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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

CITIZENS ORGANIZED FOR SMART
TRANSIT,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY,

Defendant and Respondent.

B164434
(Consolidated with B166223)

(Los Angeles County
Super. Ct. No. BS 075103)

COURT OF APPEAL - SECOND DIST.

FILED

JUL 19 2004

JOSEPH A. LANE Clerk

Deputy Clerk

APPEALS from a judgment and an order of the Superior Court of Los Angeles County. David Yaffe, Judge. Reversed with directions.

John A. Henning Jr. for Plaintiff and Appellant.

Lloyd W. Pellman, County Counsel, Steven Carnevale, Assistant County Counsel, and Ronald W. Stamm, Principal Deputy County Counsel; Demetriou, Del Guercio, Springer & Francis, Jeffrey Z. B. Springer, John E. Mackel III, and Stan M. Barankiewicz II, for Defendant and Respondent.

Citizens Organized for Smart Transit ("COST") appeals from a judgment denying its petition for a writ of mandate that challenged the environmental impact report ("EIR") prepared under the California Environmental Quality Act ("CEQA") (Pub. Res. Code §¹ 21000 et seq.) for a \$300 million plus bus guideway project ("the Project" or the "busway") crossing the San Fernando Valley ("the Valley"). The Los Angeles County Metropolitan Transit Authority ("MTA") was the proponent of the Project and the public agency that approved it.

COST contends the draft and final EIRs were inadequate, the final EIR contained significant new information and should have been recirculated, further alternatives should have been considered, and MTA improperly segmented the project. COST also appeals from the order awarding costs to MTA relating to the preparation of the administrative record. COST contends it prepared the record. We reverse with directions to consider a further alternative.

GENERAL BACKGROUND

The Project is a major public transit improvement that will alleviate severe congestion in the Valley. If it were a separate city, the Valley would be the sixth largest city in the United States.

The Ventura Freeway, currently the major east-west transit corridor in the Valley, is operating at full capacity in both directions. By the year 2020, east-west Valley arterial streets are projected to be the most congested in the Valley, with Victory Boulevard, Vanowen Street and Sherman Way being severely congested.

¹ Unless otherwise noted, all statutory references are to the Public Resources Code.

I. History of the Project

In 1983, MTA's predecessor initiated a study of alternative transit routes for an east-west corridor through the Valley. The alternatives included the Southern Pacific Coast Mainline route (which became a Metrolink route), Sherman Way, the Los Angeles River, the MTA right-of-way ("MTA ROW"),² the Ventura Freeway, and Ventura Boulevard. In 1983, the MTA ROW was selected as the best route for a light rail line for system planning purposes.

A subsequent route refinement study included all the alternatives above except Sherman Way. Public opposition was voiced by residents along all five of the proposed routes. Following completion of an alternatives evaluation report, the MTA ROW and the Ventura Freeway were retained for further study. In 1990, a full-scale environmental analysis resulted in a final EIR adopting the MTA ROW as the preferred route for a heavy rail extension of the Metro Red Line.

In June 1991, the California Legislature adopted Public Utilities Code section 130265, which limited any rail transit project within the MTA ROW to a below ground subway system. Planning continued, and a Ventura Boulevard alignment was also studied in an EIR; however, in 1991, the Ventura Boulevard alternative was deleted due to the expense of constructing an all subway alignment.

In December 1992, the Ventura Freeway aerial alignment was adopted as the preferred route; but, following the Northridge earthquake in January 1994, MTA considered the revised construction standards for the support of an aerial freeway alignment. As those costs were prohibitive, MTA returned to the MTA ROW as the preferred alternative.

² A former railroad right-of-way, also referred to by other names, including the SP Burbank Branch and SP ROW, was purchased by MTA's predecessor in 1990.

In 1996, MTA completed a major investment study ("MIS") alternatives screening report, which considered the cost effectiveness of heavy rail, light rail, and an enhanced bus alternative. In 1998, MTA entered into a contract with a bus riders advocacy group, which legally obligated MTA to focus on bus transit enhancements. Also in 1998, the electorate of Los Angeles County passed Proposition A which prohibited the expenditure of local funds on subway construction.

In June 1999, MTA initiated a full scale MIS for the Valley east-west transit corridor. In that MIS, MTA evaluated bus rapid transit ("BRT"), enhanced bus or transportation system management ("TSM"), light rail, heavy rail, dual mode rail, diesel multiple unit technology, aerial guideway, at-grade guideway, and below ground tunnel. The BRT alternative was determined to have the lowest capital and operating costs of all the build alternatives. While slightly slower than the rail alternative, the BRT would provide cross-Valley travel timesavings over both local and Rapid Bus³ service. The MIS recommended that MTA proceed with environmental documentation for BRT.

The alternatives carried forward for detailed evaluation in the draft EIR were:

1. No Build.
2. TSM. This alternative entails a significant improvement in bus service along all arterial roadways in the Valley. This alternative would make significant improvements in bus service to Sherman Way, Vanowen Street, Van Nuys Boulevard, Sepulveda Boulevard and Reseda Boulevard. TSM was designed to increase and improve bus operations to the point of maximum efficiency and was defined as the

³ Rapid Bus features buses combining limited stops with new technology such as centralized control and green light signal priority sensors to reduce travel time. The buses have low floors to allow faster boarding; headway rather than time-table based schedules to maximize bus frequency; and active management by supervisors in the MTA control center. At the time of the subject EIRs, there were two Rapid Bus lines in Los Angeles City.

optimal level of bus service that could be provided on the existing highway and roadway network.

