Comment Letter 31

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Roger Snoble
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, California 90012

September 16, 2004

Received
9-23-04

Via Hand Delivery

Dear Mr. Snoble:

Thank you for your letter of July 29, 2004, responding to my letter to you of July 23, 2004.

I apologize for not responding earlier, but, as I am sure you are aware, there have been both a large number of event regarding the Orange Line that have required my priority attention and many of these events have impacted the technical issues discussed in the enclosure to this letter. Now that many of these legal issues have either been settled or at least presented to the California Supreme Court, it is appropriate to return to the technical issues that need to be addressed as part of the California Environmental Quality Act (CEQA) process.

As I explained in my earlier letter, I have been designed as the contact between Citizens Organized for Smart Transit (COST) and the Los Angeles County Metropolitan Transportation Authority (MTA) for coordination of our efforts to prepare the new Environmental Impact Report (EIR) for the study of transit alternatives in the San Fernando Valley. This new EIR will replace the earlier analysis and Final EIR that were utilized in an attempt to satisfy the CEQA requirements to allow construction of what is now known as the "Orange Line."

I am, of course, very well aware of the MTA actions in this regard that were announced at the MTA Board meeting of July 22nd and widely reported in the press. That was why my letter of July 23rd was prepared.

Evidently my early letter failed to make clear two important points:

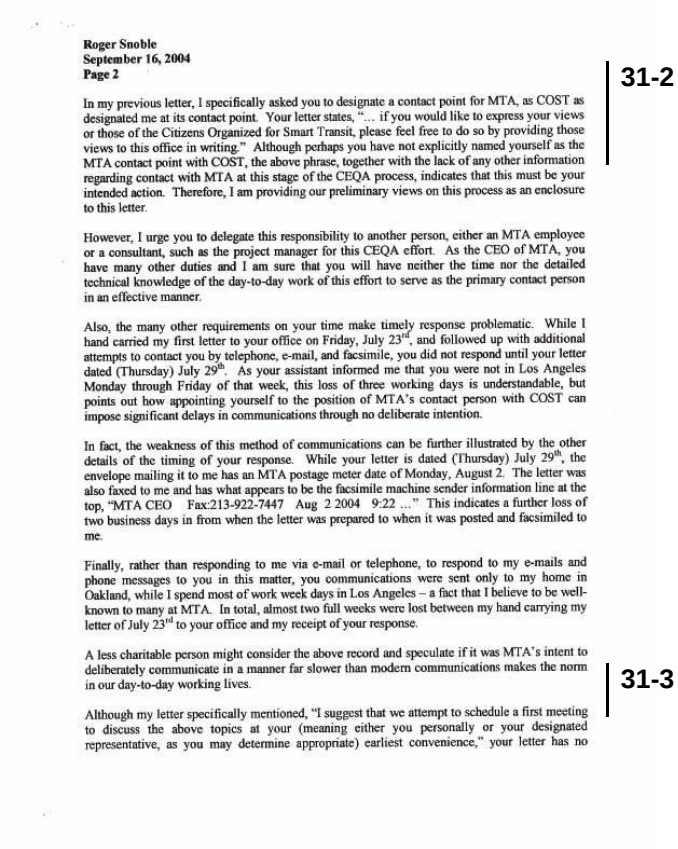
- The strong desire of COST to work closely with MTA on this CEQA effort throughout the process, beginning with the extremely important initial planning and scoping of this effort.
- Time is of the essence in this process.

31-1

Response to Comment Letter 31

Comment 31-1

Please see response to comment 20-8.



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31-2

In my previous letter, I specifically asked you to designate a contact point for MTA, as COST as designated me at its contact point. Your letter states, "… if you would like to express your views or those of the Citizens Organized for Smart Transit, please feel free to do so by providing those views to this office in writing." Although perhaps you have not explicitly named yourself as the MTA contact point with COST, the above phrase, together with the lack of any other information regarding contact with MTA at this stage of the CEQA process, indicates that this must be your intended action. Therefore, I am providing our preliminary views on this process as an enclosure to this letter.

However, I urge you to delegate this responsibility to another person, either an MTA employee or a consultant, such as the project manager for this CEQA effort. As the CEO of MTA, you have many other duties and I am sure that you will have neither the time nor the detailed technical knowledge of the day-to-day work of this effort to serve as the primary contact person in an effective manner.

Also, the many other requirements on your time make timely response problematic. While I hand carried my first letter to your office on Friday, July 23rd, and followed up with additional attempts to contact you by telephone, e-mail, and facsimile, you did not respond until your letter dated (Thursday) July 29th. As your assistant informed me that you were not in Los Angeles Monday through Friday of that week, this loss of three working days is understandable, but points out how appointing yourself to the position of MTA's contact person with COST can impose significant delays in communications through no deliberate intention.

In fact, the weakness of this method of communications can be further illustrated by the other details of the timing of your response. While your letter is dated (Thursday) July 29th, the envelope mailing it to me has an MTA postage meter date of Monday, August 2. The letter was also faxed to me and has what appears to be the facsimile machine sender information line at the top, "MTA CEO Fax:213-922-7447 Aug 2 2004 9:22 …" This indicates a further loss of two business days in from when the letter was prepared to when it was posted and facsimiled to me.

Finally, rather than responding to me via e-mail or telephone, to respond to my e-mails and phone messages to you in this matter, you communications were sent only to my home in Oakland, while I spend most of work week days in Los Angeles – a fact that I believe to be well-known to many at MTA. In total, almost two full weeks were lost between my hand carrying my letter of July 23rd to your office and my receipt of your response.

A less charitable person might consider the above record and speculate if it was MTA's intent to deliberately communicate in a manner far slower than modern communications makes the norm in our day-to-day working lives.

