

ROAD WORK AHEAD. SLOW DOWN. WHAT ABOUT PUBLIC TRANSIT?: THE FUTURE OF THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.

Adrienne Zitka¹

With the recent expiration of the Transportation Equity Act for the 21st Century (“TEA-21”),² Congress has the remarkable opportunity to set the stage for a more efficient, environmentally responsible, and energy independent transportation policy for America’s future.³ With looming national security concerns currently confronting the nation, the expiration of TEA-21 at this time should serendipitously bring transportation policy to the forefront of Congress’ perception as a viable avenue for alleviating our strong dependence on foreign oil.⁴ In order to achieve this goal, Congress must intelligently construct a transportation policy that promotes and invests in public transportation.⁵ In addition to reducing energy consumption, a focus on public transportation will also transform the way in which we design our urban communities and unleash a multitude of environmental, public health, and economic benefits.⁶

In this note, I will first review the recent history of American transportation policies and the current status of Congress’ deliberations over reauthorizing The Transportation Equity Act including the proposed budget for

¹ Rutgers School of Law-Camden (2006).

² See Edwin S. Rosado, *Reauthorization of the Transportation Equity Act for the 21st Century (TEA-21)*, National Association of Counties, at <http://www.naco.org/ContentManagement/ContentDisplay.cfm?ContentID=11269> (last visited Nov. 3, 2004).

³ See, e.g., Surface Transportation Policy Project, *Stay the Course: How to Make TEA-21 Even Better*, available at http://www.transact.org/library/reports_pdfs/Stay%20the%20Course.pdf (March 10, 2003).

⁴ See generally Robert J. Shapiro et al., *Conserving Energy and Preserving the Environment: The Role of Public Transportation* (July, 2002) (“Any serious effort to reduce our dependence on foreign oil and make significant environmental progress must address the way Americans travel.”), available at <http://www.apta.com/research/info/online/documents/shapiro.pdf>.

⁵ See, e.g., American Public Transportation Association, *The Benefits of Public Transportation: An Overview* (Sept. 2002), available at http://www.apta.com/research/info/online/documents/ben_overview.pdf.

⁶ *Id.*

funding highway development versus public transportation. I will then examine the implications of a policy with a primary focus on highway development.⁷ Finally, I will discuss the benefits of public transportation and the way in which TEA-21 can be an instrumental vehicle for achieving these benefits.⁸

I. HISTORY OF AMERICAN TRANSPORTATION POLICIES AND AN ANALYSIS OF FUNDING

A. THE FEDERAL AID HIGHWAY ACT

The Federal Aid Highway Act was enacted in 1956 and authorized the construction of America's interstate highway system.⁹ Specifically, the Act created a 41,000 mile national system of interstate and defense highways.¹⁰ Since the nation was immersed in a period of war, widespread consensus grew during this time to develop an interstate highway system as a means for ensuring national defense.¹¹ The development of an interstate highway system was also seen as a way to boost the national economy, create jobs, and satisfy the demands for traffic relief from increased congestion resulting from the rapid growth in automobile and truck ownership.¹²

⁷ See American Public Transportation Association, *Critical Relief for Traffic Congestion: The Benefits of Public Transportation* (2003) (discussing the chronic under-investment in public transportation and the need for a shift from investment in highway expansion to investment in public transit), available at <http://www.apta.com/research/info/online/documents/congestion.pdf>.

⁸ See *Stay the Course: How to Make TEA-21 Even Better*, *supra* note 2 (“Having laid the groundwork during the last twelve years in two laws-ISTEA in 1991 and TEA-21 in 1998-federal lawmakers are poised to take the third step toward building a safe, environmentally-sound, multifaceted transportation system accessible to all Americans.”).

⁹ Robert J. Dilger, *American Transportation Policy* 5 (Praeger Publishers 2003) available at <http://www.polsci.wvu.edu/ipa/PS493/AmericanTransportationPolicy.htm>; see also Federal-Aid Highway Act of 1956, Pub. L. No. 108-356, 70 Stat. 374 (codified as amended in scattered sections of 23 U.S.C.A.).

¹⁰ See Dilger.

¹¹ See General Lucius D. Clay, Statement before the House Committee on Public Works, Hearing before the House Committee on Public Works 128 (April 20, 1955), 84th Congress, U.S. Government Printing Office (President Eisenhower's Chairman of the Committee on a National Highway Program explains that:

. . . the interstate system is a system designated by the Defense Department as essential to national defense for the movement of troops in the event of war, more important for the movement of industrial products and, with civil defense now a more important factor, for the dispersal of population in the event of atomic attack.)

¹² See Dilger, *supra* note 8.

After the enactment of the Federal Aid Highway Act, the national government focused most of its surface transportation resources on the construction of interstate highways.¹³ In addition to this resulting transformation of the American landscape, the Act also represented a defining moment in the development of the nation's transportation policy in that it elevated the role of national highway department officials in determining the scope and nature of the nation's transportation system.¹⁴

B. THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT (ISTEA)

In the years following the passage of the Federal Aid Highway Act, a great deal of resistance grew between highway and environmental lobbying groups with the dominant highway interest groups insisting on continued highway funding and opposing environmental groups calling for an intermodal transportation policy that included mass transit.¹⁵ The fundamental concepts inherent to intermodalism are continuity and connectivity.¹⁶ More specifically, environmental interest groups sought a continuous transportation system wherein people and goods could move efficiently and safely and where various transportation modes could be seamlessly connected.¹⁷ During this time, environmental groups did not have the resources or power to effectively promote their views over those of highway lobbyists and the transportation policy that they sought did not come to fruition.¹⁸

¹³ Id.

¹⁴ Id. (explaining how local government officials and urban planners still played a role, but the overall design and location of the interstate system was decided by national and state government officials. Also noting how “. . . national and state highway engineers imposed professional, uniform road construction and design standards throughout the nation.”).

¹⁵ Id. (noting that disagreements over funding dominated American highway and mass transit policy throughout the 1956 to 1990 period).

¹⁶ Donald H. Camph & Sarah J. Siwek, *Listening to America; Report on the U.S. Department of Transportation's Outreach on Implementation of the Transportation Equity Act for the 21st Century (TEA-21)*, Office of Intermodalism (January 25, 1999) available at <http://www.fhwa.dot.gov/tea21/listamer.htm>.

¹⁷ Id.

¹⁸ See Dilger, *supra* note 8:

[I]nstead of formulating a grand design to weave the various transportation modes into a single, cohesive system the national government continued to follow the path of least political resistance which was to act in a piecemeal fashion, appease the various transportation industries' lobbying organizations by increasing funding for all transportation modes indiscriminately, and, in recognition of the highway lobby's political power, focus most of its transportation resources on the completion of the interstate highway system.

In 1991, however, several factors converged allowing for significant change in America's highway and mass transit policies.¹⁹ While the highway lobby still remained active and intent on preserving the status quo, these circumstances gave credence to other views calling for an integrated, comprehensive, coordinated, and intermodal transportation system.²⁰

During congressional conference sessions, the House, the Senate, and President Bush had differing views on the scope and the cost of a new bill regarding America's transportation policy.²¹ However, eventually they were able to work out their differences and President Bush enacted what is known as the Intermodal Surface Transportation Efficiency Act ("ISTEA") in 1991. ISTEA served as a landmark piece of legislation by sparking surface transportation programs as well as enhancing local involvement in transportation decision-making.²² In enacting this bill, the legislature intended to create jobs, reduce congestion, rebuild infrastructure, maintain mobility, and address environmental issues.²³ The bill was also intended to create a level playing field for all transportation modes and was expected to divert significant amounts of national funding from highways to mass transit.²⁴

Despite ISTEA's intention to divert more funding to mass transit, this did not happen partially because many states had already committed funds to a large number of highway projects when ISTEA went into effect.²⁵ However, even though highways remained dominant, the importance of ISTEA cannot be underestimated. The bill, which expired on September 30, 1997, was seen as

¹⁹ See *id.* (explaining how the interstate highway program had already been completed while the condition of America's highways and bridges was progressively deteriorating, traffic congestion was getting worse, pollution from automotive exhaust was getting worse, and sprawl was rampant).

