21st Century Futurama: Contemplating Removal of Urban Freeways in the World of Tomorrow

Jessica Kraft-Klehm*

INTRODUCTION

Cities all across the country are in various stages of contemplating or planning for the removal of segments of freeway running through their urban cores.[1] These freeway removal projects are becoming a growing trend in urban planning.[2] The concept is being discussed in greater frequency as a viable mechanism for urban development because many of the freeway structures subject to removal proposals have reached or are reaching the end of their design lifespan[3] and need structural attention.[4] New Urbanists[5] see the removal of portions

* J.D. (2015), Washington University School of Law.

1. *See* JOSEPH F. C. DIMENTO & CLIFF ELLIS, CHANGING LANES: VISIONS AND HISTORIES OF URBAN FREEWAYS 228 (2013). *See also* Bruce Eggler, *Claiborne Avenue Expressway Demolition Gets Support in Report*, TIMES-PICAYUNE (July 22, 2010, 3:30 PM) http://www.nola.com/politics/index.ssf/2010/07/claiborne_avenue_expressway_de.html (New Orleans); Sam Levin, *Gateway Arch 2015: New Details in Massive Redesign, Museum, Riverfront Plans (PHOTOS)*, RIVERFRONT TIMES BLOG (Apr. 17, 2013, 12:34 PM), http://blogs.riverfronttimes.com/dailyrft/2013/04/gateway_arch_2015_redesign_photos.php (St. Louis); *and* William Yardley, *Seattle, After Decades of Debate, Approves Tunnel*, N.Y. TIMES (Aug. 18, 2011), http://www.nytimes.com/2011/08/19/us/19seattle.html?r=0 (Seattle).

2. *See Highways to Boulevards*, CONGRESS FOR THE NEW URBANISM, http://www.cnu.org/highways (last visited Feb. 8, 2014).

3. According to an assessment and reconstruction plan of the regional freeway system of Southeastern Wisconsin, the typical lifespan of a freeway pavement before reconstruction is needed is forty to fifty years, and twenty to twenty-five years before an initial re-pavement is needed. *See* SE. WIS. REG'L PLANNING COMM'N, A REGIONAL FREEWAY SYSTEM RECONSTRUCTION PLAN FOR SOUTHEASTERN WISCONSIN 81–82 (2003), *available at* http://maps.sewrpc.org/freewaystudy/. The typical lifespan for bridges designed with modern standards implemented in the last thirty to forty years is seventy to seventy-five years, and considerably less for older bridges. *Id.* at 89.

4. *See* Mary Ebeling, *Rethinking the Urban Freeway Options for Rebuilding, Replacing, Altering or Otherwise Addressing Aging Freeways*, MAYORS INNOVATION PROJECT (Nov. 2013), http://mayorsinnovation.org/pdf/SURDNA_freeway%20brief.pdf.

5. New Urbanism developed as a response to post World War II land development, which was characterized by sharp separation of uses and facilitated urban sprawl. *See* James A.

of urban, often elevated, freeway structures as opportunities to redress the negative impacts urban freeway construction had on the American metropolis and spur economic development and downtown revitalization.[6]

Urban freeway planning began in the 1930s.[7] Urban planners saw the urban freeway as a solution to the growing traffic congestion resulting from the accessibility and popularity of the automobile,[8] as well as an answer to the increase in "urban blight" neighborhoods.[9] These dilapidated districts surrounded high-value properties in many cities' central business districts and could easily be cleared out and replaced by transportation conduits.[10] Early automobile-era urban planners struggled to make urban freeways compatible with their current metropolitan landscapes.[11] In the early 1930s, Suburban and rural limited-access parkways complete with scenic greenways were aspirational for urban freeways[12] but only truly existed on the urban fringe.[13] Planners were forced to compromise these principles given the need to traverse dense urban cores and thus considered elevated structures as a reasonable alternative, especially in urban central

---

Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Movements in America and Their Impact on Poor and Minority Populations*, 21 UCLA J. ENVTL. L. & POL'Y 45, 46–48 (2002). The Congress for New Urbanism is a leading promoter of New Urbanism principles. *See Learn About New Urbanism*, CONGRESS FOR THE NEW URBANISM, https://www.cnu.org/who_we_are (last visited Feb. 8, 2014).

6. *See* CONGRESS FOR THE NEW URBANISM, *supra* note 2.

7. DIMENTO & ELLIS, *supra* note 1, at 24.

8. There was nearly a 200 percent increase in the number of automobiles in the United States during the 1920s. *See* TOM LEWIS, DIVIDED HIGHWAYS 20 (2013). By 1929, there were 26.5 million automobiles, approximately one for every four Americans. *Id.* While automobile growth stagnated during the height of the Depression, urban congestion did not abate. DIMENTO & ELLIS, *supra* note 1, at 23.

9. *Id.* at 28.

10. *Id.*

11. *Id.* at 29. "In the 1930s, city planners and engineers hoped that the freeway would be a *manageable insertion into the urban fabric*." *Id.* at 42.

12. DIMENTO & ELLIS, *supra* note 1, at 24, 29–33 (explaining Robert Moses' New York City parkways that "pushed into urban centers" served as an influential example, and describing urban parkway designs in Boston, Chicago and Los Angeles). In his plans for Boston's Central Artery, city planner Robert Whitten described the need for "a pleasant, park-like appearance that will add some elements of interest and distinction to the neighborhood through which it passes." *Id.* at 42.

13. *Id.* at 23.

business districts.[14] The 1939 New York World's Fair introduced Americans to the "World of Tomorrow"[15] through Norman Bel Geddes's Futurama exhibit: a vision of a 1960s city crisscrossed by a network of elevated superhighways.[16] The American people were on board, and the major roadblock on the path to saving America's declining cities was funding.

The Federal-Aid Highway Act, through permutations discussed in greater detail below, funded the vast majority of urban freeways. But the effects of urban freeways were not as these early twentieth century city planners supposed. Freeways offered (predominantly white) Americans a way out of the cities.[17] Since the beginning of suburbanization in the 1950s, the population density of 522 central cities declined by 50 percent.[18] Decentralization of the metropolitan region has left inner cities with declining economic and social conditions.[19] As the wealthy tax base leaves the city, relying on the automobile for transportation, so too do businesses, leaving behind abandoned and often contaminated real estate, high unemployment

14. *See id.* at 31 (explaining Whitten's realizations that "elevated highways were the only workable means of traversing densely built-up downtown areas in the absence of preexisting linear corridors such as rivers or vacant waterfront lands").

15. LEWIS, *supra* note 8, at 193 (slogan adopted by the 1939 New York World's Fair).

16. See DIMENTO & ELLIS, *supra* note 1, at 46–53 for a discussion of Bel Geddes World's Fair exhibit, sponsored, not surprisingly, by General Motors and Shell Oil, and his subsequent book, *Magic Motorways*. Interestingly, Bel Geddes did not advocate for interregional highways to cut through cities; however, his vision for smaller "feeder roads" and "express boulevards" to cut into city centers still employed the elevated, limited-access highway design. *Id.* at 48–49.

17. *See* Clayton Nall, *The Political Consequences of Spatial Policies: How Interstate Highways Facilitated Geographic Polarization*, 77 J. POL. 394, 395–96 (2015). *See also* J. Peter Byrne & Michael Diamond, *Affordable Housing, Land Tenure, and Urban Policy: The Matrix Revealed*, 34 FORDHAM URB. L.J. 527, 565 (2007).

18. *See* Georgette Chapman Poindexter, *Land Hungry*, 21 J.L. & POL. 293, 312 (2005).

19. See Audrey G. McFarlane, *Race, Space and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 352 (1999), who describes the contributing structural conditions:

> [A]s urban sprawl relocates persons to the periphery of metropolitan areas, further and further away from the core, the core inevitably suffers from depleted financial, social, and human resources that have relocated to the suburbs. [Moreover,] fragmented local government erects jurisdictional boundaries that insulate wealthier suburban areas from any responsibility for the communities and people within cities that are left behind. [Further,] both historical and current policies further contribute to inner-city marginalization by insulating and benefiting suburban communities.

rates, and a poor and disadvantaged subset of the population unable to move or access now remote jobs.[20]

Part I of this Note explains the freeway's arrival and prominence in urban centers as a product of the national transportation policy, which has evolved significantly under the Federal-Aid Highway Acts and their modern equivalents.

Part II is an overview of completed freeway teardown projects, which are often cited by cities in contemplation of their own freeway removal proposals. The removal of the Park East Freeway in Milwaukee is discussed in greater detail because although a model, it is not perfect and exemplifies many of the issues facing cities that are currently contemplating freeway removal.

Part III will discuss the benefits of urban freeway removal and considers some of the hurdles that freeway removal proponents must overcome as well as factors of success. Finally, I propose that national transportation policy should be revised to actively promote urban freeway removal projects.