3. Bus Rapid Transit (“BRT”)

a. Along the MTA ROW. This alternative includes the enhancements to bus service included in the TSM alternative.

b. Lankershim/Oxnard on-street alignment. BRT buses would travel on Lankershim Boulevard and Oxnard Street, a distance of approximately 3.6 miles. Project buses would also operate on-street from Owensmouth Avenue to Warner Center, a distance of .96 miles. While in those streets, Project buses would operate in the same fashion as Rapid Bus.

c. Minimum Operable Segment (“MOS”). BRT buses would operate in the middle segment of the MTA ROW for a distance of about 4.7 miles. In the western segment, the BRT buses would operate on Victory Boulevard in the same fashion as Rapid Bus. In the eastern segment, the BRT buses would operate on Oxnard Street and Lankershim Boulevard in the same fashion as Rapid Bus.

II. The Project

As approved, the Project consists of BRT within the MTA ROW. BRT is similar to Rapid Bus in that both utilize buses and receive priority at intersections. Rapid Bus operates within city streets together with cars and trucks and is subject to delays caused by traffic congestion. The BRT runs almost entirely within the MTA ROW and is not subject to the delays caused by traffic. The exclusive busway portion of the Project is 13 miles long, and the on-street portion near Warner Center is nine-tenths of a mile long.

Similar to light rail and Rapid Bus, BRT will have low floors for level boarding so that no step up will be necessary to enter the buses and loading and unloading times will be minimized. Because most of the BRT will operate in an exclusive right-of-way like light rail, cross-Valley travel times are estimated to approach those of light rail.

The Project will connect major centers of activity in the Valley across the heavily congested east-west corridor. The eastern terminus links with the northern terminus of the Metro Red Line at the North Hollywood station.

The BRT portion of the Project includes 13 stations, with Park-and-Ride facilities at 6 stations, providing commuters with approximately 3,000 new parking spaces. The Project also includes all of the enhancements to bus operations that were included in the TSM alternative, including improved bus service on all of the major arterials in the Valley.

III. The EIR

In May 2001, MTA released the draft EIR for the Valley east-west transit corridor ("DEIR") for public comment. The DEIR contained no discussion of expanding Rapid Bus as an alternative to the busway project. From May 18, 2001, through July 26, 2001, MTA provided a 69-day public comment period. MTA's governing board (the "Board") received public testimony at a workshop on July 19 and at its regular meeting on July 26. The Board selected the BRT alternative as the locally preferred alternative and directed staff to evaluate a sub-alternative of operating the Lankershim/Oxnard alignment on weekends only.

After receiving and responding to over 700 comment transmittals containing over 1,200 individual comments, on February 12, 2002, MTA issued the final EIR for the Valley east-west transit corridor ("FEIR").

On February 28, the Board of MTA certified the FEIR and approved the full BRT option.

IV. COST's Concerns

As demonstrated by the DEIR, bringing high-speed transit to street level raised a host of environmental issues. The right-of-way, which was a median down the middle of residential streets in some areas, would be paved with asphalt and concrete and be hemmed in by fences and walls. Once operational, up to 42 buses per hour would travel along the busway.

The DEIR conceded that without mitigation, the project would result in significant traffic, noise, aesthetic and other impacts under CEQA. Even with the extensive mitigation proposed in the DEIR, noise from both construction and operation remained a "potentially significant" impact because of the proximity of residences and other noise sensitive receptors.

Pedestrian and traffic safety was a concern as the high-speed buses would cross 40 streets and intersections, stopping only 11 or 12 times. Several of the busway intersections would be at crooked angles that are difficult to control and signalize. At those intersections, there is a heightened risk that confused, inattentive or impatient drivers will enter the busway into oncoming bus traffic.

Rapid Bus, which began in 2000, presently includes only one line in the San Fernando Valley, along Ventura Boulevard at its southernmost edge. An alternative to the busway would be to expand the Rapid Bus network by initiating multiple east-west lines on major arterials north of Ventura Boulevard spreading across the Valley.

V. Court Proceedings

On April 2, COST filed an action in superior court seeking a writ of mandate against MTA on the grounds its certification of the FEIR violated CEQA.

Both parties filed a motion to supplement the record of proceedings, or in the alternative, admit extra-record evidence. The court granted MTA's motion and admitted the COST documents that MTA did not oppose.

On December 20, the court heard oral argument and denied the writ.

COST filed a timely notice of appeal from the subsequent judgment.

On January 27, 2003, in this court, COST filed a petition for writ of supersedeas or other appropriate stay order seeking to have this court enjoin MTA, pending resolution of the appeal, from construction, contracting and other activities on the busway. This court denied the petition.

On January 30, MTA filed a memorandum of costs, claiming \$38,264.21 for costs incurred in connection with preparing the administrative record. COST filed a motion to strike, asserting no award was proper because it had elected to prepare, and had prepared, the record itself. The court heard oral argument, found the parties had agreed to share costs of preparing the record, denied the motion to strike and awarded costs of \$37,415.81 to MTA as the prevailing party.

The court amended the judgment to reflect the award of costs. COST filed an appeal from the order and amended judgment. The two appeals were consolidated.

DISCUSSION

I. CEQA Review

This case involves several complaints about the DEIR and the FEIR prepared for the Project. In general, COST complains that the DEIR was inadequate and that the FEIR contained significant new information and should have been recirculated.

“Under CEQA, an EIR is presumed adequate, and the plaintiff in a CEQA action has the burden of proving otherwise.” (Citation omitted.) (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.)

“The EIR has been aptly described as the ‘heart of CEQA.’ Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self- government.’” (Citations omitted; original emphasis.) (*Citizens of Goleta Valley v. Board of Supervisors* (“*Goleta II*”) (1990) 52 Cal.3d 553, 564.)

“[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.’ The error is prejudicial ‘if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.’” (Citation omitted.) (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (“*San Joaquin Raptor I*”) (1994) 27 Cal.App.4th 713, 721-722.)