31-3

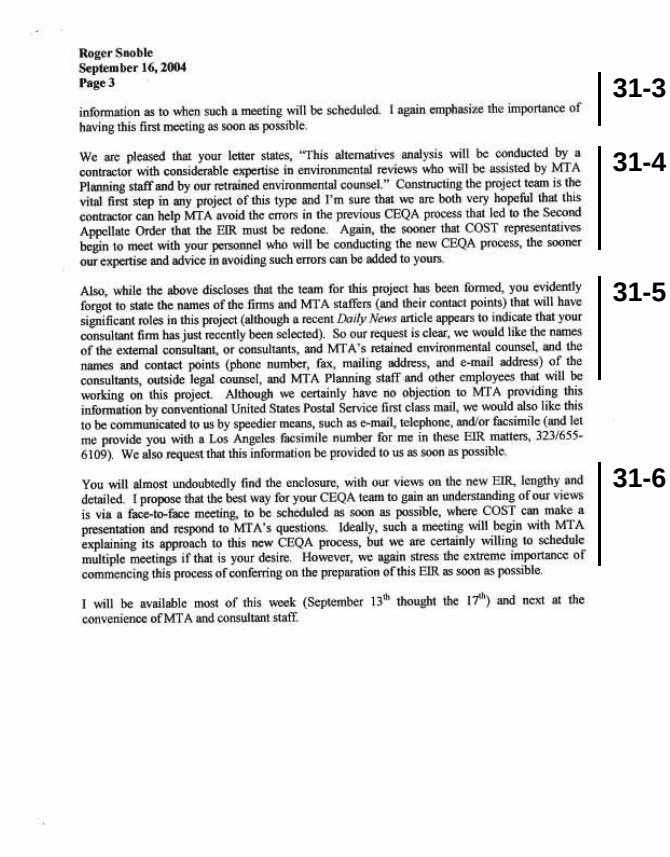
Although my letter specifically mentioned, "I suggest that we attempt to schedule a first meeting to discuss the above topics at your (meaning either you personally or your designated representative, as you may determine appropriate) earliest convenience," your letter has no

Comment 31-2

The CEO's letter invited Mr. Rubin to provide comments to his office. The correspondence from Mr. Rubin to Metro's CEO were referred to the project team as soon as it was received.

Comment 31-3

Please see Response 31-2.



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Page 3

information as to when such a meeting will be scheduled. I again emphasize the importance of having this first meeting as soon as possible. **31-3**

We are pleased that your letter states, "This alternatives analysis will be conducted by a contractor with considerable expertise in environmental reviews who will be assisted by MTA Planning staff and by our retrained environmental counsel." Constructing the project team is the vital first step in any project of this type and I'm sure that we are both very hopeful that this contractor can help MTA avoid the errors in the previous CEQA process that led to the Second Appellate Order that the EIR must be redone. Again, the sooner that COST representatives begin to meet with your personnel who will be conducting the new CEQA process, the sooner our expertise and advice in avoiding such errors can be added to yours. **31-4**

Also, while the above discloses that the team for this project has been formed, you evidently forgot to state the names of the firms and MTA staffers (and their contact points) that will have significant roles in this project (although a recent *Daily News* article appears to indicate that your consultant firm has just recently been selected). So our request is clear, we would like the names of the external consultant, or consultants, and MTA's retained environmental counsel, and the names and contact points (phone number, fax, mailing address, and e-mail address) of the consultants, outside legal counsel, and MTA Planning staff and other employees that will be working on this project. Although we certainly have no objection to MTA providing this information by conventional United States Postal Service first class mail, we would also like this to be communicated to us by speedier means, such as e-mail, telephone, and/or facsimile (and let me provide you with a Los Angeles facsimile number for me in these EIR matters, 323/655-6109). We also request that this information be provided to us as soon as possible. **31-5**

You will almost undoubtedly find the enclosure, with our views on the new EIR, lengthy and detailed. I propose that the best way for your CEQA team to gain an understanding of our views is via a face-to-face meeting, to be scheduled as soon as possible, where COST can make a presentation and respond to MTA's questions. Ideally, such a meeting will begin with MTA explaining its approach to this new CEQA process, but we are certainly willing to schedule multiple meetings if that is your desire. However, we again stress the extreme importance of commencing this process of conferring on the preparation of this EIR as soon as possible. **31-6**

I will be available most of this week (September 13th thought the 17th) and next at the convenience of MTA and consultant staff.

Comment 31-4

The comment is acknowledged for the record.

Comment 31-5

The team preparing the document was identified in the Revised FEIR. Please see Appendix 8E. Metro project staff is responsible for managing consultant contracts. Contact with consultants and legal assistance hired by Metro are done through Metro's project manager. Consultants are instructed to direct members of the public to the Metro project manager.

Comment 31-6

Mr. Rubin's points were well articulated and follow-up meetings were not required to understand his comments. As soon as his letter was received, it was distributed to the project team as public input to be considered in completing the project. The team anticipated that the letter would be submitted as a comment letter and gave it serious consideration as we proceeded.

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We at COST are looking forward to working with the MTA team on this important project to produce a FEIR and a project recommendation that we can both be proud of.