I. EARLY FEDERAL INVOLVEMENT IN URBAN INTERSTATE CONSTRUCTION AND THE FEDERAL AID HIGHWAY ACT OF 1956

The U.S. National Highway System[21] is "the largest civil engineering project in human history."[22] Its implementation is largely credited to President Dwight D. Eisenhower[23] with the passage of the

20. *See generally* Hope Babcock, *The National Environmental Policy Act in the Urban Environment: Oxymoron or a Useful Tool to Combat the Destruction of Neighborhoods and Urban Sprawl?*, 23 J. ENVTL. L. & LITIG. 1 (2008) (summarizing the various deleterious effects of urban sprawl on the environment, urban populations, and the economy).

21. National Highway System, 23 U.S.C. § 103 (2012).

22. Tom Chaffin, *The Interstates Turn 50*, TIME.COM (June 26, 2006), http://content.time.com/time/nation/article/0,8599,1207986,00.html.

23. Credit to Eisenhower is demonstrated by the Interstate system's official title: The Dwight D. Eisenhower National System of Interstate and Defense Highways, so named by Congress in 1990. *See* Act of Oct. 15, 1990, Pub. L. No. 101-427, 104 Stat. 927 (1990) (codified as amended at 23 U.S.C. § 101 (2012)). Eisenhower had a personal interest in a cohesive system of national roads since 1919, an early point in his military career. *See generally The 1919 Transcontinental Motor Convoy*, EISENHOWER PRES. LIBRARY, MUSEUM & BOYHOOD HOME, http://www.eisenhower.archives.gov/research/online_documents/1919_convoy.html (last visited Dec. 4, 2015). Following World War I, the Motor Transport Corps of the United States Army, concerned about the possibility of a homeland attack by an Asian nation, lead the first motor convoy across the United States as a means of testing travel and

Federal Aid Highway Act of 1956.[24] The 1956 Act was unique from its predecessors in two essential respects. The first was the creation of the Highway Trust, a combination of federal funds and gasoline taxes to finance interstate construction, the idea being that through the Highway Trust the federal government can fund interstate highway construction projects without incurring a deficit.[25] The second was an increase in the ratio of federal to state financial contribution to 90 percent federal and 10 percent state.[26] Touted as essential to national

response time. As a member of the caravan, Eisenhower experienced all of the trials and tribulations that a rudimentary and wholly incomplete system of roads had to offer: the convoy took sixty-two days, traveling at an average speed of 6.07 miles per hour, to reach the West Coast, demonstrating the need for a high-speed, intercontinental road network. *See* WILLIAM C. GREANY, PRINCIPAL FACTS CONCERNING THE FIRST TRANSCONTINENTAL ARMY MOTOR TRANSPORT EXPEDITION, WASHINGTON TO SAN FRANCISCO, JULY 7 TO SEPTEMBER 6, 1919, *available at* http://www.eisenhower.archives.gov/research/online_documents/1919_convoy/principal_facts .pdf (last accessed Dec. 19, 2015). During his presidency, Eisenhower got the attention of both state governors and highway lobbyists. In a Presidential address delivered by Vice President Nixon to the conference of state governors in 1954, Eisenhower called for a $50 billion highway program, in the name of safety and national security, with self-liquidated financing to avoid the debt of construction. *See* Richard F. Weingroff, *Federal-Air Highway Act of 1956: Creating the Interstate System*, 60 PUB. ROADS 1 (1996), *available at* http://www.fhwa.dot.gov/publications/publicroads/ 96summer/p96su10.cfm.

24. Federal Aid-Highway Act of 1956, Pub. L. No. 84-627, § 108(l), 70 Stat. 374 (1956) (codified as amended at 23 U.S.C. §§ 101–166 (2012)). However, the inception for a unified transcontinental system of roads predates the Eisenhower administration. The first federally aided highway program was in 1916, and it focused on farm to market highways and connecting county seats. HELEN LEAVITT, SUPERHIGHWAY—SUPERHOAX 25 (1970). Many of these early projects lacked coordination between federal, state, and county officials, resulting in paved roads with no discernable beginning and endpoint that would abruptly end at county or state lines. *Id.* at 24. In 1937, President Franklin Delano Roosevelt crudely drew a series of lines running north and south, and east and west across a map for then Bureau of Roads Chief Thomas McDonald. LEWIS, *supra* note 8, at 50. FDR's inception resulted in the Federal-Aid Highway Act of 1944, Pub. L. No. 78-521, 58 Stat. 838 (1944), directing the Bureau of Public Roads to make plans for a national system of roads. *Id.* In the years prior to 1956, lack of federal funding devoted to interstate road construction meant that little construction progress was made. By 1953, only approximately 24 percent of interstates were suitable for travel. Weingroff, *supra* note 23.

25. LEWIS, *supra* note 8, at 119. The Interstate Highway Program was initially perceived as a self-financed project. *Id.* at 99. This proved not to be the case, so the federal government increased its contributions to the Highway Trust significantly early on in the program to ensure its success. *Id.* at 144. One reason is because the initial price quoted for the entire system was hastily drawn up and unsupported. *Id.* at 143. Additionally, the initial planners did not consider just how much more difficult freeway construction in densely populated city centers would be in comparison to rural areas, where land and the costs of dislocating its occupants were significantly less. *Id.* at 175. *See also* DIMENTO & ELLIS, *supra* note 1, at 108–09.

26. *See* LEWIS, *supra* note 8, at 121–22. Prior to the 1956 Act, the federal to state ratio for national highway projects was fifty-fifty. LEAVITT, *supra* note 24, at 25. The Federal Aid Road

defense,[27] the 1956 Act called for a unified system of forty-one thousand miles of interstate to be built over thirteen years.[28]

With the plan set, construction took off. Accompanying the 1956 Act, and perhaps a large reason for its successful passage through Congress, was the Bureau of Public Road's publication, *General Location of National System of Interstate Highway Including All Additional Routes at Urban Areas*, known as "*The Yellow Book"* (due to the color of its cover page).[29] *The Yellow Book* mapped out the entire Interstate Highway System in thick black lines, including one line through nearly every metropolitan city.[30] Prior to the 1956 Act's enactment, the Bureau of Public Roads had yet to designate the last 2,175 miles of Interstate highways; the Bureau selected their placement in cities.[31]

Only three years after highway construction began under the 1956 Act, reformers raised questions as to whether the Act was intended to devote so much of its interstate funds to serve intracity transportation

---

Act 1916 authorized $75 million over five years to get traffic "out of the mud." MARK H. ROSE & RAYMOND A. MOHL, INTERSTATE HIGHWAY POLITICS AND POLICY SINCE 1939 8 (3d ed. 2012). The Act's renewal in 1921 authorized the expenditure of $75 million for that year alone. *Id.* At the time, highway construction efforts were conducted solely by state road agencies with little consideration for collaborative interstate construction efforts. *Id.* However, the Federal-Aid Highway Act of 1938 authorized the Bureau of Public Roads to assess the proposed construction of a small network of six transcontinental highways. DIMENTO & ELLIS, *supra* note 1, at 133. Furthermore, some toll roads were constructed and provided significant revenues for the states, but due to their expense, they did not attract city traffic. LEAVITT, *supra* note 24, at 39.

27. *See* 23 U.S.C. § 101(b)(2) (declaring that "the prompt and early completion of the Dwight D. Eisenhower National System of Interstate and Defense Highways . . . so named because of its primary importance to the national defense, is essential to the national interest"). National defense was the major theme supporting federal financing of highway projects during World War II, primarily to aid the movement of troops, war materials and supplies. LEAVITT, *supra* note 24, at 25. Following the war, Eisenhower continued to use the national defense rationale to support his proposed $50 billion interstate project when he described the current network of roads as "appalling inadequacies to meet the demands of catastrophe or defense, should an atomic war come." Weingroff, *supra* note 23.

28. LEWIS, *supra* note 8, at 127.

29. *Id.* at 120–21.

30. *Id.*

31. *Id.* The guaranteed construction projects for cities represented by members of Congress gave an incentive to vote for the highway bill, if not a justification, for voting to increase federal taxes on fuel to fund the Highway Trust. *Id.* Only one congressman whose represented city appeared in *The Yellow Book* voted against the 1956 highway bill, and he did not see another term in Congress. *Id.*

needs.[32] Eisenhower himself was allegedly disturbed by the amount of highway construction targeted at city centers after seeing firsthand the construction efforts and resulting congestion while stuck in traffic on the way to Camp David in the spring of 1959.[33] Eisenhower directed General John Stewart Bragdon[34] to study the Interstate Program's current policies regarding financing, planning, and supervising highway construction, with a particular emphasis on "intra-metropolitan area routing" and "urban planning."[35] Bragdon made a strong case to Eisenhower opposing highway construction in cities under the Interstate Highway Program.[36] Bertram Tallamy, then head of the Bureau of Public Roads and administrator of the Interstate Highway Program, countered Bragdon's argument by

---

32. *See id.* at 145–46. *See also* Gary T. Schwartz, *Urban Freeways and the Interstate System*, 49 S. CAL. L. REV. 406, 445–48, 470–71 (1976) (discussing in part the general understanding of the Act's purpose and ambiguity of the Act's language as it relates to interstate-intracity dynamic). Section 116(b) of the 1956 Act reads:

> Insofar as possible in consonance with this objective [the "prompt completion" of the System], existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given *equal consideration* with the needs of interstate commerce.

Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, ch. 462, § 116(b), 70 Stat. 385 (1956) (emphasis added). The Bureau of Public Roads interpreted the "equal consideration clause" broadly, such that when planning that Interstate System as a whole as well as each individual segment, "the same amount of consideration" should be given to the needs of both local traffic and interstate commerce traffic. Schwartz, *supra*, at 471. Alternatively, Section 116(b) could be read much more narrowly to give "equal consideration" only with respect to the question of incorporating existing highways into the system or building new ones. *Id.* The Justice Department determined that either interpretation is legally defensible and refused to weigh in on what policy considerations should determine the appropriate interpretation. *Id.*

33. LEWIS, *supra* note 8, at 145.

34. General Bragdon was a former West Point classmate of Eisenhower and later directed the Public Works Planning Unit of Eisenhower's Council of Economic Advisers. *Id.* at 101. During the administration's pre-1956 Act discussions of how to create and fund the interstate highway project, Bragdon was a proponent of a simple system of transcontinental roads, similar to those initially proposed by Roosevelt, built entirely under the control of the federal government, and financed by a toll system. *Id.* at 102. Most importantly, Bragdon believed that the federal government should have no part in financing intracity transportation through the interstate highway program: highways through cities were meant for through traffic. The amount of egresses required to accommodate the needs of local traffic constituted a substantial and unforeseen burden on the federal highway budget. *Id.* at 148.

35. *Id.* at 146 (quoting from "Bragdon['s] Papers" located at the Dwight David Eisenhower Library, Abilene, Kansas).

36. *Id.* at 146–47, 151.

brandishing *The Yellow Book*.[37] Tallamy declared the law was on his side as Congress, by adopting *The Yellow Book*, acknowledged the planned urban routes prior to the passage of the 1956 Act, further showing it intended to devote funds to intracity transportation needs.[38] Although it was Eisenhower who requested the report, Bragdon's arguments were ultimately met by silence from the president, and no planned urban routes were abandoned.[39]

A. Freeway Revolt and Changes to the Federal-Air Highway Act of the 1960s and 1970s

Beginning in the 1960s and continuing heavily into the 1970s, urban activists strongly opposed freeway construction.[40] Initially, the ability of the freeway opposition to counteract construction of highways though city centers was weak.[41] Citizens whose neighborhoods were targeted for disruption due to planned highway paths had little political or economic clout to reroute construction.[42]

---

37. *Id.* at 151.

38. *Id.* at 148–49, 151.

39. *Id.* at 151. Bragdon was soon thereafter removed from the urban interstate debate when the president nominated him to an unexpired term as a commissioner on the Civil Aeronautics Board. *Id.*

40. Literature of the time included A. Q. MOWBRAY, ROAD TO RUIN (1969); HELEN LEAVITT, SUPERHIGHWAY—SUPERHOAX (1970); ALBERT BENJAMIN KELLEY, THE PAVERS AND THE PAVED (1971); DAVID G. BURWELL & MARY ANN WILNER, END OF THE ROAD: A CITIZEN'S GUIDE TO TRANSPORTATION PROBLEMSOLVING (1977). *See also* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 150–51 (2d ed. 1961) (calling for high densities of population and activities, mixtures of primary uses, small-scale, pedestrian-friendly blocks and streets, and the preservation of old buildings alongside the newly constructed; all these principles are at odds with separate use Euclidean zoning which allowed for suburbanization with the support of freeway travel).

41. ROSE & MOHL, *supra* note 26, at 113.

42. *See id.* This was particularly true in African American communities, not only because they lacked political leverage, but also because routes through African American communities were supported by the dominant white communities. *Id.* In New Orleans, the construction of an elevated highway through the city's historic French Quarter that would have cut off the neighborhood from the Mississippi riverfront was met with opposition of residents, businessmen, and preservationists and was well-organized by two educated young men from connected New Orleans families. LEWIS, *supra* note 8, at 182, 189–90. They were equipped for the uphill battle, which lasted nearly half a decade. *Id.* at 195–210. In contrast, the construction of Interstate 10 though New Orleans's prosperous African American community on Claiborne Avenue was met with no opposition. *Id.* at 188. When the elevated Interstate was superimposed onto Claiborne Avenue, historic large oak trees that lined the street were removed for the construction and its once prosperous businesses and festivities dissipated. *Id.*

Furthermore, these citizens had few legal tools at their disposal.[43] The federal highway builders viewed public hearings as a method of furnishing citizens with information, not as a mechanism for them to voice their concerns.[44]

As a response to the opposition, the transportation legislation and implementation that followed in the 1960s and 1970s realized a gradual policy shift from a construction-centric view of highways as the savior of the blighted city, to transportation planning and highway construction within a greater urban context.[45] The Federal-Aid Highway Act of 1962 required, for the first time, the integration of highway planning and metropolitan planning.[46] It required federally-funded urban freeway projects be based on "a continuing, comprehensive transportation planning process carried out

43. *See* Oliver A. Houck, *More Unfinished Stories: Lucas, Atlanta Coalition, and Palila/Sweet Home*, 75 U. COLO. L. REV. 331, 375–76 (2004) (describing the unanticipated opposition to freeway construction by white, middle-class residents and their relative lack of legal recourse during the construction boom of the 1950s and 1960s); Jerry L. Mashaw, *The Legal Structure of Frustration: Alternative Strategies for Public Choice Concerning Federally Aided Highway Construction*, 122 U. PA. L. REV. 1 (1973) (explaining the challenges facing the highway litigant, in both state and federal courts). An early exception is San Francisco's opposition to the continued construction of the Embarcadero Freeway, a double-decked, partially completed pre-interstate freeway that ran along the city's bayfront harbor. ROSE & MOHL, *supra* note 26, at 115. Plans to complete the freeway stretch using interstate funds were met by a powerful coalition of upscale neighborhood associations, environmental groups, a "locally oriented board of supervisors," and an eventual commitment to public transit by city businesses and political figures. *Id.* Unique to San Francisco's situation was a California state law that provided no street or road could be closed without the approval of the local government authorities. *Id.* at 116. Continuation of the construction of the Embarcadero would require multiple road closures, and the locally minded San Francisco Board of Supervisors stonewalled the construction by exercising its veto power. *Id.*

44. The role of the public hearing is thus explained: "[t]he department is there to inform the public of its plans and to hear from them. It is under no obligation to make an affirmative case or to subject its project rationale to cross-examination." Mashaw, *supra* note 43, at 24. *See also* Schwartz, *supra* note 32, at 481–82 n.455 (explaning of the origins of the public hearing requirement within the 1956 Act, its limited scope of examining only "economic effects," and the 1968 Act's amendment widening the scope of the public hearing requirement to include consideration of "social," "environmental," and "urban planning effects").

45. *See* DIMENTO & ELLIS, *supra* note 1, at 132, 142. The legislation of the 1960s that went hand in glove with the updates to the Federal-Aid Highway Acts includes the National Historic Preservation Act of 1966, Pub. L. No. 89-665, 80 Stat. 915; the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (specifically, Title VIII, The Fair Housing Act, 82 Stat. at 81); and, the National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852.

46. The Federal-Aid Highway Act of 1962, Pub. L. No. 87-866, 76 Stat. 1145 (current version at 23 U.S.C. §§ 101–166 (2012)).

cooperatively by states and local communities" that conform with the national objective of developing multi-modal transportation systems.[47] The 1962 Act was later amended to further require the federal government to give "due consideration" to the "probable effect" of highway projects on urban areas.[48] However, it was decidedly unnecessary to revisit freeway routes that were already planned as of 1955 (i.e. those proposed in *The Yellow Book*), prior to the 1956 Highway Act.[49] As a result, these enumerated expectations saw little actual implementation.[50] The Federal-Aid Highway Act of 1968,[51] in addition to declaring a national policy of preservation for public parks, wildlife refuges, and historic sites,[52] also mandated relocation and housing replacements for displaced citizens as a result of highway construction.[53] The Federal Highway Act of 1973[54] allowed federal funds via the Highway Trust to be used not only for Interstate construction projects, but also for public transportation.[55]

Environmental protections incorporated into legislation during the second half of the 1960s provided highway opponents the first substantial legal standing to challenge highway construction.[56] One

47. 76 Stat. at 1148.

48. DIMENTO & ELLIS, *supra* note 1, at 139.

49. Schwartz, *supra* note 32, at 461.

50. DIMENTO & ELLIS, *supra* note 1, at 119.

51. The Federal-Aid Highway Act of 1968, Pub. L. No. 90-495, 82 Stat. 815.

52. § 138, 82 Stat. at 124–25. *See also infra* note 5560.

