

URBAN POLICY IN BRAZIL: MISMATCHES IN THE SOCIAL MANAGEMENT OF LAND APPRECIATION

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In Brazil, there is a clear strengthening of debates about the instruments of City Statute, which are discussed under the light of social management of land appreciation. Their degree of effectiveness, their low popular participation and their use to legitimize policies engendered by particular interests are usually questioned. This paper investigates the capacity of Joint Urban Operations as a instrument for surplus land value recovery. Starting from a study on Faria Lima Urban Operation, limitations and opportunities of Linha Verde Urban Operation (Curitiba-PR), which is being implemented, is prospectively discussed. Analysis performed came up with observations that were, at the same time, complementary and contradictory. On one hand, it is necessary to recognize urban operation's potential as an instrument able to leverage urban transformation, dividing costs of public action among other stakeholders. On the other hand, however, its low efficiency – from the perspective of social management of land appreciation – is clear, and shows a lack of mechanisms that could ensure a minimal addressing of the funds for constructions of public interest.

Key words: Urban Operation, surplus land value, land appreciation, city statute, social management of land appreciation.

INTRODUCTION

Certain urban actions and decisions taken and made by the government – such as implementation of infrastructure and public facilities or changes in urban legislation – leverage land value. Thus, a public action, whose costs are spread throughout society, results in benefits for a few private owners. In this context, mechanisms for social management of land appreciation acquire a major role, enabling government to recover surplus land values, redistributing to community the land appreciation resulted from their actions (Smolka, Amborski, 2000, Furtado, 2004, Santoro, Cymbalista, 2004).

In Brazil, significant advances have been achieved in this field since 2001, when Federal Law No. 10.257/2001, known as the City Statute, established “rules of public policies and social

interest that rule the use of urban property in favor of collective well, safety and welfare of citizens, as well as environmental balance” (Article 1, Author translation). For Piza, Santoro and Cymbalista (2004), City Statute consolidates State's duty on promoting the fair distribution of urbanization onus and benefits among whole society, recovering resulting appreciation of public constructions in order to accomplish the social function of city.

Among the instruments defined in Law 10.257/2001, this paper focuses its discussion on *Joint Urban Operation*, “one of the most controversial instruments of the City Statute”, in the words of Cymbalista and Santoro (2008). As authors construes, Joint Urban Operation (UO) can be understood as an instrument to redesign certain urban areas through modifications in parameters of land use and occupation, combining public and private investments (obtained by selling of building rights) in order to implement an urban plan. The resulting funds of counterpart are directed to a unique account

for each Urban Operation, and have to be used only for achievement interventions defined by law, within its perimeter.

According to its defenders, Joint Urban Operation lets the beneficiaries of a construction pay for its costs, freeing up public resources, so that they can be used in priority investments; and allow the recovery of so-called “surplus land value”, by capturing part of the appreciation resulted from a public investment in a way that it is not appropriated only by owners and real estate developers (Fix, 2004).

Considering that instruments of urban policy must follow all guidelines outlined in City Statute (Santoro, Cymbalista, 2004), and thus enable social management of land appreciation, this paper intends to investigate the extent of Joint Urban Operation as a mechanism of urban surplus land value capture. In Brazil, its application dates back to the early 1990s,

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This paper was supported by CAPES, a human resources training institution of Brazilian government.

adopted by the city of São Paulo, a pioneer. However, many implementation problems were encountered due to fragility of operation at the time, leading to a series of questionings by public agencies (Sepe, Pereira, 2011).

After City Statute, in 2001, a set of general rules was established for Joint Urban Operations, ensuring legal security for its implementation by local governments. The law created the *Certificates of Additional Building Rights* (In Portuguese: certificados de potencial adicional de construção - CEPACs): real estate bonds issued by City Hall and sold in São Paulo Stock Market Exchange (BMF&Bovespa), a sale mechanism that works as a counterpart for the selling of additional building rights acquired by developers. In other words, they can be understood as a financial mechanism that enable to purchase more floor area ratio than established in zoning law, converting square meters into financial quotas.

In Brazil, there are only two cases of Joint Urban Operations (UO) implemented with issuance of CEPACs bonds so far (both in São Paulo), and another in implementation process (in Rio de Janeiro). Bearing in mind the reduced number of cases, it can be stated that the adoption of this financial engineering mechanism is still an ongoing learning opportunity in the country, whose dissonances and contradictions must be understood in order to mitigate them when setting up new Urban Operations.