²⁰ *Id.*

²¹ *Id.*

²² Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (codified as amended in scattered sections of 23 U.S.C.A.).

²³ See Message by Samuel K. Skinner, Secretary of Transportation, *Summary of the Intermodal Surface Transportation Efficiency Act of 1991*, National Transportation Library (1991), available at <http://ntl.bts.gov/DOCS/ste.html>; see also H.R. Conf. Rep. No. 102-404, at 2 (1991), reprinted in 1991 U.S.C.C.A.N. 1679, 1679 ("It is the policy of the United States to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy and will move people and goods in an energy efficient manner.").

²⁴ See Dilger, *supra* note 8.

²⁵ *Id.*

pivotal in beginning to shift federal priorities toward alternatives to roads since the passage of the 1956 Federal-Aid Highway Act.²⁶

C. THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-21)

ISTEA was reauthorized as TEA-21 by President Clinton on June 9, 1998.²⁷ TEA-21 is a six-year, \$217 billion authorization of federal highway, bridge, and transit programs for the period of October 1, 1997 through September 30, 2003.²⁸ TEA-21 builds on the work of ISTEA and increased highway funding to \$175 billion and transit funding to \$41.4 billion.²⁹ Both ISTEA and TEA-21 are important pieces of legislation since they have broadened the scope of transportation planning to include other related concerns such as environmental protection, energy conservation, enhanced accessibility, and healthy, safe communities.³⁰ TEA-21 has unraveled the single-tracked myopic view toward transportation planning and has instead adopted a more encompassing strategy, which takes into account the many implications associated with transportation development.³¹

Despite the sound policy and positive legislative intent of TEA-21, there is a wide discrepancy between the amount of funding designated by this appropriations bill for highway projects compared to transit and the playing field is far from even for these modes of transportation. The national government's increase in funding for mass transit since ISTEA needs to be placed into

²⁶ See Natural Resources Defense Council, *Reaping the Benefits of Public Transit Through Balanced Investments*, at <http://www.nrdc.org/air/transportation/pttransit.asp> (last visited Nov. 3, 2004); see also H.R. Conf. Rep. No. 102-404, *supra* note 9 at 1679 (declaring part of the Congressional purpose behind ISTEA as creating a National Intermodal Transportation System that includes significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, and mobility for all people in both urban and rural areas of the country.); see also Dilger, *supra* note 8 ("Although ISTEA did not have a large effect on the distribution of resources between highways and mass transit, it changed the process used to reach those funding decisions and, by changing that process, altered state-local relations in surface transportation policy.").

²⁷ See American Public Transportation Association, *Facts About Reauthorization of TEA 21*, at <http://www.apta.com/transitaction/facts.asp> (last visited Nov. 3, 2004).

²⁸ Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, 112 Stat. 107 (1998) (codified as amended in scattered sections of 23 U.S.C.A.).

²⁹ See *id.*; See also American Public Transportation Association, *supra* note 26 (stating that TEA-21 authorized a 42 percent increase in highway funds and a 31 percent increase in transit funds from ISTEA levels).

³⁰ See Surface Transportation Policy Project, *supra* note 2.

³¹ See Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, *supra* note 12 (containing sections designating environmentally conscious programs such as a Congestion Mitigation and Air Quality Improvement program).

perspective.³² On the whole, only a small fraction of TEA-21 funds have been invested in public transportation.³³ Because of this, TEA-21 perhaps is not being executed in a manner that adequately takes environmental protection and energy conservation into account.³⁴

D. STATUS OF LEGISLATION AS OF TEA-21'S SEPTEMBER 30TH EXPIRATION DATE

Since lawmakers on Capitol Hill were unable to agree on a transportation bill by TEA-21's September 30, 2003 expiration date, President George W. Bush supported a one year extension of the bill.³⁵ On February 12, 2004, the Senate passed S. 1072, SAFTEA.³⁶ The House later introduced its bill, H.R. 3550, TEA-LU funded at \$275 billion with \$217 billion for highways and \$51 billion for transit.³⁷ In analyzing these proposals, the Bush administration has stated that both the Senate and House levels of funding are too high and that a veto is, therefore, possible.³⁸

³² Barbara McCann, Roy Kienitz, and Bianca DeLille, *Changing Direction: Federal Transportation Spending in the 1990s*, Surface Transportation Policy Project, at 13-14 (2000) (explaining how between 1990 and 1999, federal government spending on mass transit and on highways and bridges increased, but that mass transit funding, as a percentage of federal government funding for highway and mass transit projects, is less under TEA-21 than under ISTEA. The percentage under TEA-21 is 17 percent and under ISTEA, it was 21 percent.) available at <http://ntl.bts.gov/lib/7000/7400/7474/tea21color.pdf>.

³³ William W. Millar, *TEA-21 Funding will Benefit all Americans*, American Public Transportation Association (Feb. 11, 2004), at <http://www.apta.com/transitaction/capitol.asp>; see also The Sierra Club, *Missing the Train: How the Bush Administration's Transportation Proposal Threatens Jobs, Commutes, and Public Transit Ridership*, 2004 Report on Sprawl (July 2004) (noting that inadequate funding for public transportation has resulted in a limited pool of dollars for new transit projects and places more financial burden on localities to satisfy the growing demand for multimodal transportation systems), available at <http://www.sierraclub.org/sprawl/report04/> (last visited March 5, 2005).

³⁴ *But see* Dilger, *supra* note 8 (noting that the highway lobby has at least lost its dominance over highway and mass transit outcomes).

³⁵ See American Public Transportation Association, *Challenges Aplenty for Transit Industry* (Feb. 11, 2004), at <http://www.apta.com/transitaction/capitol.asp>; see also Surface Transportation Policy Project, *Another TEA-21 Extension in the Works*, Transfer Newsletter (Sept. 17, 2004) (stating Bush's willingness to allow more time to craft a comprehensive bill), at http://www.transact.org/transfer/trans04/9_17.asp.

³⁶ See Rosado, *supra* note 1 (“[SAFTEA] is a six-year \$318 billion bill, with \$255 billion for the highway program and \$56 billion for the transit program.”).

³⁷ *Id.*

³⁸ *Id.*; see also The Sierra Club, *supra* note 32 (describing the Bush Administration as the most anti-rail administration in our country's history of mass transit and as trying to gut federal support. “In

After the one year extension, Senate and House leaders were still unable to resolve the discrepancies in their TEA-21 reauthorization proposals and the threat of a presidential veto remains firmly in place. A new deadline of May 31, 2005 has been set and committee leaders hope to conduct conference negotiations in April.³⁹ It is doubtful, however, that this debate over transportation policy will be resolved without a great deal of resistance.⁴⁰ House and Senate leaders have already indicated their intentions to use their respective TEA-21 renewal plans that were presented during the 108th Congress and the President has proposed his own transportation budget for fiscal years 2004 to 2008, which falls below the figures proposed by Congress.⁴¹ Additionally, the President's proposed transportation budget also falls short of the needs of public transportation.⁴² In order to replace aging equipment as well as ensure that communities are able to keep up with the increasing demands of public transportation, the American Public Transportation Association recommends an

their zeal for fiscal conservatism, they are prepared to scuttle one of the most successful government programs of all time.”).

³⁹ Surface Transportation Policy Project, *109th Congress to Tackle Renewal of TEA-21*, Transfer Newsletter (Dec. 22, 2004), available at http://www.transact.org/transfer/trans04/12_22.asp.

⁴⁰ See Robert Puentes, *Cement and Pork Don't Mix*, The Brookings Institution (May 10, 2004) (arguing that as far as Washington is concerned, transportation is all about the money-how much and who gets it and that the debate has essentially been about pork and not principle), at http://www.brookings.edu/metro/20040510_metroview.htm; see generally Bruce Katz & Robert Puentes, *Taking the High Road: A Metropolitan Agenda for Transportation Reform* (Brookings Institution Press 2005) (examining the central issues in the ongoing debate and deliberations about the nation's transportation policy).

