access, not movement per se, should be the overarching goal of transportation policy. Parts III and IV analyze the source and contours of structural barriers to the realization of this vision. Transportation is characterized by a high degree of technical complexity, which has been accommodated with regulatory discretion and deference to professional opinion. The institutions vested by law with that discretion and deference have become the primary battleground for transportation reform. Part V provides a novel firsthand examination of that essential but largely neglected space, the site of which is often an unglamorous state or local government office building. Informed by the legal analysis that follows, it presents findings from our interviews and develops an account of "transportation policy linoleum"—the everyday institutional setting where policy is made and reform often stalls. Part VI offers a reform playbook that builds on existing tools, including improved public participation and better use of cost-benefit analysis. Though technocratic, these steps can produce durable change.

We conclude by returning to abundance. Labels may shift, but the aim of broad prosperity endures. Transportation access must be the lodestar of policy. Because transportation and land use are inseparable, so too are transportation reform and any serious vision of abundance.

I. Abundance and Transportation Policy

Land use reform, a core objective of the abundance agenda, has gained

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[14] *See* Interview 4 (adding that in community board level decisionmaking bodies, "people are thinking parochially about their neighborhood, losing parking" and that transportation reform "can be a problematic conversation with local municipalities, smaller home rule communities"). Institutional norms and well-organized community groups were often cited as barriers.

[15] *See* MANUEL P. TEODORO, BUREAUCRATIC AMBITION: CAREERS, MOTIVES, AND THE INNOVATIVE ADMINISTRATOR 2 (2011) ("ambition and opportunity for career advancement in the professional labor market cause some [policy] administrators to pursue innovative policies").

[16] This term nods to an earlier work extolling the necessity of public goods. *See* JOHN KENNETH GALBRAITH, THE AFFLUENT SOCIETY (1958).

momentum in recent years.[17] Yet buildings only make up one part of the built environment. A big chunk of the rest consists of transportation infrastructure, which is often likened to the human body's circulatory system for its essential role in moving things where they need to go. This Part overviews how transportation policy shapes the land use-transportation interaction.[18]

Transportation planning influences where housing is built by guiding and evaluating investments in streets and roads, transit lines, sidewalks, and cycling facilities. These networks provide a region's basic framework and shape the distribution of both housing and destinations. At times, transportation planning also operates directly on land use. A common example is traffic-impact assessment, which estimates the roadway delays that a development is expected to impose on nearby intersections. If predicted impacts exceed a set threshold, traffic mitigation is typically required. These forms of mitigation are often costly in both direct and indirect terms. Ironically, they can include measures that tend to induce more traffic, such as the expansion of lanes or intersections. They can also result in a reduction of the height or density of a project or even its rejection altogether, exacerbating housing shortages.

A. The Rise of Abundance

In the early 2010s, as the nation emerged from the Great Recession, organizers in the housing-starved Bay Area brought economics papers to planning meetings to press for looser land use rules.[19] By the early 2020s, the

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[17] Major reforms have included the easing of single-family zoning and parking requirements. *See, e.g.,* Parking Reform Network, *Parking Mandates Map*, https://parkingreform.org/resources/mandates-map/ (last visited July 10, 2025) (showing 106 places in eight countries, mostly in the U.S., that have "removed all parking minimums"); Meghan Stromberg, *How Sacramento Won Major Housing Gains with Zoning Reform*, PLANNING MAGAZINE (Mar. 20, 2025), https://www.planning.org/planning/2025/mar/how-sacramento-won-major-housing-gains-with-zoning-reform/; Salim Furth & M. Nolan Gray, *What the YIMBY Winning Streak Means*, BLOOMBERG CITYLAB (Nov. 28, 2023), https://www.bloomberg.com/news/articles/2023-11-28/pro-housing-yimbys-build-a-zoning-reform-winning-streak-across-us (surveying recent land use reform successes around the country); Jonathan Levine, *The Shifting Coalition for Land-Use and Transport Policy Reform in the United States*, *in* URBAN TRANSPORT AND LAND USE PLANNING: A SYNTHESIS OF GLOBAL KNOWLEDGE 135 (Xinyu Jason Cao, Chuan Ding & Jiawen Yang eds., 2021).

[18] *See* Todd Litman, *Land Use Impacts on Transport How Land Use Factors Affect Travel Behavior*, VICTORIA TRANSPORT POLICY INSTITUTE, white paper (Dec. 10, 2024 version), https://www.vtpi.org/landtravel.pdf.

[19] *See generally* CONOR DOUGHERTY, GOLDEN GATES: FIGHTING FOR HOUSING IN AMERICA (2020) (chronicling the history of the YIMBY movement in the Bay Area).

shortage had become national[20] and politically salient. During the 2024 election campaign, high-profile figures in both major parties endorsed housing-supply growth as a route to affordability.[21] What had been described as an elite "liberaltarian consensus"[22] began to look like a rare policy agenda with bipartisan support. Many officials in both major parties still oppose the reforms needed to implement it.[23] But support for building more housing is newly broad. By early 2024, "at least eight states and more than one hundred cities" had relaxed their zoning laws to permit additional units.[24]

Abundance draws on this reservoir. The abundance coalition is united by a commitment to "solving our national problem of scarcity"[25] by building infrastructure. In broad terms, the agenda calls for retuning government so it builds and permits more. If land use rules inhibit housing production, relax them. If permitting impedes energy generation and transmission, simplify it. Doing so also requires strengthening state capacity, i.e., the ability of governments to build directly or to allow others to build.[26] In the movement's framing, the ends and the basic means are clear.

Transportation often appears on abundance's list of domains,[27] but

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[20] Despite this trend, some areas continue to have persistently low housing prices. However, these places tend to lack strong employment opportunities, which makes their housing less affordable to local residents despite low prices.

[21] This goal has been more widely embraced on the Democratic side than on the Republican side, but the alignment is nevertheless notable and now boasts both a bipartisan Congressional YIMBY Caucus and a bipartisan Build America Caucus. *See, e.g.,* Andres Picon, *Bipartisan 'Abundance' Caucus Sets Sights on NEPA*, E&ENEWS BY POLITICO (July 8, 2025)), https://www.eenews.net/articles/bipartisan-abundance-caucus-sets-sights-on-nepa/; Dustin Gardiner & Tyler Katzenberger, *Scoop: The YIMBYs Are Coming—To Congress*, POLITICO (Nov. 21, 2024), https://www.politico.com/newsletters/california-playbook/2024/11/21/scoop-the-yimbys-are-coming-to-congress-00190812.

[22] *See* Ganesh Sitaraman, Morgan Ricks & Christopher Serkin, *Regulation and the Geography of Inequality*, 70 DUKE L.J. 1763, 1770 (2021) ("The central liberaltarian policy is to deregulate zoning rules and promote urban development."). The "liberaltarian" arguments are rooted in decades of economics research establishing that land use restrictions like zoning inflate the price of housing.

[23] Other commentators, such as Professor Noah Kazis, broadly express sympathy for the abundance agenda's reforms but argue that some expressions of it, including notably Klein and Thompson's book, "conceal[] the hard parts." *See* Noah Kazis, *Abundance by Ezra Klein and Derek Thompson Review – Make America Build Again*, THE GUARDIAN (Mar. 27, 2025), https://www.theguardian.com/books/2025/mar/27/abundance-by-ezra-klein-and-derek-thompson-review-make-america-build-again.

[24] Brian J. Connolly, *Putting the "Why" in YIMBY*, 57 ARIZ. ST. L.J. 443, 445 & n.2 (2025) (canvassing sources).

[25] *See* Derek Thompson, *A Simple Plan to Solve All of America's Problems*, THE ATLANTIC (Jan. 12, 2022).

[26] *See* note 3, *supra*.

[27] *See, e.g.,* KLEIN & THOMPSON, ABUNDANCE 20 (identifying transportation as among

typically through the narrow lens of high-speed rail or megaprojects like multibillion-dollar subway expansions. Even in the best case, high-speed rail would make only a modest contribution to abundance. The benefits of increasing subway capacity in places like Manhattan are real but highly concentrated,[28] and there aren't many more places in the United States where adding (or starting) subways is true or realistic.

More important, the agenda has devoted less attention to the consequences of "more" housing and energy for urban transportation and vice versa, even though traffic and intracity transportation more generally is often the limiting factor on growth and determines whether reforms succeed. Transportation law, regulation, and policy institutions are largely constructed around the project of mitigating car traffic, and tend to sacrifice housing before they allow more traffic—or even, often, more transit.[29] Abundance needs to take account of this problem.

Some prominent accounts contrast delays and cost overruns in California's high-speed rail project with the successful effort to rebuild the I-95 bridge in Philadelphia after a segment collapsed.[30] But these episodes offer limited guidance for urban transportation policy. High-speed rail is largely irrelevant to the everyday task of moving within metropolitan areas, and it is different in kind from most urban projects. It requires assembling vast numbers of parcels, navigating conflicts with freight rail, passenger rail, highways, and topography, and managing construction across long distances. Regulatory review will predictably be protracted. Emergency reconstruction is even less instructive, by its nature. An exemption issued on an emergency basis to restore lost service of proven value is politically and legally easier than building something new of uncertain value that requires new land, creates new winners and losers, and permanently reshapes neighborhoods.[31] The central task is therefore not to search for general lessons in exceptional

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the "building blocks of the future").

[28] *See, e.g.,* Arpit Gupta et al., *Take the Q Train: Value Capture of Public Infrastructure Projects*, 129 J. URB. ECON. 103422 (2022).

[29] *See* Parts IV-V, *infra*. One counterexample is transit-oriented development, but it remains the exception in planning and is often impeded by conflicting land use regimes even where it exists. *See* Shishir Mathur & Aaron Gatdula, *Review of Planning, Land Use, and Zoning Barriers to the Construction of Transit-Oriented Developments in the United States*, 12 CASE STDS. ON TRANSPORT POL'Y 100988 (2023).

[30] *Id.* at 71–76, 116–19 (California high-speed rail); id. at 125–28 (I-95 bridge collapse in Philadelphia).

[31] Loss aversion arguably weighs unusually heavily on decisions that affect the built environment (being semi-permanent and highly visible), but it also may help explain the turn in American law to intense procedural requirements in general. *See generally* Nicholas Bagley, *The Procedure Fetish*, 118 MICH. L. REV. 345 (2019); ROBERT A. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW (2001).

projects. It is to clarify the fundamental purpose of transportation policy—connecting people to the destinations they value—and then set about operationalizing it.

B. Transportation as a Binding Constraint

Transportation policy has long been treated as a niche concern of planners and engineers. In the 2020s, rising living costs have brought it to the fore. Transportation is the second-largest household expense after housing, and the cost of each is connected to the other.[32]

Housing affordability has tightened through several reinforcing mechanisms. A central one is a shortage of units. Homebuilding collapsed during the Great Recession and never recovered.[33] Demand then surged during and after the pandemic, leaving the United States short roughly five million homes.[34] Many factors contribute, but a key driver is local land use controls—zoning, parking mandates, environmental review, and the like—that constrain production.[35] As a result, a near-record share of Americans now meet the standard definition of cost-burdened: about half of renters and a quarter of homeowners spend more than 30 percent of income on housing.[36]

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[32] Center for Neighborhood Technology, *Housing and Transportation Affordability Index*, https://htaindex.cnt.org/ (last visited Feb. 8, 2026).

[33] *E.g.,* Ryan Cooper, *The Housing Industry Never Recovered From the Great Recession*, THE AMERICAN PROSPECT (Dec. 11, 2024). https://prospect.org/infrastructure/housing/2024-12-11-housing-industry-never-recovered-great-recession/. The roots of the housing shortage extend further back still, to the creation of zoning in the early 1900s and its increasingly restrictive character. *See generally* M. NOLAN GRAY, ARBITRARY LINES: HOW ZONING BROKE THE AMERICAN CITY AND HOW TO FIX IT (2022); WILLIAM A. FISCHEL, ZONING RULES! THE ECONOMICS OF LAND USE REGULATION (2015); KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 242 (1985) (discussing the spread of zoning similar to New York City's 1916 code from 76 U.S. cities in 1926 to 1,322 in 1936).

[34] *See* Elena Patel, Aastha Rajan & Natalie Tomeh, *Make it Count: Measuring Our Housing Supply Shortage*, BROOKINGS INSTITUTION RESEARCH, Nov. 26, 2024, https://www.brookings.edu/articles/make-it-count-measuring-our-housing-supply-shortage/ (finding a deficit of 4.9 million housing units in 2023 compared to the mid-2000s); *see also* Orphe Divounguy, *Affordability Crisis: Housing Shortage Worsened Despite Pandemic Construction Boom*, ZILLOW, https://www.zillow.com/research/affordability-housing-shortage-34153/ (finding 4.5 million housing unit deficit).

[35] For early discussions, *see* WILLIAM A. FISCHEL, ZONING RULES! THE ECONOMICS OF LAND USE REGULATION (2015); Noah Kazis, Note, *Environmental Review as an Incentive for Parking Provision in New York and California: Moving from Conservatism to Conservation*, 41 TRANSP. L.J. 157 (2014); JONATHAN LEVINE, ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND USE (2005).

[36] This definition is used by the U.S. Department of Housing and Urban Development.

These burdens are unequal; among renters, Black, Hispanic, and woman-led households face especially high insecurity.[37] Strict land use controls have undermined geographic mobility in general,[38] which historian Yoni Appelbaum has described as "the great engine of American prosperity, the essential mechanism of social equality, and the ballast of our diverse democracy."[39] They have also helped produce racial segregation in particular.[40]

A movement has formed to address this problem. Its simplified message is captured by two slogans: "the rent is too damn high" and "build, baby, build." The first is descriptive: housing costs have risen sharply relative to historical norms and have outpaced income growth.[41] The second is prescriptive: increasing supply is a central tool for lowering prices.[42] Packaged for popular consumption, both claims rest on substantial empirical work.[43]

In retrospect, the decade and a half after the Great Recession marked a

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See U.S. Census Bureau, Press Release, *Nearly Half of Renter Households Are Cost-Burdened, Proportions Differ by Race* (Sept. 12, 2024), https://www.census.gov/newsroom/press-releases/2024/renter-households-cost-burdened-race.html (49.7% renters cost-burdened in 2023); Peyton Whitney, Alexander Hermann & Whitney Airgood-Obrycki, *Housing Cost Burdens Climb to Record Levels (Again) in 2023* (Dec. 3, 2024), JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, https://www.jchs.harvard.edu/blog/housing-cost-burdens-climb-record-levels-again-2023 (24% of homeowners cost-burdened in 2023).

[37] *See* Orphe Divounguy, *Renters: Who Is Most Likely Rent-Burdened?* (May 5, 2025), ZILLOW, https://www.zillow.com/research/rent-burdened-households-35131/.

[38] *See* YONI APPELBAUM, STUCK: HOW THE PRIVILEGED AND THE PROPERTIED BROKE THE ENGINE OF AMERICAN OPPORTUNITY (2025); BRINK LINDSEY & STEVEN M. TELES, THE CAPTURED ECONOMY: HOW THE POWERFUL ENRICH THEMSELVES, SLOW DOWN GROWTH, AND INCREASE INEQUALITY 109–26 (2017).

[39] YONI APPELBAUM, STUCK: HOW THE PRIVILEGED AND THE PROPERTIED BROKE THE ENGINE OF AMERICAN OPPORTUNITY 10–11 (2025).

[40] *See generally* JESSICA TROUNSTINE, THE GEOGRAPHY OF INEQUALITY: HOW LAND USE REGULATION PRODUCES SEGREGATION (2020).

[41] Jimmy McMillan, an occasional longshot candidate for high office in New York, is credited with popularizing the term "the rent is too damn high." *See* David Brand, *The Rent Is Still Too Damn High: Catching Up With Jimmy McMillan*, CITYLIMITS (Oct. 18, 2022), https://citylimits.org/the-rent-is-still-too-damn-high-catching-up-with-jimmy-mcmillan/.

[42] Politicians have issued a call to build more housing using this slogan. *See, e.g.,* Governor Gretchen Whitmer, Press Release, *Gov. Whitmer's 2025 State of the State Address as Prepared for Delivery* (Feb. 26, 2025), https://www.michigan.gov/whitmer/news/press-releases/2025/02/26/whitmers-2025-state-of-the-state-address-as-prepared-for-delivery.

[43] *See, e.g.,* Edward Glaeser and Joseph Gyourko, *The Economic Implications of Housing Supply*, 32 J. ECON. PERSP. 3 (2018); WILLIAM A. FISCHEL, ZONING RULES! THE ECONOMICS OF LAND USE REGULATION (2015).

shift in the cost-of-living problem. Housing strain is not new.[44] What is novel is its spread—from low-income households to the middle and upper-middle class, and from coastal metros to the Midwest and Sunbelt.

Transportation is often mentioned alongside housing and energy as essential infrastructure. Historically, transportation investments have expanded market size and growth potential.[45] As Adam Smith observed, "Good roads, canals, and navigable rivers" reduce carriage costs and are among "the greatest of all improvements."[46] But in a mature transportation system like that of the United States, transportation differs from other domains. "More" housing, energy, and health care can produce abundance.[47] In transportation, at least in its twentieth-century mobility form that overhangs into the current day, "more" can erode it. Urban renewal, the last major injection of an undertheorized "more" in urban transportation and housing development, still casts a shadow. Abundance will require some building, but much of what is needed is institutional reform rather than concrete.[48] In transportation, the substance of abundance is different.[49]

This Article argues that abundance requires transportation policy reform. The contrast is starkest in measurement. In housing, success is visible in units

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[44] Indeed, the challenge of making housing affordable to people of low income is one of the early rationales for public housing. *See, e.g.,* Note, *Public Housing in Illinois*, 8 U. CHI. L. REV. 296, 296–97 (1941) ("there is general agreement that housing for the very low income groups cannot presently be furnished without substantial governmental subsidies").