In this context, we highlight the creation of Linha Verde [*Green Line*] Urban Operation in Curitiba, fourth in Brazil with CEPACs bonds. Known as the largest Brazilian Urban Operation (4,475,000 square meters of additional building potential), its implementation is still very recent (its regulatory decree was sanctioned only on January 26, 2012).

Given the above, this paper seeks to discuss the Linha Verde Urban Operation limits and its potential in Brazilian scenario, aiming to contribute to further discussion of Joint Urban Operations as a instrument for social management of land appreciation. The following issues were raised: what are the main structural elements of Linha Verde urban operation? Do these factors hinder or promote surplus value recovery?

An effort was made to understand previously experiences in national scenario, in order to establish a comparative parallel, enriching the discussion.

The experience in Rio de Janeiro (Porto Maravilha UO - Municipal Law No. 101/2009) was left out due to its early implementation process. In São Paulo, however, there is a historical trajectory of implementation of Joint Urban Operations, whose legal provision dates back to 1985 Master Plan

and its implementation at the 1990s. Between São Paulo's urban Operations with CEPACS, Faria Lima UO was defined as complementary study case, selected in a non-probabilistic and intentional way, primarily considering two aspects: (I) the greater volume of financial compensation resources involved and (II) because there was an issuance of CEPACs in a second step of Urban Operation implementation (post City Statute), which allows to verify any transformation engendered by modifications in the way additional building rights are commercialized.

A SYNTHETIC ANALYSIS OF FARIA LIMA URBAN OPERATION

The first initiative to create Faria Lima Urban Operation (UO) dates back to 1991, when Municipal Strategic Master Plan was being developed. Later, in 1993, the UO was forwarded to City Council as a bill, approved in 1995 (Sepe, Pereira, 2011).

Instituted by Law No. 11.732/1995, Faria Lima UO focused in an area defined for a road system connection between Brigadeiro Faria Lima Avenue and Pedrosa de Moraes Avenue, foreseeing improvements in road system, social housing and social equipments (Montandon, 2007). In a critical view, Sandroni (2001) summarizes Faria Lima's UO as a strategy to extend an avenue that was not priority in terms of circulation and traffic, on whose land value was one of the highest of São Paulo.

Its implementation can be divided into two stages: the first one preceding City Statute, and another, in which revisions were made in order to adapt it to new Brazilian legal framework. In the first stage, perimeter of the Urban Operation was divided into Directly Benefited Area (DBA), referring to the parcel directly benefited by extension of Faria Lima Avenue, and Indirectly Benefited Area (IBA). The purchase of additional building rights happened through presentation of projects by the

owners, from which São Paulo City hall calculated the compensation value to be paid for each building individually.

According to Alvim, Abascal and Moraes (2011), capture of counterparts proved to be a sluggish process, in which buildings were settled long before required infrastructures were constructed. In addition, the adopted model for compensations valuation lacked legal ground, generating serious questionings by supervisory and controlling boards.

After City Statute approval (Law 10.257/2001), São Paulo City Hall reviewed Faria Lima UO in 2003, changing financial engineering and adopting CEPAC's logic. Thus, since Municipal Law nº. 13.769/2004 (amended by Law 13.871/2004), São Paulo City Hall started issuing CEPACs bonds for selling additional building rights. A CEPACs conversion table in additional square meters was created, with different values for commercial and residential uses, reducing subjectivity in the financial contribution calculation (Sepe, Pereira, 2011).

Four sectors (and 18 subsectors) were created to replace areas directly and indirectly benefited and the stock of residual additional square meters (1,281,908.54 m²) was converted into 650,000 CEPACs (sold for a minimum price per unit of \$ 591,40¹¹). The adopted criteria involve infrastructure capacity, architectural typological-pattern and existing land use.

Until October 2011, city hall had already sold 635.059 CEPACs (97.7% of total amount), collecting more than \$ 634 million – 526,684 were already converted into buildings and 110.875 are still outstanding in financial market (SP-Urbanismo, 2011). It is necessary to highlight the recent approval by City Council of São Paulo, in December 2011, of an additional issuing of 500,000 CEPACs in Faria Lima UO, generating estimated revenue of \$ 1.07 billion.



