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City-Wide: A Strategy for Sustainable Growth

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CITY-WIDE: A STRATEGY FOR SUSTAINABLE GROWTH

COLIN PARENT*

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INTRODUCTION

This article suggests a strategy for achieving smart growth land use rules through the adoption of programmatic¹ and city-wide policy.

Programmatic and city-wide policy proposals create more favorable dynamics to allow for smart growth policy outcomes, unlike more traditional approaches of updating neighborhood-level plans, or making land use decisions on a project-by-project basis. Legal principles like forum shopping and concepts from social sciences about political economies and structuring decisions can inform strategy to implement land use policy and local land use law.

This article uses examples from the City of San Diego and its experiences attempting to update its land use policies to focus toward smart growth.² Using a programmatic and city-wide approach to land use reforms is also a strategy that should be considered for cities and regions nationwide.

Political science has long understood that small, well-organized groups seeking concentrated policy gains can often prevail over larger groups seeking diffuse benefits for the general public.³ Legal academia has also recognized this dynamic and its role in land use policy.⁴

1. For this piece, “programmatic policies” are those that apply rules for development across a broad set of properties and neighborhoods that share certain characteristics. To a large degree, “programmatic” in this article is akin to legislative actions. For example, rules that apply to all multi-family developments, or that apply to all developments that include deed-restricted units would be programmatic because they would not be based on particular parcels or neighborhoods. Certain programmatic rules could apply to all developments city-wide, and others could apply to a subset of a jurisdiction, such as for all developments that are near transit.

2. For this piece, “smart growth” means more intense development of jobs and homes in locations that will facilitate more active transportation and use of public transit. This kind of development is essential to achieve reductions in greenhouse gas emissions, and to improve affordability.

3. See MANCUR OLSON JR., *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1965).

4. David Schleicher, *City Unplanning*, 122 *YALE L. REV.* 1707–08 (2013). This article largely agrees with Schleicher on how political economies impact land use

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Opposition to smart growth decisions in the form of community plan updates, or individual project entitlements, can capture concentrated gains for opponents of change while shifting diffuse costs onto the general public. This dynamic strengthens opposition to smart growth when decisions are made on a neighborhood or project level.

Programmatic and city-wide policy decisions create a different dynamic that is more favorable to smart growth outcomes. For large cities, smart growth policies that have a city-wide impact create diffuse public benefits, and any associated costs are also spread out. When costs are not concentrated to any particular neighborhood, small opposition groups have less incentive and capacity to organize against policy changes. Larger groups, with goals to achieve widely-dispersed public benefits, have sufficient motivation and incentive to dedicate political support for city-wide policy changes. Approaching smart growth policy on a programmatic and city-wide basis creates more favorable dynamics for reforms to be politically viable.

This article is intended to inform how local governments plan out their policy agendas, where they allocate staff resources, and how they spend political capital. Planners and staff for mayors and city managers can also use the strategy in this article to present smart growth policy proposals to elected decision-makers that create more favorable dynamics for adoption. Programmatic policy changes and city-wide land use code updates can be important tools, if policymakers understand their value and the opportunity they represent.

I. ACHIEVING SMART GROWTH OUTCOMES IS POLITICALLY DIFFICULT

A. *Background on the City of San Diego*

Outdated development policies and housing shortages have become common in large American cities.⁵ Current San Diego land use policies uniquely undermine the goals of smart growth. A recent study found that San Diego land use around transit was the least well utilized in

decision-making, but I argue for a different strategy for how to navigate those dynamics.

5. See *State of the Nation's Housing*, JOINT CENTER FOR HOUS. STUDIES OF HARVARD UNIV. (2015), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-sonhr-2015-full.pdf>.

California.⁶ A full forty percent of housing costs in San Diego are the result of regulatory choices, not merely the high demand for the region's good weather and proximity to the ocean.⁷ The cost of housing to renters and buyers is often substantially higher than the cost of development in other American cities today. San Diego is one of the few markets in the nation where this has been a problem since as early as the 1970s.⁸

San Diego's poor record of smart growth runs counter to some of the city's stated goals. The City of San Diego has adopted a variety of forward-looking plans intended to implement smart growth policy. These plans reflect a general consensus, at least in the abstract, that more growth near transit is a desired outcome. San Diego's General Plan City of Villages Strategy⁹ and Climate Action Plan ("CAP")¹⁰ are the two most important documents. Each calls for land use rules that facilitate more development, more homes, and more jobs near the region's transit investments.

The General Plan does not by itself add development capacity near transit. The General Plan's City of Villages Strategy relies on future updates to community plans to "designate land uses and assign densities, [requiring that] they must preserve or increase planned capacity of residential land uses to ensure compliance with the City's

6. See Ethan N. Elkind, Michelle Chan, & Tuong-Vi Faber, *Grading California's Rail Transit Station Areas*, CENTER FOR LAW, ENERGY, & THE ENV'T AT UC BERKELEY SCHOOL OF LAW at 3, 14, 39 (Oct. 5, 2015), <https://www.next10.org/sites/default/files/grading-california-rail-transit-station-areas.pdf>.

7. *Opening San Diego's Door to Lower Housing Costs*, FERMANIAN BUS. & ECON. INST. AT POINT LOMA NAZARENE UNIV. at 11 (Jan. 2015), <http://nebula.wsimg.com/de788b5616c255287f0d8d294150d113?AccessKeyId=83DD3BA8B6D5B0BFB690&disposition=0&alloworigin=1>.

8. Edward L. Glaeser, Joseph Gyourko, & Raven E. Saks, *Why Have Housing Prices Gone Up?*, HARVARD INST. OF ECON. RESEARCH at 5 (Feb. 2005), https://scholar.harvard.edu/files/glaeser/files/why_have_housing_prices_gone_up.pdf.

9. CITY OF SAN DIEGO, GENERAL PLAN LAND USE AND COMMUNITY PLANNING ELEMENT 22 (2010), <http://www.sandiego.gov/planning/genplan/pdf/generalplan/landuse2010.pdf>.