[45] *See, e.g.,* Ray Laurence, *Traffic and Land Transportation in and Near Rome*, in THE CAMBRIDGE COMPANION TO ANCIENT ROME (Paul Erdkamp ed., 2013).

[46] ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 165 (Edwin Cannan ed., Univ. Chi. Press 1976) (5th ed. 1789). From this observation, it was only a small step to enlisting the government to finance these improvements, as indeed happened in the twentieth century.

[47] Some iterations of abundance extend to health care, worker policy, and other sectors that are supply-constrained. *See* Robert Saldin & Steven Teles, *The Rise of the Abundance Faction*, HYPERTEXT (June 3, 2024), https://hypertext.niskanencenter.org/p/879f5abf-8087-46cb-b481-32204715a71a; *see also* Ben Glasner, *Abundance: The Missing Piece*, AGGLOMERATIONS (Oct. 3, 2025), https://agglomerations.substack.com/p/abundance-the-missing-piece (urging an abundance agenda that "demolish[es] the self-imposed blockages to job creation, wage growth, and workforce mobility").

[48] Some leading organizations in the YIMBY movement have begun to forge explicit connections between reform of housing laws and transportation policy. *See, e.g.,* California YIMBY, *The Framework for California: Chapter 3: Mobility*, https://cayimby.org/wp-content/uploads/2024/04/Framework-Chapter_3-04242024.pdf.

[49] David Zipper conducts a preliminary exploration in *What Would 'Transportation Abundance' Look Like?*, BLOOMBERG CITYLAB (Apr. 3, 2025), https://www.bloomberg.com/news/articles/2025-04-03/when-the-abundance-movement-talks-about-transportation (observing that "it is less obvious what abundance means" in transportation than in other domains).

produced and in cost burdens. In energy, it is visible in production and price. In transportation, "abundance" is harder to define. If the goal is affordable connectivity, the United States already has extensive transportation: ubiquitous roads that are largely free at the point of use and lightly regulated. But, as one scholar has put it, "it's not even clear that we want more of what we already have."[50] This skepticism is warranted because our current system is an externality machine—in terms of carbon emissions and roadway fatalities, but also in ways that self-limit more directly. In our planning paradigm, car traffic itself poses an existential threat to housing abundance because its prospect fuels legal and institutional restrictions on development. To succeed, efforts to facilitate abundance through transportation must start with policy change.

Reform will need to embrace an institutions-first approach, axiomatically known in German rail planning as organization before electronics before concrete.[51] This focus yields fewer ribbon cuttings, but it unmistakably places transportation's underlying purposes ahead of transportation as a jobs program or other ancillary functions.

Demand for transportation is "derived": it arises from the desire to reach destinations.[52] Unlike energy generation sites, transportation facilities cannot be sited far from population centers; they intermix with the people they serve, and their impacts are felt locally. Abundance therefore needs transportation policy that supports its goals without treating transportation as an output-maximization problem.

The first substantive change is to the objective function of transportation policy. Twentieth-century policy often equated success with mobility, and specifically vehicle speed. Planners have long argued that this is conceptually flawed. For them, a different goal is primary: increasing the ability of people to access valued destinations. In planning terms this is "transportation accessibility."[53] In this Article, we call it access. Advancing access would further higher-order goals, including emissions reduction, safety, and

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[50] David Zipper, *What Would 'Transportation Abundance' Look Like?*, BLOOMBERG CITYLAB (Apr. 3, 2025), https://www.bloomberg.com/news/articles/2025-04-03/when-the-abundance-movement-talks-about-transportation (quoting economist Leah Brooks).

[51] David M. Levinson, *Transportist: Organisation before Electronics before Concrete*, TRANSPORTIST (May 22, 2023), https://www.transportist.net/p/transportist-organisation-before (canvassing sources).

[52] "Travel demand is an *epiphenomenon*, in the sense that travel is a derived demand." Harvey J. Miller, *Theories and Models in Transportation Planning* in THE GEOGRAPHY OF URBAN TRANSPORTATION 117 (Genevieve Giuliano & Susan Hanson eds., 2017).

[53] *See generally* JOE GRENGS, JONATHAN LEVINE & LOUIS A. MERLIN, FROM MOBILITY TO ACCESSIBILITY: TRANSFORMING URBAN TRANSPORTATION AND LAND-USE PLANNING (2019).

mitigation of automobile externalities.

Transportation access is also central to abundance. The abundance agenda can be framed as a constrained optimization problem: increase the supply of desirable goods, subject to certain constraints. Some constraints are natural, like geography. Others are legal, like zoning. Transportation capacity is a technological constraint: systems can move only so many people. We argue that these limits can throw a ceiling on abundance. But they are not static things. We argue that this ceiling can be raised by policy. We explain how in Part I.B., *infra*.

Judging transportation by access would upend conventional planning by demoting mobility to a means rather than an end. Reformers have advanced this idea for decades. It is newly vital for abundance because the housing shortage is not simply a shortage of units. It is a shortage of housing that is accessible—by transportation—to good jobs, amenities, and other destinations. In short: too little housing in the right places. The cost of this shortage falls primarily on households, but—being estimated to cost the United States between two and 13.6 percentage points of GDP annually[54]—it also undermines national prosperity. Transportation helps make places "right."[55] It also helps make places affordable. The areas where housing is most costly—and where new housing is most needed—tend to be significantly denser than average already[56] and many could make productive use of investments in high-capacity transportation.

In the car-centric paradigm that prevails in most growing regions, however, even modest density creates transportation conflict and, in turn, political conflict. But the origin of the problem is fundamental, not merely political. Transportation capacity is relatively fixed in the near term. If housing production accelerated in high-demand areas without transportation reform, transportation would quickly become the binding constraint—and neighborhood opposition would intensify. Scholars of local government law

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[54] *See* Taner Osman, *Restrictive Land Use Regulations and Economic Performance*, 43 INT'L REG. SCI. REV. 291, 292 (2020) (canvassing literature); Edward Glaeser and Joseph Gyourko, *The Economic Implications of Housing Supply*, 32 J. ECON. PERSP. 3, 5 (2018) (identifying 2% as the lower bound). Scholars emphasize that these measures make many assumptions and do not capture second-order effects well. *See id.*

[55] Mobility is one means by which people may be given convenient access to valued destinations, along with proximity and virtual connectivity. *See generally* JOE GRENGS, JONATHAN LEVINE & LOUIS A. MERLIN, FROM MOBILITY TO ACCESSIBILITY: TRANSFORMING URBAN TRANSPORTATION AND LAND-USE PLANNING (2019).

[56] *See* Kevin Erdmann, *Does Density Increase Local Prices?*, ERDMANN HOUSING TRACKER (May 5, 2023), https://kevinerdmann.substack.com/p/does-density-increase-local-prices (analyzing the relationship between housing density and housing prices).

and political science have documented these dynamics in multiple settings.[57] Increasing capacity requires a longer-term view, and transportation reform is essential to any serious campaign to build more housing.

Yet reform has been elusive. It is not enough to blame national partisan politics. Many of the places that would benefit most are blue states and cities, and the difficulties there long predate recent federal administrations.

Nor is a simple lack of money a sufficient explanation. Agencies often cite resource constraints, and sometimes funding restrictions matter[58]—for example, farebox recovery requirements that make new service hard to launch.[59] But recent experience suggests deeper barriers. Often, restrictions are looser than they appear, pointing toward the need for entrepreneurship as much as funding.

The first half of the 2020s combined new salience with unusually generous federal support. First, transit agencies received historic fiscal support through covid-era legislation beginning in 2020.[60] The Infrastructure Investment and Jobs Act[61] and the Inflation Reduction Act[62] then provided roughly two trillion dollars in appropriations, much of it for transportation.[63] The laws even allow states to "flex," or reallocate, certain highway funds for

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[57] *See, e.g.,* Noah Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, IOWA L. REV. (2021); Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083 (2021); DAVID M. GLICK, KATHERINE LEVINE EINSTEIN & MAXWELL PALMER, NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS (2019).

[58] *See* James McIntosh et al., *Framework for Land Value Capture from Investments in Car-Dependent Cities*, 10 J. TRANSP. & LAND USE 155, 156 (2017); *see also* Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2141 (2021); Michael E. Lewyn, *Campaign of Sabotage: Big Government's War Against Public Transportation*, 26 COLUM. J. ENV'T. L. 259, 264 (2001).

[59] Interview 12.

[60] Coronavirus Economic Stabilization Act (CARES Act), Pub. L. No. 116–136, 134 Stat. 286 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117–2, 135 Stat. 4 (2021).

[61] Pub. L. No. 117–58, 135 Stat. 429 (2021). This statute is also sometimes known as the Bipartisan Infrastructure Law.

[62] Pub. L. No. 117–169, 136 Stat 1818 (2022).

[63] *See* U.S. Dep't of Treasury, *The Inflation Reduction Act's Benefits and Costs* (Mar. 1, 2024), https://home.treasury.gov/news/featured-stories/the-inflation-reduction-acts-benefits-and-costs (citing estimates of the fiscal cost of the Inflation Reduction Act ranging from $730 billion to $1.2 trillion); U.S. Dep't of Transportation, *Bipartisan Infrastructure Law (BIL) / Infrastructure Investment and Jobs Act (IIJA)* (last updated Feb. 16, 2023), https://www.phmsa.dot.gov/legislative-mandates/bipartisan-infrastructure-law-bil-infrastructure-investment-and-jobs-act-iija (noting that the law authorizes $1.2 trillion in transportation and infrastructure spending). Not all of that is for transportation (let alone transit), but tens of billions are available for transit.

transit.[64] Some later efforts have sought to condition or withdraw portions of these commitments. Even so, reformers report that institutional barriers persisted during the years of strong fiscal support and before.

Those barriers have endured despite growing bipartisan cooperation on aspects of the land use-transportation interaction.[65] Some reforms[66] have been led by Democrats; others, including housing-production bills, have gained traction among conservatives, including in deep red states where compromise is not obviously compelled by electoral considerations.[67] Yet even as politics has become more favorable, transportation policy remains resistant in practice.

Transportation reform thus sits at a crossroads: this decade, it has seen rising salience, an infusion of funding,[68] increasing support among planning staff,[69] and a measure of bipartisan political backing[70]—yet limited change

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[64] *See* John Greenfield, *Illinois Could Help Avoid the Transit Fiscal Cliff by Shifting Federal Funding from Highways to Public Transportation*, STREETSBLOG CHICAGO (Dec. 16, 2024), https://chi.streetsblog.org/2024/12/16/illinois-could-beat-the-transit-fiscal-cliff-by-shifting-federal-funding-from-highways-to-public-transportation.

[65] Some of the constraint is structural to the American system of government, which gives primacy to states (where urban transportation problems are often not primary) and delegates no constitutional role to cities or regional authorities. *See generally* Janice C. Griffith, *Evolution of Metropolitan Planning Organizations (MPOs) into Multi-Functional Regional Roles*, 106 IOWA L. REV. 2241 (2021) (commenting on structural weaknesses of regions); JONATHAN A. RODDEN, WHY CITIES LOSE: THE DEEP ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE (2019) (same for cities). Transportation policy preferences do frequently exhibit a partisan valence, with transportation reform being more favored in "urban areas with moderate and left-leaning populaces." *See* Nicholas J. Klein, Kelcie Ralph, Calvin Thigpen & Annie Brown, *Political Partisanship and Transportation Reform*, 88 J. AM. PLAN. ASS'N 163, 163 (2022). However, as discussed in this Part, some notable abundance-enabling reforms have made progress in conservative areas and states governed by Republicans.

[66] *See, e.g.,* M. Nolan Gray & Salim Furth, *What the YIMBY Winning Streak Means*, BLOOMBERG CITYLAB (Nov. 28, 2023), https://www.bloomberg.com/news/articles/2023-11-28/pro-housing-yimbys-build-a-zoning-reform-winning-streak-across-us; Part IV, *infra*.

[67] See Part IV, *infra*.

[68] Some, though not all, of this new funding has been paused or eliminated during the second Trump administration. In the bigger picture, the historic federal fiscal support for transportation that began in 2020 appears to have done little to catalyze a move toward serious transportation reform.

[69] *See generally* Lydia Lo & Yonah Freemark, *Planning for Housing in a Regional Context: Results from a Survey of Metropolitan Governance and Planning Organizations*, URB. INST. RSCH. REPORT (July 29, 2025), https://www.urban.org/research/publication/planning-housing-regional-context (finding in an original survey that regional planners support increased regional coordination of housing and transportation planning).

[70] To be clear, there remains a substantial constituency among voters and elected officials in both parties that resists reform in this domain.

on the ground. This Article explores that puzzle by distinguishing between nominal adoption and operational implementation, where institutional influence is strongest. It shows the limits of adoption-stage levers—money, new statutory priorities—to change implementation in a domain that is technically complex and slow-moving. In doing so, the Article builds on a long tradition of work in law, economics, planning, and political science[71] emphasizing the centrality of institutions as gatekeepers of policy implementation, including in transportation.[72]

We argue that in transportation, a technically complex domain where change requires years of planning, construction, and ongoing operational attention, the relevant institutions are semi-autonomous and have variable degrees of capacity, which means their successful implementation of edicts issued from the political level cannot be taken for granted. A secondary issue is that these institutions, ranging from transit agencies to courts, are bureaucratically complex in their own right. This compounds the challenge of reform and contributes to their own resilience in the face of pressure. But this challenge is not easily legislated or restructured away.

In transportation, a good deal of complexity is inherent: managing physical-world conflicts among millions of people is difficult, and decentralized governance makes simple, centralized solutions unlikely. Still, the workings of these institutions are instructive. They help explain the challenge—and point the way to the potential to unlock abundance through access.

II. The Purpose of Transportation Policy

For nearly a century, transportation planning—and the transportation aspects of land use planning—has been guided by a mobility logic: transportation is better when movement is less impeded.[73] Since 1965, the dominant indicator has been Level of Service, a grading system that rates transportation links from A to F based largely on delay.[74] Although Level of

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[71] *See, e.g.,* ELINOR OSTROM, UNDERSTANDING INSTITUTIONAL DIVERSITY (2005); Oliver E. Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead*, 38 J. ECON. LIT. 595 (2000); ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN ORGANIZATIONS, FIRMS, AND STATES (1970); Ronald H. Coase, *The Nature of the Firm*, 4 ECONOMICA 36 (1937).

[72] *See generally* ERICK GUERRA, OVERBUILT: THE HIGH COSTS AND LOW REWARDS OF US HIGHWAY CONSTRUCTION (2025) (economics and urban planning); JERRY L. MASHAW & DAVID HARFST, THE STRUGGLE FOR AUTO SAFETY (1990) (administrative law).

[73] Hao Ding & Brian D. Taylor, *Traffic Trumps All: Examining the Effect of Traffic Impact Analyses on Urban Housing*, 37 J. PLAN. LIT. 3 (2022).

[74] HIGHWAY CAPACITY MANUAL (1965), HIGHWAY RESEARCH BOARD OF THE DIVISION

Service measures exist for multiple modes,[75] highway Level of Service has most strongly shaped transportation investment and land use decisions.[76]

A. What Counts as Success?

The environmental and societal harms of the mobility-centered transportation and land use planning paradigm are well documented.[77] Less appreciated is how mobility-centered planning can fail to meet transportation's core purpose: enabling people to reach destinations. The issue is the difference between mobility and accessibility as the frame for planning and evaluation. We argue that shifting from mobility to access (1) better aligns transportation policy with its purpose and (2) can reduce barriers to housing supply in accessible places, but (3) is obstructed by legal and institutional forces that lock mobility-based practices in place. These changes are central to the abundance agenda.

The distinction is easiest to see in what counts as improvement. An improvement in mobility expands the territory reachable for a given investment of time and money. An improvement in physical accessibility increases the value of destinations reachable for that same investment. Time matters because time costs constitute a large share of the cost of driving and most other urban travel.[78] Mobility improvements therefore often track speed. Accessibility, by contrast, depends on both mobility (travel speeds) and proximity to valued destinations. It can be increased in two basic ways: by increasing travel speeds or by increasing the number or value of destinations reachable within a given travel time—for example, through higher development densities. The first is a mobility strategy; the second is a proximity (land use) strategy. Mobility strategies also face resource tradeoffs—between service frequency and coverage in transit, for example. Proximity reduces reliance on movement and can ease those tradeoffs and the

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OF ENGINEERING AND INDUSTRIAL RESEARCH, NATIONAL ACADEMY OF SCIENCE-NATIONAL RESEARCH COUNCIL (1966).

[75] Bruce W. Landis, et al., *Modeling the Roadside Walking Environment: Pedestrian Level of Service*, 1773 TRANSP. RES. REC.: J. TRANSP. RES. BD. 1, 82-88 (2001).

[76] Tabitha S. Combs, Noreen C. McDonald & William Leimenstoll, *Evolution in Local Traffic Impact Assessment Practices*, J. PLAN. EDUC. RES. (2020).

[77] *See generally* KEVIN J. KRIZEK & DAVID A. KING, ADVANCED INTRODUCTION TO URBAN TRANSPORT PLANNING (2021); Reid Ewing & Shima Hamidi, *Compactness versus Sprawl: A Review of Recent Evidence from the United States*, 30 J. PLAN. LIT. 4, 413-432 (2015).

[78] Mengying Cui, Zhe Dai & David Levinson, *Link-Based Full Cost Analysis of Travel*, TRANSPORTMETRICA A: TRANSPORT SCIENCE 1 (2024). An important qualification to this measurement is that it captures only internal costs; externalities are separate.

political battles they often trigger.[79]

Accessibility can also be advanced through connectivity: the movement of valued goods and services to the individual rather than the individual's travel to them. Connectivity includes remote electronic connections and physical delivery, including packages and utilities. This Article focuses on the interaction of proximity and mobility in producing physical accessibility, because these are the primary domains of transportation and land use policy.