Sincerely,

Thomas A. Rubin

Enclosure

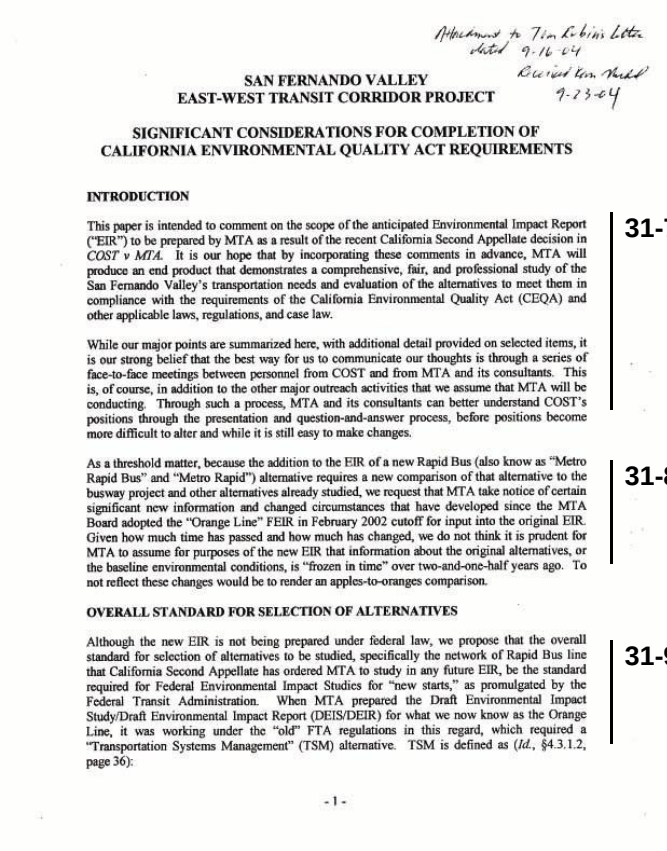
cc: Frank Roberts, MTA Chair (w/enclosure)
Steven Carnevale, MTA General Counsel (w/enclosure)
Jeffrey Z. B. Springer, Demetriou, Del Guercio, Springer & Francis (w/enclosure)
Diana Lipari, Chair, COST (w/enclosure)
John A. Henning, Jr., COST Legal Counsel (w/enclosure)

* *

Acknowledgement:

Received.

_____ _____
Name/Signed Date/Time



Attachment to Tim Rubin's Letter
dated 9-16-04
Received from Metro
9-23-04

SAN FERNANDO VALLEY
EAST-WEST TRANSIT CORRIDOR PROJECT

SIGNIFICANT CONSIDERATIONS FOR COMPLETION OF
CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS

INTRODUCTION

This paper is intended to comment on the scope of the anticipated Environmental Impact Report ("EIR") to be prepared by MTA as a result of the recent California Second Appellate decision in *COST v MTA*. It is our hope that by incorporating these comments in advance, MTA will produce an end product that demonstrates a comprehensive, fair, and professional study of the San Fernando Valley's transportation needs and evaluation of the alternatives to meet them in compliance with the requirements of the California Environmental Quality Act (CEQA) and other applicable laws, regulations, and case law.

31-7

While our major points are summarized here, with additional detail provided on selected items, it is our strong belief that the best way for us to communicate our thoughts is through a series of face-to-face meetings between personnel from COST and from MTA and its consultants. This is, of course, in addition to the other major outreach activities that we assume that MTA will be conducting. Through such a process, MTA and its consultants can better understand COST's positions through the presentation and question-and-answer process, before positions become more difficult to alter and while it is still easy to make changes.

As a threshold matter, because the addition to the EIR of a new Rapid Bus (also know as "Metro Rapid Bus" and "Metro Rapid") alternative requires a new comparison of that alternative to the busway project and other alternatives already studied, we request that MTA take notice of certain significant new information and changed circumstances that have developed since the MTA Board adopted the "Orange Line" FEIR in February 2002 cutoff for input into the original EIR. Given how much time has passed and how much has changed, we do not think it is prudent for MTA to assume for purposes of the new EIR that information about the original alternatives, or the baseline environmental conditions, is "frozen in time" over two-and-one-half years ago. To not reflect these changes would be to render an apples-to-oranges comparison.

31-8

OVERALL STANDARD FOR SELECTION OF ALTERNATIVES

Although the new EIR is not being prepared under federal law, we propose that the overall standard for selection of alternatives to be studied, specifically the network of Rapid Bus line that California Second Appellate has ordered MTA to study in any future EIR, be the standard required for Federal Environmental Impact Studies for "new starts," as promulgated by the Federal Transit Administration. When MTA prepared the Draft Environmental Impact Study/Draft Environmental Impact Report (DEIS/DEIR) for what we now know as the Orange Line, it was working under the "old" FTA regulations in this regard, which required a "Transportation Systems Management" (TSM) alternative. TSM is defined as (*Id.*, §4.3.1.2, page 36):

31-9

- 1 -

Comment 31-7

The comment is acknowledged for the record. See Response to Comment No. 14-10 for a discussion on "public outreach" (i.e., consultation with the public).

Comment 31-8

Please see Response 14-12.

Comment 31-9

As acknowledged by the commenter, MTA opted not to proceed under federal law in the FEIR. Therefore, FTA "new starts" standards are inapplicable to the FEIR and the Revised FEIR.

> "[T]he No Build Alternative *plus* lower cost transportation improvements (i.e., lower cost than the Build Alternative) which represent the *best* that can be done to improve mobility in the corridor without the construction of major new transit facilities." (Federal Transit Administration, *Technical Guidance on Section 5309 new Starts Criteria*, July 1999, §4.3.1.2, page 36)

31-9

Since MTA prepared this DEIS/DEIR, new regulations have gone into effect (the "new" regulations actually went into effect prior to the DEIS/DEIR being promulgated, but the "Orange Line" DEIS/DEIR was "grandfathered" into use of the "old" regulations), which replaced the former requirement for both "no build" and a "TSM" alternatives with a single alternative that combined the two former ones, the "baseline" alternative. The "baseline" alternative is defined in part, as:

31-10

> "In response to comments submitted on this issue and in recognition of the desire to simplify the new starts process, this Rule eliminates the requirement for separate no-build and TSM alternatives, and instead requires that the proposed new start be evaluated against a single 'baseline alternative.' The baseline alternative is best described as transit improvements lower in cost than the proposed new start, which result in a better ratio of measures of transit mobility compared to cost than the No Build alternative; the 'best you can do' without the new start investment." (FTA, 64 Federal Register, 17070-71, Appendix "A," VI., Section-by-Section Analysis, E., §611.9: Project Justification Criteria, page 76871.)