“In reviewing agency actions under CEQA, [] section 21168.5 provides that a court’s inquiry ‘shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.’ Thus, the reviewing court “does not pass upon the correctness of the EIR’s environmental conclusions, but only upon its sufficiency as an informative document.” We may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. ‘Our limited function is consistent with the principle that “The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.”’ We may not, in sum, substitute our judgment for that of the people and their local representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA requirements.” (Citations omitted.) (*Goleta II, supra*, 52 Cal.3d at p. 564.)

“[T]he substantial evidence test applies to the court’s review of the agency’s factual determinations.’ Substantial evidence means ‘enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.’ ‘In applying the substantial evidence standard, “the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.”’ The appellate court’s role ‘is precisely

the same as the trial court's,' and lower court's findings are not 'conclusive on appeal.'" (Citations omitted.) (*San Joaquin Raptor I, supra*, 27 Cal.App.4th at p. 722.)

COST raises the claim the EIR should have been recirculated in the context of several of its issues. MTA determined that the FEIR "presents no significant new information that would require the recirculation of the [DEIR]." (Emphasis deleted.) *Laurel Heights Improvement Assn. v. Regents of University of California* ("*Laurel Heights II*") (1993) 6 Cal.4th 1112, 1129-1130 sets out basic principles of when an EIR must be recirculated:

"[W]e conclude that the addition of new information to an EIR after the close of the public comment period is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. As recognized by the [*Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813] court, recirculation is not required where the new information added to the EIR 'merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.' On the other hand, recirculation is required, for example, when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented (cf. Guidelines,⁴ § 15162, subd. (a)(1), (3)(B)(1)); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance (cf. Guidelines, § 15162, subd. (a)(3)(B)(2)); (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt (cf. Guidelines, § 15162, subd. (a)(3)(B)(3), (4)); or (4) that

⁴ All references to Guidelines are to the state CEQA Guidelines which implement the provisions of CEQA. (Cal. Code Regs., tit. 14, § 15000 et seq.)

the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless.” (Citations omitted.) However, “the Legislature did not intend to promote endless rounds of revision and recirculation of EIR’s. Recirculation was intended to be an exception, rather than the general rule.” (*Laurel Heights II.*, *supra*, 6 Cal.4th at p. 1132.)

II. Pedestrian and Traffic Safety

COST contends that the Project’s impacts on pedestrian safety were ignored and that MTA failed to properly analyze traffic safety in both the DEIR and the FEIR.

Section 21100, subdivision (c) provides: “The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.” A “significant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.” (§ 21068.) One criteria for determining whether a project might have “a significant effect on the environment” is if “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” (Former § 21083, subd. (c).)

Appendix G of the Guidelines lists “Transportation/Traffic” as one of the “environmental factors potentially affected” by a project. Under transportation/traffic, a change in traffic patterns resulting in “substantial safety risks” or “[s]ubstantially increased hazards due to a design feature” are suggested items to be considered in an EIR. (Guidelines, appen. G, at p. 714.24.)

A. Pedestrian Safety

1. Adequacy of the DEIR

Safety and security was one of sixteen areas discussed in the chapter of the DEIR on the consequences of the Project. COST posits the analysis of pedestrian safety was inadequate as it did not reflect the unique nature of the busway or contain a quantification of the actual risks to pedestrians or explain how the design features might mitigate the impact of the Project on pedestrian safety. However, it does not offer any authority that such a discussion was required. (See *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 477, fn. 4; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (“*San Joaquin Raptor II*”) (1996) 42 Cal.App.4th 608, 626 [“We discuss only those arguments that are sufficiently developed to be cognizable.” “[A]n appellant has the burden of showing reversible error.”] (Citation omitted).])

The DEIR did not ignore pedestrian safety; in it, MTA found as a result of the dedicated corridor and integrated safety features, the Project would not have a significant impact on safety. Prior to that conclusion, MTA noted, “Pedestrian/bus conflicts are another potential concern” and discussed various safety features relating to accident prevention. Those features included an MTA safety awareness program; pedestrian warning signs; three signalized, mid-block pedestrian crossings; fences, earth berms and vegetations to prevent pedestrians and bicycles from crossing the busway as well as a commitment to adopt City of Los Angeles safety standards for pedestrians and bicycles in addition to MTA’s own safety standards. Also, traffic control signals provide safe crossing times for pedestrians, and Project intersections are signalized.

That discussion satisfied CEQA. (See § 21002.1, subd. (e) [“To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.”].)

2. Recirculation

COST asserts the FEIR should have been recirculated as it incorporated important changes in the Project. COST notes the Z gates (metal barriers pedestrians have to weave through before walking onto the busway), as well as the grade separation at the Burbank/Fulton intersection, both of which were contained in the DEIR, had been eliminated in the FEIR. COST also complains that although the DEIR stated LADOT standards would be followed in devising traffic signals for pedestrians, the FEIR provided substantial new details about the design of those signals.

The Z gates were eliminated in response to a comment about other problems presented by the gates. The FEIR explained even without the Z gates, pedestrian platforms, signal timing and LADOT safety standards would adequately protect pedestrians. MTA determined the busway could be implemented without the grade separation at the Burbank/Fulton intersection after discussions with LADOT, the agency which commented on the grade separation initially. MTA also indicated the need for a grade separation was “rejected due to its impacts on adjacent land uses, development patterns, access to properties, and costs. Moreover, it was shown through the traffic analysis that this intersection can operate acceptably in an at grade configuration.” The amplification of the details of the design of the traffic signals did not constitute substantial new information about which the public was entitled to comment.

As noted by COST, “MTA received a raft of comments on this shortcoming [pedestrian safety].” Thus, the draft permitted “meaningful public review and comment.” (See Guideline § 15088.5(a)(4).) To insist on recirculation every time “new information” or details are included in a final EIR in response to comments, would lead to endless rounds of EIRs clearly against the Legislature’s intent recirculation be the exception, not the rule.