53. §§ 501-11, 82 Stat. at 830-35. *See also* DIMENTO & ELLIS, *supra* note 1, at 128–29. Similar requirements had been in place for federally funded urban renewal projects since the 1950s. ROSE & MOHL, *supra* note 26, at 145–46.

54. Federal-Aid Highway Act of 1973, Pub. L. No. 93–87, 87 Stat. 250 (1973).

55. § 142, 87 Stat. at 259-61. *See also* LEWIS, *supra* note 8, at 233. The congressional compromise for the 1973 Act phased in the use of Trust Fund money for public transportation beginning in 1975, and by 1976, cities were allowed to use any amount of their allotted highway funds for public transit projects. *Id.* As of 1974, however, projects already in their construction stages would continue with funding as planned. *Id.*

56. *See* ROSE & MOHL, *supra* note 26, at 137–38; *see also* Roger Nober, *Federal Highways and Environmental Litigation: Toward a Theory of Public Choice and Administrative Reaction*, 27 HARV. J. ON LEGIS. 229, 230–34 (1990). Much planned highway construction utilized public land, giving opponents the opportunity to disrupt planned routes. *See id.* at 248 (early highway construction proposals expressed a preference to route highways through parks and other publically owned land). *See also* Tannera George Gibson, *Not in My Neighborhood: Memphis and the Battle to Preserve Overton Park*, 41 U. MEM. L. REV. 725, 729 (2011) (noting the convenience of using publically owned parkland, which drastically reduced construction costs); NAT'L INTERREGIONAL HIGHWAY COMM., INTERREGIONAL HIGHWAYS, H.R. DOC. NO. 379, at 69 (2d Sess. 1944) (noting "the valley of a small stream

protection came with the enactment of Section 4(f) of the Department of Transportation Act of 1966.[57] Section 4(f) mandated that special efforts be made to protect the environment in developing transportation plans.[58] Section 4(f) was a substantive law intended to prevent the routing of highways through public parks unless no "feasible and prudent alternative"[59] route exists and all possible efforts are made to minimize the harm if there is no such alternative.[60] The second protection came with the National Environmental Policy Act (NEPA),[61] which requires federally aided highway projects to study potential environmental impacts before federal funds can be allocated to the project.[62] Freeway opponents have been successful in stopping freeway construction through cities using these environmental tools in some instances.[63] Some cities,

---

penetrating a city may offer excellent opportunity for the location" of a freeway); *and* AM. ASS'N OF STATE HIGHWAY OFFICIALS, A POLICY ON ARTERIAL HIGHWAYS IN URBAN AREAS 89–90 (1957) (same).

57. Department of Transportation Act, Pub. L. No. 89-670, 80 Stat. 931 (1966) (creating the Department of Transportation).

58. Section 4(f), 80 Stat. at 934.

59. *Id.*

60. Section 4(f) states, in pertinent part:

> After the effective date of this Act, the Secretary shall not approve any program or project which requires the use of any land from am public part, recreation area, wildlife and waterfowl refuge, or historic site unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

80 Stat. at 934 (codified as amended at 23 U.S.C. § 138(a) (2012)). Nearly identical language to the Section 4(f) language codified in Title 23 (Highways) is also found in Title 29 (Transportation). *See* 49 U.S.C. § 303(c) (2012) ("The Secretary may approve a transportation program or project . . . only if (1) there is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm . . . ."). Because of common usage and familiarity, the term "Section 4(f)" continues to be used by the Department of Transportation in matters relating to both 23 U.S.C. § 138 and 49 U.S.C. § 303.

61. National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (current version at 42 U.S.C. § 4321 (2012)).

62. NEPA provides that a report detailing the environmental and social impacts of the proposed project be filed for all "major Federal actions significantly affecting the quality of the human environment . . . ." 42 U.S.C. § 4332(2)(C) (2012).

63. *See* Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971) (preventing the construction of Interstate 40 through a Memphis Park); Gibson, *supra* note 56, at 726. In Milwaukee, freeway opponents succeeded in halting the construction of Park Freeway West days before construction contracts were to be issued based on the requirement for an environmental impact statement under NEPA, despite the fact that most of the land had been

however, managed to thwart these environmental safeguards and proceed with their urban routes. For example, in San Antonio, Texas, Interstate 281 was successfully constructed through Breckenridge-Olmos Park despite the opponents' challenge to the project under Section 4(f).[64] Through congressional action, local authorities were able to construct the originally designated route through the park by bifurcating the highway project.[65] The highway segments on either end of the park remained federally funded, while the middle segment running through the park was solely state-funded.[66]

B. Modern Transportation Legislation (ISTEA to MAP-21)

In 1991, Congress marked the end of the Interstate Highway Era.[67] The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)[68] shifted the planning focus away from state governments, which largely favor traditional automotive projects to accommodate vehicular demand,[69] to a local or regional focus by requiring greater

---

acquired and homes removed prior to NEPA's enactment. RICHARD W. CUTLER, GREATER MILWAUKEE'S GROWING PAINS, 1950–2000: AN INSIDER'S VIEW 83 (2001).

64. Named Individual Members of San Antonio Conservation Soc. v. Tex. Highway Dep't, 446 F.2d 1013, 1029 (5th Cir. 1971).

65. Federal-Aid Highway Act of 1973, Pub. L. No. 93–87, 87 Stat. 250, § 154. Section 154, "Termination of Federal-Aid Relationship," was added to the Federal-Aid Highway Act of 1973, as a means for Texas to build its freeway without Federal-Aid funds and the requirements under Section 4(f). Section 154 stated that "The Contractual Relationship Between the Federal and State Governments shall be ended with respect to all portions of the San Antonio North Expressway between Interstate Highway 35 and Interstate Loop 410, and the expressway shall cease to be a federal–aid project." § 154.

66. *See* Mashaw, *supra* note 43, at 36–37.

67. S. REP. NO. 102-71, at 4 (1991). Jerry Mashaw summarizes prior Federal-Aid Highway legislation succinctly:

> The Congress has had something to say about local preferences, environmental and social considerations, and public participation. But the crucial question, "to build or not to build," is one of preference and power. The Federal-Aid Highways Acts largely reinforce the power of state legislatures and highway departments to act on their preferences.

Mashaw, *supra* note 43, at 21–22.

68. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. No. 102-240, 105 Stat. 1914 (current version at 23 U.S.C. §§ 101–166 (2012)).

69. Benjamin K. Olson, *The Transportation Equity Act for the 21st Century: The Failure of Metropolitan Planning Organizations to Reform Federal Transportation Policy in Metropolitan Areas*, 28 TRANSP. L.J. 147, 148 (2000). There are several studies that suggest that the construction of new roads or widening of roads to accommodate capacity is largely

participation of Metropolitan Planning Organizations (MPOs).[70] ISTEA tied transportation funds to a requirement that MPOs work in conjunction with state and public transportation officials in creating a long-term transportation improvement plan.[71] ISTEA's goals balanced increased economic development and productivity with environmental standards and social benefits to ensure transportation decisions were made "with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability."[72]

ISTEA's successor, the Transportation Equity Act for the 21st Century (TEA-21),[73] authorized the federal surface transportation programs for highways, highway safety, and transit for another six-year period, ending in 2003. TEA-21 significantly increased the federal contribution to transportation projects[74] and reworked some of

---

offset by induced traffic. *See* Michael Lewyn, *Suburban Sprawl: Not Just an Environmental Issue*, 84 MARQ. L. REV. 301, 368 (2000). *See also* Stephen H. Burrington, *Restoring the Rule of Law and Respect for Communities in Transportation*, 5 N.Y.U. ENVTL L.J. 691, 702–03 (1996) (noting that highway capacity induces new and longer trips, and promotes sprawl).

70. Intermodal Surface Transportation Act of 1991, Pub. L. No. 102-240, Title I, §1024(a), 1025(a), 105 Stat. 1914 (requiring a formal metropolitan transportation planning process conducted by MPOs). MPOs are federally mandated organizations that serve, at a minimum, as a designated urban area's "policy board" with respect to its transportation planning. *See* 23 U.S.C. § 134(b)(2) (2012). Every urban area of fifty thousand or more people is required to have an MPO. 23 U.S.C. § 134(d)(1). MPOs come in various shapes and sizes (and levels of collaboration with neighboring MPOs), which may depend on the needs of the urban area they serve and the deliverables required by federal statute. For example, an MPO that exists within a region that also in non-attainment status based on National Ambient Air Quality Standards has additional obligations under the Clean Air Act. *See* 41 U.S.C. § 7506(c) (2012). Federal law requires that an MPO's policy board consist of "local elected officials; officials of public agencies that administer or operate major modes of transportation . . . ; and appropriate State officials." 23 U.S.C. 134(d)(2). Federal law is otherwise silent on board composition, voting rights, and general governance, although many states have statutes that regulate MPOs' governance and a number of other subject areas. *See* ALEXANDER BOND, JEFF KRAMER & KAREN SEGGERMAN, STAFFING AND ADMINISTRATIVE CAPACITY OF METROPOLITAN PLANNING ORGANIZATIONS Tbl. 2-6 (2010), *available at* https://www.planning.dot.gov/ documents/Staffing_Administrative_Capacity_MPOs.pdf (a thorough summary of MPOs, their composition and administration based on extensive survey results).