Figure 1. Faria Lima UO Perimeter (stage 1), Source: adapted from Montandon (2007).

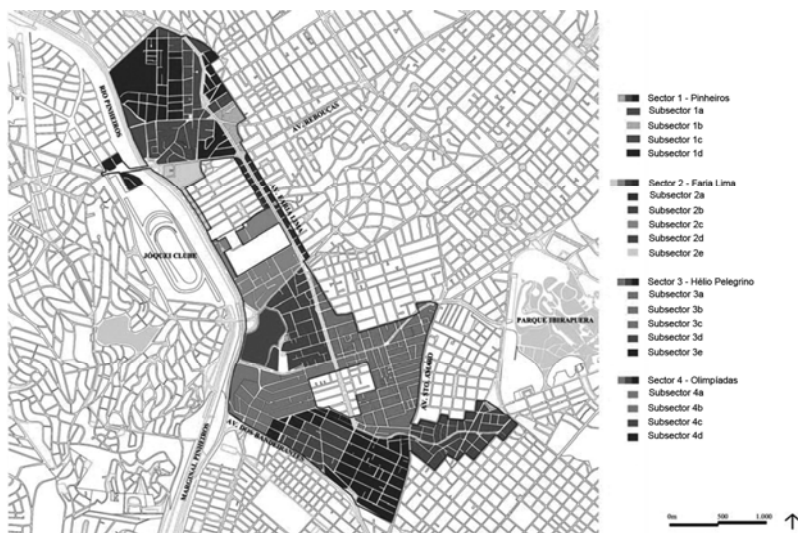


Figure 2—Faria Lima UO Perimeter (Stage 2), Source: adapted from SEPE and PEREIRA (2011).

Based on the analysis of another studies about this urban operation (Sepe, Pereira, 2011, Sales, 2005, Montandon, 2007; Fix, 2001), it was clear that there is an uneven distribution of benefits of urban interventions, confirming the classic *mismatch between theoretical framework of urban planning and the practice of urban management*, as extensively discussed by Maricato (2000).

Indeed, Faria Lima UO is far from being strong as an instrument for surplus value capture, contributing, in fact, to strengthen an exclusionary model of urban development, which concentrates resources and opportunities in restricted areas and in favor of certain groups. This process led to a fast land appreciation in a noble area of the city, hampering investments in social housing and land use diversification suggested by the UO (Fix, 2004, Sepe, Pereira, 2011, Sales, 2005, Montandon, 2007).

It is interesting to notice that the stock acquire was

concentrated, between 1995 and 2004, in Indirectly Benefited Area (IBA) - accounting for 59.61% of acquired additional building rights - demonstrating the inability of Urban Operation in leveraging the densification along the extension of Faria Lima Avenue (DBA), where the largest amount of additional building rights was offered (1.25 million m² - 56% of total).

We can observe an increased interest of real estate sector in Vila Olímpia district (IBA), an area traditionally occupied by medium density single family housings, where direct investments in improvements have not been carried out, and where there has been occurred intensive replacement of existing buildings by large commercial ones (Sepe, Pereira, 2011). These new centralities expose a contradiction: districts with higher land appreciation are the same that have lost the greater amount of resident population. Direct public investment has

intensified real estate activity, but failed in obtaining appropriated urban and social development (Montandon, 2007).

Faria Lima UO obtained, as a main result, the gentrification² of an already elitist area of the city, where, from a "magical formula of partnership", a public investment cycle for real estate market has been legitimized and formally justified by the need for infrastructure funding (Fix, 2004). Although the second stage of urban operation has shown advances, it is still unable to break the capitalist logic of space production that combines high building density detached from population density, investments in road system closely related to real estate interests and low investment in social housing (Montando, 2007).

LINHA VERDE URBAN OPERATION – CURITIBA – PR

BR-116 Federal Highway is the main road in Brazil, connecting the whole country lengthwise. In Curitiba, it crosses the city, dividing it into two parts, creating transposition difficulties and an intense conflict between urban traffic and load traffic (Figure 3.). According to Souza (2001), problems generated by the intersection between BR-116 and urban grid are objects of City Hall's concern since the *Preliminary Urban Plan (PUP)* in 1965, when the urban occupation even had not overtaken the so-called BR-2 (Figure 4.).