⁴¹ See William R. Buechner, *Analysis of the President's Proposed Transportation Budget FY 2004-2008*, America Road & Transportation Builders Association (April 15, 2003), available at http://www.artba.org/economics_research/reports_studies/apptb/FY04_08_pres_prop_trans_budget.pdf; see also Surface Transportation Policy Project, *Uncertain Future for TEA-21 Renewal*, Transfer Newsletter (August 9, 2004) (describing challenges over funding levels for TEA-21 renewal), available at http://www.transact.org/transfer/trans04/8_09.asp (last visited October 15, 2004).

⁴² See Buechner, *supra* note 40 (finding that, under the President's proposed budget, funding for the mass transit program would grow at approximately the rate of inflation, thus providing no real growth in federal mass transit investment. These amounts fall far short of the funds needed just to maintain current transit systems and services, let alone make improvements.); see also Surface Transportation Policy Project, *House Funding Bill Would Close Off Travel Options-Amtrak and New Rail Transit Projects*, Transfer Newsletter (August 9, 2004) (“Amtrak President David Gunn has repeatedly advised Congress that the levels in the President's budget and the House bill would put Amtrak on a path to shut down intercity passenger rail service throughout the United States beginning early next year.”), available at http://www.transact.org/transfer/trans04/8_09.asp; see also The Sierra Club, *supra* note 32 (stating that there is currently a backlog of more than 120 public transportation projects looking for federal support).

increase in federal public transportation investment to at least \$65 billion over the next six years.⁴³

II. IMPLICATIONS OF IMBALANCED FUNDING

By channeling most funding to highway programs over public transportation, America's transportation policy is encouraging most Americans to be overly dependent on their automobiles for mobility.⁴⁴ Under the current infrastructure, relatively few Americans have access to reasonable or attractive transit options.⁴⁵ Not only does this create inconvenient travel situations for many people and force them to endure the high cost of maintaining an automobile, but there are also many other negative consequences that can be attributed to a strong emphasis on the automobile.⁴⁶ Some of these impacts

⁴³ See William W. Millar, *Focusing on Public Transportation Needs*, American Public Transportation Association (Feb. 11, 2004), at <http://www.apta.com/transitaction/capitol.asp>; see also Office of Technology Assessment, *Saving Energy in U.S. Transportation*, U.S. Congress, at 184 (July 1994) (further noting that if transit service in the more transit-dependent cities is allowed to deteriorate, the central business districts of these cities will become unsupportable), available at <http://www.wws.princeton.edu/cgi-bin/byteserv.prl/~ota/disk1/1994/9432/943208.PDF>.

⁴⁴ See, e.g., Natural Resources Defense Council, *supra* note 25 (noting that over the past 50 years, the federal government spent lavishly on highways and roads at the expense of public transit and other alternatives, leaving most Americans overly dependent on their cars and trucks); see generally, Jane Holtz Kay, *Asphalt Nation: How the Automobile Took Over America and How We Can Take It Back* (University of California Press 1997) (examining the history of the rapid spread of the automobile and the huge subsidies commanded by the highway lobby to the detriment of once-efficient forms of mass transportation).

⁴⁵ See American Public Transportation Association, *supra* note 6 (stating that only 4.3 percent of the miles on our road system are being served by public transportation); see also U.S. Federal Highway Administration, *Highway Statistics Series* (2002) (stating that "[f]rom 1980 to 2000, the U.S. population grew [by] 24 percent, while the number of registered motor vehicles increased [by] 46 percent and the number of vehicle miles traveled grew [by] 80 percent."), available at <http://www.fhwa.dot.gov/ohim/ohimstat.htm>.

⁴⁶ Donald H. Camph, *Transportation and the Changing Face of America*, Surface Transportation Policy Project (April 10, 1996) (explaining that for years,

. . . American cities and towns have had to live with the unintended consequences

of transportation policies not guided by concepts of community, equity, and quality of life, but rather driven by a decision-making paradigm, which unconsciously assumed, a priori, that transportation is somehow a value-free instrumentality of people's desires to get from A to B, no questions asked.

available at <http://www.transact.org/report.asp?id=20> (last visited March 5, 2005).

See also Doug Moss, *Save our Cities, Towns (and Jobs) with Public Transit*, E-magazine (March/April 2005) ("We've become slaves to our automobiles and it has reached crisis proportions, determining the layout of our cities and towns, mandating endless miles of concrete jungle . . . and

include a rapid rate of urban sprawl, traffic congestion, and a high rate of energy consumption.⁴⁷

A. LAND USE/URBAN SPRAWL

The relationship between land use and transportation is a fundamental concern in transportation policy.⁴⁸ In addition to affecting the way in which Americans travel, transportation policies also shape the way in which land is used and communities are structured.⁴⁹ With most funding being designated for highway programs, America's transportation policies effectively reinforce auto-oriented patterns of development and encourage urban sprawl, which in turn undercuts the viability of alternatives to driving such as bus transit, heavy rail, light rail, and biking.⁵⁰ Sprawl can be referred to as haphazard development with

creating stress for those who have no choice but to creep along to work in single-digit speeds during rush hours.”), available at <http://www.emagazine.com/view/?2283> (last visited March 6, 2005).

⁴⁷ See Surface Transportation Policy Project, *Transportation and the Environment* (“America’s auto-oriented transportation system dirties the air, contaminates oceans and rivers, consumes open space and wildlife habitats, hastens climate change, and guzzles energy.”), available at <http://www.transact.org/library/factsheets/environment.asp> (last visited Nov. 2, 2004); see also American Public Transportation Association, *Conserving Energy and Preserving the Air We Breathe: The Benefits of Public Transportation* (also stating the economic inefficiency and cost involved in “. . . continuing to expand the fleet of private vehicles, and to build and maintain more roads and highways to accommodate them.”) available at http://www.apta.com/research/info/online/documents/preserving_air.pdf (last visited Nov. 4, 2004); see also American Public Transportation Association, *An Investment in America: TEA-21 Reauthorization Proposal* (“Our nation’s roadways have become increasingly congested with traffic, our security needs have assumed heightened importance, and conserving energy and protecting the environment have become priorities.”), available at <http://www.apta.com/research/info/online/investment.cfm> (last visited Oct. 15, 2004).

⁴⁸ See generally Marlon G. Boarnet & Andrew F. Haughwout, *Do Highways Matter? Evidence and Policy Implications of Highways’ Influence on Metropolitan Development*, The Brookings Institution Center on Urban and Metropolitan Policy (August 2000) (examining the way in which transportation policy and highway spending affects metropolitan growth patterns), available at <http://www.brookings.edu/dybdocroot/es/urban/boarnet.pdf>.

⁴⁹ See Puentes, *supra* note 39 (explaining the strong influence that federal surface transportation law has on the spatial form and social fabric of our cities and suburbs).

⁵⁰ See American Public Transportation Association, *supra* note 6 (“Sprawling development patterns in America’s urban and suburban areas often provide no choice but to use private vehicles for every travel need . . . requiring ever more land devoted to roads and parking.”); see also Bruce Katz et al., *TEA-21 Reauthorization: Getting Transportation Right for Metropolitan America*, The Brookings Institution (March 2003), at <http://www.brookings.edu/metro/publications/tea21.htm>; see also Dena Belzer & Gerald Autler, *Transit Oriented Development: Moving from Rhetoric to Reality*, The Brookings Institution Center on Urban and Metropolitan Policy and The Great American Station Foundation (June 2002) (noting that one of the problems with standard suburban development is that lack of transportation choice), available at <http://www.brookings.edu/es/urban/publications/belzertod.pdf>; see also The Sierra Club, *Freedom to Travel, Freedom to Choose: Better Communities Start with More Transportation Choices*,

no foresight about how the pieces fit together.⁵¹ Land use and transportation are closely intertwined and intrinsic to sprawl in that the construction of roads result in destinations being farther apart and open spaces being rapidly consumed.⁵²

With highways having such a profound impact on the pace and shape of metropolitan growth, an emphasis on federal transportation spending aimed toward highway development will only result in greater social costs.