71. 23 U.S.C. § 134(c).

72. Declaration of Policy: Intermodal Surface Transportation Efficiency Act, Section 2, 105 Stat. 1914. *See also* Olson, *supra* note 69, at 154.

73. Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, 112 Stat. 107 (1998) (current version at 23 U.S.C. §§ 101-166 (2012)).

74. *See* Olson, *supra* note 69, at 156. TEA-21 authorized $217 billion for transportation

ISTEA's policies in the area of transportation planning, giving greater autonomy to local planning agencies.[75] While TEA-21 continued on the path forged by ISTEA to provide for more flexibility in the use of federal transportation funds, it is debatable whether it significantly changed the federal government's commitment to highway construction.[76]

The Moving Ahead for Progress in the 21st Century Act (MAP-21), is the most recently enacted transportation bill.[77] It allocates nearly $40 billion for each fiscal year 2013 and 2014 to fund federal-aid highways and highway safety construction programs.[78] MAP-21 is the first long-term highway authorization enacted since 2005.[79] MAP-21 "creates a streamlined and performance-based surface transportation program"[80] by consolidating funding programs and imposing a maximum four-year environmental review process to speed up project development.[81]

---

spending over five years, as compared to ISTEA's $150 billion over the previous seven years. *Id.* In addition, TEA-21 guaranteed the states a minimum amount of funding, something that ISTEA was unable to achieve. Liam A. McCann, *TEA-21: Paving Over Efforts to Stem Urban Sprawl and Reduce America's Dependence on the Automobile*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 857, 863 (1999).

75. See Olson, *supra* note 69, at 156, for a explanation of the differences in ISTEA and TEA-21, especially with regard to the role of regional transportation planning and community involvement.

76. See McCann, *supra* note 76, at 857–58 for an argument that TEA-21 was a wasted opportunity to develop a sustainable transportation policy because the dedication of funds remains predominantly focused on highway construction, a path state governments will likely continue to chose in their discretionary capacity over alternative transportation projects.

77. The Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141, 126 Stat. 405 (2012) (current version at 23 U.S.C. §§ 101–166 (2012)).

78. § 1101, 126 Stat. at 414 (indicating that over $37.5 billion dollars for the highway program and $750 million for transportation infrastructure be allocated in 2013, and similar figures for 2014).

79. MAP-21 replaced TEA-21's successor, The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1839 (2005). SAFETEA-LU expired in 2009 but Congress continued to renew its funding formulas until the enactment of MAP-21. *See* David Tanner, *It's Official; the U.S. Has a New Transportation Law*, LAND LINE MAG. (July 6, 2012), *available at* http://www.landlinemag.com/Story. aspx?StoryID=23862#.VUpdzdpViko.

80. *MAP-21 Performance Requirements Summary*, FED. HIGHWAY ADMIN., http://www.fhwa.dot.gov/tpm/about/summary.cfm (last updated Mar. 5, 2013).

81. *A Summary of Highway Provisions*, FED. HIGHWAY ADMIN. (July 17, 2012), http://www.fhwa.dot.gov/map21/summaryinfo.cfm.

II. SUCCESSFUL REMOVAL PROJECTS

Initial urban highway removal projects began in the 1970s and 1980s and focused on pre-Interstate constructions. The first of these early projects occurred in Portland, Oregon, where community activists advocated for the removal of the inner-city Harbor Drive to open up the waterfront for parks and recreation.[82] Despite heavy traffic flows on Harbor Drive,[83] it was removed in 1974 and replaced with a greenway. The Harbor Drive removal laid the foundation for Portland's successful urban revitalization.[84]

In the 1980s, New York and Boston attempted to deal with their failing pre-interstate highways by burying them. In 1973, New York's elevated West Side Highway, constructed in the early 1930s, was torn down after a heavily loaded truck fell through the roadway.[85] Efforts to rebuild the roadway via underground tunnel were met with environmental challenges,[86] and the West Side Highway was eventually replaced with an at-grade boulevard, completed in 2001.[87] In Boston, city officials decided in the early 1970s to replace the pre-interstate elevated Central Artery with a

82. Portland's community activists benefited from strong political backing out of the gate. *See* ROSE & MOHL, *supra* note 26, at 180. Thomas L. McCall, a former journalist and environmental activist, was a proactive state governor who initiated an exploratory task force in 1968. *Id.* Neil E. Goldschmidt, a former poverty lawyer and city councilman, took the lead after he was elected as Portland's mayor in 1972. *Id.*

83. As an argument against removal, highway engineers estimated daily traffic of ninety thousand vehicles in the near future. Following the removal of Harbor Drive, its traffic dispersed without incident, especially with the viable alternative of Interstate 5, which ran through an industrial area along the riverfront's opposite bank. *Id.*

84. *See* 6 CASE STUDIES IN URBAN FREEWAY REMOVAL, SEATTLE URB. MOBILITY PLAN 6B (2008), *available at* http://www.seattle.gov/transportation/docs/ump/06%20SEATTLE%20Case%20 studies%20in%20urban%20freeway%20removal.pdf [hereinafter SEATTLE CASE STUDIES] (following Harbor Drive's removal, the Downtown Waterfront Urban Renewal Area's "assessed land values in downtown Portland have increased an average of 10.4% annually, from a total of $466 million to more than $1.6 billion").

85. CASE STUDIES OF URBAN FREEWAYS FOR THE I-81 CHALLENGE, SYRACUSE METRO. TRANSP. COUNCIL 27 (2010), *available at* http://www.thei81challenge.org/cm/ResourceFiles/resources/Case StudiesReport_3-02-10.pdf [hereinafter I-81 CHALLENGE CASE STUDIES].

86. ROSE & MOHL, *supra* note 26, at 181. Following an environmental impact statement, a judge declared the construction of a submerged tunnel could potentially harm the Hudson River's striped bass population. Sierra Club v. U.S. Army Corps of Engineers, 701 F.2d 1011 (2d Cir. 1983).

87. West Side (Joe DiMaggio) Highway Historic Overview, NY CROSSROADS, http://www.nycroads.com/roads/west-side/ (last visited Feb. 8, 2014).

series of tunnels.[88] Termed the "Big Dig" project, construction began in 1987 and was not completed until 2003, amidst criticism of expense, delay, and poor urban planning.[89]

In the 1990s and early part of 2000s, San Francisco removed two elevated freeways, The Central Freeway and the Embarcadero Freeway, replacing them with boulevards.[90] Both were opened 1959, with only partially completed portions of the originally planned routes due to earlier citizen-initiated "freeway revolts."[91] The catalyst for their removal was the 1989 Loma Prieta Earthquake, which created structural damage to both the Central Freeway and the Embarcadero.[92]

The Central Freeway carried approximately one hundred thousand cars per day during peak hours until the earthquake required demolition of a damaged section.[93] Local politicians and citizen activists began to propose alternatives for the remaining elevated structure in lieu of the state's planned seismic retrofit.[94] Their argument for the replacement of the elevated highway was strengthened when in 1996, a segment was closed for four months to demolish a portion of the freeway's upper deck and none of the anticipated gridlock materialized.[95] In 1999, the freeway's fate was left to the voters, who rejected a ballot initiative to retrofit the Central

88. ROSE & MOHL, *supra* note 26, at 181.

89. *Id.* On the Big Dig:

> The thirty acres where the Central Artery once stood became contested ground for planners and developers. In the end the swath of land became a wide urban park named the Rose Kennedy Greenway. . . Sadly, urban planners have replicated on land what highway planners had created in the Central Artery a half-century earlier . . . a fancy median strip flanked by four-lane boulevards. Without the mix of density and activity requisite for successful cities, the land still divides.

LEWIS, *supra* note 8, at 307–08.

90. ROSE & MOHL, *supra* note 26, at 182

91. SEATTLE CASE STUDIES, *supra* note 84, at 6C-D.

92. ROSE & MOHL, *supra* note 26, at 182; *see also* DIMENTO & ELLIS, *supra* note 1, at 223, 225.

93. SEATTLE CASE STUDIES, *supra* note 84, at 6C.

94. *Id.* "Seismic retrofitting is the modification of existing structures to make them more resistant to seismic activity, ground motion or soil failure due to earthquakes." RAJA RIZWAN HUSSAIN, MUHAMMAD WASIM & SAEED HASAN, COMPUTER AIDED SEISMIC AND FIRE RETROFITTING ANALYSIS OF EXISTING HIGH RISE REINFORCED CONCRETE BUILDINGS 5 (2016).