B. Traffic Safety

Similar to its position on pedestrian safety, COST contends that the EIRs failed to properly analyze traffic safety as they did not consider the potential safety hazard of the busway's 40 intersections or take into account its capacity to generate accidents at a higher rate than buses on the streets and that the FEIR added significant new information. As with pedestrian safety, the EIRs provided a brief explanation as to why the impact of the Project on traffic safety was not significant.

In the FEIR, MTA found the effects related to bus accidents and crime were not significant, noting, "The project would have the potential to result in a marginal increase in bus accidents; however, net benefits are likely due to improved signalization and use of the exclusive busway."

As noted in a comment, using MTA's figures, the Project's impact on safety would result in 60 new accidents per year. COST's suggestion that impact is presumptively significant is not supported by any evidence, and the impact appears to be de minimis given the anticipated increase in traffic. Moreover, the EIRs noted the accident rate was based on operation in mixed flow streets. In response to a comment, MTA stated: "Bus operation in an exclusive busway (as stipulated by the BRT Alternative) is inherently safer than buses operating in mixed flow traffic. The BRT exclusive busway will employ 'pre-signals' and appropriate stopping distances as safety measures at intersections, which are the only locations at which buses come into contact with automobiles in the street system. These provisions will be sufficient to assure the public of adequate protection." The Project also incorporates substantial improvements to intersections along the busway.

The FEIR noted the total number of accidents in the Valley should actually decrease as a result of the Project because BRT ridership would be drawn primarily from commuters who would otherwise be traveling in cars on mixed flow streets. The Project was expected to result in a reduction in automobile traffic of 34 million miles per year.

In the safety impact section, the EIRs referred to other design elements that will create a safer transit system, e.g., enhanced signal controls, operator communication equipment, LADOT safety standards, warning signs, three mid-block crossings, pre-signals, traffic lighting, and painting to visually designate the busway. A more detailed discussion of those design features was contained in specific portions of the FEIR.

Expert agency personnel may be entitled to conclude that a project will not have a particular environmental impact. (See *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380.) MTA's conclusion that the Project would not have significant impact on safety was reasonable. (*Ibid.*)

Citing *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1030, COST suggests deferring the discussion of signal operation until the development phase violated MTA's obligation to present a comprehensive description of the Project. The project at issue in *Los Angeles Unified* (a development plan for an urban area) had a significant environmental impact (increased air pollution), and this court determined the EIR was inadequate as it failed to discuss air conditioning and filtering as a means to mitigate the effects of increased air pollution on the schools. (*Id.*, at pp. 1028-1031.) COST does not discuss what significant environmental impact was implicated by putting off a detailed discussion of signal operation. (See *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 36 ["In addition, appellants do not explain how more detailed engineered drawings would allow the public and decisionmakers to 'fully understand the environmental consequences of the entire project.'"]) As conceded by appellants, MTA received "voluminous comments" on traffic safety. Thus, appellants have not demonstrated the traffic signals were inadequately described in the EIR. (*Ibid.*)

Again, the responses cited by COST in the FEIR to comments provided more details, but did not constitute significant new information requiring recirculation.

Accordingly, the DEIR's discussion of pedestrian and traffic safety was adequate, and the FEIR did not generate significant new information about pedestrian or traffic safety requiring recirculation.

III. Responses to Comments

"The written response shall describe the disposition of any significant environmental issue that is raised by commenters." (Former § 21091, subd. (d)(2)(B).) "Thus, a lead agency need not respond to each comment made during the review process, however, it must specifically respond to the most significant questions presented. Further, the determination of the sufficiency of the agency's responses to comments on the draft EIR turns upon the detail required in the responses. Where a general comment is made, a general response is sufficient." (Citations omitted.) (*Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862.) The responses need not be exhaustive, but must evince good faith and reasoned analysis. (*San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 596.)

A. Miami Study

In response to a comment the high rate of accidents on the Blue Line demonstrated the busway would have a significant impact on safety, the FEIR referred to a dedicated busway project in Miami, Florida that purportedly had a low accident rate at some of its intersections.

COST contends MTA had no support for its selective comparison with the Miami facility because MTA's analysis was inaccurate and misleading as demonstrated by a study performed for the Miami/Dade Transit Authority, which MTA admitted was the

source for its analysis and should have been referred to and cited in the FEIR.⁵ COST notes the study showed Miami had a bad safety record, with more than 67 cross-traffic collisions, most involving injuries.⁶

COST complains the response did not cite to supporting information or documentation in the administrative record or elsewhere and argues the lack of supporting evidence was a violation of CEQA's requirement for a good faith and reasoned response to comments. (Guidelines § 15088.) That requirement applies "to comments relating to significant environmental issues." (*Laurel Heights II, supra*, 6 Cal.4th at p. 1124.) Traffic safety was not a significant environmental issue.

In part, the response to Comment C9-66 about accident prevention stated:

"The Miami Project has intersections with coordinated signal control (such as would be the case with the BRT) and intersections without coordinated signal control. The accident rate at the intersections with coordinated signal control was approximately 1 accident per every 20 million entering vehicles. [¶] The proposed BRT is designed to operate at-grade with all intersections signaled in a manner similar to the coordinated signal control intersections in the Miami Project. The BRT busway and parallel street traffic will have the same signal phasing at intersections. Cross traffic will be phased to pass through both intersections as if they were one. [¶] Additional safety measures have been incorporated into the BRT project design that are not present in the Miami project. Although the busway and parallel traffic will have the same signal phasing, they will each have their own signage, active signs, street painting, and signals to warn cross traffic and right-turn lanes that they are not to enter either intersection. Pre-signals will be installed to keep all cross traffic

⁵ COST states the study was not part of the documents supplied by MTA when COST was preparing the administrative record, but it obtained a copy of the study from the Miami/Dade Transit Authority and successfully moved the court to include the study in the record.