B. TRAFFIC CONGESTION

In the past two decades, traffic congestion has become a way of life in nearly every major metropolitan area and millions of U.S. metropolitan area residents have come to regard traffic congestion as their most serious local and

Challenge to Sprawl Campaign (observing that residents of sprawling communities drive three to four times more than those living in efficient, well-planned areas), *available at* <http://www.sierraclub.org/sprawl/transportation.pdf> (last visited March 6, 2005).

⁵¹ Elizabeth E. Fischer, *The Federal Transportation Livability Initiative-Building Livable Communities for the 21st Century*, U.S. Department of Transportation Federal Highway Administration (June 2000) (noting how sprawl represents a fundamental shift in land-use development patterns and our sense of place and how it is generally a sign of a deteriorating quality of life resulting in the erosion of environmental, cultural, and economic values), *available at* <http://www.tfhr.gov/pubrds/mayjun00/liability.htm>; *see also* The Sierra Club, *Sprawl: The Dark Side of the American Dream* (describing sprawl as low-density development beyond the edge of service and employment, which separates where people live from where they shop, work, recreate, and educate-thus requiring cars to move between zones), *at* <http://www.sierraclub.org/sprawl/report98/> (last visited March 6, 2005).

⁵² *See* Howard Frumkin et al., *Urban Sprawl and Public Health: Designing, Planning, and Building for Health Communities*, Island Press (arguing that road development fragments land uses and increases the need for travel to many different areas to meet one's needs), *available at* <http://www.islandpress.org/books/excerpt/1559633050.pdf>; *see also* Robert Steuteville, *The New Urbanism: An alternative to modern, automobile-oriented planning and development* ("Lacking a town center or pedestrian scale, conventional suburban development spreads out to consume large areas of countryside even as the population grows relatively slowly." As a result, automobile use per capita has soared since a motor vehicle is required for the great majority of household and commuter trips.), *at* <http://www.newurbannews.com/AboutNewUrbanism.html> (last visited Jan. 26, 2005); *see also* The Sierra Club, *Sprawl Overview* (noting that sprawl destroys more than two million acres of open space each year), *at* <http://www.sierraclub.org/sprawl/overview/> (last visited March 6, 2005).

even regional problem.⁵³ Many Americans have become outraged by the amount of time and money that they regularly waste through repeated traffic delays.⁵⁴

In an attempt to respond to this problem, it has also become apparent that increased building provides little relief.⁵⁵ While it would appear as though building new and wider roads would alleviate traffic congestion, in actuality, the converse has been true and highway development has instead generated additional traffic.⁵⁶ The longest-running study of traffic congestion in America, the Urban Mobility Study conducted annually for nineteen years by the Texas Transportation Institute (“TTI”), confirms that the trend of congestion is becoming worse and more widespread as more roads are being developed.⁵⁷ In the study conducted by the TTI, travel delay, on average, was found to be higher in the 23 metro areas that built the most roads.⁵⁸ The Texas Transportation

⁵³ See Anthony Downs, *Still Stuck in Traffic: Coping with Peak-Hour Traffic Congestion*, Brookings Institution Press (2004) (explaining that unlike many other important social problems such as poverty and hunger, traffic congestion is directly experienced every day by millions of American commuters of all income levels), available at http://www.brookings.edu/press/books/chapter_1/stillstuckintraffic.pdf; see also McCann, Kienitz, and DeLille, *supra* note 31 at 12 (describing a Pew Center for Civic Journalism study of four cities conducted in the year 2000 showing traffic congestion as well as sprawl and unfettered growth as the top national concerns outstripping crime, the economy, and education).

⁵⁴ See Downs, *supra* note 52; see also American Public Transportation Association, *supra* note 6 (“Each person traveling in peak periods wastes, on average, 62 hours a year—nearly eight full working days—in congestion delays.” It was also estimated in the year 2000 that each peak-period road user lost \$1,160 in wasted fuel and time from traffic congestion.); see also The Sierra Club, *supra* note 32 (explaining how arduous commutes negatively affect work productivity with many people arriving to work very stressed and upset. The senior manager in organization and team development at the Boeing Commercial Airplane Company in Greenbank, Washington explains how “people come to work jangled,” and that “a 15 second episode can cause hormonal changes that last for six hours [essentially] infect[ing] the whole work day.”).

⁵⁵ See Katz et al., *supra* note 49 (noting that we are “. . . beginning to recognize that we cannot build our way out of congestion.”).

⁵⁶ See, e.g., Surface Transportation Policy Project, *Why are the Roads so Congested? Road Building has Little Effect on Congestion* (Nov. 1, 1999) (“This phenomenon, known as ‘induced travel,’ occurs when road capacity is expanded and drivers flock to the new facility hoping to save time.” Adding road capacity doesn’t just meet the current travel demand, but it actually spurs additional driving and ultimately adds to traffic congestion.), available at <http://www.transact.org/report.asp?id=88>; see also Clifford Winston, *Have Car Won’t Travel; The Sober-and Sobering-Case for Privatizing Urban Transportation*, The Milken Institute Review (April 1999) (“...having invested hundreds of billions of dollars building and maintaining roads to accommodate autos, the public has begun to lose patience with road construction that never catches up with demand.”) available at <http://www.brookings.edu/views/articles/winston/19990826.htm>.

⁵⁷ See Millar, *supra* note 32 (explaining that Americans are experiencing longer traffic delays every day for longer periods of time and that urban roads are crammed seven hours a day, compared with four hours only a decade ago.).

⁵⁸ See Surface Transportation Policy Project, *Easing the Burden: A Companion Analysis of the Texas Transportation Institute’s Congestion Study* (May 2001) (noting that “[r]esidents in the high road-

Institute also notes that congestion is growing worse in many places as a result of road construction expanding at a rate that outpaces population growth as indicated by Federal Highway Administration data as compared to U.S. Census data.⁵⁹

With traffic congestion as an already pervasive and worsening problem and evidence that building more roads will do little to alleviate traffic delays and instead may contribute to the problem, Congress must carefully reevaluate its budget for TEA-21 which allows highway expansion to take precedence. Disproportionately large funds allocated to highway programs would effectively perpetuate the problem of traffic congestion and only continue commuters' frustration with arduous commutes.⁶⁰

C. HIGH ENERGY CONSUMPTION

America consumes more energy and produces more pollution from travel than from any other activity.⁶¹ Oil is the predominant energy resource that is consumed and it is America's love affair with the automobile that has made the transportation sector over 95% dependent on oil.⁶² This is mostly due to the fact

building metro areas average about 32 hours of delay annually, nine more hours than residents in the low road-building areas which typically average 23 hours of delay.”), available at http://www.transact.org/pdfs/etb_report.pdf; see also Jonathan D. Salant, *U.S. Traffic Congestion has Increased Greatly, Study Finds*, *The Charleston Gazette*, May 8, 2001, at 2A (noting that rush “hour” is now a misnomer in most of America's larger cities where city streets and highways are congested for up to seven hours each weekday).

⁵⁹ See Surface Transportation Policy Project, *supra* note 57 (reasoning that evidence of road capacity expanding more quickly than the population strongly suggests that the rise in congestion is caused by an increase in driving and not by a shortage of roads.).

⁶⁰ See American Public Transportation Association, *supra* note 6 (discussing the problem of too many vehicles crowding available road space as a result of disproportionate increases in private vehicle use coupled with a lack of travel options).