95. SEATTLE CASE STUDIES, *supra* note 84, at 6C.

Freeway, and instead elected to remove the freeway and replace it with an at-grade boulevard.[96] The freeway's removal allowed for the reconnection of residential neighborhoods, the revitalization of a commercial area, increased property values, and the construction of a new park and one thousand new housing units.[97]

The Embarcadero Freeway carried sixty thousand vehicles per day and acted as both a physical and visual barrier to San Francisco's waterfront.[98] Prior to the earthquake, the city's voters rejected demolishing the freeway.[99] Once damage by the earthquake rendered the freeway temporarily inoperative, however, San Franciscans began to envision the city's waterfront potential without the elevated freeway.[100] Shortly thereafter, it came down.[101] The Embarcadero's replacement with a boulevard, vintage streetcar line, and a promenade has helped establish new surrounding neighborhoods, civic amenities, and tourist attractions along with new housing in the former freeway's path.[102]

Milwaukee's removal of the Park East Freeway in 2003 is a more recent example of a completed highway removal project and shares similar traits and challenges facing other candidate cities for highway removal. Unlike New York and San Francisco, where the impetus for removal projects was largely the result of the need to address unforeseen structural damage, the Park East Freeway was an underused segment of freeway soon in need of a maintenance overhaul.[103]

Milwaukee's Mayor, John Norquist,[104] was vehemently against urban freeway construction and made freeway removal a priority of

96. *Id.*
97. *Id.*
98. *Id.* at 6D.
99. *Id.*
100. *Id.*
101. The freeway was demolished in 1991. *Id.*
102. *Id.*
103. See SEATTLE CASE STUDIES, *supra* note 84, at 6K-2 ("The estimated cost to rebuild the aging freeway was $100 million. By contrast, the total cost of replacing it . . . was $25 million. . . .").
104. After serving as Milwaukee's mayor from 1988 until 2004, John Norquist went on to become the president of the Congress for New Urbanism. *See CNU President John Norquist to Step Down After a Decade*, CONGRESS FOR THE NEW URBANISM, https://www.cnu.org/cnu-news/2013/12/cnu-president-john-norquist-step-down-after-decade (last updated Dec. 2, 2013).

his administration.[105] There were two elevated freeway spurs on his removal agenda: I-794 and the Park East Freeway.[106] Both were the remnants of a planned downtown loop that was never completed due to freeway revolt and stalemate in the 1970s.[107] And both isolated recently redeveloped and promising neighborhoods from access to downtown.[108]

I-794 now connected the downtown interchange over the Hoan Harbor Bridge along the Lake Michigan waterfront to the recently completed Lake Parkway, creating a new route to the airport.[109] While I-794 cut off Milwaukee's historic Third Ward neighborhood from the downtown business district, its removal was strongly opposed by regional commuters[110] along with officials of nearby cities whose investments in transportation projects, like the Lake Parkway, relied heavily on I-794 traffic.[111]

The second project on Norquist's agenda was the removal of Park East Freeway. Compared to the I-794 removal proposal, this project

105. *See* John O. Norquist, *Tear It Down!*, BLUEPRINT MAG., Dec. 2000, at 15–19. Prior to his becoming mayor, Norquist was a state legislator who strongly opposed to 1970s freeway construction in Milwaukee. ROSE & MOHL, *supra* note 26, at 181. Norquist felt that the city of Milwaukee was underrepresented in the South Eastern Wisconsin's Regional Planning Commission (SEWRPC), the federally-designated MPO. CUTLER, *supra* note 63, at 101–02. While a legislator, he unsuccessfully attempted to increase Milwaukee's (city and county) representation in SEWRPC, which he felt was pandering to the pro-freeway lobby to the detriment of the city. *Id.* As mayor, he sought to decertify SEWRPC as an MPO based on Milwaukee's underrepresentation, but Federal Highway Administration officials rejected his arguments. *Id.*

106. CUTLER, *supra* note 63, at 106.

107. WIM WIEWEL & GERRIT KNAAP, PARTNERSHIP FOR SMART GROWTH: UNIVERSITY-COMMUNITY COLLABORATION FOR BETTER PUBLIC PLACES 37 (2005). "Neither facility carried anything near its engineered capacity, essentially functioning as mile-long off-ramps to the downtown." *Id.*

108. *Id.* Just south of downtown and separated by I-794, the historic Third Ward neighborhood began in the 1980s transforming its old industrial warehouses into loft condos, restaurants, and art and design spaces. *Id.* On the other side of downtown, just to the north of the Park East Freeway, the former Schlitz Brewery complex was repurposed as Schlitz Park consisting of a mixture of office space and condominiums. *Id.*

109. CUTLER, *supra* note 63, at 106–07.

110. I-794 carried eighty-nine thousand vehicles per day and the traffic was predominantly regional. *Id.* Replacing I-794 with a boulevard required drawbridges over the Milwaukee River resulting in insurmountable congestion. *Id.*

111. *Id.* at 107. The adjacent city of Cudahy had just spent $100 million to build Lake Parkway to facilitate trips from nearby municipalities and airport traffic to downtown via I-794. *Id.*

was publically supported as a far more reasonable endeavor.[112] The Park East Freeway carried predominately local traffic at less than half the rate of the I-794.[113] The land surrounding the freeway was undeveloped[114] or used for surface parking lots.[115] Moreover, Norquist had an appealing fiscal argument for Park East's removal: tearing the freeway down would cost on $25 million, whereas making the necessary repairs would cost $100 million.[116]

Wisconsin Governor Tommy Thompson was not an initial proponent of the project but quickly became one, likely when Harley Davidson indicated plans to build a museum along the Park East corridor.[117] Perhaps Governor Thompson saw the economic value in the freeway's replacement with a boulevard, as well as the development capacity of the twenty-three acres of land surrounding the corridor.[118] In addition, Governor Thompson was in possession of $241 million in federally withheld transportation funds granted under ISTEA.[119] The funds would soon be forfeited if not allocated to specific transportation projects.[120] In 1999, the governor, the mayor, and the county executive negotiated a written compromise for the allocation of the ISTEA funds to the Park East removal.[121] In return, the I-794 spur would remain intact.[122] The Milwaukee City Council approved the removal of Park East by unanimous vote, and the County Board of Commissioners also approved the project by wide margin.[123]

---

112. *Id.*
113. CUTLER, *supra* note 63, at 107.
114. Land had been cleared for the complete freeway project that never materialized. *See supra* text accompanying note 63.
115. SEATTLE CASE STUDIES, *supra* note 84, at 6K-3.
116. Norquist, *supra* note 105, at 15.
117. CUTLER, *supra* note 63, at 107–08.
118. *Id.* at 107.
119. *Id.*
120. *Id.*
121. *Id.* at 107–08.
122. *See* Larry Sandler, *Deal Creates Different Fates for Freeways*, MILWAUKEE J. SENTINEL, May 3, 1999, at B1.
123. CUTLER, *supra* note 63, at 108.

Demolition of Park East was delayed until 2002, mostly due to legal challenges raised by local businessman George Watts.[124] Watts unsuccessfully challenged the environmental assessment process required by NEPA[125] in an effort to delay construction,[126] and later challenged Park East's removal based on alleged negative impact on commuters and businesses.[127] Despite these challenges, the project moved forward and Milwaukee completed the demolition of Park East Freeway in 2003.[128] The replacement boulevard was completed and opened to traffic by January 2006.[129]

Development within the three new neighborhoods created by Park East Freeway's removal has been slower than anticipated.[130] One probable reason for the slow development was the economic collapse in 2008, which hampered real estate projects that began just two years before.[131] Another likely reason for the slow development of the neighborhood was the disconnect between the development objectives of the city and the county in regards to the land each controlled.[132] Milwaukee County has implemented, by legislation, a

---

124. Larry Sandler, *Watts Campaigns to Save Park East Spur*, MILWAUKEE J. SENTINEL, Jul. 10, 2000, at 3B [hereinafter *Watts Campaigns*]. Watts challenged Mayor Norquist in the 2000 mayoral election predominately on the basis of the Park East freeway removal, and lost. *Id.*

125. National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(C) (2012).

126. Sandler, *Watts Campaigns*, *supra* note 124.

127. Larry Sandler, *Watts Loses Fight to Save Spur*, MILWAUKEE J. SENTINEL, Mar. 19, 2002, at 5B.

128. Christopher J. Bessert, *Milwaukee Freeways: Park East*, WIS. HIGHWAYS, http://www.wisconsinhighways.org/milwaukee/park.html (last updated Jan. 31, 2009).

129. *Id.*

130. *See City Prods County About Park East Delays*, BIZTIMES.COM (Jan. 15, 2007), http://www.biztimes.com/article/20070115/ENEWSLETTERS02/ 301159998/ (last modified Mar. 14, 2012); *and* Sean Ryan, *Momentum Picks Up in Park East*, MILWAUKEE BUS. J. (July 12, 2013), http://www.bizjournals.com/milwaukee/print-edition/2013/07/12/momentum-picks-up-in-park-east.html?page=all.

131. *See* Sean Ryan, *A Ray of Hope: Projects Proposed for Park East, But Financing Still a Challenge*, MILWAUKEE BUS. J. (Feb. 4, 2011), http://www.bizjournals.com/milwaukee/print-edition/2011/02/04/a-ray-of-hope-projects-proposed-for.html?page=all.