We wish to focus MTA's attention on two key, almost identical, phrases from the "old" and the "new" requirements, respectively:

> "... the *best* that can be done to improve mobility in the corridor without the construction of major new transit facilities."

> "... the 'best you can do' without the new start investment."

We are looking for a Rapid Bus alternative that meets these definitions and *is* "the best that can be done" without the extensive capital expense of the Orange Line. This will include both a network of East-West and North-South Rapid Bus lines serving the study area – which the DEIS/DEIR and the FEIR clearly established as the entire San Fernando Valley – plus *other* low capital cost transit improvements that are detailed below.

31-11

The evaluations of Rapid Bus alternative(s) that are not "the best that can be done" will not be satisfactory to COST, and would not, we believe, satisfy either the letter or spirit of the Court of Appeal decision.

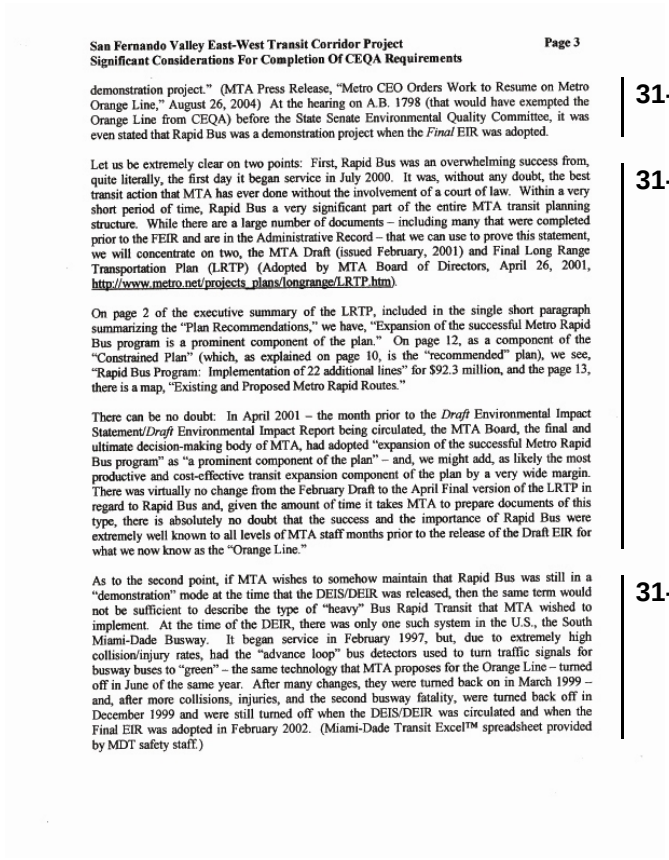
We wish to make clear that there is one decision criterion, even a descriptive term, that will be totally unacceptable to us because it is demonstrably false. We refer to MTA's often cited contention that, "A Metro Rapid alternative was not included in the original Environmental Impact Report (EIR) because at the time the EIR was being written Metro Rapid was only a

31-12

Comment 31-10
Please see response to comment 31-9.

Comment 31-11
Please see response to comment 31-1.

Comment 31-12
The commenter's statement is noted for the record.



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Significant Considerations For Completion Of CEQA Requirements

demonstration project." (MTA Press Release, "Metro CEO Orders Work to Resume on Metro Orange Line," August 26, 2004) At the hearing on A.B. 1798 (that would have exempted the Orange Line from CEQA) before the State Senate Environmental Quality Committee, it was even stated that Rapid Bus was a demonstration project when the *Final* EIR was adopted.

Let us be extremely clear on two points: First, Rapid Bus was an overwhelming success from, quite literally, the first day it began service in July 2000. It was, without any doubt, the best transit action that MTA has ever done without the involvement of a court of law. Within a very short period of time, Rapid Bus a very significant part of the entire MTA transit planning structure. While there are a large number of documents – including many that were completed prior to the FEIR and are in the Administrative Record – that we can use to prove this statement, we will concentrate on two, the MTA Draft (issued February, 2001) and Final Long Range Transportation Plan (LRTP) (Adopted by MTA Board of Directors, April 26, 2001, http://www.metro.net/projects_plans/longrange/LRTP.htm).

On page 2 of the executive summary of the LRTP, included in the single short paragraph summarizing the "Plan Recommendations," we have, "Expansion of the successful Metro Rapid Bus program is a prominent component of the plan." On page 12, as a component of the "Constrained Plan" (which, as explained on page 10, is the "recommended" plan), we see, "Rapid Bus Program: Implementation of 22 additional lines" for $92.3 million, and the page 13, there is a map, "Existing and Proposed Metro Rapid Routes."

There can be no doubt: In April 2001 – the month prior to the *Draft* Environmental Impact Statement/*Draft* Environmental Impact Report being circulated, the MTA Board, the final and ultimate decision-making body of MTA, had adopted "expansion of the successful Metro Rapid Bus program" as "a prominent component of the plan" – and, we might add, as likely the most productive and cost-effective transit expansion component of the plan by a very wide margin. There was virtually no change from the February Draft to the April Final version of the LRTP in regard to Rapid Bus and, given the amount of time it takes MTA to prepare documents of this type, there is absolutely no doubt that the success and the importance of Rapid Bus were extremely well known to all levels of MTA staff months prior to the release of the Draft EIR for what we now know as the "Orange Line."