10. CITY OF SAN DIEGO, CLIMATE ACTION PLAN 37–39 (Dec. 5, 2015, amended July 12, 2016), https://www.sandiego.gov/sites/default/files/final_july_2016_cap.pdf.

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regional share goal.”¹¹ In short, the General Plan relies on future planning efforts to implement its goal.

Similarly, the CAP does not directly add development capacity, or make development more feasible near transit. Instead, the CAP sets goals for the number of people who live near transit stations who will use public transportation instead of private vehicles to commute. The CAP also requires the city to later adopt policies and community plan updates that will achieve its mode share and climate goals.¹²

Both the CAP and the General Plan look toward future updates to planning documents to achieve their goals. They rely on one-off and case-by case decisions that affect neighborhood-level plans or individual entitlements. They reflect a standard approach to land use planning decisions¹³ and do not make use of the potential advantages of more legislative and programmatic policy proposals.

B. In San Diego, Neighborhood-Level Plans are Difficult to Update

The City of San Diego has a General Plan and roughly 50 community plans that outline land use and zoning rules at a neighborhood level.¹⁴ Community plans are the documents where the rubber meets the road for many local land use goals. They translate conceptual visions into on-the-ground land use rules for what can be built where.

For proponents of smart growth, efforts to update San Diego community plans have been frustrating. As an initial matter, updating community plans takes a long time. They also require consistent and ongoing resources to bring them to fruition. Budget crises and shifting

11. GENERAL PLAN LAND USE AND COMMUNITY PLANNING ELEMENT, *supra* note 9, at 22.

12. CLIMATE ACTION PLAN, *supra* note 10, at 37–39.

13. ROBERT C. ELLICKSON & VICKI L. BEEN, LAND USE CONTROLS: CASES AND MATERIALS 86–92 (3d ed. 2005) (discussing common one-off land-use procedures as plans, maps, map amendments, and variances).

14. *Community Profiles*, SANDIEGO.GOV, <https://www.sandiego.gov/planning/community/profiles> (last visited May 1, 2019).

political priorities have limited the City of San Diego's ability to update its community plans.¹⁵

Further, even the plans that have been updated recently after years of delay—or those near completion—have often not resulted in smart growth outcomes. Recent efforts to update the Barrio Logan community plan were overturned through a ballot initiative.¹⁶ Many members of community planning groups in the Uptown and North Park neighborhoods fiercely resist added density, despite those areas' rich transit options. Some proposals for updates to those plans only allow new capacity if tied with time-consuming and discretionary review processes.¹⁷

Some bright spots for smart growth have occurred, like the residential capacity added to the Southeastern Community Plan.¹⁸ There has been some suggestion that added capacity in neighborhood-level plans tends to occur in areas without near-term market-interest for new development.¹⁹ Some finalized community plan updates, like in Uptown, produced mixed results with an overall capacity reduction, but that was paired with less restrictive height limits.²⁰ More recent community plan updates have been more aggressive in moving the

15. Adrian Florido, *Next on the Chopping Block: Community Plans?*, VOICE OF SAN DIEGO (Nov. 30, 2010), <http://www.voiceofsandiego.org/photo-book/next-on-the-chopping-block-community-plans>.

16. Tom Fudge & Jill Replogle, *San Diego Voters Reject Barrio Logan Community Plan*, KPBS (June 4, 2014), <http://www.kpbs.org/news/2014/jun/03/council-plan-barrio-logan-losing-early-returns>.

17. Andrew Keatts, *North Park Presents a Big Test for City's Climate Action Plan*, VOICE OF SAN DIEGO (Jan. 21, 2016), <http://www.voiceofsandiego.org/topics/land-use/north-park-presents-a-big-test-for-citys-climate-action-plan>.

18. David Garrick, *Zoning changes aim to boost Southeastern San Diego*, SAN DIEGO UNION TRIBUNE (Dec. 6, 2015, 7:00 AM), <http://www.sandiegouniontribune.com/news/2015/dec/06/encanto-southeast-san-diego-zoning-development>.

19. Andrew Keatts, *Council Members Want Zombie Redevelopment Dollars to Lure Actual Development Dollars*, VOICE OF SAN DIEGO (Apr. 13, 2016), <http://www.voiceofsandiego.org/topics/land-use/council-members-want-zombie-red-velopment-dollars-to-lure-actual-development-dollars>.

20. Andrew Bowen, *San Diego City Council OKs Uptown Growth Plans*, KPBS (Nov. 15, 2016), <https://www.kpbs.org/news/2016/nov/15/san-diego-city-council-oks-uptown-growth-plans>; CITY OF SAN DIEGO, UPTOWN COMMUNITY PLAN UPDATE PRESENTATION (Feb. 2, 2016), https://www.sandiego.gov/sites/default/files/2016_feb_2_uptown_planners_lu_presentation.pdf.

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needle in the direction toward sustainable growth, however sometimes still modestly.²¹

C. Innovations to Update Only Subsets of Community Plans in San Diego are No Silver Bullet

In 2013, the City of San Diego responded to the difficulty of updating community plans by proposing to update only portions of individual community plans. Instead of attempting to reach community consensus over a large and complex plan, the strategy was to update only the parts of community plans where development was likely to occur, such as near transit.²² The hope behind this approach was that a smaller piece of geography would be administratively simpler, and keeping the plan changes to commercial and multi-family areas was likely to generate less opposition from incumbent single-family home owners.

Unfortunately for smart growth proponents, the attempt to update planning documents around only transit stations was not any easier. In the Clairemont neighborhood, that strategy was used to propose updated land uses near the stations of the planned Mid-Coast Trolley Extension. The planning effort resulted in one of the most unruly land use debates in recent memory.²³ As a result, the City of San Diego has

21. Andrew Bowen, *San Diego City Council Approves Update To North Park Growth Plans*, KPBS (Oct. 25, 2016), <https://www.kpbs.org/news/2016/oct/25/north-park-community-plan-update-san-diego-council>; David Garrick, *Planning Commission approves dense housing near Morena Boulevard trolley stations*, SAN DIEGO UNION TRIBUNE (Feb. 21, 2019, 2:45 PM), <https://www.sandiegouniontribune.com/news/politics/sd-me-morena-building-height-20190221-story.html>.