132. *See* Mark Kass, *The Park East Runaround: Why Nothing is Happening There*, 14 WIS. INT. MAG. 41, 41, 43–44 (Spring 2005), *available at* http://www.wpri.org/WIInterest/Kas14.2.pdf; *and* Tom Daykin, *Park East Development Kicks into High Gear with a New Marketing Campaign*, MILWAUKEE J. SENTINEL (May 18, 2013), http://www.jsonline.com/business/park-east-development-kicks-into-high-gear-with-a-new-marketing-campaign-709v4j3-208008131.html ("[A] new bill passed by the Legislature will limit the County Board's role in selling land, including Park East parcels. The bill's supporters say that will help encourage

community benefits agreement (CBA) imposed on any developer of land owned by the county in the Park East Corridor.[133] The City of Milwaukee has no CBA in place for the parcels of land it owns.[134] Thus, the lack of a unified development plan and differing requirements for parcels of land within the same development area appears to have contributed to slower investment, but the prospects for positive development still remain favorable.[135]

A. Additional Resources: Locally targeted federal funds through TIGER Grants

Since 2009, cities contemplating highway removal projects have had the opportunity to apply for Transportation Investment Generating Economic Recovery (TIGER) discretionary grants.[136] The

more development. . . .”). Milwaukee County acquired the land for the spur’s initial construction from the federal government, so when the Park East Freeway was demolished, the land comprised of the freeway’s footprint reverted back to the county. WIEWEL & KNAAP, *supra* note 107, at 41. The surrounding parcels of land either belonged to the city or were privately owned. *See* Tom Daykin & Knight Ridder, *Park East Area Improvements to Cost More*, CHI. TRIB. (May 16, 2004), http://articles.chicagotribune.com/2004-05-16/business/0405160285_1_michael-wisniewski-million-in-new-development-freeway-stub (the city owns four acres of land in the Park East redevelopment area, compared to the County’s sixteen acres).

133. *Milwaukee Park East Redevelopment CBA*, CMTY. BENEFITS AGREEMENTS BLOG (Jan. 30, 2008), http://communitybenefits.blogspot.com/2008/01/milwaukee-park-east-redevelopment-cba.html (highlighting Milwaukee County’s CBA requirements to Park East developers: provide living wages to construction jobs, incorporate green design elements into buildings, provide affordable housing, and contribute to community programs).

134. *Id.*

135. *See* Andrew Welland, *County's Park East Land Is a Development Dead Zone*, BIZTIMESMEDIA (Jan. 15, 2009), http://www.biztimes.com/apps/pbcs.dll/article?AID=/20090115/BLOGS/301159987/image1.gif/&template=printart.

136. *See About TIGER Grants*, DEP’T OF TRANSP., http://www.dot.gov/tiger/about (last visited May 4, 2015). Historically, Congress determines how much federal highway spending each state receives through the use of formulas (accounting for roughly four-fifths of the distributed funds) and appropriations to special-purpose programs and specific projects. *See* Chad Shirley, Cong. Budget Office, *Spending and Funding for Highways*, *in* ECONOMIC AND BUDGET ISSUE BRIEF 2 (Jan. 2011), *available at* http://www.cbo.gov/sites/default/files/01-19-highwayspending_brief.pdf. Funds allocated by formula are used for various purposes, including highways and bridges (construction, improvement, and maintenance), safety, pollution reduction, transportation planning, and alternative forms of transportation. *Id.* The formula amounts allocated for a particular purpose are also based on different criteria “such as each state’s share of highway lane-miles, vehicle-miles traveled, fuel use, population, or contributions to the Highway Trust Fund.” *Id.* The states can then determine the specific projects their allocated funds will serve. *Id.* Alternative methods for Congress to allocate the remaining one-fifth of the available transportation funds to special programs or individual

TIGER grant program was initiated as part of the American Recovery and Reinvestment Act of 2009,[137] and to date, has received over $4.1 billion to invest in transit programs that "promise to achieve critical national objectives."[138] Selected projects are typically multi-modal, multi-jurisdictional, or otherwise difficult to fund through traditionally available programs.[139] Eligible applicants include not just state, but also local governments, transit agencies, metropolitan planning organizations, and groups representing multiple states or jurisdictions.[140] TIGER funds are awarded to grant applicants on a competitive basis for projects demonstrating valuable long-term outcomes.[141] Criteria considerations for awarding TIGER grants include minimizing "life-cycle" costs of repair and maintenance, contributing to the nation's economic competitiveness, fostering livable communities, promoting environmental sustainability, and improving safety.[142] The Department of Transportation has awarded TIGER grants to approximately forty to sixty projects annually throughout its five years in operation. Among those grants, only four have been designated to highway removal projects, either for planning purposes or actual removal.[143]

---

projects include programs such as TIGER, and the Transportation Infrastructure Finance and Innovation Act (TIFIA), a program "designed to attract private investment, particularly to projects that create new capacity." *Id.*

137. American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115, 203–04 (2009).

138. *About TIGER Grants*, *supra* note 136. Funding for TIGER grant rounds since its inception are as follows: $1.5 billion for TIGER I grants; $600 million for TIGER II grants; $526.994 million for FY 2011; $500 million for FY 2012; $473.847 million for FY 2013; and $600 million for FY 2014. *Id.*

139. *Id.*

140. *See Tiger Grant Application Resources*, DEP'T OF TRANSP., http://www.dot.gov/tiger/application-resources (last updated May 23, 2013).

141. *Id.*

142. *Id.*

143. *See FY 2010 TIGER Capital Grants*, DEP'T OF TRANSP., https://www.transportation.gov/sites/dot.gov/files/docs/TIGER_CAPITAL_GRANTS_2010.pdf (last updated June 14, 2013) (New Haven, CT, for highway removal and boulevard replacement); *FY 2010 TIGER Planning Grants*, DEP'T OF TRANSP., https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf (last updated June 14, 2013) (New Orleans, LA, to study potential infrastructure investments along elevated I-10 expressway); *FY 2011 TIGER Awards*, DEP'T OF TRANSP., https://www.transportation.gov/sites/dot.gov/files/docs/TIGER_2011_AWARD.pdf (last updated Feb. 19, 2013) (St. Louis, MO, for roadway improvement that "reconnects the Arch Grounds and the Mississippi River with the Downtown Core," although not specifically highway removal); *TIGER 2013 Awards Fact Sheet*, DEP'T OF

A potential hindrance for a community seeking a TIGER grant for freeway removal is inability to demonstrate project readiness. To ensure the Department of Transportation's ability to obligate funds before the end of the fiscal year, grant applicants are strongly recommended to include "concrete evidence of project milestones achieved and remaining" in their proposals.[144] For example, the city of Rochester, New York unsuccessfully applied for TIGER grants in 2009 and 2011 to fund its proposal to convert a portion of the depressed Inner Loop Expressway, described as "a noose, strangling the downtown area," into an at-grade boulevard.[145] Rochester finally received the TIGER grant in 2013.[146] It showed readiness when Rochester's mayor dedicated two million dollars in city funds and federal highway aid to fund a final design, thereby boosting Rochester's competitiveness.[147]

III. ANALYSIS/PROPOSAL

Urban freeway removal is an opportunity to redress the environmental and social justice harms that resulted in large part from early highway policy and American's dependence on the automobile. A successful urban freeway removal project can have lasting beneficial social and economic impacts for a city.

TRANSP., https://www.transportation.gov/sites/dot.gov/files/docs/TIGER_2013_FactSheets.pdf (last updated Nov. 2, 2013) (Rochester, NY, for removal of segment of inner loop depressed expressway and boulevard replacement).

144. *TIGER 2013 NOFA: Project Readiness*, DEP'T OF TRANSP., https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202013%20NOFA_ProjReadiness%20 Guidance_0.pdf (last updated May 9, 2013).

145. Zack Seward, *Rochester Doubling Down on Inner Loop Plans*, INNOVATION TRAIL (Feb. 14, 2012, 3:54 PM), http://innovationtrail.org/post/rochester-doubling-down-inner-loop-plans.

146. *See Federal Funding Announced for Inner Loop Project*, RECONNECT ROCHESTER BLOG (Aug. 30, 2013), http://reconnectrochester.org/blog/2013/08/federal-funding-announced-for-inner-loop-project/.

147. *See generally* Seward, *supra* note 145. In addition to funding a final design plan, the mayor successfully built a coalition of diverse stakeholders and influential politicians like Senator Chuck Schumer, who advocated the grant award for Rochester in a meeting with Department of Transportation Secretary Anthony Foxx. *See* Angie Schmitt, *Will the Feds Support Rochester's Downtown Highway Teardown?*, STREETSBLOGUSA (Aug. 29, 2013), http://dc.streetsblog.org/2013/08/29/will-the-feds-support-rochesters-downtown-highway-teardown/.