⁶¹ See Shapiro et al., *supra* note 3 (stating that nearly forty-three percent of America's energy resources are used for transportation compared to thirty-nine percent for industrial use and eleven percent for residential use); see also David L. Greene, *Transportation's Oil Dependence and Energy Security in the 21st Century*, Oak Ridge National Laboratory Center for Transportation Analysis, at 3 (October 1997) (stating that petroleum consumption is becoming increasingly concentrated in the transportation sector), available at <http://ntl.bts.gov/lib/5000/5800/5846/oildep/pdf> (last visited March 7, 2005).

⁶² See Surface Transportation Policy Project, *supra* note 46 (“In 2000, cars and trucks guzzled 132 billion gallons of gasoline and an additional 33 billion gallons of diesel and other special fuels. Cars and trucks accounted for 43% of all petroleum consumed in the United States in 2000 and consume more energy than domestic oil producers extract.”); see also Charles Komanoff, *A Plan to Kick the Saudi Habit: Ending the Oil Age*, Komanoff Energy Associates (New York, N.Y.) (2002) (stating that cars, trucks, and the petroleum needed for asphalt pavement consume most of the oil that we use every year); see also U.S. Congress Office of Technology Assessment, *Energy, the Economy, and Mass Transit*, at 19 (October 1975) (stating that the private car is by far the least efficient of all

that Americans have a growing reliance on driving alone since there is a lack of convenient and reliable alternatives in most instances.⁶³ With federal funding perpetuating dependence on the automobile, current trends indicate that transportation energy use will continue to grow and that the United States is likely to remain in the position of the world's worst gas guzzler for the foreseeable future.⁶⁴

Not only does America's ravenous appetite for oil contribute to air pollution as well as the depletion of a finite resource, but the U.S.'s strong dependence on oil also places the country in a precarious international position since only 6% of the currently estimated global oil reserves are located in North America.⁶⁵ The U.S.'s reliance on oil has been one of the country's most significant sources of international tension due in large part to the maintenance of a strong military presence in the Middle East to secure a continued flow of oil.⁶⁶ This international tension is only expected to worsen since the Institute for the Analysis of Global Security predicts that the oil reserves in non-Middle Eastern countries will be depleted as much as 65 years earlier than those of the Middle East and that if oil production continues at today's rate, many of the world's producers will cease to be relevant players in the oil market leaving the Middle East with the only major reservoir of abundant crude oil.⁶⁷ Moreover,

transportation modes). available at http://ntl.bts.gov/card_view.cfm?docid=596 (last visited March 6, 2005).

⁶³ See Natural Resources Defense Council, *Keeping the "E" in ISTEA; Transportation Energy and the Federal Role in Conservation* (explaining that when Americans travel, they are forced to drive and that Americans take some 86 percent of their trips by car, as compared to eight percent by walking, three percent by bicycle, and about three percent by public transit), available at <http://www.nrdc.org/air/transportation/istea/chapI.asp> (last visited on Jan. 25, 2005).

⁶⁴ See *id.* (noting that transportation energy use has been growing at a much faster rate than that projected and, if unchecked with policy intervention, is likely to continue to do so over the forecast horizon).

⁶⁵ See Institute for the Analysis of Global Security, *The Future of Oil* (stating that a small percentage of oil is located in North America while 66% of the global oil reserves are in the hands of Middle Eastern regimes), available at <http://www.iags.org/futureofoil.html> (last visited on Jan. 26, 2005); see also Smart Communities Network: Creating Energy Smart Communities, *Sustainable Transportation Introduction* ("Our oil habits have caused increasing dependency on oil imports, much of it coming from unstable parts of the world."), available at <http://www.sustainable.doe.gov/transprt/trintro.shtml> (last visited January 26, 2005); see also Consumer Affairs News, *Oil Consumption vs. National Security* (January 27, 2005) (stating that while the United States is fighting terrorism, it is also funding its enemies through payments for imported oil), available at http://www.consumeraffairs.com/news04/2005/fuel_economy.html (last visited March 6, 2005).

⁶⁶ See Joanna D. Underwood, *Less Oil, More World Security*, Earth Times News Service (Nov. 9, 2001) available at <http://www.cleanenergyfuels.com/articles/11-09-01.html>.

⁶⁷ See Institute for the Analysis of Global Security, *supra* note 64 (noting that Middle Eastern producers will have a much bigger piece of the pie than ever before and will thus be able to dictate the

America's reliance on imported petroleum is rapidly increasing to satisfy its growing demand further placing it at the mercy of the relatively few oil producing nations.⁶⁸

In addition to America's vulnerable reliance on foreign countries for oil, international competition for oil will become intense if countries that currently have minimal automotive infrastructure decide to expand their use of gasoline-burning automobiles.⁶⁹ The United States leads the world in automobile use and has one car for every 1.5 people as compared to countries such as China, for example, which has one car for every 652 people.⁷⁰

Another point worth noting is that in addition to the fact that cars, in and of themselves, guzzle gasoline, it has also been estimated that a substantial amount of this energy is consumed as a result of traffic congestion.⁷¹ Thus, the cycle of oil consumption continues: each automobile consumes gas, as the number of automobiles on the road increases so does the amount of oil consumed, and when there are enough cars to result in gridlock, there results another level of wasted energy.

terms on world oil markets as well as manipulate oil prices and world politics. As a result, America's economic resources will be further drained by imports of expensive oil and the U.S. will need to keep increasing military presence in the Middle Eastern region to ensure access to the remaining oil. "This will mean further U.S. embroilment in Middle East conflicts, more anti-American sentiment, and a deepening rift between the West and the Islamic world."); *see also* David L. Greene and Sanjana Ahmad, *Costs of U.S. Oil Dependence: 2005 Update*, Oak Ridge National Laboratory, at 1 (February 2005) (describing the U.S.'s oil dependence as a syndrome that creates economic, political, and military problems that are complicated by social and religious conflicts between oil producing and consuming nations. Further stating that the U.S.'s strong demand for oil makes it vulnerable to the small group of oil producing states who wield monopoly power), *available at* http://cta.ornl.gov/cta/Publications/pdf/ORNL_TM2005_45.pdf (last visited March 7, 2005).

⁶⁸ *See* Greene & Ahmad, *supra* note 66 at p.3 (noting that net oil imports are currently at their highest levels ever with the United States importing 11.8 million barrels of oil per day).

⁶⁹ *See id.* (explaining that "[t]he energy security and national security concerns that stem from reliance on a single energy resource that is unevenly distributed throughout the world will be intensified as demand for oil grows."); *see also* *The Nation's Energy Security Problem is Most Severe in the Transportation Sector* (noting that if China or other developing nations seriously enter the competition for oil by increasing its automobile infrastructure, global oil demand would soon far exceed production capacity), *available at* http://solstice.crest.org/repp_pubs/articles/issuebr7/issuebr7g.html (last visited on Jan. 26, 2005).

⁷⁰ *See* Institute for the Analysis of Global Security, *supra* note 64 (noting that the United States has 19 million more vehicles than registered drivers).

⁷¹ *See* Surface Transportation Policy Project, *supra* note 46 (stating that the 5.7 billion gallons of gasoline wasted in congestion in the year 2000, which is an average of 100 gallons annually by each peak-period road user, would be enough to fill 114 supertankers or 570,000 gasoline trucks).

III. BENEFITS OF PUBLIC TRANSIT

In an attempt to respond to the many problems associated with highway development and automobile use, investment in public transportation can allow for significant energy, environmental, and social benefits.⁷² Modes of public transportation, therefore, not only benefit transit riders, but also provide wider benefits to society at large.⁷³ Furthermore, current trends indicate that shifting focus to a more balanced and intermodal transportation system is more likely to meet present-day transportation needs.⁷⁴

A. LAND USE

Public transit can significantly affect the way in which we design our urban communities and can specifically act as a vehicle for smart growth by combining increased accessibility with a better mix of land use.⁷⁵ A shift to public

⁷² See Shapiro et al., *supra* note 3 (“. . . greater use of public transportation offers the single most effective strategy currently available for achieving significant energy savings and environmental gains without creating new government programs or imposing new rules on the private sector.”); see also American Public Transportation Association, *supra* note 4 (“Public transportation helps lead the nation towards its goals and policies of protecting the environment, conserving energy, and providing for the health, safety, and security of its citizens.”).