Reform is needed to better align policy with the underlying purpose of transportation. A broad consensus in planning, economics, and engineering holds that most travel is undertaken to reach destinations, not for the sake of movement per se.[80] We argue that this view implies that the purpose of transportation policy[81] is access (accessibility), not mobility. Mobility is one means to access, but treating it as an end can undermine access. A system designed to facilitate private-car movement through extensive highway deployment can encourage low-density, auto-oriented development and longer trips. As origins and destinations disperse, accessibility gains from faster travel can be diluted or reversed.

Empirically, job accessibility by car (and by walking, cycling, and transit) has been found to be positively related to development densities.[82] Driving may be faster in sparse regions, but longer distances more than offset the speed advantage. In effect, areas oriented around automobility can have worse accessibility even by car.[83] A multinational study similarly found that,

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[79] *See, e.g.,* Interview 8 (speaking about interjurisdictional conflicts, especially between city and county, over frequency vs. coverage, with distant, less dense areas generally favoring coverage and nearer, denser areas generally favoring frequency).

[80] *See* JOE GRENGS, JONATHAN LEVINE & LOUIS A. MERLIN, FROM MOBILITY TO ACCESSIBILITY: TRANSFORMING URBAN TRANSPORTATION AND LAND-USE PLANNING (2019); Susan Hanson, *Theories and Models in Transportation Planning* in THE GEOGRAPHY OF URBAN TRANSPORTATION 3–4 (Genevieve Giuliano & Susan Hanson eds., 2017) ("Although people do sometimes engage in travel entirely for its own sake (as in taking a family bike ride), most urban travel occurs as a by-product of some other, nontravel activity such as work, shopping, or seeing the dentist.").

[81] The notion that transportation policy should seek to prioritize accessibility should not be taken to suggest either that such goal should automatically trump any other or that there are no other legitimate purposes of transportation besides connecting people with valued destinations, for example ensuring the fundamental right to movement. *See* Noah Smith-Drelich, *Travel Rights in a Culture War*, 101 TEX. L. REV. O. 21, 26 (2022) (quoting *Papachristou v. City of Jacksonville*, 405 U.S. 156, 164 (1972)) (describing forms of movement as among "activities [that] are historically part of the amenities of life as we have known them").

[82] Jonathan Levine, Joe Grengs, Qingyun Shen & Qing Shen, *Does Accessibility Require Density or Speed? A Comparison of Fast Versus Close in Getting Where You Want to Go in US Metropolitan Regions.* 78 J. AM. PLAN. ASSOC. 157 (2012).

[83] *Id.*

with adequate infrastructure, urban compactness improves job access despite added congestion.[84] Where mobility-centered planning produces low-density regions, access—the very purpose of transportation—is sacrificed to mobility.

This relationship mirrors other contexts with intermediate inputs. Fertilizer is useful because it supports crop yields; it is not desirable for its own sake. For a given yield, less fertilizer is preferable to more. Measuring farm productivity by fertilizer consumption would be an analytic error that would distort investment. The influential British economist Alfred Marshall described demand for such intermediate inputs as "derived demand."[85] Mobility is similarly derived: it follows from demand for access to destinations. Accessibility-based planning, rather than its mobility-based counterpart, is aligned with transportation's purpose.

B. From Mobility to Access

We advocate an accessibility shift: using access, rather than mobility, as the basis for transportation planning and the transportation dimensions of land use planning. Mobility analysis would remain, but it would not be valued in isolation. Instead, mobility impacts would be assessed alongside proximity impacts to evaluate the accessibility consequences of decisions. This shift would reshape most planning techniques. Two prototypical cases illustrate the point: transportation investment and land use regulation.

Consider transportation investment. Proposals such as freeway widenings or new routes are typically evaluated through travel-demand models that use forecasted development as an input and load projected trips onto the network, identifying where volumes will exceed capacity.[86] The results support forecasts of Level of Service and delay, and analysts then model how a proposed project reduces delay. One interviewee with experience across levels of government described a common institutional divide: engineers optimize for mobility while planners pursue land use goals, and there is little integration of the two perspectives.[87]

But transportation investments predictably affect land use. A freeway extension serving exurban territory is likely to attract residential and

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[84] Hao Wu, et al., *Urban Access Across the Globe: An International Comparison of Different Transport Modes,* 1 NPJ URBAN SUSTAINABILITY 1, 6 (2021).

[85] ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 381–82 (9th ed. 1961).

[86] PAUL H. WRIGHT, ET AL., TRANSPORTATION ENGINEERING: PLANNING AND DESIGN (4th ed. 1998).

[87] Interview 1.

nonresidential development away from built-up areas.[88] In accessibility terms, a mobility increase can induce a proximity decrease through low-density suburbanization. The proximity effect may partially erode, or even negate, the mobility-driven accessibility gains.[89] The reverse can also occur: an in-town rail station can attract dense development nearby, so proximity amplifies the mobility benefit and increases overall accessibility.[90] Because investments can spread or concentrate land uses, accessibility analysis requires both transportation and land use assessment, with mobility and proximity evaluated together.

Accessibility also requires cross-mode assessment. One interviewee who works for the principal county of a large metro area reported that transit operating agencies may treat overlapping service as competition rather than coordination.[91] That pattern is reinforced by a mission bias toward mobility: adding capacity to move more buses or cars appears to advance the agency's mission even if it does not improve access.[92]

The second case is traffic-impact assessment, which evaluates the congestion effects of a proposed land development.[93] Jurisdictions often set a Level of Service standard; developments are assessed against it.[94] Impacts that remain above the threshold are tolerated, while projected drops below it trigger mitigation—signal changes at first, then turn lanes, road widenings, lower densities, or blocking the project altogether.[95]

Table 1 provides some examples of these requirements and the outcomes they generate.

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[88] Robert Cervero, *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis*, 69 J. AM. PLAN. ASSOC. 2, 145-163 (2003); NATIONAL RESEARCH COUNCIL, EXPANDING METROPOLITAN HIGHWAYS: IMPLICATIONS FOR AIR QUALITY AND ENERGY USE (1995).

[89] JOE GRENGS, JONATHAN LEVINE & LOUIS A. MERLIN, FROM MOBILITY TO ACCESSIBILITY: TRANSFORMING URBAN TRANSPORTATION AND LAND-USE PLANNING 62–69 (2019).

[90] JARRETT WALKER, HUMAN TRANSIT: HOW CLEARER THINKING ABOUT PUBLIC TRANSIT CAN ENRICH OUR COMMUNITIES AND OUR LIVES 20 (2014).

[91] Interview 12.

[92] *Id.*

[93] Noreen C. McDonald & Tabitha S. Combs, *Reinventing TIA: Contemporary Approaches to Addressing the Traffic Impacts of Urban Development*, 90 INST. TRANSP. ENG. J. 9, 46–49 (2020).

[94] TEXAS DEPARTMENT OF TRANSPORTATION, TRAFFIC DESIGN MANUAL (2020), https://www.tn.gov/content/dam/tn/tdot/traffic-engineering/manual-8-11/CHAPTER%202%20-%20TRAFFIC%20STUDIES.pdf.

[95] Hao Ding & Brian D. Taylor, *Traffic Trumps All: Examining the Effect of Traffic Impact Analyses on Urban Housing*, 37 J. PLAN. LIT. 3 (2022).

Table 1: Examples of Traffic-Impact Analysis Requirements in Municipal Ordinances

Jurisdiction	Traffic-Impact Analysis Legal Standard	Likely Impact on Development	Citation
City of Bainbridge Island, WA (pop. 25,000)	"If the capacity of transportation facilities affected by the proposed development is less than the capacity required to maintain the level of service standard for the impact of the development, the concurrency test is not passed, and the city shall issue a letter denying a certificate of concurrency."	Mandatory denial; no discretionary override. Development is frozen in any area where roads are below adopted LOS.	Bainbridge Island, Wash., Mun. Code §§ 15.32.040(C) (2025).[96]
Manatee County, FL (pop. 420,000)	No development order shall be issued unless a Certificate of Level of Service Compliance is obtained. A transportation analysis must address all roadways on which project traffic is projected to equal or exceed 5% of the adopted PM peak-hour two-way LOS capacity.	Developer must affirmatively commit to proportionate-share mitigation. The 5% capacity trigger can sweep in road segments far from the project site.	Manatee County, Fla., Land Development Code § 360 (as amended by Ord. No. 16-24, § 3 (Exh. A-3) (Nov. 15, 2016)).[97]
Gwinnett County, GA (pop. 960,000)	If study intersections or segments are projected to fall below adopted LOS standards, the developer shall provide all necessary roadway improvements to maintain adopted LOS as a condition of zoning or land disturbance approval.	A 20-year horizon analysis for large projects means developers must mitigate not only their own impacts but projected background growth for two decades.	Gwinnett County, Ga., Traffic Impact Study Guidelines (2023)[98]; Gwinnett County, Ga., Unified Dev. Ordinance § 270-20.8.[99]

[96] https://www.codepublishing.com/WA/BainbridgeIsland/#!/BainbridgeIsland15/BainbridgeIsland1532.html#15.32.040.
[97] https://library.municode.com/fl/manatee_county/codes/land_development_code?nodeId=CH3REAUPR_PTVIIICOMA_S360CELESECO.
[98] https://www.gwinnettcounty.com/documents/d/gwinnett-county/gwinnett-transportation-traffic-impact-study-guidelines-pdf.
[99] https://www.gwinnettcounty.com/static/departments/planning/unified_development_ordinance/pdf/UDO_TitlesOnly_NoApp.pdf.

In practice, these demands can bind most tightly in places that are already congested. Yet high-accessibility areas—often central locations or areas near major destinations or facilities—are frequently congested. Mobility-centered land use policy can therefore discourage development precisely where accessibility is highest. The displaced development does not disappear; it shifts to lower-accessibility areas. The pursuit of free-flow automobility may or may not succeed, but it becomes a barrier to accessibility by suppressing growth in central areas and inducing sprawl.[100]

Reform does not require abandoning mobility analysis. Mobility is a necessary input to accessibility forecasts, but it must be analyzed in conjunction with proximity benefits. If the only question is "how much congestion will this development induce," new housing can be framed only as a cost in the form of a degradation in the Level of Service provided. But housing near jobs and amenities can provide large accessibility benefits by reducing travel needs. Joint mobility-proximity analysis is therefore required to assess accessibility gains and losses.

These benefits are most directly captured through accessibility metrics, which are well developed in transport geography and planning. Direct measurement aligns transportation planning with other fields that evaluate performance using metrics tied to core objectives (e.g., emissions or biodiversity in environmental planning, quality-adjusted life years in public health, evacuation time in emergency management). Economists have developed methods to assign dollar values to outcomes in all these fields, which is especially useful for cost-benefit analysis. Despite this utility, applied planning relies heavily on untransformed outcomes because they link most closely with on-the-ground action. Estimating dollar equivalents requires additional steps and assumptions between action and evaluation, and direct measurements serve evaluation needs even amid disagreement or uncertainty over the dollar value of desired ends.

Researchers have experimented with various approaches to attach dollar values to accessibility, including discrete-choice modeling[101] and land-value appreciation.[102] Evaluating accessibility through property values is promising and captures benefits missed when transportation is evaluated in mobility terms. For example, a bus investment that spurs intense development may increase travel volumes and on-board congestion, showing little mobility benefit—yet it enabled many more people to reach valued destinations, an accessibility impact reflected in land values. Gauging accessibility through

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[100] Jonathan Levine, Joe Grengs, Qingyun Shen & Qing Shen, *Does Accessibility Require Density or Speed? A Comparison of Fast Versus Close in Getting Where You Want to Go in U.S. Metropolitan Regions*, 78 J. AM. PLAN. ASSOC. 157 (2012).

[101] *See generally* ACCESSIBILITY ANALYSIS AND TRANSPORT PLANNING: CHALLENGES FOR EUROPE AND NORTH AMERICA (Karst T. Geurs, Kevin J. Krizek & Aura Reggiani eds., 2012).

[102] Michael Iacono & David Levinson, *Accessibility Dynamics and Location Premia: Do Land Values Follow Accessibility Changes?*, 54 URBAN STUDIES 364 (2017).

land values poses methodological challenges, which several authors argue can be readily overcome.[103]

The accessibility shift does not eliminate value conflicts; it clarifies them. Modes can compete for space, as when car lanes are dedicated to buses. Routing decisions can raise accessibility in some areas while reducing it in others. Because race and class map onto location and mode in metropolitan America, these choices often distribute benefits unevenly. The shift's task is not to resolve those conflicts, but to frame decisions around the benefits people derive from the system. As one city official observed, planners typically "don't follow our own project development process"—they do not bother to define the purpose and need of a project in the first place—and instead skip to "we need to improve that road."[104] A road may need improvement, but scarcity requires prioritization and access should be the overall goal.

This matters in the recurring conflict between incumbents and would-be newcomers. Decentralized land use planning often empowers "neighborhood defenders," or residents who employ their local political power to resist development in their area, particularly housing that is denser than the preexisting urban pattern.[105] Objections are frequently couched in mobility terms: traffic. Traffic-impact analyses quantify and legitimize those concerns. Yet many projects that generate traffic would still increase regional accessibility by allowing households to live closer to jobs and amenities.

Consider a proposal for apartments near a centrally located single-family neighborhood. The move would likely be beneficial to regional accessibility, since it would give a number of households the opportunity to live relatively close to their work and non-work destinations. The gain for future residents could be substantial. But the impact on incumbents would be more ambiguous. Notwithstanding the accessibility benefit to the region and the housing's prospective residents, incumbent homeowners stand to accrue little or no accessibility benefit. Without new retail, commercial, recreational, or employment uses, the new housing would not add destinations to the area, but the traffic it generates could increase people's travel time to their existing destinations. Framing this claim in accessibility terms would force opponents to argue explicitly that their own access should not decline even if the region's access rises and newcomers benefit. Mobility metrics let them

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[103] Yadi Wang & David Levinson, *Access-Based Land Value Appreciation for Assessing Project Benefits*, 16 J. TRANSPORT & LAND USE 469 (2023).

[104] Interview 7.

[105] KATHERINE LEVINE EINSTEIN, DAVID M. GLICK & MAXWELL PALMER, NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS (2019).

translate that parochial claim into technical language: the project threatens to degrade Level of Service below a threshold. "Policy should favor our accessibility over that of others" is expressed much more palatably as "policy should be consistent with its Level of Service targets to ensure the mobility of all."

This illustrates the core contribution of the accessibility shift. It does not dictate a fixed menu of projects or travel modes. Rather, it changes the definition of success, which reshapes what counts as a benefit, what counts as a cost, and how conflicts are justified.

C. Transportation Policy Spillovers

The abundance agenda seeks human flourishing through "more" in key domains. As we argue, pursuing those goals without regard to transportation constraints risks choking off abundance. A central risk is political: reforms can convert latent traffic congestion concerns into backlash that seeks to unwind housing liberalization. This Subpart examines three policy realms an abundance agenda focused on flourishing should address: housing affordability, climate action, and roadway safety. Land use rules shape housing supply in high-accessibility areas. When they prevent households from living in lower-carbon cities and close-in suburbs, they push growth outward, increasing driving and emissions. Transportation and safety are also intertwined: wide, fast roads endanger pedestrians and cyclists and impede dense, walkable centers; compact nodes can calm traffic and improve safety and livability.

1. Housing affordability

Alongside land use and parking reform, the accessibility shift can support the promise of housing abundance: plentiful, affordable housing, especially in high-accessibility locations. Two implications follow. First, affordability does not require that most new units be formally "affordable." The U.S. Department of Housing and Urban Development (HUD) defines cost burden as housing costs (including utilities) exceeding 30 percent of income,[106] and HUD and state and local housing authorities use income to determine eligibility for affordable housing programs such as public housing and vouchers administered under Section 8. These thresholds vary and are defined as a percentage of area median income, e.g., 30 percent (extremely

[106] *See* U.S. Dep't of Housing & Urban Development, Office of Policy Development & Research, *Dataset/CHAS Background*, https://www.huduser.gov/portal/datasets/cp/CHAS/bg_chas.html.

low income), 50 percent (very low income), or 80 percent (low income).[107] New market-rate housing almost never falls into these affordability categories, yet market-rate housing (together with subsidized below-market-rate housing) is critical to housing affordability up and down the income spectrum.[108] When development is constrained, existing stock is bid up and becomes unaffordable even to moderate- and higher-income households.[109]

Second, though it is not included in the formal definition of affordable housing above, location is hugely consequential to living affordability. Supplies of low-cost housing may be abundant in areas that are very far from people's work- and non-work destinations, or low-accessibility areas. Living in a low-accessibility area entails one of two transportation consequences: either high levels of travel, or low interaction with destinations. The former is costly in time and money terms to the individual, particularly since transportation share of household budgets is second only to housing,[110] while the latter is costly in terms of exclusion from the opportunities that the destinations offer.[111] The high impact of transportation costs on living affordability (as opposed to affordable housing narrowly construed) is well captured by the H+T (housing and transportation) index of the Center for Neighborhood Technology, in which affordability is strongly shaped by the accessibility of one's location.[112] This makes access a measurable input.

For these reasons, policies to foster housing abundance would both lower obstacles to housing development in high accessibility areas and reduce the pressure for housing development in low-accessibility areas. The accessibility shift can be a step toward both of these reforms, particularly as

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[107] *See, e.g.,* Carol Bianchi, AFFORDABLE HOUSING HUB (2023), https://affordablehousinghub.org/affordable-housing/hud-income-limits-2023 (describing income limits for limits).