With the construction of an alternative road to divert load traffic from urban stretch of the highway, the City Hall could urbanize an important route that connect Curitiba and its metropolitan area, passing through 23 neighborhoods and polarizing urban growth in eastern portion of the city (Machuca, 2010).



Figure 3. BR 116 Axis – current urban grid, Source: adapted from IPPUC (2011).

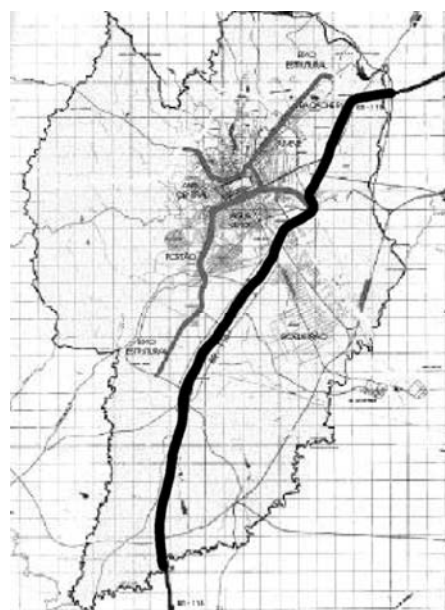


Figure 4. BR 116 Axis – PUP, Source: adapted from Souza (2001).



Figure 5. Linha Verde – total length, Source: IPPUC (2010).

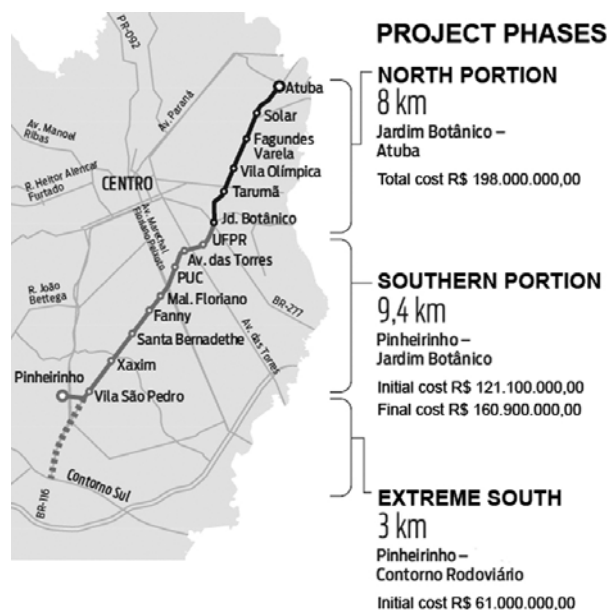


Figure 6. Project Cost per Stretch, Source: adapted from Cabral (2011)

Despite lengthy negotiations with federal government to grant the stretch - that lasted over a decade - the project, even with some modifications, maintained its principle from the beginning: construct an intercity and metropolitan integration axis, adapting the road system, changing land use and occupation (originally occupied by sheds and factories) and the type of predominant traffic (Moura, 2011).

The urbanization process, focused on the road system adequacy and implantation of the new public transportation axis, started in 2007, consuming \$ 86.5 million only in the southern section (Figures 5. and 6.). Changes in zoning, made in 2008³, intensified real estate dynamics in neighboring area, where was observed appreciation in land of over 70% in some places (Secovi, Rios, 2009).

Analyzing preliminary results, Machuca (2010), Hardt, Chu and Hardt (2009) identified a trend (even if slow) of transformation in land use and occupation, with gradual replacement of existing use for residential buildings and local commercial enterprises.

In order to leverage urban transformation in bordering areas of Linha Verde axis, Curitiba City Hall proposed the **Linha Verde Urban Operation (UO)**. The bill, sent to City Council in October 2011, was endorsed by Mayor Luciano Ducci in December 2011, creating Law No. 13.909/2011, regulated by Decree No. 133/2012.

Modeled according to CEPACs systematic, Linha Verde UO aims to raise funds for complete construction of the road and transportation system, urban redevelopment, creation of public spaces and land regularization, promoting an

urban occupation with diversification of uses (in accordance to proposed zoning), assisting the population in vulnerable situation and improving road system and urban and environmental quality of the intervention area (Curitiba, 2011).