⁶ COST's claim that Miami had instructed its bus drivers to stop at all intersections whether or not there was a green signal is not supported by the record page cited by COST. Both parties miscite to the record.

from entering the busway/parallel traffic intersection. Should a motorist enter into the intersection on a yellow signal, the vehicle will be able to pass through the full intersection before the busway/parallel traffic is phased to green. Right turn lanes will have active 'No Right Turn' signs and should motorists ignore that warning they will be stopped by a signal situation on the opposite side of the busway."

A further debate on the details of the comparison, such as which type of intersections were the most comparable and whether Miami had the additional safety measures referred to in the response, would have been of no further assistance. The Board was alerted to potential problems with the comparison and had MTA's commitment to seeing that problems with cross-traffic would be addressed.

B. Comparison with The Blue Line

COST contends MTA refused to consider the safety impacts in light of its own experience with the Blue Line, the most dangerous light rail in the nation. Specifically, COST asserts the FEIR ignored the comments of Thomas Rubin, a former chief financial officer with MTA's predecessor agency.

Rubin opined that the busway had the potential to be far more dangerous than the Blue Line because of various design elements: (1) the frequency of buses on the busway would be as much as twice that of the trains on the Blue Line, doubling potential accidents; (2) the busway would not have the physical protections of the Blue Line, such as crossing gates with arms lowering across the roadway, crossing signals with flashing lights and bells, and a loud, long horn on each train; (3) trains, being far heavier than buses and operating on tracks, are generally far safer than buses for transit passengers in a collision so that although no Blue Line passenger or employee had ever suffered a serious injury, it was unlikely BRT passengers would be that fortunate.

MTA posits it may disregard Rubin's testimony as it related to a subject outside his field as nothing qualified him as an expert in safety or traffic engineering. Although Rubin's duties included supervising risk management, his expertise was in the financial and auditing side of transit not safety or traffic engineering. (See *San Joaquin Raptor II, supra*, 42 Cal.App.4th at p. 621; *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 157.) Rubin's statement shows that even with extensive protections, all accidents cannot be prevented. Rubin's opinion BRT passengers might suffer serious injury was speculation and not substantial evidence. (See *Citizens' Com. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1170-1171.)

Besides the response to Comment C9-66, the EIRs stated: "The intersections will operate as an at-grade street crossing, and will not require the installation of gates, bells or whistles associated with rail crossings. Busway drivers will have direct control over their vehicles and will be able to brake quickly or move out of the way to avoid accidents."

The Board was alerted to safety concerns and had MTA's commitment to address those concerns. MTA was entitled to determine buses were a different kettle of fish from trains.

C. Running Times

The DEIR estimated travel time of the length of the 14 mile busway at 28.8 minutes. However, the DEIR acknowledged the runtime was an estimate; it stated the runtime was limited by the amount of signal priority allocated by LADOT and priority treatment for buses in both directions during peak flow might not be possible. Runtime was based on bus speed, dwelling time at stops, and expected average delay at intersections. The DEIR also stated a refinement of the bus operating speeds and signal priority would be made during preliminary engineering.

During the comment period, Rubin pointed out that the primary assumptions underlying the runtime, i.e., that every BRT bus would have close to 100 percent green lights at all of the intersections and no delay at stations, were unfounded, and that the buses would operate more slowly than predicted.

In response, the FEIR explained “a more detailed analysis of operating assumptions along the busway was conducted in consultation with [LADOT].” Recognizing “[s]ignal delay for the BRT will likely vary over time as traffic conditions and signal technology evolve,” the FEIR “addresses a range of signal delay assumptions.” The FEIR concluded the runtime would “likely be somewhere between 28.8 and 40 minutes.”

COST contends that because runtime calculations were critical to a fair comparison with alternatives like Rapid Bus, the dramatic increase in runtime was significant new information warranting recirculation of the FEIR as it would affect the cost effectiveness of the busway over the other alternatives.

Although COST questions the lower time estimate, the FEIR considered whether any new significant environmental impacts would be caused by the upper-bound runtime. The FEIR found the upper estimate would slightly increase background traffic by at most 0.1 percent resulting in fewer riders and less traffic traveling to and from BRT’s parking lots such that the longer runtime would cause less traffic impacts at intersections. The overall traffic impacts to intersections were therefore projected to remain the same so that changes were not required with regard to impacts and mitigation of the intersections in the FEIR. Air quality impacts were reanalyzed, and the FEIR concluded there were only negligible changes and no significant impacts. COST does not challenge those findings.

COST suggests Rapid Bus was within reach of the new 40-minute estimate for BRT. As noted by MTA, it considered comments concerning the 50 minute runtime for Rapid Bus and found that estimate was still appropriate. A disagreement among experts does not render an EIR inadequate. (Guidelines § 15151.)

Moreover, the runtime for Rapid Bus is based on 2001 traffic conditions whereas the BRT estimate is based on 2020 traffic conditions, which are projected to be much more congested in the Valley. Also, BRT will operate within an exclusive busway resulting in reliable travel times compared to on-street bus operation in congested traffic. The travel time of Rapid Bus will degrade as traffic congestion increases, while the travel time of BRT is not subject to degradation.

Recirculation is not required if a new study supporting conclusions in a draft EIR does not reveal a significant environmental impact. (*Laurel Heights II, supra*, 6 Cal.4th at pp. 1136-1137.) Hence, recirculation was not necessary due to the change in the estimate of runtime.

D. Ridership

COST contends the alternative analysis in the FEIR was skewed by mistaken ridership data and the EIR should be recirculated.⁷ Without any supporting argument or authority, COST asserts MTA was obligated to confirm the predictive ability of its ridership model by testing its projections for a past year against the actual data it had gathered for that past year, and MTA had not done so. In a comment, Rubin stated he had tested the model himself. Rubin chose 1998 as the year for his comparison and obtained actual data for MTA's bus boardings filed with the Federal Transit Administration's National Transit Database ("NTD"), which were available in MTA's public files.