[108] Evan Mast, *JUE Insight: The Effect of New Market-Rate Housing Construction on the Low-Income Housing Market,* 133 J. URB. ECON. 103383 (2023); Brian J. Asquith, Evan Mast & Davin Reed, *Local Effects of Large New Apartment Buildings in Low-Income Areas,* 105 REV. ECON. STAT. 2, 359-375 (2023).

[109] *See* Vicki Been, Ingrid Gould Ellen & Katherine O'Regan, *Supply Skepticism: Housing Supply and Affordability,* 29 HOUS. POL'Y DEB. 25 (2019); *see also* Vicki Been, Ingrid Gould Ellen & Katherine O'Regan, *Supply Skepticism Revisited*, NYU LAW & ECON. RES. PAPER NO. 24-12 (Nov. 13, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4629628.

[110] BUREAU OF LABOR STATISTICS, AVERAGE ANNUAL EXPENSES AND CHARACTERISTICS OF ALL CONSUMER UNITS, CONSUMER EXPENDITURE SURVEYS, 2021-2021, https://www.bls.gov/cex/tables/calendar-year/mean/cu-all-multi-year-2021.pdf.

[111] Karen Lucas, *Transport and Social Exclusion: Where Are We Now?*, 20 TRANSP. POL'Y 105-113 (2012).

[112] Center for Neighborhood Technology, *Housing and Transportation Affordability Index*, https://htaindex.cnt.org/ (last visited Oct. 8, 2024).

it represents a move from (auto)mobility as a basis for policy. The automobile, whether parked[113] or in motion,[114] is a space-intensive element of the urban landscape. For this reason, urban design around the automobile constrains housing development by raising the space demands each household imposes.

In high-accessibility areas, the accessibility shift would redefine the transportation impact of proposed development, including housing. Under a mobility-only frame, new housing can never be a transportation benefit; at best it avoids dropping Level of Service below a threshold. Where impacts are larger, projects face fees, downzoning, or exclusion—all of which impede housing supply. Under an accessibility frame, however, housing would receive credit for proximity benefits alongside congestion costs. Projects with large net accessibility gains should face fewer burdens than under a pure Level of Service regime.

By contrast, shifting the terms to accessibility would give credit to proposed development for the proximity that it offers, together with an accounting for the congestion cost that it imposes. New housing that represents a significant accessibility gain would presumably be less subject to costs, reduction in scope, or exclusion than it was under a regulatory regime in which traffic-impact assessment held sway.

In low-accessibility areas, complementary benefits would accrue from reform of Level of Service forecasting to analyze transportation investments. Traditional predict-and-provide transportation planning forecasts future congestion and models the impact of new transportation investments—largely roadways—on highway Level of Service. This policy has frequently been deployed to justify highway investments, which have been shown to promote a low-density, auto-oriented metropolitan development pattern.[115] In other words, this form of mobility analysis tends to encourage development in low-accessibility areas. If standard Level of Service forecasting were to shift to accessibility forecasting, then the land use impacts would be incorporated in the analysis. Where transportation investments degrade proximity by inducing low-density development, these impacts would reduce or even reverse the accessibility gains triggered by the highway investment.

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[113] Eric Scharnhorst, *Quantified Parking: Comprehensive Parking Inventories for Five U.S. Cities*, RESEARCH INSTITUTE FOR HOUSING AMERICA SPECIAL REPORT (2018), https://www.mba.org/docs/default-source/research---riha-reports/18806-research-riha-parking-report.pdf?sfvrsn=d59a2d33_0.

[114] National Association of City Transportation Officials, *Transit Street Design Guide: Designing to Move People* (2016), https://nacto.org/publication/transit-street-design-guide/introduction/why/designing-move-people/

[115] Robert Cervero, *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis*, 69 J. AM. PLAN. ASSOC. 145 (2003).

Where this happens, roadway investments would be assessed less favorably than they would on the basis of their mobility impact alone. By contrast, transportation investments that attract development around them—thus increasing proximity—would rate more favorably than they would on the basis of their raw mobility benefits alone.

Urban designs that center on the transit user, pedestrian, and cyclist can accommodate more people in a given territory. Cities will always have cars, but designs that assume that the car must never be more than a few steps away and will be used for nearly all trips—the hallmarks of much of U.S. suburban development—are limited in the amount of housing they can provide per acre. This is easier said than done, of course; one state transportation official said that their agency's strategic plan called for accessibility-based decision making but that staff lacked an understanding of how to implement it.[116]

In some instances, the blunt instrument of law may be better adapted to prohibiting the use of mobility-based standards rather than requiring more robust accessibility ones. For example, in Colorado (via administrative decision) and Minnesota (via legislation), new rules now disfavor widening highways as a way to ease congestion, and Maryland and New York are weighing similar changes via legislation.[117] This opens the door to other solutions, such as pricing the road or increasing access via greater efficiency or proximity. Colorado's experience highlights the latter set of choices. State policy changed in 2021. Shortly thereafter, the department of transportation canceled two major highway expansions and redirected $100 million to transit, and a Denver-area regional planning body moved $900 million from highway projects to multimodal investments, including bus and bicycle infrastructure.[118] By increasing transportation access, these measures should help foster abundance objectives in housing.

2. Climate mitigation

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[116] Interview 9.

[117] *See* Megan Kimble, *Colorado's Bold New Approach to Highways—Not Building Them*, N.Y. TIMES (May 31, 2024), https://www.nytimes.com/2024/05/31/headway/highways-colorado-transportation.html (describing Colorado rule and proposed legislation in Maryland and New York); MINNESOTA DEP'T OF TRANSP., SUSTAINABILITY AND PUBLIC HEALTH: TRANSPORTATION GREENHOUSE GAS EMISSIONS IMPACT ASSESSMENT, https://www.dot.state.mn.us/sustainability/ghg-assessment.html (last visited July 15, 2025) (describing Minnesota rule adopted in 2023 through state legislation).

[118] *See* Megan Kimble, *Colorado's Bold New Approach to Highways—Not Building Them*, N.Y. TIMES (May 31, 2024), https://www.nytimes.com/2024/05/31/headway/highways-colorado-transportation.html.

The connection between land use and travel behavior is among the most studied topics in planning, with a literature stretching back to at least 1970[119] seeking to assess whether residence in more accessible, walkable, and land use-mixed areas leads to less driving. While the magnitude of the effect remains open to debate and is dependent on context, a consensus has emerged around the "D" variables—density, diversity, design, destination accessibility and distance to transit—that significantly shape the extent of driving in an area and hence its carbon emissions.[120]

Destination accessibility deserves particular mention. Metropolitan accessibility by any mode tends to be highly correlated with distance from the center of a region, with the central city tending to be the highest accessibility point for its area, and accessibility tapering off as one traverses the inner suburbs, outer suburbs, and rural hinterland.[121] There is a correspondingly strong relationship with driving, with vehicle-miles traveled per household per day in the fringe areas frequently twice its value in the center.[122] The distinction reveals that land use regulations limiting residential development density in closer-in areas inadvertently drive people toward more remote locations. In effect, these regulations shift populations from lower-carbon to higher-carbon zones. The impact on driving-related carbon emissions is further intensified by disparities in building energy consumption: homes situated in more peripheral areas are generally larger than those in central locations and are less likely to be part of energy-efficient multifamily buildings. [123]

Parking policy reinforces this pattern. For decades, cities have required property developers to build a minimum quantity off-street parking spaces. The impact of these requirements is to separate land uses (since parking is land intensive); increase the cost of housing, particularly in denser locations

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[119] *See* JOHN B. LANSING, ROBERT W. MARANS & ROBERT B. ZEHNER, PLANNED RESIDENTIAL ENVIRONMENTS (1970); *see also* Robert Cervero & Kara Kockelman, *Travel Demand and the 3Ds: Density, Diversity, and Design*, 2 TRANSP. RSCH. PART D: TRANSP. & ENV'T 199 (1997).

[120] Reid Ewing & Robert Cervero, *Travel and the Built Environment: A Meta-Analysis*, 76 J. AM. PLAN. ASS'N 265 (2010).

[121] Edward L. Glaeser, Matthew E. Kahn & Jordan Rappaport, *Why Do the Poor Live in Cities?*, 63 J. URB. ECON. 1 (2008).

University of Minnesota Accessibility Observatory, *Access Across America: Auto 2019 Accessibility Maps*, https://www.access.umn.edu/research/america/auto/2019/maps (last visited Oct. 8, 2024).

[122] Center for Neighborhood Technology, *Housing and Transportation Affordability Index*, https://htaindex.cnt.org/ (last visited Oct. 8, 2024).

[123] U.S. Energy Info. Admin. Today in Energy, *Apartments in Buildings with 5 or More Units Use Less Energy Than Other Home Types* (July 15, 2013), https://www.eia.gov/todayinenergy/detail.php?id=11731.

(because structured parking is expensive), and to encourage driving, because drivers are assured of a spot, typically free, next to the origins and destinations of nearly all trips. Free parking can be a larger commuting subsidy than free gasoline would be.[124] Cumulatively, the impact of these policies is to help lock in a level of driving that is relatively resistant to efforts to improve walking, cycling, or public transit.[125] Parking reform has accelerated since 2016, alongside broader zoning reforms that prioritize affordability. Other notable landmarks were the elimination of single-family zoning in several jurisdictions, together with other reforms to prioritize housing affordability in cities.[126]

3. Roadway safety

A transportation system rebuilt for abundance but otherwise unchanged will still face a safety crisis. Like climate, safety is a humanitarian imperative and fits naturally within abundance. Safety is related to accessibility but not identical to it. The United States is far riskier than peer countries, in part because Americans drive more.[127] Unlike mobility, accessibility-based planning incorporates proximity and therefore dovetails with the safety benefits of meeting needs with less driving.

Design is also central. Much twentieth-century safety planning relied on straightening and widening roads to reduce conflict and increase flow. If that approach had worked, the United States would have among the safest streets in the world. Instead, peer nations' safety improved sharply while U.S. performance stagnated. In 1990, the United States was roughly at the middle of the pack of its peer countries in terms of roadway deaths per 100 million miles traveled, but in the years since, peer countries' safety improved markedly, while America's safety performance remained roughly constant.[128] The result is that the United States is now notably less safe. On a per capita

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[124] DONALD SHOUP, THE HIGH COST OF FREE PARKING 211–12 (2021).

[125] C.J. Gabbe, Gregory Pierce & Gordon Clowers, *Parking Policy: The Effects of Residential Minimum Parking Requirements in Seattle*, 91 LAND USE POL'Y 104053 at 1 (2020).

[126] Jonathan Levine, *The Shifting Coalition for Land-Use and Transport Policy Reform in the United States*, *in* URBAN TRANSPORT AND LAND USE PLANNING: A SYNTHESIS OF GLOBAL KNOWLEDGE 135 (Xinyu Jason Cao, Chuan Ding & Jiawen Yang eds., 2021).

[127] *See generally* International Traffic Safety Data and Analysis Group (IRTAD). *Road Safety Annual Report 2023*. Paris: International Transport Forum (2023). https://www.itf-oecd.org/sites/default/files/docs/irtad-road-safety-annual-report-2023_final.pdf.

[128] Adam Paul Susaneck, Op-Ed, *American Road Deaths Show an Alarming Racial Gap*, N.Y. TIMES (Sept. 6, 2023), https://www.nytimes.com/interactive/2023/04/26/opinion/road-deaths-racial-gap.html.

basis, a U.S. resident is about five times as likely to be killed by a motor vehicle driver as a Swede, three times as likely as a German, and more than twice as likely as a Canadian.[129]

Americans famously drive long distances, but the risk exposure shrinks only somewhat when accounting for each nation's aggregate vehicle miles traveled (VMT): road fatalities per VMT in the United States are more than three times that of Sweden, more than double that of the UK, and about double that of Germany.[130] Notably, fatalities in Canada and Australia, which broadly share a suburban, automobile-centric development land use paradigm with the United States, are nearly one half lower than in the U.S. even accounting for miles driven.[131]

Roadway risk in the U.S. has also shifted toward pedestrians. Between 2000 and 2020, U.S. motorist deaths declined by about one quarter, while pedestrian deaths increased over one third over the same period.[132] The increase likely reflects design choices that privilege fast vehicle movement in cities. Both the pace of this change and the anomalous status of the United States have grown lately; during the 2010s, for example, U.S. pedestrian deaths increased 46 percent while in peer nations the figure dropped 20 percent.[133]

Though total travel and total crashes are much higher for car travelers, people killed or seriously injured in crashes are roughly equal between car travelers, on the one hand, and pedestrians and cyclists, on the other. Poorer urban neighborhoods, which have larger share of Black and Latino residents, are particularly hard hit.[134] These areas often lack the safety investments of

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[129] INTERNATIONAL TRANSPORT FORUM, ROAD SAFETY ANNUAL REPORT 17 (2020), https://www.itf-oecd.org/sites/default/files/docs/irtad-road-safety-annual-report-2020_0.pdf; *Motor Vehicle Crash Deaths (Per 100,000 Population)*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/mmwr/volumes/71/wr/figures/mm7126a1-F-large.gif?_=04186 (last visited Sept. 14, 2024).

[130] INTERNATIONAL TRANSPORT FORUM, ROAD SAFETY ANNUAL REPORT 2024, at 29 fig. 8 (2024), https://www.itf-oecd.org/sites/default/files/docs/irtad-road-safety-annual-report-2024.pdf (showing road fatalities per billion vehicle-kilometers for 2023 or 2022, using the most recent data available).

[131] *See id.*

[132] Adam Paul Susaneck, Op-Ed, *American Road Deaths Show an Alarming Racial Gap*, N.Y. TIMES (Sept. 6, 2023), https://www.nytimes.com/interactive/2023/04/26/opinion/road-deaths-racial-gap.html.

[133] Gregory H. Shill, *Transportation Policy for the 100-Year Life*, in LAW AND THE 100-YEAR LIFE 275 (Anne Alstott, Abbe Gluck & Eugene Rusyn eds. 2025); *see generally* Gregory H. Shill, *Regulating the Pedestrian Safety Crisis*, 97 N.Y.U. L. REV. O. 194 (2022).

[134] *See* Gregory H. Shill, *The Future of Law and Transportation*, 106 IOWA L. REV. 2107, 2115 (2021) (discussing disproportionately high fatality rates among Black and Native American pedestrians); Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV.

their wealthier counterparts, and roadways traversing them serve as rapid throughfares whisking people between downtowns and more affluent suburbs.

International experience shows these deaths are preventable. Sweden's Vision Zero framework, pioneered in 1997, aims to eliminate deaths and serious injuries by designing systems that anticipate human error.[135] Many U.S. cities have adopted Vision Zero plans, yet U.S. fatalities and serious injuries have continued to rise relative to peers. The reasons are numerous, including slow adoption of design principles.[136] A similar observation could be made about the failure to make improvements to transit infrastructure and operations: proven methods exist, yet are frequently disregarded.

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The next Parts explore the question why it has been so hard to implement reform in transportation policy. Some barriers flow from the fundamental activities that make up transportation—the underlying complexity of systems that move millions of people and heavy machines in physical space demands a stable governing equilibrium. This barrier is explored in Part III. The constraints of hard law (analyzed in Part IV) and the softer but nevertheless potent internal pressures of institutions that this Article calls "transportation policy linoleum" (documented in Part V through original interviews with practitioners) are in part a consequence of these fundamental challenges but exacerbate them.

III. Operational Barriers to Reform

498, 501 & n.9 (2020).

[135] *See* Ellen Kim, Peter Muennig & Zohn Rosen, *Vision Zero: A Toolkit for Road Safety in the Modern Era*, VISION ZERO CANADA, https://visionzero.ca/vision-zero-a-toolkit-for-road-safety-in-the-modern-era (last visited Oct. 8, 2024). Design is an important tool for improving safety, though not the only one. *See, e.g.,* U.S. Dep't of Transp., Nat'l Highway Traffic Safety Administration Office of Behavioral Safety Research, *Synthesis of Studies That Relate Amount of Enforcement to Magnitude of Safety Outcomes [Traffic Tech]*, DOT HS 813 268 (2022), https://rosap.ntl.bts.gov/view/dot/62378 (finding targeted enforcement measures to be effective).

[136] S*ee, e.g.,* Rachel Weiner et al., *A Young Woman's Death Reveals Why America's Pedestrian Safety Plan Failed*, WASH. POST (Dec. 4, 2025), https://www.washingtonpost.com/business/interactive/2025/pedestrian-deaths-vision-zero-roads/.

Recognizing the tight connection between transportation and land use[137] yields several insights. One is their combined force: together they create feedback loops that persist even as dominant transportation technologies change.[138] Another is reciprocity: changes in land use governance affect transportation, and vice versa. But reciprocity cuts both ways. *Barriers* to change in one domain can block change in the other.

That observation has outsize implications. Reformers and scholars often focus on land use (more on that shortly), but the land use-transportation interaction functions as a single system. It resembles less a loaf of bread that can be sliced than a footstool: remove one leg and the whole loses its function.[139] Durable progress toward abundance—including housing abundance, climate mitigation, battens on safety—requires progress on both sides of the interaction.

Regional entities, including each metro area's Metropolitan Planning Organization (MPO), model long-range plans. But an MPO official we interviewed emphasized how constrained these entities are by state and federal law, fiscal limits, and other institutional boundaries.[140] A county transit official described a "lowest common denominator" approach driven by municipal fragmentation.[141] A state transportation official called this a "Balkanization of metros."[142] Several interviewees pointed to similar frictions in day-to-day operations—for example, disputes over how to allocate authority and costs for roadway improvements across

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[137] *See, e.g.,* RUBÉN CORDERA, ÁNGEL IBEAS, LUIGI DELL'OLIO, BORJA ALONSO, LAND USE-TRANSPORT INTERACTION MODELS (2018); Paraskevi Sarri et al., *Using Land Use and Transportation Interaction (LUTI) Models to Determine Land Use Effects from New Vehicle Transportation Technologies; a Regional Scale of Analysis*, 135 TRANSPORT POLICY 91 (2023); Ransford Antwi Acheampong & Elisabete Silva, *Land Use–Transport Interaction Modeling: A Review of the Literature and Future Research Directions*, 8 J. TRANSPORT & LAND USE 11 (2015).