22. Andrew Keatts, *The Plan to Fix Lengthy Plan Updates*, VOICE OF SAN DIEGO (Nov. 20, 2013), <http://www.voiceofsandiego.org/all-narratives/growth-housing/the-plan-to-fix-lengthy-plan-updates/>.

23. Andrew Keatts, *An Unruly Clairemont Crowd Asks: 'Leave Us in Peace'*, VOICE OF SAN DIEGO, (May 1, 2014), <http://www.voiceofsandiego.org/all-narratives/height-limit/an-unruly-clairemont-crowd-asks-leave-us-in-peace>.

struggled, going back and forth from only marginal increases to land use capacity²⁴ to a more robust proposal years later.²⁵

It should be noted that efforts to update subsets of community plans have resulted in some positive smart growth outcomes. The Grantville Focused Plan Amendment²⁶ is an example of a successful use of this strategy—it created higher development capacities than the initial efforts around the planned Mid-Coast Trolley Extension. However, San Diego’s experience has shown that there is no silver bullet from updating only parts of community plans. The point is not that community plan updates, or updates to subset of plans, cannot ever achieve smart growth goals; instead, San Diego’s experience shows that those changes to land use are long and difficult, even when smaller in geographic scale.

D. Capacity Limits in San Diego’s Community Plans are not the Only Barriers to Smart Growth

Much of the conversation around the need to improve land use outcomes in the City of San Diego focuses on adding development capacity to community plans. While targeted increases to capacity may very well be necessary, it is not the only strategy available to increase the supply of homes, and to build more near transit.

The City of San Diego already zones a sufficient number of parcels for multi-family development to accommodate all of its projected

24. Compare Memorandum from William Fulton, Director, City of San Diego Neighborhoods & Econ. Dev. Dep’t., to Lorie Zapf, Councilmember, District 6 (Apr. 23, 2014), <http://voiceofsandiego.org/wp-content/uploads/2014/04/FultonMemo.pdf> with Memorandum from Mike Hansen, Director, City of San Diego Planning Dep’t., to Lorie Zapf, Councilmember, District 6 (Sept. 17, 2018), <https://www.voiceofsandiego.org/wp-content/uploads/2018/09/Hansen-memo-to-CM-Zapf-re-Revisions-to-the-Morena-Corridor-Specific-Plan.pdf>. See also Andrew Keatts, *City on Raising Clairemont Height Limit: Nevermind*, VOICE OF SAN DIEGO (Apr. 24, 2016), <http://www.voiceofsandiego.org/2014/04/24/city-on-raising-clairemont-height-limit-nevermind/>.

25. Andrew Keatts, *The Mid-Coast Trolley’s On-Again-Off-Again Height Limit Increase Is On Again*, VOICE OF SAN DIEGO (Jan. 24, 2019), <https://www.voiceofsandiego.org/topics/land-use/the-mid-coast-trolleys-on-again-off-again-height-limit-increase-is-on-again>.

26. CITY OF SAN DIEGO, MINUTES FOR REGULAR COUNCIL MEETING, ITEM 332: GRANTVILLE FOCUSED PLAN AMENDMENT (June 9, 2015, 2:39 PM), http://sandiego.granicus.com/MediaPlayer.php?view_id=3&clip_id=6442.

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housing needs.²⁷ All jurisdictions in California are required to meet this zoning threshold through Housing Element Law.²⁸ While some cities resist these requirements,²⁹ San Diego has a history of dutiful compliance.

Although the City of San Diego does set aside sufficient land for homes, San Diego fails to produce as many homes as their housing element allows.³⁰ The figures are especially dire for homes that are affordable to low income families.³¹ San Diego is not alone in this; other cities across California have similarly low production figures compared to need, despite sufficient, planned residential capacity.³² A growing body of research shows that zoning capacity alone is not sufficient to meet housing needs. Several studies have shown that California Housing Element Law is insufficient to meet its goals.³³ Further, recent studies of upzoning in Chicago also show unsatisfactory results in the short term.³⁴

27. See SAN DIEGO ASS'N OF GOV'TS, REGIONAL HOUSING NEEDS ASSESSMENT PLAN (Oct. 28, 2011), http://www.sandag.org/uploads/publicationid/publicationid_1661_14392.pdf.

28. CAL. GOV'T CODE § 65100 (West 2019).

29. Jesse Marx, *Judge Puts Encinitas Voters' Veto Power Over Housing Plans on Ice*, VOICE OF SAN DIEGO (Dec. 12, 2018), <https://www.voiceofsandiego.org/topics/land-use/judge-puts-encinitas-voters-veto-power-over-housing-plans-on-ice>.

30. REGIONAL HOUSING NEEDS ASSESSMENT PLAN, *supra* note 27, at 23.

31. *Id.*

32. CAL. DEP'T OF HOUS. & COMTY. DEV., SB 35 STATEWIDE DETERMINATION SUMMARY (Dec. 2018), http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf (demonstrating that most jurisdictions in California have failed to produce sufficient homes, qualifying them for housing streamlining benefits from Senate Bill 35).

33. MAC TAYLOR, DO COMMUNITIES ADEQUATELY PLAN FOR HOUSING?, CAL. LEGISLATIVE ANALYST'S OFFICE (Mar. 8, 2017), <https://lao.ca.gov/reports/2017/3605/plan-for-housing-030817.pdf>; see Paul G. Lewis, *California's Housing Element Law: The Issue of Local Noncompliance*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (2003), https://www.ppic.org/content/pubs/report/R_203PLR.pdf; Liam Dillon, *California lawmakers have tried for 50 years to fix the state's housing crisis. Here's why they've failed*, L.A. TIMES (June 29, 2017, 3:00 AM), <https://www.latimes.com/projects/la-pol-ca-housing-supply>.