⁷ MTA's argument that COST waived any questions concerning the ridership model because they were not preserved in the pleadings and statement of issues is without merit as it is not supported by any legal authority requiring such specificity in the petition or the statement of issues. (See *MST Farms v. C. G. 1464* (1988) 204 Cal.App.3d 304, 306.) However, those questions explain why the record had to be supplemented.

Rubin first ran the MTA model and predicted the ridership for the 1998 base year and then compared those figures with the actual MTA data for that year. Rubin concluded the numbers showed a 22 percent error rate, which he claimed overstated ridership.

Thus, COST argues the MTA Board did not have an accurate comparison of the busway versus other alternatives when it certified the FEIR and adopted the Project, which was an abuse of discretion because of the failure to comply with the information disclosure provisions of CEQA. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 734.) COST also notes MTA moved the court to add 101 pages of new documents (i.e., MTA's 1999 NTD submittal) to explain how the error was made. COST urges that information should have been presented to the public. (See *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

MTA responded that as the technology in the DEIR was part of bus service, not rail service, the estimate of BRT ridership was more likely on the conservative side. The response included a chart comparing several data items from the MTA's 1998 model run with corresponding actual data from the 1998 NTD data and showed the error rate was at most nine percent. The response noted the model validation (i.e., the chart) had been presented to modeling professionals, who said its predictive accuracy was acceptable.

MTA states that COST's argument is based on the wrong NTD submittal because the model attempted to simulate conditions for October 1998, which fell within its fiscal year ending June 30, 1999, and the corresponding NTD report for that year, and the data on the chart matched the 1999 NTD submittal. MTA states the chart simply mislabeled the data sources by referring to "1998" at the top rather than "FYE 6/30/1999."

COST notes several of the items in that chart had not come from MTA's 1999 NTD submittal, but from its own internal spreadsheets. COST cites the declaration of MTA staffer Chaushie Chu as support for that position. COST then notes that declaration was admitted only to support MTA's motion to include certain documents in the record and was not itself admitted into the administrative record by the court. Accordingly,

COST urges this court to refuse MTA's effort to supplement the record with Chu's declaration to explain MTA's decision. We decline COST's invitation as part of its argument is based on that same declaration.

These explanations of the differences from the application of the ridership model constituted a conflict among experts, and MTA was entitled to rely on its staff explanation. (See *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.) The additional document supported MTA's explanation and did not need to be part of the EIR nor was there any need to recirculate the EIR.

Moreover, to predict ridership, MTA's model included input data on pedestrians walking to the stations within a half-mile radius, demographic data within a half-mile of the stations, forecasted population increases in the Valley, countywide vehicles trips, traffic speed, and BRT runtimes. A court should not scrutinize the scientific value of a model. (See *Friends of Boundary Waters Wilderness v. Dombeck* (8th Cir. 1999) 164 F. 3d 1115, 1130.)

IV. Alternatives

COST contends the DEIR failed to consider other alternatives that could feasibly meet MTA's objective to improve mobility at low cost and with minimal community impacts, while sparing much of the Valley from the safety, noise, aesthetics, air quality and other impacts associated with the busway.

In *Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 733, the court discussed the concept of reasonable alternatives:

"An EIR must '[d]escribe a range of reasonable alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives.' (Guidelines, § 15126, subd. (d).) The discussion must 'focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these

alternatives would impede to some degree the attainment of the project objectives, or would be more costly.’ (Guidelines, § 15126, subd. (d)(3).) A major function of the EIR is to ensure thorough assessment of all reasonable alternatives to proposed projects by those responsible for the decision.

“A legally adequate EIR ‘must produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned.’ It must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug. It must reflect the analytic route the agency traveled from evidence to action. An EIR which does not produce adequate information regarding alternatives cannot achieve the dual purpose served by the EIR, which is to enable the reviewing agency to make an informed decision and to make the decisionmaker’s reasoning accessible to the public, thereby protecting informed self-government.

“The degree of specificity required in an EIR depends upon the degree of specificity involved in the underlying activity described in the EIR. (Guidelines, § 15146.) The sufficiency of the information contained in an EIR is reviewed in the light of what is reasonably feasible. (Guidelines, § 15151.)” (Citations omitted.)

An EIR must consider a reasonable range of alternatives to the project which: (1) offer substantial *environmental* advantages over the project proposal, and (2) may be feasibly accomplished in a successful manner considering the economic, environmental, social and technological factors involved. (*Marin Mun. Water Dist. v. KG Land California Corp.* (1991) 235 Cal.App.3d 1652, 1664.) “Those alternatives and the reasons they were rejected . . . must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 405.)

Moreover, “If the agency finds certain alternatives to be infeasible, its analysis must explain in meaningful detail the reasons and facts supporting that conclusion. The

analysis must be sufficiently specific to permit informed decision-making and public participation, but the requirement should not be construed unreasonably to defeat projects easily. An EIR need not consider in detail every conceivable variation of the alternatives stated; instead, as with the range of alternatives which need discussion, the level of analysis is subject to a rule of reason.” (*Marin Mun. Water Dist. v. KG Land California Corp.*, *supra*, 235 Cal.App.3d at pp. 1664-1665.)

A. Rapid Bus

COST contends MTA refused to consider the most promising alternative -- an expansion of Rapid Bus⁸ and instead set its sights on a particular project. (*Laurel Heights I, supra*, 47 Cal.3d at p. 394 [The court criticized using EIRs as a post hoc rationalization for projects to which an agency had committed.].) However, “If having high esteem for a project before preparing an [EIR] nullifies the process, few public projects would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed toward it.” (*City of Vernon v. Board of Harbor Comrs.* (1998) 63 Cal.App.4th 677, 688.) The instant FEIR was not a post hoc rationalization; COST does not point to any evidence of a legally binding precommitment such as an official act granting a permit or recognizing a right. (*Ibid.*)

Moreover, as Rapid Bus was not discussed until the FEIR, COST contends recirculation was triggered because Rapid Bus was significant new information as it was substantially different from the other proposed alternatives because it lessened environmental impacts and had substantial travel time advantages over existing bus

⁸ Various comments proposed a series of three or five east-west routes north of Ventura Boulevard, which would complement a series of north-south routes MTA was proposing in the Valley.

service and hence over the no build and TSM alternatives. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 403-404; Guidelines § 15088.5(a)(3).)