As to the second point, if MTA wishes to somehow maintain that Rapid Bus was still in a "demonstration" mode at the time that the DEIS/DEIR was released, then the same term would not be sufficient to describe the type of "heavy" Bus Rapid Transit that MTA wished to implement. At the time of the DEIR, there was only one such system in the U.S., the South Miami-Dade Busway. It began service in February 1997, but, due to extremely high collision/injury rates, had the "advance loop" bus detectors used to turn traffic signals for busway buses to "green" – the same technology that MTA proposes for the Orange Line – turned off in June of the same year. After many changes, they were turned back on in March 1999 – and, after more collisions, injuries, and the second busway fatality, were turned back off in December 1999 and were still turned off when the DEIS/DEIR was circulated and when the Final EIR was adopted in February 2002. (Miami-Dade Transit Excel™ spreadsheet provided by MDT safety staff.)

31-12

31-13

31-14

Comment 31-13

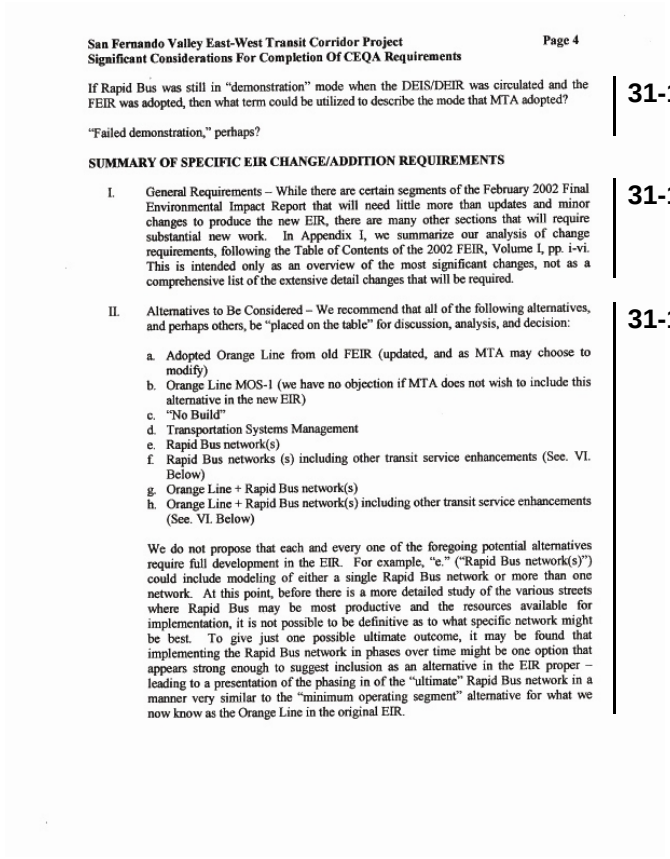
What Tom Rubin states in 31-13 is partially correct. The mention of Metro Rapid in the Executive Summary of the Long Range Transportation Plan is, as stated by Mr. Rubin, on the page numbers given. However, he is incorrect in stating that the MTA Board adopted "expansion of the successful Metro Rapid Bus Program" as "a prominent component of the plan" with the approval of the LRTP in April 2001.

The Metro Rapid Program was still a demonstration project in April 2001. What was discussed in the LRTP was the conceptual plan for expanding the Metro Rapid Demonstration Program. The conceptual plan included 22 expansion lines and was based on a limited selection process. The MTA Board of Directors directed that further work needed to be done on expanding the Demonstration Program in May 2001, based on the plan identified in the Long Range Transportation Plan (this is all in Metro Rapid Board Report of February 2002).

This direction called for three principal work efforts:

- Reconfirm the lines identified in the LRTP through more extensive analysis and the consideration of additional MTA and Municipal lines, and prioritize potential Metro Rapid candidate lines into an updated phased implementation plan.
- Implement an initial expansion phase of 6-7 lines.
- Monitor, analyze, and improve Metro Rapid operations, facilities, and customer experience.

The Board Report of February 2002 presented the first element in this work, selection of the Metro Rapid Expansion Program lines (Phase II).



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Significant Considerations For Completion Of CEQA Requirements

If Rapid Bus was still in "demonstration" mode when the DEIS/DEIR was circulated and the FEIR was adopted, then what term could be utilized to describe the mode that MTA adopted? 31-14

"Failed demonstration," perhaps?

SUMMARY OF SPECIFIC EIR CHANGE/ADDITION REQUIREMENTS

I. General Requirements – While there are certain segments of the February 2002 Final Environmental Impact Report that will need little more than updates and minor changes to produce the new EIR, there are many other sections that will require substantial new work. In Appendix I, we summarize our analysis of change requirements, following the Table of Contents of the 2002 FEIR, Volume I, pp. i-vi. This is intended only as an overview of the most significant changes, not as a comprehensive list of the extensive detail changes that will be required. 31-15

II. Alternatives to Be Considered – We recommend that all of the following alternatives, and perhaps others, be "placed on the table" for discussion, analysis, and decision: 31-16

a. Adopted Orange Line from old FEIR (updated, and as MTA may choose to modify)
b. Orange Line MOS-1 (we have no objection if MTA does not wish to include this alternative in the new EIR)
c. "No Build"
d. Transportation Systems Management
e. Rapid Bus network(s)
f. Rapid Bus networks (s) including other transit service enhancements (See. VI. Below)
g. Orange Line + Rapid Bus network(s)
h. Orange Line + Rapid Bus network(s) including other transit service enhancements (See. VI. Below)

We do not propose that each and every one of the foregoing potential alternatives require full development in the EIR. For example, "e." ("Rapid Bus network(s)") could include modeling of either a single Rapid Bus network or more than one network. At this point, before there is a more detailed study of the various streets where Rapid Bus may be most productive and the resources available for implementation, it is not possible to be definitive as to what specific network might be best. To give just one possible ultimate outcome, it may be found that implementing the Rapid Bus network in phases over time might be one option that appears strong enough to suggest inclusion as an alternative in the EIR proper – leading to a presentation of the phasing in of the "ultimate" Rapid Bus network in a manner very similar to the "minimum operating segment" alternative for what we now know as the Orange Line in the original EIR.