34. See Yonah Freemark, *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction*, URB. AFF. REV. (Jan. 29, 2019), <https://journals.sagepub.com/doi/abs/10.1177/1078087418824672>.

Since there is no equivalent state law to housing elements for commercial development capacity, quantifying the adequacy of development capacity for non-residential projects is not straight forward. However, the City of San Diego does employ a significant set of policies in its General Plan to preserve lands for industrial and economic development.³⁵

There are two primary reasons why new developments do not occur on the level that San Diego's zoning capacity allows. First, zoning capacity may not be located in areas where market demand is sufficient to actually build. If everyone in San Diego wants to live on the coast, but San Diego satisfies its housing element requirements by primarily adding capacity away from the coast, in areas without strong market demand, then less housing will be constructed than the Housing Element would permit. Similarly, the land reserved for commercial and industrial development may not be located where there is a market for firms to locate or expand.

Second, policies and development requirements may make new projects financially unfeasible at the accommodated density levels. These barriers often have nothing to do with density limitations. Non-density policies that inhibit sustainable growth can be embedded in community plans, such as height limits, setback requirements, fees on new developments, and public review requirements that add delays and costs to new projects. If these requirements make building up to zoning capacity impractical from a financial perspective, developers will not build—or not build to full capacity. In theory, community plan updates can fix some of the non-density barriers to sustainable growth that are included in those plans, so developments can actually achieve the densities the decisionmakers have decided to accept.

Many policies that inhibit growth are not in community plans, but are instead embedded in the municipal code or other city-wide policies. In the City of San Diego off-street parking requirements,³⁶ the methods for fee calculations³⁷ and the process for measuring and mitigating

35. CITY OF SAN DIEGO, GENERAL PLAN, ECONOMIC PROSPERITY ELEMENT (2008), <https://www.sandiego.gov/sites/default/files/legacy/planning/genplan/pdf/generalplan/adoptedepelem.pdf>.

36. SAN DIEGO, CAL., MUNICIPAL CODE ch. 14, §§ 142.0501–142.0560 (2019).

37. SAN DIEGO, CAL., MUNICIPAL CODE ch. 14, §§ 142.0601–142.0680 (2019).

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traffic impacts³⁸ are all policies that restrict new development, but which are largely located in city-wide codes and not in neighborhood-level community plans. These barriers to development are often not tied to any limitations on density or zoning capacity. Amending community planning documents, or adding allowed development capacity, will do nothing to address barriers created by these city-wide policies. Similarly, recent proposals to create additional zoning capacity through mechanisms like zoning budgets³⁹ do not address these non-capacity restraints on development.

Programmatic and city-wide policy changes should be a part of any effort to improve smart growth outcomes. These changes are necessary to address the non-density barriers to smart growth. Further, programmatic policy changes can also be easier to adopt, politically.

II. STRUCTURE OF POLICY QUESTIONS IMPACT THE EASE OF SMART GROWTH POLICY ADOPTION

A. *Smart Growth Policy is More Difficult to Adopt when it has a Narrower Geographic Impact*

Community plan updates for smart growth outcomes are difficult to achieve. Despite being smaller and having a limited impact, updating subsets of community plans can be even more difficult. The smaller the scope of a smart growth policy, the more effective the opposition seems.

While this dynamic may seem counterintuitive, it is not unfamiliar to anyone involved with the politics of real estate development. When a project seeks entitlements through conditional use permits, variances, or zoning amendments, it often seeks policy changes on the most geographically narrow of questions: the development of an individual project. Opposition to individual projects is often the subject of the most rancorous and effective public opposition.

38. CITY OF SAN DIEGO, TRAFFIC IMPACT STUDY MANUAL (July 1998), <https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/trafficimpact.pdf>; CITY OF SAN DIEGO, LAND DEVELOPMENT CODE TRIP GENERATION MANUAL (May 2003), <https://www.sandiego.gov/sites/default/files/legacy/planning/documents/pdf/trans/tripmanual.pdf>.

39. See Roderick J. Hills, Jr. & David N. Schleicher, *Balancing the "Zoning Budget,"* 42 CASE W. RES. L. REV. 81 (2011).

Policy changes with a relatively narrow geographic scope directly impact a small set of people. Nonetheless, opposition to sustainable growth policy seems to be effective and fervent when those policies impact the fewest number of people, or the smallest amount of geography. This begs the question of “Why?”

Political science has the answer. In 1963, Mancur Olson wrote that when public policy can provide concentrated benefits to smaller and more easily organized groups, those groups are often able to prevail over larger groups even when costs are spread across society.⁴⁰

Land use politics fits Olson’s observation. Broader society is likely to experience diffuse public benefits from smart growth policies because of reduced congestion, lower greenhouse gasses, economic growth, and more affordable homes. However, the benefit to the city as a whole from one neighborhood-level plan, or one new housing development may be relatively small and diffuse. As such, larger city-wide interests like housing advocates, business groups, and smart growth environmentalists may not see the value in spending time and resources to support individual projects or community plan updates. The narrowness of small-scale decisions creates collective action problems for large groups interested in promoting wider benefits. Large groups will have greater difficulty policing free-riders, who let others do the hard work of organizing for new smart growth development, but hope to partake in development’s benefits.

For small-scale decisions, individual residents or neighborhood groups who oppose smart growth are better situated to advocate for their own interests. Anti-development forces express their preference for policy outcomes such as maintaining the status quo, limiting access to neighborhood amenities, and enhancing their own property values by excluding new developments nearby.⁴¹ They may feel that those outcomes provide them with concentrated benefits, or at least ward off an experience of concentrated harms. Like many political actors, anti-development advocates can seek policy outcomes that they feel will benefit them, even if that would externalize costs onto society more generally.

40. See OLSON, *supra* note 3; see also Schleicher, *City Unplanning*, *supra* note 4, at 1707–08 (discussing Olson in depth).