Based on the projected runtimes (between 28.8 and 40 minutes for BRT versus 50 minutes for Rapid Bus), one response concluded Rapid Bus would not achieve a decrease in travel time comparable to BRT. The response to a comment characterizing Rapid Bus as the most viable option noted Rapid Bus operated in mixed flow streets and would be subject to the risk of substantial deterioration in travel time as projected congestion increased in the east-west transit corridor of the Valley while full BRT will continue to provide long-term transit benefits, meaning Rapid Bus would not serve to minimize total travel times, one of the objectives of the Project.

However, to comments supporting the ~~TMS~~^{TSM} alternative and suggesting adding Rapid Buses and mentioning three or five possible routes, the response was to note the opposition. The response did not address the suggestion of multiple Rapid Bus routes.

COST asserts Rapid Bus would advance the primary objective of improving public transit in the Valley because it has the advantage of operating on existing streets, which would avoid environmental impacts associated with the busway, would serve a more diverse population than BRT, which was a single line many miles distant from many Valley residents, and would cost \$195,000 per capital mile compared to the busway, which would cost \$16.8 million per mile.⁹

MTA counters that Rapid Bus was similar to the alternatives it discussed and that alternatives with similar advantages and disadvantages to those considered need not be discussed. (See e.g. *Carmel-By-The-Sea v. U.S. Dept. of Transp.* (9th Cir. 1997) 123

⁹ COST impliedly raised a question regarding the comparative costs of the busway and Rapid Bus. MTA does not respond to this claim, and we are unable to evaluate the accuracy of those claimed costs, especially as Rapid Bus was not considered as an alternative and no statement of overriding considerations appears to have been adopted. (See §§ 21002, 21002.1, 21081; Guidelines, §§ 15064, 15093, 15121, 12124.)

F.3d 1142, 1159; *Save San Francisco Bay Assn. v. San Francisco Bay Conservation, etc. Com.* (1992) 10 Cal.App.4th 908, 922-923.)

MTA insists the three and five route proposals are very similar to the Project, which includes TSM (i.e., substantial improvements in bus service making for the best bus service possible using the existing network of roadways) for major arterial roadways in the Valley. Those roadways will receive more buses, which will substantially reduce the headways (or time between buses) during peak travel periods.

MTA also notes that the Lankershim/Oxnard alternative was one-third Rapid Bus and the MOS alternative was two-thirds Rapid Bus and that those alternatives have the other time-savings features of Rapid Bus, such as limited stops, low floor boardings and headway based schedules.

MTA states Rapid Bus would result in significant environmental impacts compared to full BRT because noise and vibration impacts are worse for the on-street alignment than for the BRT as the MTA ROW provides the opportunity to mitigate the sound impacts from buses with sound walls and because Rapid Bus was inconsistent with the general plan of the City of Los Angeles, which had an objective of a busway utilizing a publicly owned railway right-of-way. Thus, MTA urges there was no duty to discuss Rapid Bus as it is an environmentally inferior alternative. (*Goleta II, supra*, 52 Cal.3d at p. 566.)

Even though MTA claims Rapid Bus “would result in significant environmental impacts from operations that are more severe than the full BRT,” there was no such finding in the EIRs. COST notes the noise factor was based on one alignment (Lankershim/Oxnard) and there was no showing that Rapid Bus, which had not been proposed for those streets, would have a significant impact on noise. Although “the Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general and regional plans” (*Marin Mun. Water Dist. v. KG Land California Corp., supra*, 235 Cal.App.3d at p. 1668), COST raises a valid point that the

fact another agency has acknowledged MTA's plan to build a busway in its general plan should not be used to reject an alternative as not meeting an objective of a project.

The other alternatives are not comparable to Rapid Bus. TSM was not designed to provide the fastest bus service possible whereas in its own report on Rapid Bus, MTA stated Rapid Bus had provided a substantial travel time advantage over traditional bus service, e. g., operating speeds on Ventura Boulevard had increased by 23 percent. The other alternatives (MOS and Lankershim/Oxnard) were each a single route not comparable to a network of routes. In addition, even though there had been prior efforts to address the Valley's mass transit needs, none of them had considered expansion of Rapid Bus. (See *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1404, fn. 11 [Public review of alternatives prior to a draft EIR cannot fulfill the requirement the document circulated for public review contain the necessary information regarding alternatives.])

COST urges the saving time explanation was insufficient to satisfy the CEQA requirement of considering all feasible alternatives. Moreover, there was no support for the inference the 50 minute runtime on Ventura Boulevard would be the same for other potential Rapid Bus routes, the cited runtime estimate for Rapid Bus was for a route one mile longer than the runtime estimate for the busway route, and the response failed to take into account the fact that with multiple east-west routes, the total origin-to-destination travel time would be reduced for a majority of riders as compared to the busway because most riders would be closer to a Rapid Bus route than to the busway.

MTA's arguments are insufficient justification for not considering Rapid Bus as they only tend to show Rapid Bus would be somewhat slower than BRT, they do not take into account the effect multiple east-west routes would have on total origin-to-destination time versus a single busway, and a longer travel time does not render Rapid Bus infeasible or otherwise justify its rejection. Accordingly, we conclude MTA erred in failing to consider multiple Rapid Bus routes as a feasible (see § 21061.1) alternative.