Reconnecting city grids can reintegrate communities that were alienated and further disadvantaged by the freeway's initial construction, and even create new neighborhoods.[148] Absent physical barriers that freeways create, local residents can have greater mobility and access to economic opportunities in city centers. Commuters too will have greater opportunity access to downtown businesses that they would have otherwise bypassed on a restricted access freeway route.[149] Successful removal projects have resulted in an increase of surrounding property values and the construction of hundreds or even thousands of new housing units on land otherwise occupied by freeways.[150] The removal of waterfront freeways, completed successfully in San Francisco, and underway in Seattle and St. Louis, arguably provide an even greater city-wide benefit (and may also be met with greater initial support) than inner-city removal projects with benefits largely targeting the proximate neighborhoods.[151] Waterfronts are among a city's greatest assets, and a developed waterfront can not only spur recreation and economic investment amongst its citizens but can also generate greater tourism opportunities.

A major hurdle for cities contemplating freeway removal is overcoming the entrenched pro-freeway stance generally held by suburban commuters, the construction industry, and state government and transportation officials who ultimately control the funds.[152] Cities can counteract these obstacles in initial contemplation stages by initiating a robust public relations campaign to capture the attention of local and state political actors, and harness the support of affected community members, businesses, and other stakeholders. While cities must initiate the need for freeway removal, the keeper of federal

148. *See, e.g.*, *Turning Brownfields into Opportunities for Urban Revitalization: The North End and Park East Corridor in Milwaukee*, P'SHIP FOR SUSTAINABLE CMTY., http://www.sustainablecommunities.gov/pdf/studies/milwaukee.pdf (last updated June 25, 2012).

149. *See, e.g.*, *Inner Loop East Project*, CITY OF ROCHESTER, http://www.cityof rochester.gov/InnerLoopEast/ (last visited Feb. 4, 2014).

150. *See generally* Ebeling, *supra* note 4.

151. *See supra* text accompanying note 1.

152. *Id.*

monies and the ultimate decision maker is the state government and transportation authority.

Every city is different. Each has experienced a different history of highway construction in its urban center, and each contends with different social, economic, and environmental effects of that construction. Furthermore, while every city can benefit from the potential urban revitalization that removing an urban freeway can advance, all differ in both the amount of economic resources available to dedicate to a project and the amount of political support for a project at the local, state, and federal level.[153]

Cities contemplating freeway removal look to completed projects for comparison,[154] and it is clear that a project's success is determined by the convergence of several variables: the freeway is or is soon to be in some form of disrepair, either because it has reached the end of its design life or it otherwise sustains unexpected structural damage; mobility for commuters will not be significantly impaired; local political actors value benefits associated with removal over maintaining the status quo; and, there exists an active group of stakeholders with a concrete development plan.[155]

Currently, urban freeway removal lacks a solid foundation in our national transportation policy. Embedding urban freeway removal in the national transportation policy would put cities with local support for a removal project on more equal footing to initiate projects and more readily access federal financial support. The transportation policy should be amended at the federal level to reflect this burgeoning trend affecting the urban environment.

ISTEA and its successors took a significant step in changing the direction of transportation policy. Congress recognized that the primary objective of the previous transportation policy under the Federal-Air Highway Acts was achieved: a national network of highways in the name of commerce and national defense has been created. ISTEA aimed at achieving greater incorporation of multi-

153. See SEATTLE CASE STUDIES, *supra* note 84, at 6G, in which Seattle distinguishes its economic position from that of Chattanooga, TN when comparing its proposed waterfront highway removal to Chattanooga's.

154. *See id.* at 6A-6K.

155. Francesca Napolitan & P. Christopher Zegras, *Shifting Urban Priorities?: The Removal of Inner City Freeways in the United States*, 2046 J. TRANSP. RES. BOARD 68 (2008).

mode transportation projects to promote energy efficient and environmentally sensitive mobility while improving productivity and economic competitiveness.[156] But the highways must be maintained, and at a significant cost.[157] A majority of transportation funds allocated under the current ISTEA regime are used by state governments and state departments of transportation to repair and maintain highways and bridges, and in some cases, build new ones.[158] State governments' primary transportation concerns are in the areas of traffic flow and road safely; they do not necessarily share their cities' perspectives on the continued need for certain urban routes or on the additional non-traffic oriented benefits of their removal.[159]

The TIGER grant program is evidence that urban freeway removal has a place in the national transportation policy. The largest TIGER grant to date was awarded to Rochester for the removal of a portion of its inner belt freeway. TIGER's ability to deliver money quickly to projects that would otherwise have difficulty securing funds makes the grant program an essential component to the urban freeway removal movement. However, if the grant is for actual demolition and development plans rather than a study of alternatives to an existing freeway spur a city's proposal must be detailed, scheduled, and ready to move forward should a grant be awarded. These requirements make sense considering TIGER's spending authority; however, the requirements put tremendous pressure on a city to dedicate resources to develop a plan that it may not be able to achieve without the grant funds.

The national transportation policy should be revised to specifically grant decision-making authority to regional transportation authorities.[160] Regional transportation authorities can be democratically elected regional legislatures, rather than boards

156. Declaration of Policy: Intermodal Surface Transportation Efficiency Act, Pub. L. 102-240, § 2 (1991).

157. Ebeling, *supra* note 4, at 6.

158. *Id.* at 8–10.

159. *Id.*

160. Some states have created regional transportation authorities with decision-making authority by state law. Georgia is an example. *See* Donald Lee Biola, *Georgia Regional Transportation Authority Act: Provide for a Regional Transportation Authority*, 16 GA. ST. U. L. REV. 233 (1999).

consisting of state and agency appointed members.[161] States can delegate transportation spending authority to regional transportation bodies, converting the role of the state department of transportation to an intermediary between regional authorities and the rest of the state or other designated regions.[162] Such reorganization would alleviate the top-down decision-making approach currently in practice and ensure that metropolitan citizens' views on highway removal are represented in local decision making on highway removal.

The national transportation policy should require the feasibility of urban freeway removal projects within the role of Metropolitan Planning Organizations (MPOs). The purpose of MPOs is to incorporate a regional perspective into the transportation process; however, they are rarely in a position to exert political pressure on the state governments who created them. State authorities acting as ultimate decision makers can undermine MPOs' views and proposals.[163]

Currently, MPOs are tasked with maintaining a metropolitan transportation plan with at least a twenty-year vision, as well as creating a transportation improvement plan (TIP), which describes a proposed list of federally supported projects and strategies to achieve performance objectives identified in the metropolitan transportation plan.[164] The inclusion of a freeway removal proposal in a TIP is a prerequisite for the allocation of federal funds to the project, however the decision of whether to select that project is ultimately approved by the state "in cooperation with the [MPO]."[165] The current transportation policy clearly emphasizes collaborative decision-making but does not mandate it, leaving MPOs, and the cities they represent, little political clout.

---

161. Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1814–15 (2002).

162. *Id.* at 1818. Frug opines that a regional legislature's "tasks would be to confront the basic political issues raised by the design of the transportation network, to forge a regional perspective on the key disputes, and to expand the existing framework to related issues like land use." *Id.* at 1819.

163. *Id.* at 1818.

164. 23 U.S.C. § 134(c) (2012).

165. 23 U.S.C. § 134 (k)(4)(B).

Federal transportation legislation provides an opportunity for states and MPOs to, "while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan."[166] This allowance clearly encapsulates freeway removal proposals, but federal legislation should do more than provide the option for suggesting alternatives for freeway segments reaching the end of their design life. Instead, MPOs should be required to examine the merits of repurposing segments of urban freeway identified as reaching the end of its design life or otherwise in need of significant commitment of federal aid funds for preservation. MPOs that work in tandem with a regional transportation authority as the primary project approver, or in the alternative, MPOs with policy-setting authority divorced from state government control, will allow for local activists and political officials to gain initial traction on urban freeway removal and redevelopment projects.

CONCLUSION

Urban freeway removal as a step toward, and means of, urban renewal is receiving increased attention in urban development policy. Many urban freeways are reaching the end of their design life and are, or will soon be, in need of major structural maintenance and repair. In contemplating next steps, cities are at a crossroads. Depending on the functionality of the freeway in lieu of its social, economic, and environmental impacts, cities must ask, does it make more sense to repair the road or repurpose the freeway space? The history of, and shifts in, highway policy demonstrate both the impetus for, and effects of, urban freeway construction, along with the need to view transportation policy within a greater societal context. Completed urban freeway removal projects, of which there are now only a handful, illustrate both keys to success and hurdles that removal policy proponents must overcome. Federal action to shift metropolitan transportation decision-making authority from state departments of transportation to regional transportation authorities, or

166. 23 U.S.C. § 134 (i)(4)(A) (optional scenario development).

to allocate greater autonomy to the current MPO regime, will help cities with local public and political support for freeway removal to alleviate funding and authorization difficulties. Incorporating urban freeway removal solidly within national transportation policy will not only help create more efficient, sustainable, and prosperous cities, but it may also contribute to a much needed shift away from America's dependence on the automobile.