41. See WILLIAM A. FISCHER, *THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, & LAND-USE POLITICS* (2001).

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Unlike larger, regional groups who may support more smart growth development, smaller groups who oppose development are easier to organize. There are lower costs to organizing smaller groups, whose members often live near one another and have more immediate and shared concerns. Smaller groups can also utilize social pressures to keep their neighbors from free-riding. In addition, smaller groups may also feel that the public policy benefit at stake is of a unique impact to them directly. The narrowness of who might benefit from a small-scale public policy helps individuals and smaller groups feel justified in spending the time and effort to advocate for their views.

While the entire city might benefit from smart growth, San Diego's choice to have many small-scale community plans gives smart growth opponents a structural advantage over land use policy. Dividing development decisions into neighborhood level community plans, which are smaller and less diverse than the city as a whole, provides smaller anti-growth groups with more leverage. Development opponents have both the incentive and ability to organize for policy outcomes they believe will benefit their neighborhood, even if their policy preferences would result in diffuse costs to the broader public.

The City of San Diego compounded the advantage to anti-development groups by forming community planning groups to advise on small-scale neighborhood and project-level decisions. While these groups provide important local perspective, they often adopt recommendations against smart growth. Recent publications have demonstrated that the rules governing the City of San Diego's community planning groups allow for the exclusion of many community members, which conflicts with generally accepted commitments to democratic participation in local government.⁴² The City of San Diego actually pre-organizes the opposition.⁴³ These kinds

42. Colin Parent, Maya Rosas, & Oscar Medina, *Democracy in Planning*, CIRCULATE SAN DIEGO (2018), <http://www.circulatesd.org/democracyinplanning>; OFFICE OF THE SAN DIEGO CITY AUDITOR, PERFORMANCE AUDIT OF COMMUNITY PLANNING GROUPS (Dec. 13, 2018), https://www.sandiego.gov/sites/default/files/19-013_community_planning_groups.pdf; SAN DIEGO GRAND JURY, SAN DIEGO COMMUNITY PLANNING GROUPS (Apr. 18, 2018), <https://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2017-2018/SanDiegoCommunityPlanningGroups.pdf>.

43. Other academic work has shown that neighborhood councils like San Diego's community planning groups can be institutional organs to oppose new development. Schleicher, *City Unplanning*, *supra* note 4, at 1712. The City of Seattle

of structures can impact who does and who does not participate in land use decision-making.⁴⁴

Of course, the community planning process also provides substantial benefits by providing expertise and public participation by residents, many of whom nobly seek broad public benefits from neighborhood level plans. Nonetheless, it is important to recognize that the community planning process in San Diego structurally disfavors considerations of broader public goals in land use decision-making.

B. Smart Growth Policies are Easier to Adopt when they are Programmatic or City-Wide

Olson's theory predicts that if smaller anti-development groups are unable to achieve concentrated benefits from policy, their incentives to oppose smart growth policies diminish and their efforts will be less effective. This suggests that policymaking on a larger geographic scale will more likely result in better outcomes for smart growth. Several empirical studies have supported this idea, where dispositive land use decisions are made at higher levels of government. Specifically, a recent study showed that where land use decisions are made at a higher level of government, housing tends to be less income segregated.⁴⁵ That same study showed jurisdictions that require more public decision-making steps for project entitlement—which are often neighborhood-level processes—tend to experience more income segregation. The California Legislative Analyst's Office also credits the strong roles some states play in local planning decisions as the cause for higher housing construction and better affordability outcomes.⁴⁶

recently ended public support for their various neighborhood groups, replacing them with several city-wide mechanisms to collect public input. Erica C. Barnett, *How Seattle Is Dismantling a NIMBY Power Structure*, NEXTCITY (Apr. 3, 2017), <https://nextcity.org/features/view/seattle-nimbys-neighborhood-planning-decisions>.

44. Katherine Levine, Maxwell Palmer, & David M. Glick, *Who Participates in Local Government? Evidence from Meeting Minutes*, PERSPECTIVES ON POLITICS (June 29, 2018), <http://sites.bu.edu/kleinstejn/research>.

45. See MICHAEL C. LENS & PAAVAO MONKKONEN, DO STRICT LAND USE REGULATIONS MAKE METROPOLITAN AREAS MORE SEGREGATED BY INCOME? (2015), <http://www.anderson.ucla.edu/Documents/areas/ctr/ziman/2015-04WP.pdf>.

46. MAC TAYLOR, CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES, CAL. LEGISLATIVE ANALYST'S OFFICE (Mar. 17, 2015), <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

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For local governments, this insight means they will find more favorable political environments if they pursue policy on a larger geographic scale as opposed to a smaller one. Decisionmakers in local government do not have the option to allocate more decision-making to higher levels of government such as the state legislature. However, cities do have the authority to focus their efforts on programmatic and city-wide policy changes, and to avoid making neighborhood or project-level choices.

Because of their scale of impact, city-wide policy efforts have the potential to create more diffuse benefits that span across multiple neighborhoods. These policies do not generate the same potential to create concentrated neighborhood-level benefits, removing the incentive for local opponents to organize for their own ends at the expense of the broader public.

The potential for widespread benefits also incentivizes city-wide and regional political actors to engage in these efforts. A policy that will broadly increase the supply of housing in a region can engage housing advocates,⁴⁷ climate activists, and business groups in a way that any individual development may not. City-wide groups can see the benefit of weighing in on city-wide policies because the scale of their impact can be sufficiently large. In effect, city-wide and legislative decision-making addresses the collective action problem of local land use decisions by aggregating decisions.⁴⁸ Instead of fighting hundreds or thousands of project-level decisions, pro-housing and pro-development groups can focus their efforts on a handful of key city-wide policies.

Programmatic and city-wide policies also can engage new and powerful political supporters, who can be enlisted to overcome anti-development opposition. New developments generally create a new economic surplus that developers and their investors are attempting to capture. A common dynamic in development fights includes developers agreeing to carve out a portion of that economic surplus to transfer to project opponents to secure their support or neutrality. This can mean developers agree to build a new park or change design

47. Developers can also act as an imperfect stand-in for the interests of people who want access to new homes, who have insufficient incentives to lobby for themselves. Schleicher, *City Unplanning*, *supra* note 4, at 1709.