B. Fare Reduction

One comment proposed fare reduction as a “well proven way to significantly increase transit ridership at a very low cost per new rider.” The response to that comment stated the MTA considered “fare policy separately.”

COST contends that because MTA ignored that comment, recirculation was triggered as fare reduction was feasible and different from the proposed alternatives and would have a substantial environmental advantage over the busway by avoiding safety, noise and aesthetic impacts.

MTA cites to part of the response to comment F8-1D stating: “All existing transit services are substantially subsidized beyond what is collected at the fare box, which would be the case for any proposed new services whether TSM or the busway. . . . The state funding available for implementation of the BRT project is limited to being used for capital expenses, including vehicles, construction, real estate, design, and engineering, so these funds would not be available for fare reductions.”

Although that response was to a comment criticizing MTA for failing to address the costs of the TSM enhancements and how they would be subsidized rather than to a fare reduction proposal, procedural violations do not necessarily require vacating an EIR. (*Neighbors of Cavitt Ranch v. County of Placer* (2003) 106 Cal.App.4th 1092, 1100.)

COST also complains the response does not qualify as a comprehensive response to the comment proposing an across-the-board fare decrease and did not respond to any of the advantages of fare reduction cited by the commentator (i.e., a low per passenger subsidy and increased ridership). Neither does the response show fare reduction was infeasible as the funds referred to were not the only funding source and MTA had other funds which could be diverted to fare reduction, and even if no funds were available, additional subsidies might not be required as reduction could cause ridership to increase,

thereby increasing total revenues without a commensurate increase in operating costs. Such inferences are sheer speculation.

MTA notes fare reduction would not meet the objectives of improving mobility in the Valley, reducing congestion, minimizing travel times or achieving land use goals. MTA did not have to consider fare reduction as there was substantial evidence in the record, i.e., it had not raised rates since 1996, it needed an increase in fares, and costs were short of revenue, fare reduction was infeasible. (*Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com.*, *supra*, 10 Cal.App.4th at p. 922.) ““But where potential alternatives are not discussed in detail in the [EIR] because they are not feasible, the evidence of infeasibility need not be found within the [EIR] itself. Rather a court may look at the administrative record as a whole to see whether an alternative deserved greater attention in the [EIR].”” (*Goleta Valley II*, *supra*, 52 Cal.3d at p. 569.)

We conclude that although MTA could have responded to the suggestion of fare reduction more appropriately, it did not deserve greater attention as any potential environmental advantage was speculative.

V. Segmentation

COST contends the absence of any analysis of the safety or other environmental impacts of the bikeway in the DEIR violated CEQA’s requirement the project be described and analyzed in its entirety, meaning the agency did not proceed in the manner required by law. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.)

COST argues that by improperly segmenting the Project, the cumulative impacts were not considered. (See *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 166; see also *San Joaquin Raptor I*, *supra*, 27 Cal.App.4th at p. 733 [setting aside an EIR for omitting a reference to a wastewater plant that was a necessary element of a project for residential development].) COST insists the

bikeway was an integral component of the busway project and MTA was obligated to take that facility into account when evaluating the impacts of the busway because of the potential for a significant impact. (*Santiago County Water Dist. v. County of Orange*, *supra*, 118 Cal.App.3d at p. 829.)

The DEIR noted the City of Los Angeles (“City”) was planning a bikeway as a separate project and planned to construct the bikeway within the MTA ROW adjacent to the busway. The DEIR discussed safety and other impacts of the bikeway; it discussed accident prevention as it related to the bikeway and the adjacent busway and noted that LADOT safety standards for bicycles would be implemented and that the bike path would be separated from the busway by fencing to discourage entry into the busway. Concept-level drawings for the Project set out the location of the bikeway and the proposed separation features from the adjoining busway. The DEIR concluded, “As a result of the dedicated corridor and integrated safety features (for drivers, bikes, and pedestrians), the project would have, at most, a minor adverse impact [on safety].”

The FEIR eliminated the language the bikeway was a separate project and noted it would be constructed concurrently with the busway. Although the FEIR referred to the bikeway as the City’s proposed bikeway, it acknowledged MTA had awarded funds for the bikeway and was the recognized lead for the bikeway. The FEIR also stated that separate environmental documentation would be prepared for the bikeway¹⁰ and that LADOT would maintain the bikeway. The FEIR confirmed that the bikeway would conform to LADOT bike lane standards and that bikeway crossings of intersections would be signalized.

Thus, the EIRs considered the impact of the bikeway on pedestrian and traffic safety in the design of signalized intersections and considered the bikeway location

¹⁰ The City completed its environmental clearance for the bikeway on January 14, 2002, through a notice of exemption. Any challenge to that clearance is now barred by the 35-day statute of limitations. (§ 21167, subd. (b).)

compared to the Project's facilities. Potential aesthetic impacts of the bikeway were evaluated, and the cumulative impacts of regional bikeway improvements were considered.

The DEIR did not improperly segment the Project as the bikeway was not an essential component because minimizing travel time and relieving congestion could be accomplished without the bikeway. (Compare *County of Inyo v. City of Los Angeles*, *supra*, 71 Cal.App.3d at pp. 197-198.) The revised description of the bikeway in the FEIR did not give rise to any new or more severe environmental impacts requiring recirculation. (See *Laurel Heights II*, *supra*, 6 Cal.4th at pp. 1139-1140.)

As we reverse for MTA to consider another alternative, we need not address COST's contention the award of costs was an abuse of discretion.

DISPOSITION

The judgment is reversed and the cause is remanded to the superior court which shall issue a peremptory writ of mandate directing MTA to vacate its certification of the FEIR and approval of the Project. The writ shall direct MTA, on any further proceedings on the EIR, to address the alternative of multiple Rapid Bus routes. Each side to bear its own costs on appeal.

WOODS, J.

We concur:

JOHNSON, Acting P.J.

ZELON, J.