Comment 31-14

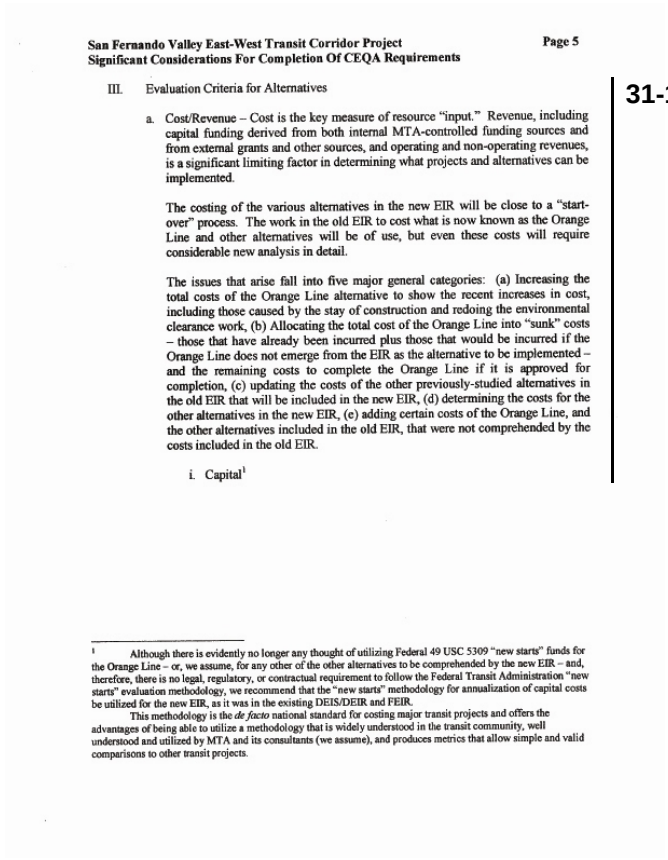
This comment appears to address an issue of semantics rather than environmental impacts. The Orange Line can be described as bus rapid transit in a dedicated busway. It is actually modeled in the MTA travel demand forecasting model as an express bus in a dedicated facility with run times hard coded into the model as opposed to being a function of the highway speed, as are other modes, such as Rapid Bus which travel in mixed flow lanes and are therefore subject to the influence of traffic congestion in those lanes.

Comment 31-15

Please see Responses 14-12 and 20-31.

Comment 31-16

The Commenter's statement is noted for the record. Please see Response 4-2.



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III. Evaluation Criteria for Alternatives

a. Cost/Revenue – Cost is the key measure of resource "input." Revenue, including capital funding derived from both internal MTA-controlled funding sources and from external grants and other sources, and operating and non-operating revenues, is a significant limiting factor in determining what projects and alternatives can be implemented.

The costing of the various alternatives in the new EIR will be close to a "start-over" process. The work in the old EIR to cost what is now known as the Orange Line and other alternatives will be of use, but even these costs will require considerable new analysis in detail.

The issues that arise fall into five major general categories: (a) Increasing the total costs of the Orange Line alternative to show the recent increases in cost, including those caused by the stay of construction and redoing the environmental clearance work, (b) Allocating the total cost of the Orange Line into "sunk" costs – those that have already been incurred plus those that would be incurred if the Orange Line does not emerge from the EIR as the alternative to be implemented – and the remaining costs to complete the Orange Line if it is approved for completion, (c) updating the costs of the other previously-studied alternatives in the old EIR that will be included in the new EIR, (d) determining the costs for the other alternatives in the new EIR, (e) adding certain costs of the Orange Line, and the other alternatives included in the old EIR, that were not comprehended by the costs included in the old EIR.

i. Capital[1]

[1] Although there is evidently no longer any thought of utilizing Federal 49 USC 5309 "new starts" funds for the Orange Line – or, we assume, for any other of the other alternatives to be comprehended by the new EIR – and, therefore, there is no legal, regulatory, or contractual requirement to follow the Federal Transit Administration "new starts" evaluation methodology, we recommend that the "new starts" methodology for annualization of capital costs be utilized for the new EIR, as it was in the existing DEIS/DEIR and FEIR.

This methodology is the *de facto* national standard for costing major transit projects and offers the advantages of being able to utilize a methodology that is widely understood in the transit community, well understood and utilized by MTA and its consultants (we assume), and produces metrics that allow simple and valid comparisons to other transit projects.

31-17

Comment 31-17

A baseline cost comparison was used to maintain continuity of the original FEIR.