48. There are also other methods to aggregate smaller decisions in decision-making, including through binding precedent and class actions. *Id.* at 1715 n.172.

elements of a building. Sometimes what opponents seek is not a share of the new larger economic pie, but rather a smaller building or a building to house fewer people. This can actually reduce the new economic value and also reduce the number of homes or workplaces created. This means that the exchange of value between the developer and the opponents may also create diffuse harms to a community that needs more homes or economic development.

Some have argued that a strategy to address neighborhood opposition should be to establish policies that institutionalize the transfer of new value generated from development to the opposition. One proposal is “Tax Increment Local Transfers,” which would dedicate a share of future tax increment caused by a new development to the residents where that development is located.⁴⁹ Developments in California already create a similar type of transfer in the form of unusually large development impact fees.⁵⁰ Those fees are a major source of funding to neighborhood-level improvements like street facilities, parks, and more. However, the potential for neighborhoods to benefit financially from new developments does not seem to have caused many opposition groups to become supporters of new housing, and instead the added costs to development is likely deterring housing construction.⁵¹

An alternative strategy facilitated by larger-scale programmatic policies is to grow the economic increment of future new developments and allocate some of that added value to new stakeholders who can be enlisted to support the policy change. Density bonuses are a good example of such a policy strategy. Density bonus programs provide more development capacity to a developer, increasing the value increment. Use of a density bonus program is contingent on a developer allocating some of the new value to deed-restricted affordable units.

49. *Id.* at 1726–32.

50. Clancy Mullen, *National Impact Fee Survey: 2015*, DUNCAN ASSOCIATES (Nov. 11, 2015), http://impactfees.com/publications%20pdf/2015_survey.pdf; Adam Deermount, *Why are California impact fees so high?*, BUILDER (May 23, 2016), https://www.builderonline.com/building/regulation-policy/why-california-impact-fees-are-so-high_o.

51. Sarah Mawhorter, David Garcia, & Hayley Raetz, *It All Adds Up: The Cost of Housing Development Fees in Seven California Cities*, TERNER CTR. FOR HOUS. INNOVATION (Mar. 2018), http://turnercenter.berkeley.edu/uploads/Development_Fees_Report_Final_2.pdf.

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Advocates for low income housing are likely to lend political support to a proposal to create such a policy, even though they may be agnostic or disengaged in a policy that merely upzoned without an affordable requirement.

This is a concept that is distinct from past views of how developers can navigate a city's anti-development politics. Instead of individual developers needing to overcome opposition on their individual projects, they can find a common cause with other developers as well as advocates for other issues like housing supply, climate change, and affordability. To create an effective political economy around a policy decision, policymakers can design smart growth proposals to create opportunities for alliance-making between interest groups that have not always seen value in collaboration. Such coalitions can provide political cover for elected decisionmakers, especially against the preferences for status quo that so often dominate conversations about land use policy.

Fortunately, city-wide policies that promote smart development—especially near transit—have the potential to attract wide and diverse support. The business community is interested in smart growth in part because any development is economic activity, which tends to benefit the economy as a whole.⁵² Smart growth also increases the accessible labor pool to local employers.⁵³ Advocates for affordable homes support more housing overall;⁵⁴ they support smart growth because it will allow low income residents to live near transit, so they can move around more affordably and conveniently.⁵⁵ Many environmentalists

52. Dena Belzer, Sujata Srivastava, & Mason Austin, *Transit and Regional Economic Development*, CTR. FOR TRANSIT-ORIENTED DEV. (May 2011), <http://www.reconnectingamerica.org/assets/Uploads/TransitandRegionalED2011.pdf>.

53. Christopher B. Leinberger & Michael Rodriguez, *Foot Traffic Ahead: Ranking Walkable Urbanism in America's Largest Metros*, GEO. WASH. SCH. OF BUS. 27 (2016), <http://www.smartgrowthamerica.org/documents/foot-traffic-ahead-2016.pdf>

54. CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES, *supra* note 46.

55. Zak Accuardi, *Inclusive Transit: Advancing Equity Through Improved Access and Opportunity*, TRANSITCENTER (July 17, 2018), <http://transitcenter.org/wp-content/uploads/2018/07/Inclusive-1.pdf>; see CTR. FOR TRANSIT-ORIENTED DEV. AND CTR. FOR NEIGHBORHOOD TECH., THE AFFORDABILITY INDEX: A NEW TOOL FOR MEASURING THE TRUE AFFORDABILITY OF A HOUSING CHOICE, BROOKINGS

support transit oriented development and other sustainable growth policies that allow more people to commute without a car, which is critical to lowering greenhouse gas emissions.⁵⁶

This is not to say that every decision should be made on a city-wide basis. The nature of real estate is uniqueness, and certain projects or parcels will surely require individual decision-making from time to time. Changing land use designations from industrial to residential generally must occur through zoning changes on an individual parcel of the neighborhood-level plan. Also, certain other decisions should be made at the neighborhood level, as such discourse positively impacts many types of land use policy. Further, issues of design, character, and history may all be appropriate for decision-making at a project, or neighborhood level.

Cities have options for how to adopt policy. If a city desires more smart growth outcomes, it could choose to set up a series of votes to separately change policies in a variety of separate neighborhoods. Each vote would attract its own set of opponents and supporters. Smaller anti-development groups from each neighborhood would have incentives to stop the policy changes that impact them most directly. Alternatively, a city could set up one or two votes that change policy across multiple neighborhoods at the same time, allowing more smart growth development. Such a programmatic policy could have as much impact as a series of neighborhood-level policy changes, but with a more favorable political dynamic that removes the incentive for anti-development groups to seek concentrated benefits for themselves at the cost of the broader public.

Every city and elected official has limited time and political capital. Political energies and staff time dedicated to achieving smart growth outcomes should be focused on policy decisions where the political economy is most likely to result in supportive decisions. This is similar to the concept of forum shopping, a concept from legal advocacy that

INSTITUTE (Jan. 2006), https://www.brookings.edu/wp-content/uploads/2016/06/20060127_affindex.pdf.