⁷³ Frank Southworth et al., *An Assessment of Future Demands for and Benefits of Public Transit Services in Tennessee*, Oak Ridge National Laboratory (March 2002), available at <http://cta.ornl.gov/cta/Publications/pdf/R02-114617.pdf> (last visited March 7, 2005).

⁷⁴ Todd Litman, *Evaluating Public Transit Benefits and Costs; Best Practices Guidebook*, Victoria Transport Policy Institute, at 3 (October 22, 2004) (“Many cities have reached a size and level of traffic demand that justifies more reliance on transit, including many areas previously classified as suburban that are becoming more urbanized, and so experience increased congestion, commercial clustering, land values and parking problems that make transit cost effective.”), available at <http://www.vtpi.org/tranben.pdf> (last visited March 7, 2005).

⁷⁵ See Reid Ewing & R. Cervero, *Travel and the Built Environment*, Transportation Research Record 87, 87-114 (2001):

A recent survey found that increasing regional accessibility among workplaces, retail stores and homes through transit reduces vehicles miles traveled significantly. People especially drive less when accessibility is combined with other changes, including increased density, a better mix of land uses—making it easy to live in places convenient to shopping and employment—and transit-oriented design techniques.

See also A. Kackar and K. Briechele, *Answers to Questions*, Smart Growth Network (June 28, 1999) (defining smart growth as an approach to metropolitan development that serves the economy, community, and environment), available at http://www.smartgrowth.org/index_frameset.html (last visited March 5, 2005); see also Todd Litman, *The Future Isn't What It Used To Be; Changing Trends and Their Implications for Transport Planning*, Victoria Transport Policy Institute, at 27 (January 25, 2005) (arguing that a transport system need not grow in vehicles, vehicle-miles, passenger-miles, ton-miles, or traffic speeds to develop and become better), available at <http://www.vtpi.org/future.pdf> (last visited March 7, 2005).

transportation can effectively combat the problems associated with urban sprawl since this method of transportation drastically reduces the amount of land that is needed for cars.⁷⁶

New theories of development commonly referred to as “New Urbanism” or “Transit-oriented Development” are emerging as viable and attractive alternatives to conventional suburban development, or sprawl.⁷⁷ The principles underlying these theories combine intelligent planning and architecture to create human scale communities in contrast to the present day auto-oriented design.⁷⁸ By designing neighborhoods with high-quality transit, a mix of uses, and pedestrian-friendly design, auto dependency will effectively be reduced and driving will be less of a necessity and more of an option.⁷⁹ As a result, “[r]esidents and employees located in more accessible, more multi-modal locations tend to own fewer motor vehicles, drive less, and use alternative modes more than those at automobile-dependent locations.”⁸⁰ It is of no surprise that a lower number of people will be driving when a community is structured around attributes that enhance an area’s location efficiency.⁸¹

⁷⁶ See American Public Transportation Association, *supra* note 6 (noting that as much as one third of a city’s land is devoted to serving motor vehicles when roads, service stations and parking lots are considered and that public transportation can preserve land for smarter growth and more productive development).

⁷⁷ Scott Lefaver et al., *Construction of Transit-Based Development*, Mineta Transportation Institute (September 2001) (defining transit-oriented development as a high density, residential or mixed-use development built within a half mile of a transportation corridor, or an intensely used transportation passageway), available at <http://transweb.sjsu.edu/publications/ConstructionTBD.htm> (last visited March 5, 2005).

⁷⁸ See Steuteville, *supra* note 51 (suggesting that transportation and land-use policies be linked and the neighborhood be used as the fundamental building block of a region); see also Center for Transportation Excellence, *Transit Benefits* (explaining that public transportation fosters more livable communities by creating corridors that become natural focal points for economic and social activities and how these activities help create strong neighborhood centers that are more economically stable, safe, and productive), available at <http://www.cfte.org/trends/benefits.asp> (last visited January 26, 2005).

⁷⁹ See Belzer & Autler, *supra* note 49 (describing transit-oriented development as expanding transportation choices and being one of the most important tools for creating more efficient regional land-use patterns); see also Reconnecting America’s Center for Transit-Oriented Development, *Hidden in Plain Sight: Capturing the Demand for Housing Near Transit* (September, 2004) (stating that only 54 percent of residents living in transit zones commute by car, compared to 83 percent in regions as a whole), available at http://www.reconnectingamerica.org/pdfs/Ctod_report.pdf; see also John Holtzclaw, *How Compact Neighborhoods Affect Modal Choice—Two Examples*, The Sierra Club (“When density increases driving falls as trip lengths are shortened and more can be taken by transit or walked or bicycled.”), at <http://www.sierraclub.org/sprawl/articles/modal.asp> (last visited March 6, 2005).

⁸⁰ See Litman, *supra* note 74 at p.17.

⁸¹ The Sierra Club, *New Study Links Auto Use to Neighborhood Design* (June 10, 2002) (describing a study of San Francisco, Los Angeles, and Chicago metropolitan areas and the direct link that was

Transit-oriented development is about simultaneously combating the problems associated with sprawl and the other negative consequences of an auto-oriented society while also empowering Americans by giving them transportation choices rather than having to resort to their automobiles for the majority of their travel needs.⁸² Transportation choice refers to the quantity and quality of transportation options available to an individual or group, taking into account their differing needs and abilities.⁸³ By considering these varying needs and abilities, transit-oriented development theories shift the focus from planning communities for cars to planning communities for people.⁸⁴

A recent study conducted by Reconnecting America's Center for Transit-Oriented Development also indicates that there is likely to be significant demand for transit-oriented communities over the next twenty-five years and that many people will desire housing within a half-mile radius of fixed guideway transit stations, or "transit zones."⁸⁵ There has already been evidence of significant

observed between about the amount of people who drive and the location efficiency attributes of a community), available at <http://www.sierraclub.org/sprawl/resources/pressrelease.asp> (last visited March 6, 2005).

⁸² See Jay Walljasper, *The Second Coming of the Great American Town*, Conscious Choice (April 2001) (suggesting that communities are designed today to make cars happy instead of people and that transit-oriented design can boost public transportation thereby empowering people with more options and making travel much more convenient), at <http://www.consciouschoice.com/issues/cc1404/secondcoming1404.html>; see also Edward Beimborn, *Implications of Automated Highway Systems on Land Use Patterns*, National Automated Highway System Consortium Land Use Panel (August 1996) (describing accessibility as a fundamental attribute to any successful community since it allows for ease in traveling from place to place. Access gives people the ability to obtain desired goods, services, and activities within close proximity to where they live or work.), available at <http://www.uwm.edu/Dept/CUTS/ahs-lu.htm> (last visited March 7, 2005).

⁸³ Todd Litman, *You Can Get There From Here; Evaluating Transportation Choice*, Victoria Transport Policy Institute, at 2 (January 5, 2001), available at <http://www.vtpi.org/choice.pdf> (last visited March 7, 2005).

⁸⁴ Wilbur Smith Associates, *Congestion Mitigation Systems Plan "Vision 2020,"* at 8 (February, 2003) (noting that transportation and land use planning should have coordinated end goals making the most efficient use of limited resources while creating an environment in which residents and businesses can enjoy a quality of life that is both desirable and sustainable), available at http://www.swrpa.org/pdf_files/cms2020FinalReportComplete.pdf; see also Jill Kruse, *Remove It and They Will Disappear: New Evidence Why Building New Roads Isn't Always the Answer*, Surface Transportation Policy Project (1999) (observing how many local officials have found that decreasing road capacity and expanding options for public transit, walking, and biking have rejuvenated their cities), available at <http://ntl.bts.gov/lib/1000/1100/1165/00778490.pdf> (last visited March 7, 2005).