[138] *See* Leah Brooks & Byron Lutz, *Vestiges of Transit: Urban Persistence at Microscale*, 101 REV. ECON. & STATS. 385, 385 (2019) (persistence in land use along many dimensions, and the ability for "century- and decade-old decisions [to] determine modern economic outcomes, . . . is particularly well documented."); David Schleicher, *How Land Use Law Impedes Transportation Innovation* in EVIDENCE AND INNOVATION IN HOUSING LAW AND POLICY (Lee Anne Fennell & Benjamin J. Keys eds., 2017).

[139] *See generally* LEE ANNE FENNELL, SLICES AND LUMPS: DIVISION AND AGGREGATION IN LAW AND LIFE (2019) (distinguishing things that can be easily aggregated and divided ("slices") from those that cannot ("lumps")).

[140] *See* Interview 10. This observation comports with scholarship on MPOs. *See generally* Janice C. Griffith, *Evolution of Metropolitan Planning Organizations (MPOs) into Multi-Functional Regional Roles*, 106 IOWA L. REV. 2241 (2021).

[141] Interview 8.

[142] Interview 9.

jurisdictions.[143]

This Part explains why transportation reform can be harder than land use reform. The differences begin in "nature"—the operational properties of each domain—and are amplified by "nurture," including regulatory design. While the scholarly and policy consensus rightly emphasizes the transport-land use connection (and this Article adds support), interconnectedness does not imply functional similarity. On closer view, the two activities differ in basic ways.

Transportation is complex in ways land use is not. The governance of transportation implicates operational judgment, multiple actors, finance, federalism, technical expertise, litigation risk, and administrative discretion. Much of this complexity is not law-made. It reflects inherent operational challenges that policy must manage. Decisions in transportation also have pronounced second-order effects on land use, investment, and population distribution, and they tend to become self-reinforcing. Many of these features exist elsewhere, but their combination is distinctive—and helps explain transportation's policy inertia.

Transportation consists of multidimensional networks that connect people[144] to destinations in space. Often that connection is delivered through heavy machines moving at speeds that create daily risks of severe injury and death. These are high-stakes systems that are difficult to manage. This Part highlights three features that distinguish transportation from land use: transportation's networked character, its technical and operational complexity, and its role in modern America as a public utility rather than private property.

A. Network Effects and System Interdependence

Networks are "systems, often characterized by 'links' and 'nodes,' that connect people or places to each other."[145] Just as "telephone lines and the postal system are communications networks," roads, rail systems, and airlines are networks in transportation.[146] An iPhone that cannot connect to telecommunications infrastructure has little value. The same is true for vehicles without the infrastructure they require.

This reflects transportation's derived demand. The purpose of

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[143] *See, e.g.,* Interviews 4, 12.

[144] Transportation also moves goods, of course, but that is not the focus of this Article.

[145] MORGAN RICKS, GANESH SITARAMAN, SHELLEY WELTON & LEV MENAND, NETWORKS, PLATFORMS, AND UTILITIES: LAW AND POLICY 7 (2022).

[146] *Id.*; Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498, 537 (2020).

transportation is not movement for its own sake but physical connection.[147] Demand for transportation derives from the accessibility it provides—connecting people to destinations. That connection exists only where infrastructure permits it: trains need tracks, cars need drivable surfaces, and pedestrians need walkable ones. In metropolitan areas, travel time depends not only on vehicle performance, road design, and traffic conditions—i.e., the presence of others—but also on the proximity of valued destinations. When destinations are closer, trips can be short even if travel is slow. Cities often pair slower traffic with higher densities of destinations. Land use regulation often strives to consider complementary impacts, but it does not consist of networks themselves in the same way as transportation.[148]

B. Operational Complexity and Risk

Modern transportation requires the real-time management of large numbers of people and vehicles in finite space. New York Penn Station, North America's busiest rail hub, serves roughly 600,000 passengers a day. About 1,300 trains move those passengers across 21 tracks and 11 platforms. Coordinating that flow safely and efficiently is an ongoing operational challenge, especially given conflicting passenger preferences and tight spatial constraints. Safety risks throughout the network compound the difficulty.

Land use decisions are different in kind. Once sewer, water, electricity, and other utilities are in place, whether to permit apartment buildings in a single-family neighborhood is largely a political question. The core disputes are about preferences and distribution, not engineering limits. The YIMBY movement's intervention operates primarily at this political level.

Transportation planning, by contrast, is saturated with technical constraint. Transportation expert Alon Levy illustrates this in posts with titles that signal the complexity involved. *How Many Tracks Do Train Stations Need?*[149] explains why rush-hour subway service runs up against physical limits. Trains operate at extremely high frequencies, constrained by the "brick wall rule": signaling systems must assume that a train ahead could stop instantly, and the following train must be able to brake in time. In *Deinterlining and Schedule Robustness*,[150] Levy emphasizes the geometric

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[147] *See* Part II.A, *supra*.

[148] For example, a home for older adults in a residential zone might receive a variance so that it can operate a health clinic despite the latter's status as a non-residential use.

[149] Alon Levy, *How Many Tracks Do Train Stations Need?*, PEDESTRIAN OBSERVATIONS (June 11, 2022), https://pedestrianobservations.com/2022/06/11/how-many-tracks-do-train-stations-need/.

[150] Alon Levy, *Deinterlining and Schedule Robustness*, PEDESTRIAN OBSERVATIONS

origins of urban transportation planning and the challenge of coordinating multiple services.

Transportation's complexity is both feature and bug. Delivering faster connections over meaningful distances requires moving large, heavy machines at high speeds through shared space. This dance can be performed with more or less elegance, and policy can improve safety. But the technical and management challenges are unavoidable.

Operational improvements, though not simple, can yield significant gains. A recent study, for example, advocates upgrading fixed infrastructure by converting diesel rail service to electric.[151] Electrification can increase productivity and reliability, enabling trains to compete more effectively with cars over intermediate distances.[152] Because it relies on existing track rather than expanding it, such a strategy can avoid many veto-prone steps in transportation reform. Electric rail also reduces negative externalities, potentially improving quality of life beyond mere reductions in travel time (for example, by reducing emissions and car traffic) while increasing social welfare and economic growth.[153]

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At the system level, the complexity multiplies. Planning and coordinating routes, vehicles, and facilities for roads, rail, buses, and bike paths requires detailed engineering. Agencies must manage flows, capacity, parking, accessibility, and intermodal connections. Human factors add further difficulty: traveler behavior varies by demographics, ability, trip purpose, and distance. Ensuring equitable access across populations and geographies is challenging. Policies governing emissions, congestion pricing, and ride sharing require balancing competing interests.

Given the scale and variability of passenger transport—countless trips occurring simultaneously across dense cities and sprawling regions—no single intervention can optimize the system. A system with so much embedded heterogeneity and complexity probably isn't even susceptible to

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(Sept. 3, 2022), https://pedestrianobservations.com/2022/09/03/deinterlining-and-schedule-robustness/ (discussing how in New York City, for example, timetables are constantly adjusted to manage crowding at peak points across interlined routes).

[151] TRANSIT COSTS PROJECT, MOMENTUM (2025), https://transitcosts.com/momentum/.

[152] *Id.*

[153] *See generally* Wei You, *The Economics of Speed: The Electrification of the Streetcar System and the Decline of Mom-and-Pop Stores in Boston, 1885–1905*, 13 AM. ECON. J.: APPLIED ECON. 285 (2021) (showing that the more-frequent service enabled by the electrification of streetcars in turn facilitated the rise of the supermarket with notable benefits for consumers).

full optimization. But we can say what an improvement would look like, at the system level: increasing access to destinations.[154] Continuous analysis and adjustment are necessary to ensure this improvement in transportation accessibility. The next two Parts turn to the human role in that project: its legal and then institutional components.

IV. Legal Barriers to Reform

Transportation reform faces both intrinsic and extrinsic obstacles. The prior Part addressed operational constraints. This Part examines a leading extrinsic one: legal barriers. It begins with courts, which have given 1970s-era conservation statutes expansive readings that impose substantive and procedural hurdles on legislative and agency reform. Through examples that reflect broader trends, it shows how these barriers now extend beyond the text—and arguably the purposes—of environmental law by making it difficult to modernize the built environment. Courts have made themselves gatekeepers of change in cities and the built environment, particularly as it concerns transportation as it interacts with land use.

This account of obstructive legal regimes from environmental and land use law complements recent work on stasis in property law[155] while extending the abundance critique. Together, these areas of law form a subfloor that underpins the institutional constraints we describe as transportation policy linoleum in Part V. Collectively, they reinforce the status quo, locking in twentieth-century settlement patterns designed above all to speed movement of cars.

A. NEPA and the Dawn of Conservation Primacy

Modern environmental law traces much of its lineage to the National Environmental Policy Act of 1970 (NEPA) and state "mini-NEPAs," most prominently the California Environmental Quality Act (CEQA), also enacted in 1970. Along with related statutes of that era,[156] these laws expressed a conservation impulse that arose in response to a perception of excess in public works, such as urban freeways and urban renewal, and private land development, such as rapid suburbanization. The mood was captured in

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[154] *See* Part II, *supra*.

[155] David Schleicher & Roderick M. Hills, Jr., *How the Gentry Won: Property Law's Embrace of Stasis*, __ TEX. L. REV. __ (forthcoming).

[156] These include the Clean Air Act (1970), Clean Water Act (1972), and Endangered Species Act (1973).

books such as *The Power Broker*[157] and *Silent Spring*[158] and in music, where Pete Seeger denounced new suburban tracts full of "ticky-tacky" boxes[159] and Joni Mitchell lamented that "they paved paradise to put up a parking lot."[160]

The environmental statutes left unclear important questions regarding what to do about these issues: the projects that would be subject to enhanced review, the procedural steps that would be required prior to approval, the legal standards that would control in litigation, and so on. Over the years, courts developed a jurisprudence answering these questions. In so doing, they entrenched conservation as environmental law's dominant function.

A conservation orientation fits a world in which the major concern is a state highway department (as departments of transportation were then known) might propose to clear-cut land for a freeway expansion. It is less suited to the affirmative ambitions central to abundance, like building infill housing and transit-oriented development. In fact, as we argue in this Article, it makes those ambitions harder to achieve.

NEPA applies to any "major federal action."[161] Specifically, it "requires all federal agencies to develop a detailed statement analyzing the impact and potential alternatives for all proposed legislation or other major actions which have a significant effect on the environment."[162] The "other major actions" category includes proposals that generate "effects that may be major and which are potentially subject to federal control and responsibility."[163] The use of federal funds can, in appropriate circumstances,[164] trigger review where agency approval is discretionary and a condition precedent to a project.[165] Opponents frequently sue to enjoin projects under NEPA, and those suits have often succeeded.

In *Seven County Infrastructure Coalition v. Eagle County, Colorado*,[166] the Supreme Court recently acknowledged the statute's drift. In a unanimous

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[157] ROBERT A. CARO, THE POWER BROKER (1974).

[158] RACHEL CARSON, SILENT SPRING (1962).

[159] PETE SEEGER, LITTLE BOXES (Columbia Records 1963).

[160] JONI MITCHELL, BIG YELLOW TAXI (A&M Records 1970).

[161] 42 U.S.C. § 4332.

[162] Rachel Keylon, *Rulemaking Doubletake: An Opportunity to Repair and Strengthen the National Environmental Policy Act*, 22 SUSTAINABLE DEV. L. & POL'Y 4, 6 (2021) (citing 42 U.S.C. § 4332).

[163] 40 C.F.R. § 1508.1(q); see also 40 CFR § 1508.1(q)(1) (specifying certain types of activities and decisions that are excluded from the requirement).

[164] The use of federal funds is not a per se trigger of this requirement. Block grants to states that do not involve federal agency control are carved out, for example. *See* 40 C.F.R. § 1508.1(q)(1)(v).

[165] *See Mayaguezanos por la Salud y el Ambiente v. United States*, 198 F.3d 297, 302 (1st Cir. 1999) (reviewing cases in multiple federal circuit courts).

[166] 605 U.S. 168 (2025).

opinion, the Court observed:

> NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to [obstruct even compliant] infrastructure and construction projects. . . Indeed, certain project opponents have relied on NEPA to fight even clean-energy projects—from wind farms to hydroelectric dams, from solar farms to geothermal wells.[167]

Over decades, judicial interpretation of NEPA and its state analogues has effectively positioned courts as gatekeepers of change in the built environment, especially in housing and transportation. The federal-state environmental regime is an example of what Professors William Eskridge and John Ferejohn call a "super-statute"—a quasi-constitutional framework that penetrates institutional practice and supplies foundational principles for interpreting ordinary law.[168] Conservation—the power to stop development, public or private—became the regime's organizing principle.

NEPA is sometimes lauded as the "Magna Carta of Federal environmental laws."[169] In practice, it has often been used to block projects that would advance environmental goals, including density and transit. The resulting tensions have fueled conflict within the environmental movement[170] and periodic reform efforts, but change has been uneven. Today, replacing an auto parts shop with housing often requires more time, expense, and coalition-building than the reverse.

At the heart of the problem lies the "alternatives analysis." When agencies consider a proposed action covered by NEPA, the statute commands them to also model a "no action alternative" under which there is no change from the status quo.[171] Although framed as procedural and routine, the choice of baseline embeds substantive judgments.

Consider a proposal to build federally funded affordable housing. NEPA review would require analysis of environmental impacts and comparison to a

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[167] *Id.* at 183.

[168] *Id.*

[169] U.S. DEP'T OF ENERGY, *Nepa.gov National Environmental Policy Act*, https://ceq.doe.gov/ (last visited Aug. 2, 2025).

[170] *See* Jerusalem Demsas, *The Culture War Tearing American Environmentalism Apart*, THE ATLANTIC (Jan. 18, 2024), https://www.theatlantic.com/ideas/archive/2024/01/housing-shortage-minneapolis-environmentalism/677165/.

[171] *See* 43 C.F.R. § 46.30.

no action alternative. Modeling the project's impacts is straightforward enough. Modeling "no action" is not. Affordable housing is typically denser than surrounding development. A baseline in which the project is not built may show less traffic at the site relative to a scenario where it is built. But that assumes that the households who would have occupied the housing simply disappear.

In practice, the no action alternative often treats project denial as environmentally neutral: the activity does not occur, and its impacts vanish. That assumption is unrealistic and can frustrate environmental goals. If a proposal for 100 housing units is denied in a high-accessibility area near jobs, the households will live elsewhere. They may move to lower-accessibility suburbs or exurbs, travel longer distances, and occupy larger, detached homes with higher per-household energy consumption.[172] Denial may increase emissions in absolute and relative terms.

Seven County Infrastructure Coalition reinforces agency discretion in conducting this analysis. The Court held that agencies are entitled to "substantial deference" in structuring their reviews, including how they frame alternatives. If an agency adopts a narrow conception of the no action alternative, courts will generally defer. Much therefore turns on agency culture and practice. Those cultures are influenced by politics but also by institutional habits, including limited transportation expertise or entrenched nonpartisan mobility biases that persist across administrations.

The decision also addressed the scope of indirect effect, or "how far to go in considering indirect environmental effects"[173] beyond the immediate project of a project on the environment before an agency approves it under NEPA. In that case, the Court considered whether agencies should be required to consider not only "indirect effects that might occur outside the area of the immediate project—for example, due to emissions or run off from the project carried elsewhere by air or water"—but also those that occur in in separate places and projects.[174] The text of NEPA does not resolve this question of scope.[175] The Court treated the inquiry as contextual and again emphasized "substantial deference,"[176] notwithstanding the demise of

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[172] *See, e.g.,* Nadja Popovich, Mira Rojanasakul & Brad Plumer, *The Climate Impact of Your Neighborhood, Mapped*, N.Y. TIMES (Dec. 13, 2022), https://www.nytimes.com/interactive/2022/12/13/climate/climate-footprint-map-neighborhood.html.

[173] 605 U.S. at 182.

[174] *Id.*

[175] *See* 42 U.S.C. § 4332(2)(C)(ii) (directing agencies to consider "any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented.").

[176] 605 U.S. at 183 (holding that agencies deserve substantial deference when deciding

Chevron deference in other settings.[177] This approach has the effect of increasing reliance on agency expertise, capacity, and willingness to develop realistic counterfactuals. But agencies are not required to adopt realistic baselines, and under *Seven County Infrastructure Coalition* courts may not be able to require them to do so. Even a unanimous Supreme Court decision like this one that is understood as a curb on NEPA's excesses illustrates how the statute's structure and implementation by lower courts can impede reform central to abundance.

B. Judges as Planners: California's CEQA Regime

California courts have played a leading role in constraining land use and transportation reform under the incongruous banner of environmental protection. In 2025, Governor Gavin Newsom signed another round of CEQA reforms. They may help shift the CEQA equilibrium somewhat. But as one state transportation official observed, CEQA enables litigants to frame almost any change as a plausible environmental harm.[178] It remains unclear whether recent reforms will materially alter that dynamic.

Friends of Mammoth v. Board of Supervisors[179] is arguably patient zero in setting California courts down a path favoring conservation over sustainability and climate mitigation. The opinion in that case, an early decision interpreting CEQA, established a very low bar on the statute's state action requirement. Specifically, it extended CEQA's reach to any project that required a government permit. The conservation impulse behind 1970s environmental legislation responded to large-scale public works of preceding decades—freeways, urban renewal, public housing.[180] Yet *Friends of Mammoth* extended CEQA's reach far beyond projects where government was the builder or major player, holding that only a nominal nexus to state action in the form of permitting was required to trigger CEQA review.[181]

The *Friends of Mammoth* court explicitly downplayed warnings that its ruling would vastly expand CEQA's reach and make nearly every development project vulnerable to delay and cancellation.[182] That is precisely

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whether NEPA requirements are met).