The urban operation perimeter was divided into three sections (North, Central and South), which were then subdivided into three sub-sectors, with different densities, possibilities of verticalization and allowed uses (Figure 7.). Linha Verde UO provides a total supply of 4,475,000 m² of additional building area (split unevenly among

sectors and uses), which will be converted into up to 4,830,000 CEPACs, with a minimum sale price of \$ 107,52⁴) (Curitiba, 2011).

A controversial point of Linha Verde Urban Operation is its institutional management framework. Our questionings involve two elements considered fundamental in discussions about urban operation as an instrument for social management of land appreciation.

The first one refers to the elaboration of the *urban project*, the *priority constructions plan* and the *environmental impact study* of urban operation. As



Figure 7. Linha Verde Urban Operation – sectors delimitation, Source: adapted from Curitiba (2011).

stated in Curitiba Master Plan (Law 11.266/2004), in accordance with City Statute (Federal Law no. 10.257/01), a joint urban operation law must contain the following minimum elements: delimitation of the intervention area; purpose of the urban operation; basic programs for area occupation and interventions; study on the impact in the neighborhood; economic and social programs directed towards population directly affected; counterparts to owners, permanent users and private investors; the way to control the operation, which must include civil society representatives (Curitiba, 2004).

Law no.13.909/2011, which approved Linha Verde Urban Operation, relegated to a later stage the elaboration of Priority Interventions Plan (art.19), Urban Plan and Project (art. 20) and the environmental impact study, contradicting Municipal Law no. 11.266/2004, which was supposed to be ruling it. In addition, although the economic and social program was mentioned as one of the general objectives of Linha Verde UO, mechanisms that would make it work are not provided and the elements that compose it are not even defined.

Far from putting into question the expertise of these documents (largely of IPPUC's responsibility), the question here is the lack of popular participation in the formulation process. And even if there was participation, how could the public evaluate a urban intervention project that does not have a clearly delineated action plan, nor a clear definition of environmental, social and economic impacts involved and their mitigation measures?⁵⁾

This question leads us to a second question on how to manage Linha Verde Urban Operation, namely: the low representation of civil society on its implementation process. Law no. 13.909/2011 establishes a management group that would implement and monitor the Intervention Program of Joint Urban Operation.

Coordinated by the Curitiba Research and Urban Planning Consultancy (IPPUC - Instituto de Pesquisa e Planejamento Urbano de Curitiba), this group consists of eleven members, with the following board: Municipal Urbanism Office; Municipal Finances Office; Municipal Administration Office; Municipal Environment Department; Municipal Government Office; Curitiba Research and Urban Planning Consultancy (IPPUC); Curitiba City Hall; Paraná's Civil Construction Industry Syndicate - SINDUSCON; Paraná Housing and Condominium Union - SECOVI Paraná; Paraná's Real Estate Companies Directors Association - ADEMI; City Council of Curitiba - CONCITIBA.

If we analyze the *Management Group board*,

which should apparently involve the participation of "representing entities of the civil society" (Curitiba, 2011, art. 18), a concentration of municipal government entities (7 - 63.4%) and institutions related to housing market (3 - 27.3%) becomes evident. Thus, civil society is left with only one member in the management group, represented by CONCITIBA. The situation gets worse when we consider the various questions about the legitimacy of CONCITIBA (Silva *et al.*, 2011; TDD, 2010; CED, 2011), which does not have a significant representation of civil society organizations. Going along with the existence of popular participation in the implementation of the Linha Verde UO becomes hard to endure.

In addition, it is interesting to notice the composition of *Executive Committee of the Intervention Program*, which is responsible for defining the *Priority Intervention Plan* and the *Linha Verde Urban Operation Investment Program*. The Executive Committee is composed by six representatives of municipal boards (the same that make up the manager group), which, alone, represents more than 50% of *management group* and therefore could approve by themselves by majority rule the plans they came up with. Also, even if they didn't hold the majority of votes, the negotiations within the management group would be centered between the government and entities related to the housing market, keeping away those who should be prioritized by resources obtained through CEPACs: community.

Bearing in mind the experience of Faria Lima UO, discussed in the previous chapter, this paper must inquire about Linha Verde UO's limited role as an instrument for social management of land appreciation. If we include this scenario in the intense lobbying engendered by real estate market (which, by the way, has significant representation in the management group) and by the contractors focused on public constructions, we can raise the hypothesis that the Linha Verde UO is closer to a mechanism of boosting housing market than to an instrument of strengthening social function of the city and of the property (as provided by City Statute).