⁸⁵ See Reconnecting America's Center for Transit-Oriented Development, *supra* note 78 (stating that their market assessment shows that at least a quarter of all new households-14.6 million households-could be looking for housing in transit zones); see also Belzer & Autler, *supra* note 49 (noting that a substantial market exists for a new form of walkable, mixed-use urban development around new rail or rapid bus stations and transit stops); see also Moss, *supra* note 45 ("Surveys show that people would take public transit if it were in place and efficient.").

ridership growth after new transit lines have been opened and transit-oriented land use development occurs.⁸⁶ Studies have shown that the ability to travel in an area conveniently, without a car, is an important component of a community's livability.⁸⁷ Furthermore, by enhancing a community's livability and fueling local development, public transportation also has a positive impact on local property values.⁸⁸

In order to satisfy this growing demand for transit-oriented development as well as slow down the rapid rate of urban sprawl, appropriate public policies must be put in place and the right infrastructure investments must be made, including continued improvements to public transportation systems.⁸⁹

B. TRAFFIC CONGESTION

To relieve traffic congestion, America's transportation policy emphasis and investment priority must shift toward a dramatic expansion of high-capacity public transportation systems.⁹⁰ Just as the construction of highways has been found to induce traffic and lead to more congestion, the construction of public transit has been found to result in a similar "build it and they will come"

⁸⁶ See Litman, *supra* note 74 at 9 (stating that in Portland, Oregon between 1990 and 2000, major transit service improvements were implemented and the population grew by 24%, vehicle mileage by 35%, and transit ridership by 49%. In addition, most of the transit ridership consisted of discretionary riders who chose transit because it offered better service.)

⁸⁷ See Center for Transportation Excellence, *supra* note 77; see also Central Midlands Regional Transit Authority, *The Benefits of Public Transportation* ("Public transportation provides opportunity, access, choice and freedom, all of which contribute to an improved quality of life."), available at http://www.gocmrta.com/content/pdf/Benefits_Public_Transportation.pdf (last visited January 26, 2005); see also Jay Walljasper, *New Lessons from the Old World; The European Model for Falling in Love with Your Hometown*, E-magazine (March/April 2005) (arguing that, in contrast to American cities, most European cities are attractive, comfortable, and thriving cities because they have prevented urban decay and sprawl through people-centric rather than auto-centric design. This, in turn, boosts urban vitality and livability. Also stating that "[b]eing able to get around by strolling, biking or taking a train without always dodging trucks and cars enhances urban life in ways that are hard to imagine until you've experienced them."), available at <http://www.emagazine.com/view/?2307> (last visited March 6, 2005).

⁸⁸ See Center for Transportation Excellence, *supra* note 77 ("Studies have shown greater increases in the value of properties located near public transportation systems than in similar properties not located near public transportation.").

⁸⁹ See Reconnecting America's Center for Transit-Oriented Development, *supra* note 78; see also The Sierra Club, *supra* note 49 (explaining that how the government chooses to apportion transportation funding through the reauthorization of TEA-21 will be instrumental in determining whether our nation focuses on smart growth, or whether we will continue to sprawl).

⁹⁰ See American Public Transportation Association, *supra* note 6.

phenomenon, but conversely relieves traffic congestion.⁹¹ The Texas Transportation Institute's Congestion Study shows that "the presence of transit service makes a significant difference in the number of residents who are subject to driving in congested conditions [and] in places with more transit service, a smaller portion of the population drives to work each day, lowering overall exposure to congested conditions."⁹² In places with more transportation choices, people are not trapped by congested conditions and can choose whether to fight through congestion in their cars or avoid it by using less stressful ways to get to work such as public transit.⁹³

Public transportation ultimately acts to take cars off of the road thereby improving traffic flow, reducing delays for highway users, and helping a significant portion of the population avoid driving in congested conditions since they have the choice of an alternate form of transportation.⁹⁴ In other words, public transportation is not only beneficial to passengers who utilize this method of transportation, but it is also beneficial to non-public transit riders since it

⁹¹ See Surface Transportation Policy Project, *supra* note 2 ("The Federal Transit Administration observed that since public transportation began to receive funding under TEA-21, transit ridership grew by nearly 20%."); see also Peter Newman & Jeffrey Kenworthy, *Sustainability and Cities: Overcoming Automobile Dependence*, Island Press (1999) (discussing the phenomenon of 'transit leverage,' whereby one mile of transit-riding has been found to take the place of multiple vehicle miles traveled); see also Surface Transportation Policy Project, *Public Transit, Operations Make Inroads on Congestion*, (Sept. 17, 2004) ("... the solution to road congestion isn't just pouring new concrete and paving new roads"), available at http://www.transact.org/transfer/trans04/9_17.asp.

⁹² See Surface Transportation Policy Project, *supra* note 57; see also The Sierra Club, *supra* note 32 (explaining how even if you don't ride public transportation, you will use it because when others are riding transit, it saves money, vehicle miles, and offers traveling flexibility to the public.).

⁹³ See Surface Transportation Policy Project, *supra* note 57 (noting that the metro areas where fewer people drive are not that way simply because people have different travel habits, but rather they are places that offer more choices, particularly more opportunities to take a convenient bus or train.); see also McCann, Kienitz, & DeLille, *supra* note 31 at 11 (stating that one of the best ways to fight congestion is to give people a way to avoid it entirely by creating places where people can enjoy quality train and bus service).

⁹⁴ See Maryland Transit Advisory Panel, *The Future of Transit in Maryland: One Million Riders a Day by the Year 2020* (January, 1999) ("The Maryland Department of Transportation estimates that a full rail car removes 200 cars from the road, a full bus removes 60 cars, and a full van removes 12 cars."); see also American Public Transportation Association, *supra* note 6 (stating that "[a]ccording to a Federal Transit Administration study of six urban corridors served by high-capacity rail transit: public transportation passengers saved 17,400 hours daily over auto travel in the corridors and the remaining road users in the corridors saved 22,000 hours of delay per day due to the absence of vehicles from public transportation users."); see also On the Move: The Official Electronic Newsletter of Capital Metro, *Public Transportation: Benefits to Individuals and Families* (September 18, 2003) (noting that if the Americans who currently take transit to work decided to drive, they would fill a nine-lane freeway from Boston to Los Angeles) available at http://www.enebuilder.net/capmet/e_article000179262.cfm?x=b11,0,w.

reduces the amount of traffic delays experienced on the road.⁹⁵ “The number of riders on the system positively impacts . . . traffic patterns on a daily basis.”⁹⁶

In response to growing public frustration with traffic congestion, numerous public opinion polls have shown that a solid majority of people desire more opportunities to take transit, walk, or bicycle, and are less interested in widening roads or constructing new ones.⁹⁷ Many American citizens ultimately favor investing in more transportation choice than in more roads.⁹⁸ Therefore, in order to ease the burden of traffic congestion, the hurdles that public transportation faces in obtaining funding must be eliminated and officials must view TEA-21 as a vehicle for providing more transportation choice rather than more road space.

C. ENERGY CONSUMPTION

Public transportation is a vital means for affording American’s more energy independence since this mode of transportation consumes significantly less energy than automobiles and trucks.⁹⁹ More specifically, “Public

⁹⁵ See Robert F. Bennett et. al., *How Transit Benefits People Who Do Not Ride It: A Conservative Inquiry*, American Public Transportation Association (October 2003) (seeing public transportation as part of the infrastructure, no different from water lines and highways and services such as the police and the fire department. If the infrastructure is inadequate, everybody suffers.), available at http://www.apta.com/research/info/online/how_transit_benefits.cfm.

⁹⁶ See *id.*; see also Surface Transportation Policy Project, *supra* note 57 (noting that as the frequency of transit service climbs, the percentage of workers driving in traffic drops).

⁹⁷ See Surface Transportation Policy Project, *supra* note 57; see also Surface Transportation Policy Project, *Americans’ Attitudes Toward Walking and Creating Better Walking Communities* (April 1, 2003) (quoting a national survey that indicates that Americans desire communities that allow them to walk to more places more often), available at <http://www.transact.org/report.asp?id=205> (last visited March 7, 2005).