[177] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The dominant mechanism for courts to defer to the exercise of agency discretion, overruled by *Loper Bright*, was *Chevron* deference. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[178] Interview 9.

[179] 502 8 Cal. 3d 247 (1972).

[180] *See generally* EZRA KLEIN & DEREK THOMPSON, ABUNDANCE (2025).

[181] *Friends of Mammoth*, 502 8 Cal. 3d at 257.

[182] *Id.* at 272 (opining that most private projects that require a permit "are minor in scope

what happened.

Like NEPA, CEQA is formally procedural. In practice, it functions as a super-statute. As Professor Christopher Elmendorf and attorney Timothy Duncheon argue,[183] CEQA empowers opponents to challenge a wide variety of functionally private actions so long as public approval is a condition precedent to the project. Given the permission-intensive nature of land use regulation, that includes most meaningful development.

CEQA review follows a familiar sequence. Ostensibly, it has three steps,[184] but they can be collapsed to one: if an agency contemplates an activity that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change," it must determine whether the activity is a "project." If so, an environmental impact report (EIR) is required unless a statutory or categorical exemption applies.[185] In practice, the threshold is low, and exemptions are contested.

California courts have extended CEQA well beyond highway expansions and major public works. They now apply it to a staggering range of decisions, reaching policy decisions to expand public education (because doing so requires building) and private development (on the theory that it requires public permits). It now reaches policy-level decisions and private development alike. Two recent examples[186] illustrate the breadth of this expansion and the veto power courts now assert over proposed changes to the built environment.

First, San Diego voters considered a 2020 ballot measure to raise municipal height limits. The city council concluded that a 2018 EIR sufficed because circumstances had not materially changed.[187] A local group opposed to the measure sued, claiming that increasing the height limit entailed significant potential environmental harms and as such would require a new

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and "may be approved exactly as before the enactment of [CEQA]."). This prediction has aged poorly.

[183] Christopher S. Elmendorf & Timothy G. Duncheon, *When Super-Statutes Collide: CEQA, the Housing Accountability Act, and Tectonic Change in Land Use Law*, 49 ECOLOGY L.Q. 655, 662–69 (2022).

[184] *Save Berkeley's Neighborhoods v. Regents of Univ. of California*, 51 Cal. App. 5th 226, 235 (2020) (internal citations omitted).

[185] *See id.*

[186] Updates to CEQA guidance, which are made by state regulatory agencies, are published periodically. *See, e.g.,* ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS, CALIFORNIA ENVIRONMENTAL QUALITY ACT STATUTE & GUIDELINES (2025), https://www.califaep.org/docs/CEQA_Handbook_2025combined.pdf.

[187] Generally, when a city council or other public entity places an initiative on the ballot, it must prepare and consider an EIR before doing so and make the results available to voters. *Save Our Access v. City of San Diego*, 92 Cal. App. 5th 819, 846–47 (2023) (applying and quoting *Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165 (2001)).

EIR.[188] It prevailed, and the city appealed, but the appellate court affirmed.[189]

The appellate court held that the ballot initiative itself constituted a CEQA "project." It did not find actual environmental harm unaddressed by the 2018 EIR.[190] Instead, it invoked the "fair argument" standard,[191] under which the existence of a "fair argument" that a project will have those impacts triggers a requirement that an EIR be prepared. In doing so, the court repeated uncritically concerns expressed by some members of the public that the measure would cause an "increase of density in the area" and "impacts to traffic, human health, air quality, water quality, and greenhouse gas emission."[192] Thus, a democratic initiative to increase allowable population density was stopped by a court in the name of environmentalism—a perverse outcome that is emblematic of the mission creep CEQA has experienced in the past half century.

The result is particularly striking in this case. A voter initiative to permit greater density was halted in the name of environmentalism without a finding of net environmental harm. This is because CEQA only requires focus on a project's marginal contributions to emissions, which are typically positive, rather than its net contributions, which for an accessibility-enhancing proposal like densifying a city will usually be negative, i.e., emissions-reducing. The decision also inverts CEQA's original democratic rationale. The statute was enacted amid concern that bureaucrats were disregarding local voices. Here, a democratically enacted ballot measure—following decades of debate on the underlying question—was blocked by judicial application of CEQA.[193]

The San Diego example reflects the one-sided nature of the CEQA inquiry: courts scrutinize potential harms from action while ignoring harms from inaction. The likely alternative to denser housing is not no housing, but lower-density housing with higher per-capita emissions. CEQA doctrine does not require courts to engage that comparison.

A lawsuit seeking to subject enrollment levels at the University of California, Berkeley to environmental review further illustrates the point.[194] The university's Regents decided to increase enrollment at the Berkeley

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[188] *Save Our Access v. City of San Diego*, 92 Cal. App. 5th 819 (2023).

[189] *Id.*

[190] *Id.* at 861.

[191] *Id.* at 859–61; *see id.* at 848–59 (adding background).

[192] *Id.* at 861.

[193] *Id.* at 831–32 (noting changes to the city's height limit and its role in related land use planning over the decades preceding its inclusion in the 2020 ballot measure).

[194] *Save Berkeley's Neighborhoods v. Regents of Univ. of California*, 51 Cal. App. 5th 226 (2020).

campus.[195] In response, a local collection of neighbors, styling themselves "Save Berkeley's Neighborhoods," filed suit under CEQA to ask a court to (among other things) enjoin the planned increase in their backyard on the grounds that the Regents had failed to perform a fresh EIR.[196] The trial court rejected the claim[197]; the appellate court reversed.[198]

The reach of the appellate court's holding in the Berkeley enrollment case is breathtaking: it conditioned the capacity of the state's flagship university to carry out its educational mission on the Regents' satisfaction of CEQA's byzantine mandates, most of which are declared on an ad hoc basis by courts. The formal hook was the inadequacy of a prior EIR, performed by the university in 2005.[199] Substantively, however, the decision subordinated statewide education objectives to an expansive reading of environmental review requirements.

From an urban and transportation perspective, the problem of the counterfactual dominates the entire analysis. If Berkeley enrolls fewer students, those students do not disappear; they attend elsewhere. Berkeley is relatively dense and transit-accessible compared to peer institutions. It is plausible that reallocating students to other campuses would increase aggregate emissions. CEQA, however, does not require courts to assess environmental effects relative to realistic alternatives. It asks whether the project may cause adverse impacts. If so, then an EIR requirement is triggered and extensive litigation challenges permitted.[200] Courts reviewing those challenges assume that emissions from the Berkeley-bound students would otherwise cease to exist.

Even a fact-rich showing that Berkeley's plan would have reduced emissions on net might not have satisfied CEQA.[201] But larger question is institutional: should a 1970 environmental statute effectively determine the

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[195] The plaintiffs alleged that "beginning in 2007, [the university] made a series of discretionary decisions to increase enrollment." *Id.* 232.

[196] *See id.* at 231–32 (detailing history of planned increase).

[197] *Id.* at 232 (recounting the holding of the trial court that the university's regents had satisfied their CEQA obligations in an earlier EIR).

[198] *Id.* at 241–42.

[199] *Id.* (holding that the planned enlargement of the student body exceeded the scope of the 2005 EIR).

[200] While agencies have the authority to engage in their own de facto balancing analysis, they must first prepare an EIR. *See* CAL. CODE REGS. TIT. 14, § 15093.

[201] The universe of potential environmental impacts is vast, as suggested by the court that ruled for the opponents of the San Diego height limit initiative. *See Save Our Access v. City of San Diego*, 92 Cal. App. 5th 819, 861 (2023) (suggesting that an analysis of "certain environmental impacts," emphasizing "traffic implications with related noise and air quality issues related to vehicular traffic," might have failed to consider "*all potential issues* related to building heights above 30 feet.") (emphasis added).

size of California's flagship university? Few voters likely anticipated that outcome. Meanwhile, housing shortages in Berkeley and across the UC system are severe, with documented reports of students experiencing homelessness or living in their cars.[202]

The legislative response was swift: the state promptly adopted legislation that exempted Berkeley's enrollment decision from CEQA review.[203] That episode may signal shifting political tolerance for CEQA's reach.[204] Yet courts retain broad authority under the statute, and most homebuilders lack the political capital of the University of California. Notwithstanding the happy ending to this particular episode, therefore, CEQA remains a potent instrument for maintaining the status quo.

C. Judges as Planners Around the Country

Until recently, the fiercest conflicts over reforming the transportation-land use bundle were concentrated in states where housing supply was most constrained. As housing and transportation costs have risen nationwide, reform efforts—and judicial resistance—have spread as well. Just as reformers once looked to California for inspiration, courts elsewhere have begun to replicate California-style constraints.

1. Minnesota and comprehensive planning

Minnesota provides a vivid illustration of litigation pushback to municipal-level reform. In 2018 the Minneapolis City Council adopted Minneapolis 2040,[205] a comprehensive plan that would definitively move the city toward eliminating single-family zoning. Local plaintiffs, led by Smart Growth Minneapolis, sued to enjoin the plan, alleging violations of Minnesota's mini-NEPA. They claimed the plan would cause an

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[202] *See* M. Nolan Gray, *The UCLA Students Who Live in Their Cars*, THE ATLANTIC (Aug. 3, 2023), https://www.theatlantic.com/ideas/archive/2023/08/california-vehicular-homelessness-car-dwelling-los-angeles/674901/.

[203] *Save Berkeley's Neighborhoods v. Regents of Univ. of California*, 91 Cal. App. 5th 872, 884 (2023), *reh'g denied* (May 19, 2023). To be precise, the CEQA amendment stated that "Enrollment or changes in enrollment, by themselves, do not constitute a project." *Id.*

[204] *See* Chris Elmendorf, X (@CSElmendorf) (May 17, 2025), Thread Reader, https://threadreaderapp.com/thread/1923856722302730632.html (making this argument after reviewing the recent history of CEQA politics).

[205] *See* MINNEAPOLIS 2040—THE CITY'S COMPREHENSIVE PLAN, *Overview*, https://minneapolis2040.com/overview/#:~:text=The%20Metropolitan%20Council%20completed%20review,effect%20on%20January%201%2C%202020 (last visited Mar. 4, 2024).

"intensification of density, intensification of use and intensification of scale," increasing noise, pedestrian traffic, vehicle traffic, vehicle congestion and idling, and parking constraints.[206]

The plaintiffs prevailed in their motion for a temporary injunction against the Minneapolis 2040 plan.[207] Although this order was later vacated,[208] the trial court's reasoning exhibited familiar problems. As when California courts have applied that state's mini-NEPA, the Minneapolis 2040 case turned on the choice of counterfactual—specifically, the choice of an implausible counterfactual.

The plaintiffs argued that increasing density would increase traffic. The trial court implicitly adopted this frame by comparing the plan to the status quo rather than to the alternative that would be likeliest to prevail absent the challenged reform, i.e., continued growth but in a lower-density settlement pattern, which would predictably require more frequent use of cars and for longer distances.[209] The trial court cited predominantly transportation impacts, especially traffic, to block the reform, and its rationale included aesthetic grounds (e.g., protecting "viewsheds")[210] quite far afield from the stated purpose of environmental law.

As in California, durable relief[211] came ultimately came from the legislature. In 2024, Minnesota enacted—and its supreme court upheld—a statute exempting municipal comprehensive plans from review under certain state environmental laws.[212]

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[206] *See State of Minnesota by Smart Growth Minneapolis v. City of Minneapolis*. No. 27-CV-18-19587, at *7 (Minn. Dist. Ct. Sept. 5, 2023), *rev'd*, 7 N.W.3d 418.

[207] *See State of Minnesota by Smart Growth Minneapolis*, No. 27-CV-18-19587 (Minn. Dist. Ct. Sept. 5, 2023), *rev'd,* 7 N.W.3d 418.

[208] *State by Smart Growth Minneapolis v. City of Minneapolis*, 7 N.W.3d 418 (Minn. Ct. App. 2024), *review denied* (Aug. 20, 2024).

[209] The trial court found that the city had failed to rebut "the many detailed assertions advanced by Plaintiffs as to increased traffic impacts, increased noise impacts, [and] decreased air quality." *State of Minnesota by Smart Growth Minneapolis*, No. 27-CV-18-19587, at *9 (Minn. Dist. Ct. Sept. 5, 2023) (listing these among the asserted impacts the city had failed to address), *rev'd,* 7 N.W.3d 418. Other claimed impacts, such as on "negative impacts to existing viewsheds," were less obviously related to transportation. *Id.*

[210] *Id.* at *9, *23.

[211] Whether this relief is, in fact, final and definitive remains to be seen.

[212] *See* Susan Du, *Minnesota Supreme Court Declines to Review 2040 Plan Ruling in Latest Victory for Minneapolis*, MINN. STAR TRIB. (Aug. 21, 2024), https://www.startribune.com/minnesota-supreme-court-declines-to-review-2040-plan-ruling-in-latest-victory-for-minneapolis/601126815.

2. Washington, D.C. and density review

A court in a recent Washington, D.C. case applied similar logic to reach a similar result to those in the lower courts in California and Minnesota. In *Cummins v. D.C. Zoning Commission*,[213] the court considered, essentially, a lawsuit against city life: a challenge to a development that called for building an apartment building, a senior home, several townhomes, and a park in the nation's capital. The plaintiffs argued that the project, which had been approved by the zoning commission, was unreasonable under the prevailing "moderate density commercial" designation and should be rescinded because, among other things, the development would be denser than the surrounding buildings. Plaintiffs cited a number of transportation-related outcomes, including their belief that the site would remove on-street parking and "increase[] vehicular and pedestrian traffic."[214] The court agreed, noting a "tension" between that vision and a local regulation restricting rehabilitation and development "in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale."[215] The court reversed the commission's approval.

As in California and Minnesota, density itself functioned as the operative harm. The substantive source of law in the D.C. case was zoning rather than environmental protection as such. Reform efforts seeking to roll back judicial vetoes on city-building will need to go beyond changes to environmental laws.

3. Montana and constitutional penumbra

A 2023 Montana trial court decision underscores the reach of courts in blocking reform efforts. The case involved a state statute authorizing modest increases in residential density: legalization of accessory dwelling units (in all Montana cities), duplexes (in a small number of more sizable cities, within areas then zoned only for single-family homes),[216] and the elimination of parking requirements.[217] Collectively, these changes would make possible an incremental increase in transportation accessibility in some neighborhoods while reducing, slightly, the imperative for motor vehicles.

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[213] 229 A.3d 768 (D.C. 2020).

[214] *Id.* at 774.

[215] *Id.* at 776.

[216] *Montanans Against Irresponsible Densification v. State,* No. DV 23–1248, at *8–9 (Mont. Dist. Ct. Dec 29, 2023), *rev'd*, 418 Mont. 78 (2024).

[217] *Id.* at *7.

Plaintiffs challenged the statute not under environmental law but as a menace to "their previously peaceful and well-maintained single-family neighborhood."[218] The court agreed and granted an injunction. Although the state supreme court later reversed,[219] an examination of the trial court opinion illustrates the challenges presented by courts acting as transportation planners.

Two features distinguish the Montana trial court decision from previous ones, for example in California and Minnesota, that resulted in directionally similar outcomes. The first is procedural but powerful: the Montana court prevented the entering into force of state legislation. The more typical situation is that a state subdivision is determined to have failed to fulfill its obligations under a state environmental statute; here, the court threw out state legislation, a more uncommon outcome. Second, the court grounded its ruling in a novel "constitutional right of public participation" under the state constitution.[220] Though later reversed,[221] the decision's reach deep into constitutional penumbra illustrates the willingness of courts to indulge novel legal challenges to transportation reforms, even when enacted by the state legislature.

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Housing is the largest household expense in the United States; transportation is second. Denser neighborhoods that support transit and walking offer one of the few tools for addressing both. As the shortage of affordable housing has become a nationwide concern, judicial resistance to reform measures has spread as well. An abundance vision will need to address this.

These varied illustrations suggest a broader pattern: courts show marked solicitude toward litigants opposing densification and related transportation reforms, even in jurisdictions facing acute housing shortages. In some instances, state appellate courts and legislatures have acted to check lower court hostility to reform, but often only after prolonged litigation or extreme

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[218] *Id.* at *6.

[219] *See Montanans Against Irresponsible Densification, LLC v. State*, 418 Mont. 78 (2024).

[220] *Montanans Against Irresponsible Densification v. State,* No. DV 23–1248, at *14 (Mont. Dist. Ct. Dec 29, 2023), *rev'd*, 418 Mont. 78 (2024) (also observing, at *16–17, that it was acting to prevent "unfair and invidious discrimination against single-family owners who must now absorb an arbitrary and disproportionate burden of increased density as opposed to those who are protected by restrictive covenants.").

[221] *See Montanans Against Irresponsible Densification, LLC v. State*, 418 Mont. 78 (2024).

circumstances, and typically in a piecemeal way—exempting student enrollment increases from CEQA in California, for example, or municipal rezonings from environmental review in Minnesota. On the whole, environmental and related land use rules continue to disfavor reform and lock in stasis over abundance—and at any moment, a court may choose to extend already-restrictive examples of such rules to block reform in new domains.

V. Transportation Policy Linoleum

The principle that transportation policy should be judged by how well it connects people to valued destinations is both straightforward and central to abundance. On its own, however, that idea—transportation accessibility—does not resolve the tradeoffs inherent in policymaking, nor does it script any particular outcome. But it does provide a tractable framework for clarifying and structuring those tradeoffs.