In this sense, Piza, Santoro and Cymbalista (2004) warn that the implementation of a Joint Urban Operation without an adequate social management of the resources involved undoubtedly leads to the definition of priorities "of a few" over the community interests. In fact, Urban Operations conducted improperly tend to maximize excluding effects of contemporary urbanization⁶⁾, once it concentrates on singular intervention actions that do not add real contributions to the society (Alvim *et al.*, 2011).

City Hall tends to invest on constructions called "anchor" of the urban operation, justified by the

doubtful necessity of attracting "private equity" that could stimulate a process of wider urban renewal. Thus, the government plays the role of a real estate development company, a business potential brake-releaser in a certain region (Fix, 2004). Therefore, Joint Urban Operation can be understood as an effective mechanism adopted to cover the logic of urban income concentration, legitimizing the targeting of significant public resources to infra-structured areas and restricted benefits constructions, leading the government to assume a central role in boosting **private accumulation** (and not recovery, as one might suppose) of urban surplus land value.

FINAL REMARKS

For decades, land appreciation capture generated by public investment has been discussed and pursued in Brazil. Among the various tributaries and urban instruments provided by City Statute, Joint Urban Operation certainly represents one of the most controversial and contradictory.

Although one cannot deny the great potential of Joint Urban Operations as a instrument to leverage urban transformations - sharing the costs of public action - its disarticulation (intentional or merely reckless) with other urban instruments tends to reduce its power as a instrument for social management of land appreciation, generating conflicts between the different stakeholders involved and resulting in projects sometimes detached from the social dimension. In fact, plans and programs displaced from social policies tend to settle the basic substrate for continuity of political patronage, a traditional characteristic of Latin-American public management.

Based on Maricato and Ferreira's (2002) statement, for who the application or interpretation of the laws in Brazil usually depends on the circumstances, one could speculate about the predominance of interests of social groups with more influence, which have greater ability to influence decisions related to municipal urban policy.

We can even question the role of the Certificates of Additional Building Rights (CEPACs), which, even though allow the government to capture quickly and in advance the resources from the private sector, can also be understood as subordinator elements of urban policy for the housing market, converting it into an additional source of financial speculation.

Another critical issue of Joint Urban Operations concerns the restriction of investments within the perimeter of intervention, understood by many authors as a limit to the social function of the city, once considerable resources are reinvested in infra-structured areas, leveraging

land appreciation and exacerbating socio-territorial inequalities.

Despite the many contradictions inherent to the process of formulation and implementation of Joint Urban Operations in Brazil, it is believed that if these operations possess consistent mechanisms of democratic and participatory management, it would be possible to mitigate the risk of the prevalence of private interests. On the other hand, however, the cases studied in this paper point out the very low representation of civil society throughout the process, which is poorly even consulted about the approval of an urban operation.

Although the results are not deep enough to support the defense of a hypothesis, we risk to conclude this paper speculating about the lack of Joint Urban Operations in promoting social management of land appreciation by themselves. It's important to note that this paper tries to contribute to the investigation about the tools for recovery surplus land value, adding support for further discussion on theoretical and empirical questions, with no intention of ending the discussions on the theme.

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¹) Monetary values in this paper were converted from reais (Brazilian currency unit) to U.S. dollars based on quotation of May, 24, 2011 (US \$ 1,00 – R\$ 1,86).

²) Although there are a large number of definitions for the term gentrification, they all understand it as a physical improvement of old neighborhoods where the poorer population move out and more affluent population moving into it. (Lukić, 2011).

³) Law no. 12.767/2008 established building incentives for land situated in the area covered by Linha Verde project.

⁴) Initial revenue estimative is approximately of \$ 806,4 million (Sinduscon, 2011).

⁵) It is worth mentioning that even among the council members, upon the approval of the bill in City Council, there were fierce debates regarding the lack of information about the impacts and mitigation measures related to Linha Verde Urban Operation (CMC, 2011).

⁶) As Mazza (2010, p. 3) states, "the political nature of spatial planning activities is linked to their redistributive character and to the mechanism of exclusion and inclusion that follows from this. The main effects of planning practices are therefore political and social, rather than economic and spatial".