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31-17

1. Definition: California Public Utilities Code 130513[2] – "'Cost,' as applied to a project or portion thereof financed under this chapter, means all or any part of the cost of construction and acquisition of all real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing any structures on land so acquired, including the cost of acquiring any land to which the structures may be removed, the cost of all machinery and equipment, vehicles, rolling stock, financing charges, interest prior to, during, and for a period after completion of construction as determined by the commission, provisions for working capital, reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements, the cost of architectural, engineering, financial, and legal services, plans, specifications, estimates, and administrative expenses, and other expenses necessary or incidental to the determination of the feasibility of constructing any project or incidental to the construction, acquisition, or financing of any project."
2. "Cost Accounting" methodology[3] – there are two basic methodologies here, both of which are relevant to costing of the Orange Line, particularly for indirect costs, but for different purposes.

    a. The first is "fully allocated costs," where, for example, part of the cost of the MTA Human Resources department is allocated to the Orange Line based, for example, on the number of Orange Line employees and the total number of MTA employees. For compliance with Generally Accepted Accounting Principles (GAAP), Government GAAP, and PUC 130513, this is the proper methodology.
    b. The second is "marginal costs," where, in this situation, the costs allocated to a new activity are, in simple terms, the difference between the costs of transit service with and without a specific change in service. In most cases, the

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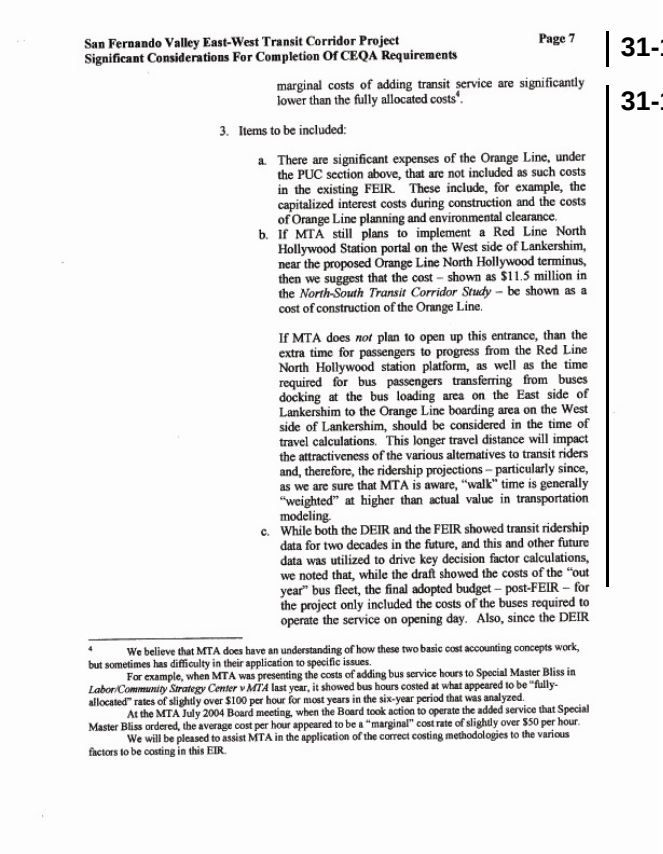
[2] Los Angles County Transportation Commission Revenue Bond Act (PUC 130000-53). The provisions of this PUC section are a fairly standard definition of "costs" found in identical, or substantially identical, form in at least ten different places in various sections of State Statutes.

As to applicability of this "LACTC" definition of cost to MTA, see PUC 130051.14: "On and after April 1, 1993, any reference in this part, or in any other provision of law or regulation, to the Southern California Rapid Transit District or to the Los Angeles County Transportation Commission or to the county transportation commission in general shall be deemed to refer to the Los Angeles County Metropolitan Transportation Authority."

[3] Although this discussion is listed under "capital" cost, it is equally applicable to operating costs and all revenues.



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marginal costs of adding transit service are significantly lower than the fully allocated costs[4].

3. Items to be included:

a. There are significant expenses of the Orange Line, under the PUC section above, that are not included as such costs in the existing FEIR. These include, for example, the capitalized interest costs during construction and the costs of Orange Line planning and environmental clearance.

b. If MTA still plans to implement a Red Line North Hollywood Station portal on the West side of Lankershim, near the proposed Orange Line North Hollywood terminus, then we suggest that the cost – shown as $11.5 million in the *North-South Transit Corridor Study* – be shown as a cost of construction of the Orange Line.

If MTA does *not* plan to open up this entrance, than the extra time for passengers to progress from the Red Line North Hollywood station platform, as well as the time required for bus passengers transferring from buses docking at the bus loading area on the East side of Lankershim to the Orange Line boarding area on the West side of Lankershim, should be considered in the time of travel calculations. This longer travel distance will impact the attractiveness of the various alternatives to transit riders and, therefore, the ridership projections – particularly since, as we are sure that MTA is aware, "walk" time is generally "weighted" at higher than actual value in transportation modeling.

c. While both the DEIR and the FEIR showed transit ridership data for two decades in the future, and this and other future data was utilized to drive key decision factor calculations, we noted that, while the draft showed the costs of the "out year" bus fleet, the final adopted budget – post-FEIR – for the project only included the costs of the buses required to operate the service on opening day. Also, since the DEIR

[4] We believe that MTA does have an understanding of how these two basic cost accounting concepts work, but sometimes has difficulty in their application to specific issues.
For example, when MTA was presenting the costs of adding bus service hours to Special Master Bliss in *Labor/Community Strategy Center v MTA* last year, it showed bus hours costed at what appeared to be "fully-allocated" rates of slightly over $100 per hour for most years in the six-year period that was analyzed.
At the MTA July 2004 Board meeting, when the Board took action to operate the added service that Special Master Bliss ordered, the average cost per hour appeared to be a "marginal" cost rate of slightly over $50 per hour.
We will be pleased to assist MTA in the application of the correct costing methodologies to the various factors to be costing in this EIR.

31-17

31-18

Comment 31-18

MTA has no plans to construct a portal on the west side of Lankershim Boulevard. This is not a part of the Orange Line project, and no funds have been budgeted for it. Travel time calculations for the BRT used as its easterly terminus, the BRT station located on the west side of Lankershim Boulevard, not the North Hollywood Metro Red Line station. In fact, it is not assumed that all patrons will arrive at the North Hollywood BRT station from the Red Line.