We recognize the scale of change required to implement this reorientation. It must overcome both operational and legal barriers to reform (detailed in Parts III and IV, respectively). This Part turns to a third category: institutional barriers.

A. Policy "In Books" and "In Action": 13 Interviews

Institutional barriers often arise less from formal legal rules than from how those rules are applied, and from "soft" factors like agency culture and industry norms. Some can trace their origins to state highway offices at midcentury; others surface in public meetings held in city hall basements after hours or on weekends—in other words, in buildings with harsh lighting and linoleum floors. Formal transportation policy is easy enough to divine from policy manuals and statutes. Here, we build an account not only of transportation policy "in books" but "in action"[222]: policy in what might be called its linoleum setting. Though informal in origin, these constraints prove to be quite restrictive in practice.

To this end, we conducted 13 interviews with officials about obstacles to transportation reform. We granted anonymity to encourage candor. All interviewees work, or recently worked, in federal, state, or local agencies with responsibility for transportation policy. Several have served at multiple agencies or levels of government; some are nationally prominent; some had left their roles by the time of our interview or subsequently. Regardless of

[222] *See generally* Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12 (1910).

whether they still serve in their role, we use the present tense to describe it.

A methodological caveat is warranted. The interviews were designed to probe legal and institutional obstacles within federal, state, and local transportation systems. Most participants were reform-minded, and we asked them specifically about barriers to reform. We do not hold out their views as representative of the tens of thousands of policymakers working in the field. We do believe that they illuminate barriers reformers encounter.

The concerns of these officials clustered around three themes: fragmented governance, path dependence, and a set of diverse yet persistent legal barriers that resist easy categorization. Together, these themes—along with a recurring sense that law itself operates as a structural source of status quo bias—help explain the durability of existing practices and the resilience of official efforts to keep them in place.

B. Fragmentation and Coordination Failures

Transportation policy is the product of a vast constellation of institutions linked horizontally and vertically by a web of financial and operational relationships. The most frequent and influential players are municipalities, special districts, transit agencies, and state departments of transportation. The federal government plays an important coordinating and funding role, but operational authority largely resides with states,[223] and most federal funds flow to them via block grants with minimal oversight from Washington.

While institutional fragmentation is hardly unique to transportation governance, the degree of divided authority in this domain poses a distinctive barrier to reform. The imperative of working across agencies and levels of government tends to produce a flight to familiarity, favoring convention over innovation. Thus, one constraint on reform within transportation institutions is the presence or perception of resistance from partners with which would-be innovators must collaborate. For this and other reasons, the division of authority has been identified as a significant barrier to transportation-policy innovation.[224]

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[223] State governments frequently slice up this authority further and designate spheres of authority to the department of transportation, transit agencies, cities, and other state subdivisions. The subdivision of transportation authority by states would benefit from additional research.

[224] Andre Comandon et al., *Institutional Obstacles to New Transportation Technology Adoption*, White Paper PSR-21-12, METRANS TRANSPORTATION CENTER, UNIV. SO. CAL. (August 2022), https://www.metrans.org/assets/research/institutional%20obstacles%20psr%20final%20report_10-21.pdf; CAREY CURTIS & NICHOLAS LOW, INSTITUTIONAL BARRIERS TO SUSTAINABLE TRANSPORT (2016).

A related barrier is path dependence. Existing infrastructure, technologies, regulatory frameworks, and organizational routines create self-reinforcing patterns that privilege prevailing systems.[225] Even where alternatives might be Pareto-efficient[226]—for example, they offer gains in time savings, equity, or sustainability without requiring tradeoffs on any of those dimensions—shifting course is costly because stakeholders have invested resources and expertise in the current paradigm.

Law underpins both dynamics. It fragments authority along jurisdictional lines and fosters path dependence through procedural requirements, liability regimes that penalize experimentation while insulating settled practice, and rigid regulatory categories that struggle to accommodate new technologies. The cumulative effect is to bias transportation policy toward stasis.

Fragmentation operates through both formal constraints and informal practice. One example is state ownership of major urban roadways, typically arterials. Cities usually control most streets within their boundaries, but these are interrupted by routes operated by the state department of transportation. State ownership often yields corridors "designed to move private motor vehicles over everything else."[227] As one municipal official put it: "We're having a real battle with our state engineering district. We have a state arterial corridor that the state redesigned eight to ten years ago. It's posted at 35 [miles per hour], but people travel at 45 to 50. We can't take this anymore."[228] In their telling, city officials are better able to prioritize safety and access for pedestrians, cyclists, and transit users on streets within city control.

Many interviewees noted the weak position of cities relative to other transportation players.[229] Municipalities often lack authority to levy car-use fees or taxes,[230] regulate ridehailing at airports, place limits on automated vehicles, or control delivery services.[231] Where needed powers exist, funding requirements may hamstring innovation. For example, significant funding from state or federal levels comes with conditions in the form of procurement processes that are sometimes as demanding for filling a sidewalk gap as for

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[225] Mariana Prado & Michael Trebilcock, *Path Dependence, Development, and the Dynamics of Institutional Reform*, 59 U. TORONTO L.J. 341 (2009).

[226] HAL R. VARIAN, MICROECONOMIC ANALYSIS 225 (1992) ("A Pareto efficient allocation is one for which there is no way to make all agents better off.").

[227] Interview 12.

[228] Interview 7.

[229] Although cities enjoy less power to regulate transportation than states, large cities in particular do possess substantial authorities, even if they normally do not use them. *See generally* Gregory H. Shill, *Beyond Congestion Pricing*, 2025 J.L. MOB. 1.

[230] Interview 7.

[231] Interview 5.

constructing a highway cloverleaf.[232] Small purchases related to Vision Zero can trigger the same procurement review burdens as large highway projects.[233]

The fragmentation problem extends to the state level. Some state DOTs lack authority to fund sidewalks. "Yeah, we'll build a Complete Street," one federal official reported, "but the locals are required to maintain the sidewalks,"[234] a burden that the official reported can deter construction. In some cases, this has a significant equity dimension: "We never want to build anything that's not in the roadway itself," reported one county official.[235] "Rich communities want us to build bike paths, for example, because they can maintain them. Poor communities can't afford to maintain them, so we try to avoid building them."[236]

State-level impediments can also be founded in constitutional restrictions, as when a state constitution restricts gas tax revenues to highway purposes[237] or imposes stringent farebox-recovery mandates on transit agencies. "New services need time to get off the ground," one county official explained, "and would have a hard time meeting [the mandated] standard."[238]

Fragmentation also cuts in the opposite direction: municipal action can blunt reforms enacted at the state level. California removed the congestion-based Level of Service from CEQA review, but municipalities may still require Level of Service mitigation, entrenching automobility-centered practices.[239] Political pressures reinforce this tendency. "Even though there's a ton of flexibility," reported a city official, "if you design to a failing Level of Service, you're living with a project that's getting so many complaints, and politics will come back to bite you."[240] In some cases, elected officials have been "weaponizing" site-plan analysis to embed Level of Service requirements into agreements with developers, prejudicing future operations and street designs.[241]

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[232] Interview 7.

[233] Interview 2.

[234] Interview 1. Complete Streets facilitate "safe access for all people who need to use them, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities." *See* Smart Growth America, *What Are Complete Streets?*, https://www.smartgrowthamerica.org/programs-and-coalitions/national-complete-streets-coalition/about/ (last visited Feb. 9, 2026).

[235] Interview 12.

[236] *Id.*

[237] Interviews 1, 10.

[238] Interview 12.

[239] Interview 9.

[240] Interview 6.

[241] Interview 5.

Congestion reappears as a focus because of state-level institutions as well. Notwithstanding the demotion of Level of Service, California's Congestion Management Agencies are required by law to demonstrate "consistency with Level of Service standards" in their corrective action plans, capital improvement programs, and land-use analysis. Though these standards could be reformulated around access, state law continues to measure success in terms of mobility.[242]

The need for coordination among municipalities on transportation networks is a force favoring stasis as well. For example, street center lines often form jurisdictional boundaries. "On a minor street with speeding issues," reported one city official, "we designed speed humps. The adjacent jurisdiction, which was poorer than ours, would not allow the hump across the center line because they felt that if it were done here, there would be demand elsewhere, which they could not afford to supply. But we're not going to build half a speed hump."[243]

Fragmented government can also impede reform informally. For example, ostensibly uniform policies get modified as they are passed between jurisdictional levels. This occurs between federal and state levels, as when federal policies are transmitted to modal administrators, then district administrators, and state subdivisions, after which they are conveyed to the state DOT engineering district. "Each time, the guidance gets watered down and loses power," said one municipal official.[244] It also occurs between state and municipal levels, as different localities within a state interpret identical laws, such as design requirements to accommodate fire trucks, completely differently.[245]

It may not be surprising that fragmentation impedes regional coordination, but its potential to do so may be underestimated all the same. "Many regions continue to plan via collation," reported one state transportation official.[246] "A list of unrelated, locally generated road and transit projects are stapled together without reference to overall network, service or land use/accessibility benefits. The same is true for state, federal investments; funded projects have no clear cost-benefit analysis or even clear articulation of what the mobility goals are for a given road or transit project."[247]

For institutions, perceived fragmentation can be as constraining as formal

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[242] Interview 13.
[243] Interview 7.
[244] *Id.*
[245] Interview 5.
[246] Interview 13.
[247] *Id.*

limits. Sometimes this takes the form of a misunderstanding: agencies may believe a given procedure or design rule is dictated at the federal level, when in fact their state has chosen to incorporate a federal practice into its own rules[248]—an issue a state agency could in principle raise internally or with state lawmakers. Other disputes turn on competing readings of statutes or constitutional provisions (for example, whether restrictions on gas tax expenditures apply to highway user charges). Divergent interpretations have fueled conflict between metropolitan and rural jurisdictions over distribution of these revenues.[249] One federal official attributed some of these barriers to "stupidity and bad lawyering."[250] This particular characterization would surely be challenged by the lawyers involved, but a theme across interviewees was that colorable disputes are routinely decided in favor of the status quo.

Fragmentation also operates within jurisdictions. Favored quarters of cities often elicit political deference when transportation improvements are proposed.[251] "At the localized level," reported a transit agency official, who faced resistance to transit lanes, "there is often pushback because people are thinking parochially about their neighborhood and losing parking. If you break transit's linear path, you have a problem, and things don't get accomplished."[252]

C. Path Dependence and Institutional Lock-In

The reengineering of U.S. cities and metropolitan regions around the automobile in the twentieth century produced a self-reinforcing equilibrium between urban form and transportation behavior: where destinations are inaccessible without a car, residents and commuters have few alternatives, generating a Catch-22. Where driving dominates, efforts to change car-centric practices and urban forms often lack a political constituency or market channel that might signal their viability.[253]

Path dependence operates at both technical and cultural levels. The most familiar infrastructure-based form involves past decisions constraining future options. An overbuilt freeway network sustains a focus on traffic flow over other priorities. Aging transit infrastructure requires costly maintenance,

[248] Interviews 1, 7.

[249] Interview 10.

[250] Interview 1.

[251] Noah M. Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, 106 IOWA L. REV. 2339 (2021).

[252] Interview 11.

[253] *See generally* Peter O. Muller, *Transportation and Urban Form: Stages in the Spatial Evolution of the American Metropolis* in THE GEOGRAPHY OF URBAN TRANSPORTATION (Genevieve Giuliano & Susan Hanson eds., 2017).

leaving less for service expansion.

Political culture reinforces these patterns. Regions built around cars tend to attract car-reliant electorates. Low-density development makes driving a necessity, creating constituencies resistant to alternatives. As one state transportation official observed, "This is a feature of our democracy. People who dislike change or who fear disruption have outsize influence."[254]

In some cases, auto-oriented majorities shape outcomes through direct politics. The same official noted that new transit initiatives in their state are often funded by sales tax measures requiring a two-thirds vote. With that threshold, any organized minority can veto reform. "The thinking has been that to get measures passed, you've got to put enough highway into the package to get it over the two-thirds threshold."[255] The supermajority requirement thus entrenches mobility-centered investments.

Professional and technical standards tend to solidify existing practices. A conspicuous example is the 85th Percentile Rule, often embedded in state law. Under this rule, speed limits are adjusted to match the speed traveled by the 85th percentile driver, a principle that can ratchet speeds upward as drivers respond to higher limits.[256] One city seeking to increase enforcement at a dangerous intersection commissioned a required speed study; when it showed that most drivers were speeding, officials said it compelled them to raise the speed limit.[257]

Standards are sometimes chosen for a given transportation policy decision not because they are believed to be meritorious or required, but because alternatives are costlier. For example, another city official advised, many municipalities adopt suggestions from national engineering industry manuals on trip generation[258] and parking[259] not because they believe their formulas produce accurate estimates of demand, but because generating original data is costly.[260] The same goes for traffic modeling software.

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[254] Interview 9.

[255] *Id.*

[256] *See, e.g.,* Sara C. Bronin & Gregory H. Shill, Rewriting Our Nation's Deadly Traffic Manual, 135 HARV. L. REV. F. 1, 5–6 (2021); Gregory H. Shill, *Should Law Subsidize Driving?*. 95 N.Y.U. L. REV. 498, 515–17 (2020). A change to the MUTCD that went into effect in 2023 suggested more consideration of land use context in the application of the 85th Percentile Rule, but did not bar the rule's use. *See* FEDERAL HIGHWAY ADMINISTRATION, MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES 84–85 (11th ed. 2023), https://mutcd.fhwa.dot.gov/kno_11th_Edition.htm.

[257] Interview 9.

[258] ITE, TRIP GENERATION MANUAL (12th ed. 2025), https://www.ite.org/technical-resources/topics/trip-and-parking-generation-v2/trip-generation-info/.

[259] ITE, PARKING GENERATION MANUAL (6th ed. 2023), https://www.ite.org/technical-resources/topics/trip-and-parking-generation-v2/parking-generation-info1/.

[260] Interview 5.

"[These tools] will never tell anything but a negative story about anything that privileges anything other than vehicular speed, but [they are] easy to default to," this official said of these sources.[261]

The embedded transportation culture emphasizes infrastructure increases over other service improvements. Service-led planning, according to one state transportation official, would deliver "service rather than concrete. To the extent that infrastructure is required[,] it has a specific utility rather [being] an end unto itself."[262] Thus, "service-led planning would focus on upgrading an existing rail corridor to meet demand—through agreement with [stakeholder railroads], signaling, electrification and strategic double tracking—rather than create a new subway on a parallel route."[263]

D. Legal Risk and Defensive Administration

Standards can also work against innovation for distinctly legal reasons. One city transportation official described how liability concerns encourage defensive decisionmaking:

> Our agency's manual is super helpful for telling contractors what to build. However, every block is different, and engineers must adjust to fit field conditions. But that means that if they don't do a fastidious job of documenting [those conditions], all a plaintiff's attorney in a lawsuit has to do is highlight the difference between the installation and the manual.[264]

The tension between policy-driven needs for customization and risk-driven needs for uniformity tends to be resolved in favor of standard designs, even when doing so is less safe.[265] "Lots of people like to sue local government," observed one city transportation official.[266] "We lose cases mostly if the right of way has any kind of defect, such as a pothole. When it comes to design, plaintiffs are much less successful because of the concept of design immunity,"[267] which shields the city so long as it adhered to the design manual, even if those designs pose risks to vulnerable road users.

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[261] *Id.*
[262] Interview 13.
[263] *Id.*
[264] Interview 5.
[265] *See generally* WES MARSHALL, KILLED BY A TRAFFIC ENGINEER: SHATTERING THE DELUSION THAT SCIENCE UNDERLIES OUR TRANSPORTATION SYSTEM (2024).
[266] Interview 6.
[267] *Id.*

Reliance on standards also guides enforcement decisions. For example, one city transportation official explained, "district attorneys do not bring charges against drivers who cause accidents unless the level of recklessness hits some 'know it when you see it' invisible line that only DAs and judges can see."[268]

Perception of legal constraint can matter as much as doctrine itself, and lawyers often mediate that perception. "Often lawyers play a deciding, rather than advising, role,"[269] city transportation officials told us. "You can do this, must do that. It's very hard to have arguments across different disciplines without being told how those disciplines work."[270] Engineers and planners, lacking legal expertise, tend to accept legal advice as dispositive even when it might present only an incomplete picture. The culture and incentives of agency lawyers play a role as well. They have few if any incentives to deviate from risk-averse interpretations, and given the prevailing climate at agencies they may pay a professional price for swimming upstream.

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The categories of barriers discussed in this Part are all mutually reinforcing. Fragmentation tends to create inconsistent standards requiring extensive interpretation which then becomes locked in place, with liability concerns and a professional culture of risk aversion further ossifying practices. Perceived impediments mix liberally with objectively existing obstacles, galvanizing barriers to change.

Although decentralized governance should, in theory, foster innovation and experimentation, our interviews suggest that in transportation policy it more often produces paralysis. The interlocking character of these barriers points to the need for coordinated, multi-level reforms. These reforms would address the "soft" constraints of transportation policy linoleum, such as professional culture and risk perception, and the formal legal barriers discussed *supra* at Part IV.

The mutually reinforcing nature of these obstacles underscores the scale of the reform project. We offer a playbook of initial policy proposals in the next Part.

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[268] Interview 5.
[269] Interview 2.
[270] *Id.*

VI. A Policy Playbook for Access

This Article calls for reorienting transportation policy away from maximizing movement for its own sake and toward expanding access to valued destinations.[271] As Parts I and II explain, that shift is not only sound as a matter of transportation theory and policy; it is necessary to any serious account of abundance.

The proposal may appear incremental. It is not. Organizing transportation around access rather than mobility would be a structural change. Similar efforts have stalled for decades. We argue that they have done so because they collide with entrenched operational constraints (described in Part III), legal doctrines that award courts something close to *de jure* control over city-building (Part IV), and the less visible but often more formidable institutional forces we describe as transportation policy linoleum (Part V).