56. *Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy*, TRANSFORM (May 2014), <http://www.transformca.org/transform-report/why-creating-and-preserving-affordable-homes-near-transit-highly-effective-climate>.

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can be usefully applied to land use policymaking.⁵⁷ If smart growth goals are more likely to be supported when they are presented as city-wide legislative proposals, then that is a preferable forum than individualized and neighborhood-level decisions.

Similarly, political scientists have found that how policy questions are presented can have an impact on the outcome. The concept of “heresthetics” from William H. Riker suggests that political actors can structure political decision-making in a manner that can help them achieve their policy goals, even if the policy preferences of decisionmakers remain static.⁵⁸ Therefore, if local decisionmakers are more likely to oppose smart growth decisions that are on a smaller geographic area, then politicians, policy staff, and planners should propose policy solutions to apply to larger geographic areas.

III. REAL WORLD EXAMPLES SHOW PROGRAMMATIC AND CITY-WIDE POLICIES CAN ACHIEVE SMART GROWTH OUTCOMES

A. *San Diego Enjoys Success Adopting Smart Growth Policy City-Wide*

The City of San Diego is traditionally a car-oriented sunbelt city, with demonstrable difficulties achieving smart growth outcomes. However, San Diego has enjoyed recent examples of how programmatic and city-wide policies can be politically viable to achieve smart growth goals.

In 2012, San Diego adopted a progressive set of rules that require less parking for deed-restricted affordable homes, especially for those projects developed near transit.⁵⁹ The reform came after a 2011 study which found excessive parking had been constructed in deed-restricted affordable buildings.⁶⁰ This policy was careful not to define parking rules on the basis of a map, but instead defined them based on

57. Mary Garvey Algero, *In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*, 78 NEB. L. REV. 79, 105 (1999).

58. See WILLIAM H. RIKER, *THE ART OF POLITICAL MANIPULATION* (Yale Univ. Press 1986).

59. SAN DIEGO, CAL., MUNICIPAL CODE ch. 14, §§ 142.0501–142.0560 (2019).

60. Wilbur Smith Associates, *San Diego Affordable Housing Parking Study* (Dec. 2011), <https://www.sandiego.gov/sites/default/files/legacy/planning/programs/transportation/mobility/pdf/111231sdafhfinal.pdf>.

programmatic elements like a project's walkability to transit. This policy change was adopted city-wide and with relatively little opposition. One might imagine a different result for this set of new parking rules if they were proposed for a single neighborhood, and incumbent residents felt singled out and organized to stop reform. Parking policy in the City of San Diego is traditionally a city-wide programmatic policy, as the parking rules are generally located in the city-wide municipal code.⁶¹

The recent enhancements to the City of San Diego's density bonus program are instructive. San Diego's enhanced bonus policy allows developers to build even more units than state density bonus⁶² in exchange for higher dedication of deed-restricted affordable homes.⁶³ This is a programmatic policy that allows developments to build above and beyond what underlying zoning would allow.

This program update attracted a wide variety of supporters, including organizations that promote affordable housing, market-rate developers, climate advocates, business organizations, and professional REALTORS.⁶⁴ These groups often align on different sides of the political spectrum. However, they have a common desire to add more housing supply, more development near transit, and to streamline the process for the right kinds of developments. The author of this article began the effort to develop the enhancements to the density bonus program, with the intent to both utilize and demonstrate the ideas that are discussed in this piece. The program was adopted unanimously with

61. SAN DIEGO, CAL., MUNICIPAL CODE ch. 14, §§ 142.0501–142.0560 (1997), [http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02 Division05.pdf](http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02%20Division05.pdf). While parking rules in the City of San Diego have generally been located in the city-wide municipal code, certain sets of rules applied to certain programmatic areas like beaches or near universities. The rules reflected inconsistent priorities, developed over time in a haphazard fashion. See Colin Parent, *Parking*, CIRCULATE SAN DIEGO (May 5, 2016), <http://www.circulatesd.org/parking>.

62. CAL. GOV'T CODE §§ 65915–65918 (1979);

63. SAN DIEGO, CAL., MUNICIPAL CODE ch. 14, §§ 143.0710–143.0750 (1997), [http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art03 Division07.pdf](http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art03%20Division07.pdf).

64. Colin Parent, *Policy Letter: Coalition of Supporters for Affordable Homes Bonus Program*, CIRCULATE SAN DIEGO (June 16, 2016), <http://www.circulatesd.org/affordablehomesbonus> (demonstrating a group of ideologically diverse organizations supporting an enhancement to the City of San Diego's density bonus program).

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almost no public opposition.⁶⁵ Initial data shows that the program is driving new construction of both market-rate and affordable homes.⁶⁶

In 2017, San Diego's current Mayor Kevin Faulconer released his "Housing-SD" strategy which includes a large number of city-wide and programmatic policy proposals, along with continued efforts to update community plans.⁶⁷ One of the first programmatic policies adopted furthered enhancements to the City of San Diego's density bonus program, replicating the earlier success with a similar set of coalition partners.⁶⁸

More recently, the City of San Diego adopted more dramatic parking reform, eliminating parking minimums for developments within a half mile of high performing transit.⁶⁹ While the vote was not unanimous,⁷⁰ it was adopted by a supermajority of councilmembers and with support of a broad coalition of supporters. The policy is programmatic for any development that meets certain characteristics.

65. *Council Hearing Minutes*, CITY OF SAN DIEGO (June 21, 2016), <http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=3091&doctype=Minutes>.

66. Colin Parent, *Early Win for Affordable Homes Bonus Program*, CIRCULATE SAN DIEGO (Oct. 18, 2018), <http://www.circulatesd.org/ahbpreport>; Josh Cohen, *San Diego's Affordable Housing Program Could One Up California*, NEXTCITY (Oct. 26, 2017), <https://nextcity.org/daily/entry/san-diego-affordable-housing-inclusionary-zoning-success>.