⁹⁸ See Surface Transportation Policy Project, *supra* note 57; see also National Governors Association, *In the Fast Lane: Delivering More Transportation Choices to Break Gridlock* (Nov. 29, 2000) (explaining the connection between land use and transportation as affecting traffic congestion: “By creatively combining transportation and growth planning, some states are doing a better job of addressing traffic congestion—the number one quality of life complaint of Americans.”), available at http://www.nga.org/center/divisions/1,1188,C_ISSUE_BRIEF%5ED_610,00.html; see also McCann, Kienitz, & DeLille, *supra* note 31 at pp. 6, 11 (noting that polls and surveys from around the country show that most people want more travel choices, not more roads. For example, in a February 2000 poll by the San Francisco Bay Area’s Metropolitan Transportation Commission, 76 percent of people surveyed named improved public transit as a high priority for the region while only 36 percent named road building as a high priority.).

⁹⁹ See Shapiro et al., *supra* note 3 (“In 1999 . . . public transportation saved nearly 890 million gallons of gasoline [which] translates to about 47 million barrels, or one month’s worth of imported oil from Saudi Arabia.” Also noting that “[g]iven its high energy efficiency and low polluting, public transportation offers the single largest untapped source of energy savings and environmental gains available to the United States.”); see also Natural Resources Defense Council, *supra* note 25.

transportation uses about one-half the fuel of private automobiles, SUVs, and light trucks per passenger-mile traveled.”¹⁰⁰ Allocating more funding to public transportation options would, therefore, help to decrease the amount of oil consumed. As stated by The Institute for the Analysis of Global Security, “[i]t is in our best interest to preemptively embark on a revolutionary change that will lead us away from oil dependency rather than drag our feet and suffer the ramifications of becoming growingly dependent on a diminishing resource.”¹⁰¹

By developing and improving public transportation systems in America, the country will be strengthening its national security. As already stated, public transportation is much more fuel efficient and will conserve a substantial amount of oil, which in turn will lessen our reliance on foreign countries to meet our transportation needs. In addition, another benefit worth mentioning with regard to national security is that the availability of public transportation has increased resiliency in times of emergency.¹⁰² Just as the country viewed an interstate highway system as crucial for maintaining national defense during the time of the Federal Aid Highway Act’s enactment in 1956, modern day national defense requires a reliable network of mass transit systems to allow for the quick transport of increasingly large metropolitan populations.¹⁰³ For these reasons, it

¹⁰⁰ See American Public Transportation Association, *supra* note 6; see also American Public Transportation Association, *supra* note 4 (noting that for every passenger mile traveled, public transportation is twice as fuel efficient as private automobiles); see also American Public Transportation Association, *supra* note 46 (stating that public transportation saves more than 855 million gallons of gasoline, or 45 million barrels of oil. Also explaining that another reason that public transportation is nearly twice as energy-efficient as private automobiles is that public transit on average carries many more passengers at once than private automobiles);

see also Sustainable Pittsburgh, *Benefits of Transit* (noting that a bus with as few as seven passengers is more fuel efficient than the average car with one occupant used for commuting), available at http://www.sustainablepittsburgh.org/TLC/benefits_of_transit.htm (last visited January 26, 2005).

¹⁰¹ See Institute for the Analysis of Global Security, *supra* note 64; see also Martin Felstein, *Oil Dependence and National Security: A Market-based System for Reducing U.S. Vulnerability* (October 2001) (stating that our dependence on foreign oil can only be limited in a significant way if we reduce our consumption of oil), available at http://www.nber.org/feldstein/oil.html#N_4_ (last visited March 6, 2005).

¹⁰² See American Public Transportation Association, *supra* note 4 (“Time and time again, the availability of public transportation in times of emergency—both natural and man-made—has proven to be critical in maintaining basic access, mobility and safety for individuals who come in harm’s way.” Also noting that by midday on September 11, 2001, New York’s MTA subway and commuter trains and buses were evacuating millions of commuters from Manhattan.); see also Michael Jenkins & Frances Edwards-Winslow, *Saving City Lifelines: Lessons Learned in the 9-11 Terrorist Attacks*, Mineta Transportation Institute (September 2003) (explaining how a reliable public transportation network is essential for providing rescue and recovery and acts as a city’s lifeline in times of emergency), available at <http://transweb.sjsu.edu/publications/02-06.pdf> (last visited March 7, 2005).

¹⁰³ American Public Transportation Association, *America Under Threat: Transit Responds to Terrorism, September 11, 2001 Special Report* (noting how public transportation is in a unique

is essential that adequate funding be provided to maintain the nation's public transportation systems.

IV. POTENTIAL ROLE OF TEA-21

The expiration of TEA-21 comes at a landmark period in American history and Congress is standing at a fork in the road faced with the decision of where to steer this nation's transportation policy.¹⁰⁴ With highways and automobiles deeply rooted in America's history and continuing to dominate the nation's present-day transportation policy, Congress can now initiate a monumental shift and take the road less traveled—that is, the road toward public transportation.¹⁰⁵ By doing this, Congress can effectively pave the way for a mature, intermodal transportation system that is both efficient and diverse to better serve future needs.¹⁰⁶

It is imperative for Congress to begin to level the playing field between highway and transit projects.¹⁰⁷ Not only will this dramatically improve the American way of life by reducing commute times, preserving landscapes, and improving air and water quality; but allocating more funds toward public transit

position to respond quickly and keep communities moving), *available at* <http://www.apta.com/research/info/online/documents/911.pdf> (last visited March 7, 2005).

¹⁰⁴ See Surface Transportation Policy Project, *supra note 2*.

¹⁰⁵ Center for Transportation Research, *Assessment of the Energy Impacts of Improving Highway-Infrastructure Materials*, United States Department of Energy Argonne National Library, at 1 (April 1995) (explaining that the United States is at a crossroads and that the transportation decisions that are made now will affect us for the next several decades), *available at* <http://ntl.bts.gov/lib/6000/6300/6331/m96004572.pdf> (last visited March 7, 2005); see also Litman, *supra note 74* at 19 (arguing that there is a declining justification for public politics to favor the automobile industry since the industry is now mature and overcapitalized with world vehicle production capacity significantly exceeding demand. Further stating that increased transport system diversity does not eliminate automobile travel, but instead allows for the improvement of other modes to accommodate a major portion of future travel demand growth.).

¹⁰⁶ See Litman, *supra note 74* at 30; see also American Public Transportation Association, *supra note 46*.

¹⁰⁷ See Surface Transportation Policy Project, *supra note 2*:

As Congress debates and deliberates the reauthorization of TEA-21, it should build upon the reforms solidified in ISTEA to level the playing field between highway and transit projects in order for officials to make sound investment decisions based on metropolitan and local goals and objectives, rather than skewed federal policies.

See also U.S. Department of Transportation, *Leading the Way to Transportation Excellence in the 21st Century-Report to the Nation. Budget in Brief FY 1999* ("A successful transportation system should be . . . intermodal in form, intelligent in character, and inclusive in service."), *available at* <http://ntl.bts.gov/lib/9000/9800/9882/dot99budget.pdf> (last visited on March 6, 2005).

may also be the most effective strategy for reducing our dependence on foreign oil and strengthening our national security.¹⁰⁸

¹⁰⁸ See American Public Transportation Association, *supra* note 46; see also Public Transportation Partnership for Tomorrow, *An Investment in America: TEA 21 Reauthorization Proposal* (September 2002) (arguing that an efficient and balanced multimodal transportation system is essential to ensure the nation's safety as well as to provide a healthy and productive quality of life for all Americans. A transportation system should be designed so that all modes function together to provide safe, secure, reliable mobility-and mobility choices to an ever-growing and ever-changing traveling public.), available at <http://www.publictransportation.org/reports/investment.asp> (last visited March 7, 2005); see also Shapiro et al., *supra* note 3 (explaining the benefits of making public transportation a vital part of our nation's energy and environmental policies).