Regime change of this kind does not happen overnight. The changes we outline seek to dismantle key fictions that pervade transportation policymaking—most notably the assumption that the real-world alternative to approving an apartment building or a bus lane in a dense area is "no project," when in fact inaction typically yields overcrowded housing, longer commutes, and weaker transit. These premises reflect the conservation-era origins of much of the governing law.

There is no silver bullet. Instead, we propose three targeted legal interventions: treating behavioral data as a form of participation for purposes of the public involvement requirement; requiring realistic alternatives modeling in environmental review; and improving cost-benefit analysis to account for opportunity costs and externalities.

A. Behavioral Data as Participation

Transportation policymakers routinely solicit public participation as part of decisionmaking under NEPA and other areas of law. Even where "public involvement" is not legally compelled, as it is for many Federal Highway Administration projects,[272] one or more public hearings are typically convened as a matter of custom. The underlying theory is familiar: giving members of the public an opportunity to speak promotes democratic legitimacy and supplies information that supplements elections, constituent communications, and other channels of accountability. A growing literature

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[271] *See* Part II, *supra* (describing the proposed shift from transportation mobility to transportation accessibility).

[272] *See, e.g.,* 23 CFR § 771.111(h) (Federal Highway Administration rule establishing procedural requirements for "public involvement," including at least one public meeting).

documents problems in the public meeting process.[273] The now-standard critique is that the voices at these meetings tend to not be representative of the community; rather, those with a powerful interest in the status quo participate disproportionately and use these meetings to stall or block proposals under discussion that would make changes to land use or transportation.[274] Despite their many flaws, in many cases these meetings are required, and even where they are not, the practice of soliciting public input has become almost sacrosanct in the linoleum halls where transportation policy is made.

Rather than seek ways to abolish, curb, or sidestep these feedback exercises, as some prior work has suggested, our Article proposes tempering their selection issues by injecting data in a formal way.

1. Ex ante participation

Even where an agency is legally required to solicit public feedback, many details of that process are within the agency's discretion.[275] So long as a public meeting requirement (if applicable) is satisfied, there is no meaningful bar on what may be incorporated into the public involvement process.

The economic concept of revealed preference offers a way to supplement traditional participation and mitigate selection bias. Asking for a show of hands about who would ride a bus between points A and B captures *stated* demand. Examining the number of existing ridehail trips between those same points captures *observed* demand.[276] A bus and an Uber are not perfect substitutes; some users, perhaps even most, will prefer ridehail even where bus service exists. But the volume of Uber trips along a corridor is plainly relevant when evaluating whether bus service is warranted. That is the practical value of revealed preference data.

Public meetings generate a form of survey evidence. Agencies, however, already collect substantial behavioral data as a matter of routine: transit

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[273] *See, e.g.,* Introduction & Part I.B., *supra*; Leah Brooks & Zachary Liscow, *Infrastructure Costs*, 15 AM. ECON. J. 1 (2023); Noah Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, IOWA L. REV. (2021); Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083 (2021); DAVID M. GLICK, KATHERINE LEVINE EINSTEIN & MAXWELL PALMER, NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS (2019).

[274] *Id.*

[275] *See, e.g.,* 23 CFR § 771.105(c) (declaring Federal Highway Administration policy that "Public involvement and a systematic interdisciplinary approach are essential parts of the development process for proposed actions.").

[276] *See, e.g.,* HAL R. VARIAN, MICROECONOMIC ANALYSIS 131 (1992).

ridership, ridehail patterns, parking occupancy, traffic volumes and speeds, toll lane uptake, and similar metrics. Treating this information as a form of public input—alongside conventional verbal comments—would permit agencies to account for real-world behavior in a structured way.

We therefore propose that revealed preference data be treated as a formally cognizable, though rebuttable, form of public participation in transportation decisionmaking. Such data would supply behavioral evidence that agencies must consider alongside traditional comments. This approach would not mechanistically elevate quantitative data over public testimony. Rather, it would recognize both as forms of public input when agencies, and ultimately courts, weigh the adequacy of the decision process. Recognizing revealed preference data as a form of public feedback would bring a measure of analytic rigor and discipline to the participation exercise

To be clear, officials would be no more obligated to accede to the data they gather than university administrators would be required to pave a path across a quadrangle when presented with evidence of consistently trampled grass linking two points. All our proposal does is suggest that agencies be empowered to regard such information as a form of feedback about students' preferred walking route.

2. Ex post participation

Abundance requires more than increasing the rate at which projects are approved. It also requires that infrastructure perform better.

Historically, agencies have paid less attention to outcomes post-implementation. But—picking up on the idea that revealed preferences should be taken seriously—participation can also occur ex post. Structured evaluation of behavioral impacts would provide a way to systematize program evaluation and adjustment, and hopefully yield improvements in those projects and future ones.

B. Realistic Alternatives Modeling

The second reform we propose is requiring realistic counterfactual baselines in environmental impact assessments. As discussed in Part IV, *supra*, courts typically evaluate a proposed action—say, a 50-unit apartment building—against a baseline of "no action," meaning no change. But if the building is not constructed, the prospective residents—and the traffic they generate[277]—do not disappear. They live elsewhere. If the places they go

[277] This critique builds on academic work critical of both traffic and parking demand

have lower transportation accessibility, total traffic may increase, just not at the immediate site. Counterfactuals that assume disappearance rather than this kind of shadow displacement should be rejected.

The current approach, though administrable, is nonsensical. Consider a spouse proposing Thai for dinner. If the other declines, the likeliest alternative is another restaurant or a meal at home—not skipping dinner altogether. Yet environmental review doctrine often treats "no action" as the operative baseline, even when that assumption defies reality.

Courts should instead require agencies to evaluate proposed changes against plausible alternatives. For a $200 million highway or transit investment, one alternative might be directing those funds toward housing near existing infrastructure. Another might be toll lanes, cordon pricing, or higher pricing where pricing already exists. The same principle applies to land use. If a 50-unit building is denied in a transit-rich area, the agency should acknowledge that the intended residents will live elsewhere and model the likely consequences. Those locations may have lower accessibility, with predictable effects on emissions and congestion.

One consequence of such a change would be to favor projects that increase transportation access. For example, a proposal to build a low-rise apartment complex in the exurbs may yield little accessibility gain; a realistic alternatives analysis might show minimal emissions benefit from proceeding. At the margin, such modeling would encourage dense development in already-built areas while preserving rural land on the metro's edge.

Ideally, NEPA and the mini-NEPAs would ideally be amended to require this approach. Short of legislation, courts could signal—through their questions to experts and counsel and in their opinions—that environmental impact assessments must rest on realistic counterfactuals.

C. A More Honest Cost-Benefit Analysis

The third reform we propose is that state and local governments—who control most transportation policy—rehink how they conduct cost-benefit analysis (CBA), if indeed they conduct it at all. Like environmental review, current practice often draws a false line between action and inaction. Agencies either perform a narrow CBA or none at all, and they rarely account for the costs of perpetuating the status quo. Under our approach, decisionmakers would evaluate both the true costs of existing conditions and

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modeling. *See, e.g.,* Kenneth A. Stahl & Kristina M. Currans, *The Trouble With Traffic Studies: Why Bad Traffic Predictions Are Making Our Cities Worse and What Courts Should Do About It*, 2024 ABA REAL PROP. TRUST & ESTATE L.J.; DONALD SHOUP, THE HIGH COST OF FREE PARKING (2021).

the potential benefits of a change, measured against transportation's core purpose: increasing access. This means not adding up the value of travel time savings, but rather basing the analysis on the value of the ability to reach destinations.[278] This is frequently technocratic and numbers-heavy but need not be; qualitative assessment may suffice, especially for jurisdictions that lack specialized staff.

At present, most transportation agencies face no obligation to use CBA. The method has well-known flaws, but it remains a structured way to assess whether discretion is exercised in service of a defined policy goal—in this case, access.

1. Requiring cost-benefit discipline

States and local governments are the principal architects of transportation policy in the United States. Yet they rarely evaluate the economic consequences of their choices outside of large federally funded projects where cost-benefit analysis is required[279]—and almost never study the costs of doing nothing. It is unrealistic to expect a small village to conduct a formal CBA before paving a parking lot. But scale does not explain the broader pattern. States and municipalities spend roughly $150 billion annually on roads,[280] much of it on large projects, and they control the regulatory levers that most shape travel demand, including land use.[281]

The widespread failure to use CBA in most state and local government transportation policy also contrasts with federal practice. Since the 1970s,

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[278] Karst T. Geurs et al., *Accessibility Appraisal of Land-Use/Transport Policy Strategies: More Than Just Adding Up Travel-Time Savings*, 15 TRANSP. RES. PT. D: TRANSP. & ENV'T 382 (2010).

[279] *See* FEDERAL HIGHWAY ADMINISTRATION, USE OF BENEFIT-COST ANALYSIS BY STATE DEPARTMENTS OF TRANSPORTATION: REPORT TO CONGRESS 3 (Aug. 2016), https://www.fhwa.dot.gov/policy/otps/pubs/bca_report/ (reporting that "[b]ased on questionnaire results from 46 FHWA Division Offices and information from the literature, roughly five to six State DOTs systematically employ BCA to inform decisionmaking; but use of BCA continues to be the exception, not the rule.").

[280] *See* URBAN INSTITUTE, STATE AND LOCAL BACKGROUNDERS—HIGHWAY AND ROAD EXPENDITURES, https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/highway-and-road-expenditures (quoting a figure of $154 billion in 2021) (last visited Feb. 12, 2025)

[281] *See generally* Adie Tomer & Ben Swedberg, *Connecting the DOTs: A Survey of State Transportation Planning, Investment, and Accountability Practices*, BROOKINGS INSTITUTION (Nov. 12, 2024), https://www.brookings.edu/articles/connecting-the-dots-a-survey-of-state-transportation-planning-investment-and-accountability-practices/; Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498 (2020) (arguing that a variety of sources of law, predominantly state law, influence the level and risk of driving).

federal agencies have been required to estimate economic impacts before adopting certain regulations, particularly those expected to impose annual costs of $200 million or more.[282] That process has been criticized for stopping or delaying meritorious changes.[283] Still, it has become a durable feature of federal governance observed by administrations of both political parties, including in transportation.[284] Given the high costs[285] and uneven productivity of many state infrastructure projects, a modest version of CBA could improve outcomes. At the state and local level, the more common risk is under-analysis, not paralysis.

More fundamentally, mobility has long been treated as the end of transportation policy rather than a means to access. That orientation has shaped a built environment poorly suited to growth. Exurban expansion offers only a partial safety valve; its infrastructure intensity and low-density form limit its capacity.

Housing abundance—especially in high-demand areas—will require changes to the transportation regime. The goal of increasing the number of people who are able to live in high-demand areas is incompatible with universal expectations of single-occupant automobility. Reform therefore demands a candid accounting of the costs, including opportunity costs, of transportation choices.

This entails both funding and rule changes. In transportation CBA, the set of alternatives is often defined narrowly—for example, whether to widen a highway within an existing right of way. Such framing systematically overvalues travel time and excludes domains like land use regulation, where state and local governments wield their greatest authority and can influence the general equilibrium. Simply extending orthodox federal-style CBA to state and local decisionmaking would be unwise. But a more realistic

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[282] This figure, current as of 2023, is adjusted every three years. *See generally* CONGRESSIONAL RESEARCH SERVICE, COST-BENEFIT ANALYSIS IN FEDERAL AGENCY RULEMAKING (Oct. 28, 2024), https://crsreports.congress.gov/product/pdf/IF/IF12058.

[283] *See generally* Jonathan Gould, *Cost-Benefit Analysis in Polarized Times*, 75 ADMIN. L. REV. 695 (2023).

[284] *See, e.g.,* U.S. DEP'T OF TRANSP., BENEFIT-COST ANALYSIS GUIDANCE FOR DISCRETIONARY GRANT PROGRAMS (Dec. 2023), https://www.transportation.gov/sites/dot.gov/files/2023-12/Benefit%20Cost%20Analysis%20Guidance%202024%20Update.pdf.

[285] *See, e.g.,* Zachary Liscow, Will Nober & Cailin Slattery, *Procurement and Infrastructure Costs*, Working Paper (July 11, 2024 version), https://www.brookings.edu/wp-content/uploads/2024/05/Procurement_and_Infrastructure_Costs.pdf; Leah Brooks & Zachary Liscow, *Infrastructure Costs*, 15 AM. ECON. J. 1 (2023); Eric Goldwyn, Alon Levy, Elif Ensari & Marco Chitti, *Transit Costs Project: Understanding Transit Infrastructure Costs in American Cities* (Feb. 11, 2023), https://transitcosts.com/Final-Report/.

economic assessment—grounded in access and attentive to opportunity costs—could reorient transportation policy in constructive ways. We sketch that next.

2. Accounting for opportunity costs and externalities

Several changes to transportation CBA would improve decisionmaking.

First, agencies should be required to consider pricing before expanding capacity. An agency contemplating a highway widening should estimate the effects of charging variable tolls during peak periods. Pricing can stabilize agency finances and, in some cases, yield a Kaldor-Hicks improvement in welfare[286]: drivers who cannot adjust timing or routes gain faster trips, while those who can shift travel bear modest losses that may be offset by systemwide benefits such as reduced congestion or pollution. Evidence from New York City's congestion pricing program suggests that drivers who remained outside the cordon experienced greater time savings than those who entered it, benefiting from reduced regional traffic without paying the toll.[287]

Second, legislatures or agencies could adopt rebuttable presumptions in environmental review that attach to certain categories of activity. For example, high-density housing added near a passenger rail hub might be presumed not to create a significant adverse environmental impact under state law. Some states have begun experimenting with categories like these.

Finally, opportunity costs and externalities should be made explicit in state and local transportation analysis. For infrastructure projects, this would include not only acquisition costs but estimates of forgone property tax revenue.[288] For land use rules with transportation effects—such as restrictive zoning in high-demand central areas—agencies should estimate additional travel time and emissions attributable to the rule. These assessments need not be granular, but they should directly engage the costs and foregone benefits of the status quo.

A stronger focus on cost-benefit would also require reforms in

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[286] Matthew D. Adler, *Cost-Benefit Analysis* in ENCYCLOPEDIA OF LAW & SOCIETY: AMERICAN AND GLOBAL PERSPECTIVES 306 (David S. Clark ed., 2007) (Kaldor-Hicks improvements obtain where a project creates some "'winners' (those whose wellbeing is improved) [who] could hypothetically compensate the 'losers,' leaving at least some better off and no one worse off.").

[287] *See* Cody Cook et al., *The Short-Run Effects of Congestion Pricing in New York City*, NBER Working Paper 33584 (Rev. Jan. 2026), https://www.nber.org/papers/w33584.

[288] For an estimate of forgone property tax revenue attributed to highway construction, *see* Urban3, *Modeling Lost Property Value Adjacent to the I-10 Elevated Urban Freeway in New Orleans* (Jan. 16, 2026), https://urban3.substack.com/p/i10-lost-value-new-orleans.

procurement and other related areas.[289] As one national transportation expert noted, the same quantity of review is required for building a mile of highway as one block of sidewalk[290]—a fixed cost structure that favors big, expensive projects regardless of merit.

Transportation policy will remain political and resistant to purely technocratic fixes. Still, a structured exercise evaluating costs and benefits, even if somewhat primitive compared to its federal counterpart, would surface neglected tradeoffs and help anchor deliberation in the shared objective of value for money.

Conclusion

Transportation reform is essential, not ancillary, to the abundant society. An agenda that seeks to expand housing, accelerate clean energy, and increase shared prosperity will choke on its own growth if transportation policy continues to be organized around mobility rather than access.

In this Article, we have argued that the central question is one of purpose. For decades, transportation policy has treated movement—especially automobility—as the end of the enterprise. But movement is only a means. The true object is access: connecting people to the destinations they value. Until that shift is made explicit and effectuated, efforts to build our way to abundance will collide with the constraints of a transportation system designed for a different era.

The difficulty of reform is not mysterious. Transportation is operationally complex and risk-laden, and that reality breeds routinization and inertia. Status quo bias is reinforced not only by technical constraints but by doctrine and by the institutional habits we call transportation policy linoleum. Courts, environmental review, professional standards, procurement rules, fragmented governance, and cautious legal advice together tilt decisionmaking toward incrementalism.

Abundance rhetoric has focused on land use reform and state capacity. Necessary—but insufficient. Without reform of the metrics, counterfactuals, and analytic frameworks that govern transportation policy, new housing in high-demand areas will continue to encounter congestion fears and legal resistance. The land use-transportation bundle functions as a system; reform must as well.

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[289] This has been an area of increasing scholarly as well as policy interest. *See, e.g.,* Zachary Liscow, Will Nober & Cailin Slattery, *Procurement and Infrastructure Costs*, Working Paper (July 11, 2024 version), https://www.brookings.edu/wp-content/uploads/2024/05/Procurement_and_Infrastructure_Costs.pdf.

[290] Interview 2.

Our policy playbook is modest: treat behavioral data as a form of public participation; require realistic alternatives modeling in environmental and land use review; and incorporate opportunity costs and externalities into cost-benefit analysis. These sound in technocratic adjustment, not revolution. But they dispense with the fiction that jettisoning a project is akin to preventing change and they begin to align transportation law with transportation's purpose.

Abundance is an expansive ambition, but transportation policy is made in prosaic settings. Reform must take hold there—on the linoleum, where norms harden into rules and small decisions accumulate into systems. Reoriented toward access and stripped of its most distorting assumptions, transportation policy can become a flywheel: reinforcing housing affordability, advancing climate mitigation, and improving roadway safety in mutually compounding ways.