67. *Fact Sheet: Mayor Kevin L. Faulconer's 'Housing SD' Plan*, CITY OF SAN DIEGO (June 21, 2017), https://www.sandiego.gov/sites/default/files/20170621_housingsdfactsheetfinal.pdf. Mayor Faulconer's Housing-SD plan also incorporates many of the city-wide policy proposals recommended by the author in a 2017 report. Colin Parent, *Transit Oriented Development*, CIRCULATE SAN DIEGO (Jan. 9, 2017), <http://www.circulatesd.org/todreport>.

68. SAN DIEGO, CAL., MUNICIPAL CODE ch. 14, §§143.0710–143.0750 (2018); David Garrick, *New San Diego incentives aim to boost moderate-income housing*, SAN DIEGO UNION TRIBUNE (Mar. 6, 2018, 8:00 PM), <https://www.sandiegouniontribune.com/news/politics/sd-me-density-bonus-20180306-story.html>.

69. Andrew Bowen, *City Council OKs Sweeping Urban Parking Reforms*, KPBS (Mar. 4, 2019), <https://www.kpbs.org/news/2019/mar/04/city-council-urban-parking-minimum-housing/>.

70. Dave Schwab, *Councilmember Bry will not support removing parking requirements for housing*, SAN DIEGO CMTY. NEWSPAPER GROUP (Mar. 23, 2019), http://www.sdnews.com/view/full_story/27633989/article-Councilmember-Bry-will-not-support-removing-parking-requirements-for-housing?instance=sdnews.

While San Diego appears poised to continue updating neighborhood-level community plans, some more effective, quick improvements have been made through legislative and city-wide efforts. Programmatic changes that apply across multiple neighborhoods have been successful in attracting diverse support from powerful interest groups. The result has been a noticeable shift in local land use politics, driving both policy outcomes and national attention.⁷¹

B. Other Governments have Recently Succeeded in Adopting City-Wide and Programmatic Land Use Reforms

In Los Angeles, Measure JJJ provides an example of another California city implementing land use reforms through programmatic policy.⁷² The policy includes major density bonuses, but only when projects include both affordable homes and labor standards. Portions of the new economic value would be used to enlist support from organizations which would otherwise not have had a direct stake in the policy decision, instead of to buy off organizations with a preexisting distaste for new development. Like with other density bonuses, the policy is programmatic, leaving individual neighborhood-level plans alone while still allowing developments to depart from local rules. Of note, the density bonus of Measure JJJ is a hybrid, with the initial measure adopted by a plebiscite, and the density bonus policy promulgated by the City Planning Director.

San Francisco reformed its parking rules in 2018, eliminating minimums city-wide.⁷³ Further, in 2017, San Francisco also adopted Home-SF,⁷⁴ a form of density bonus. The program was designed to implement state density bonus law, and to allow even greater benefits

71. Liam Dillon, *After decades of suburban sprawl, San Diego eyes big shift to dense development*, L.A. TIMES (Feb. 25, 2019), <https://www.latimes.com/politics/la-pol-ca-big-cities-housing-plans-san-diego-20190225-story.html>.

72. VINCENT P. BERTONI, TECHNICAL CLARIFICATIONS TO THE TRANSIT ORIENTED COMMUNITIES AFFORDABLE HOUSING INCENTIVE PROGRAM GUIDELINES (TOC GUIDELINES), CITY OF L.A., (revised Feb. 26, 2018), <https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf>.

73. CITY & CTY. OF S.F., MEETING MINUTES (Dec. 11, 2018), https://sfbos.org/sites/default/files/bag121118_minutes.pdf.

74. SAN FRANCISCO, CAL., PLANNING CODE art. 2, § 206.3 (2019). A variety of background information and FAQ documents are available on the San Francisco Planning Department web page at <https://sfplanning.org/project/home-sf>.

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for projects with higher levels of affordable homes. While the process for adopting Home-SF was far from smooth, it represents a significant effort toward smart growth policy in a city that has recently been a hotbed of anti-development advocacy.⁷⁵

Perhaps the most dramatic programmatic changes to land use policy have been through recent legislation in California. Legislation has increasingly been used to override neighborhood-level plans and other policies that restrict smart growth. Laws have been passed to cap the amount of parking required for homes near transit⁷⁶ and allow for more accessory units to be built on single family lots.⁷⁷ State law also recently reformed more esoteric components of local land use rules, like prohibiting localities from using level of service traffic measures as a part of environmental analyses.⁷⁸

Small anti-development groups have limited incentive to engage in city-wide policy reforms, but even less incentive to engage on state-wide issues. The reverse is also true. State-wide interests like housing advocacy organizations, the building industry, and environmental groups all have a strong presence in state capitals. They have the potential and incentives to make positive, large scale, public policy changes. While local smart growth policymakers focus their efforts on city-wide policies, state lawmakers are well-suited to reform policies at a state-wide level.

CONCLUSION

As San Diego continues its efforts to implement its Climate Action Plan and City of Villages Strategy, it should focus more energy on city-wide policies. While community planning documents also need to be updated, city-wide policy reforms are both necessary, and potentially easier to adopt.

Further, other cities can use the approach for legislative and programmatic policy to achieve smart growth results. City-wide

75. Kristy Wang, *HOME-SF: New Law Aims to Spark More Affordable Housing*, SPUR (June 21, 2017), <https://www.spur.org/news/2017-06-21/home-sf-new-law-aims-spark-more-affordable-housing>.

76. Assemb. B. 744, 2015 Leg. Reg. Sess. (Cal. 2015).

77. S.B. 1069, 2016 Leg. Reg. Sess. (Cal. 2016); Assemb. B. 2299, 2016 Leg. Reg. Sess. (Cal. 2016).

78. Assemb. B. 743, 2013 Leg. Reg. Sess. (Cal. 2013).

policies can be designed to attract political support from diverse and powerful constituencies. A city-wide approach does not single out individual neighborhoods for changes, which tend to organize opposition that favors the status quo. Approaching policy on a city-wide basis creates the right dynamics for reforms to be politically viable.