Procurement of advanced-technology vehicles was not anticipated in formulating the Project budget for the FEIR. Please see Response 20-229.

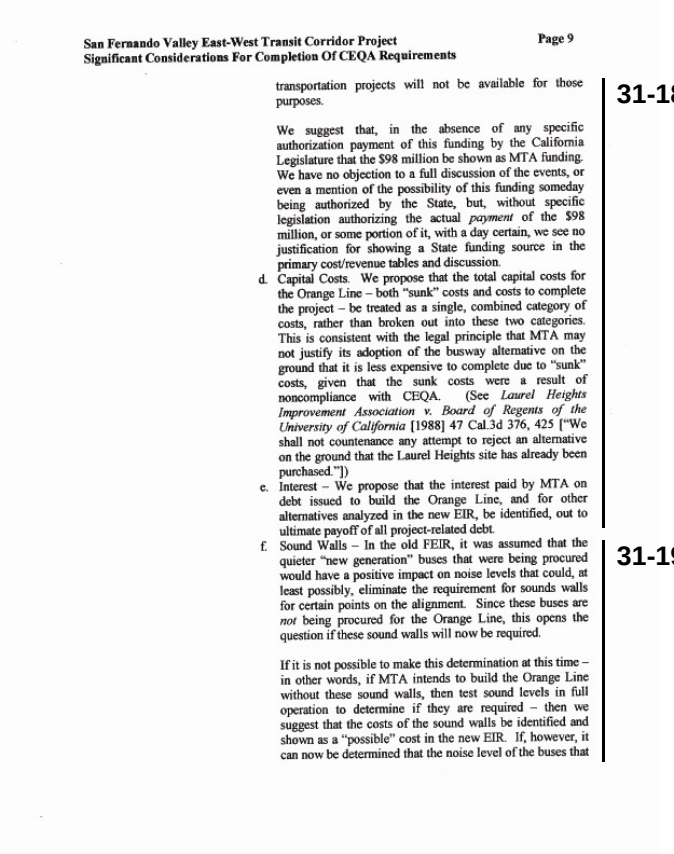
vehicle costs assumed an extremely expensive CNG/Hybrid or CNG/Electric Articulated vehicle – which MTA decided not to procure – and the final adopted budget was based on more conventional vehicles, there was a significant reduction in the vehicle line item costs. Interestingly, the amount of the reduction in the vehicles line item appeared to exactly match the amounts added to other line items, leaving the project total unchanged at $329.5 million.

If, as was done in the original EIR, the data for ridership, time savings, air quality, et al in the new EIR are based on a year 20 years in the future, then the costs of the Orange Line should also be based on the number of vehicles required to operate the Orange Line service, and other related service, in the same year. Of course, the unit cost of vehicles should be based on MTA's best professional estimation of the costs of the vehicles that would then be in use, which, we expect, will be based in large part on current vehicle costs.

d. The costs in the last EIR were based on an assumption that substantial funding would be received from the State of California. As we now know, approximately $98 million of the expected funding is not currently authorized and MTA has elected to "front" this State funding by borrowing against its own future sales tax revenues and the shift of funds from various transportation projects planned in the "out" years. At this time, there appears to be only a possibility that a small portion of the $98 million in Traffic Congestion Relief Act funding could be received any time in the foreseeable future[5]. Since the "repayment" of the funds fronted by MTA is, arguably, a "rob Peter to pay Paul" scheme that assumes that other funds will become available in the future to fund the projects that had their future funding shifted to future reimbursement of MTA Orange Line expenditures, there must ultimately be a recognition that, if the TCRA funds don't ever appear, then ultimately, choosing to "fund" the Orange Line in the way that MTA has elected will eventually mean that funds that could have been used for other Los Angeles County

31-18

[5] While there is an allocation of $11.6 million for the Orange Line in the "Indian Gaming" funds recently negotiated by the Governor, we understand that these funds would not be forthcoming if either Proposition 68 or 70 is passed by the California electorate in November. If this issue is not resolved prior to the FEIR being prepared, then this matter would require proper disclosure in that document, as well as full discussion in the DEIR if that document is issued prior to the outcome of the November election being known.



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transportation projects will not be available for those purposes.

We suggest that, in the absence of any specific authorization payment of this funding by the California Legislature that the $98 million be shown as MTA funding. We have no objection to a full discussion of the events, or even a mention of the possibility of this funding someday being authorized by the State, but, without specific legislation authorizing the actual *payment* of the $98 million, or some portion of it, with a day certain, we see no justification for showing a State funding source in the primary cost/revenue tables and discussion.

d. Capital Costs. We propose that the total capital costs for the Orange Line – both "sunk" costs and costs to complete the project – be treated as a single, combined category of costs, rather than broken out into these two categories. This is consistent with the legal principle that MTA may not justify its adoption of the busway alternative on the ground that it is less expensive to complete due to "sunk" costs, given that the sunk costs were a result of noncompliance with CEQA. (See *Laurel Heights Improvement Association v. Board of Regents of the University of California* [1988] 47 Cal.3d 376, 425 ["We shall not countenance any attempt to reject an alternative on the ground that the Laurel Heights site has already been purchased."])

e. Interest – We propose that the interest paid by MTA on debt issued to build the Orange Line, and for other alternatives analyzed in the new EIR, be identified, out to ultimate payoff of all project-related debt.

f. Sound Walls – In the old FEIR, it was assumed that the quieter "new generation" buses that were being procured would have a positive impact on noise levels that could, at least possibly, eliminate the requirement for sounds walls for certain points on the alignment. Since these buses are *not* being procured for the Orange Line, this opens the question if these sound walls will now be required.

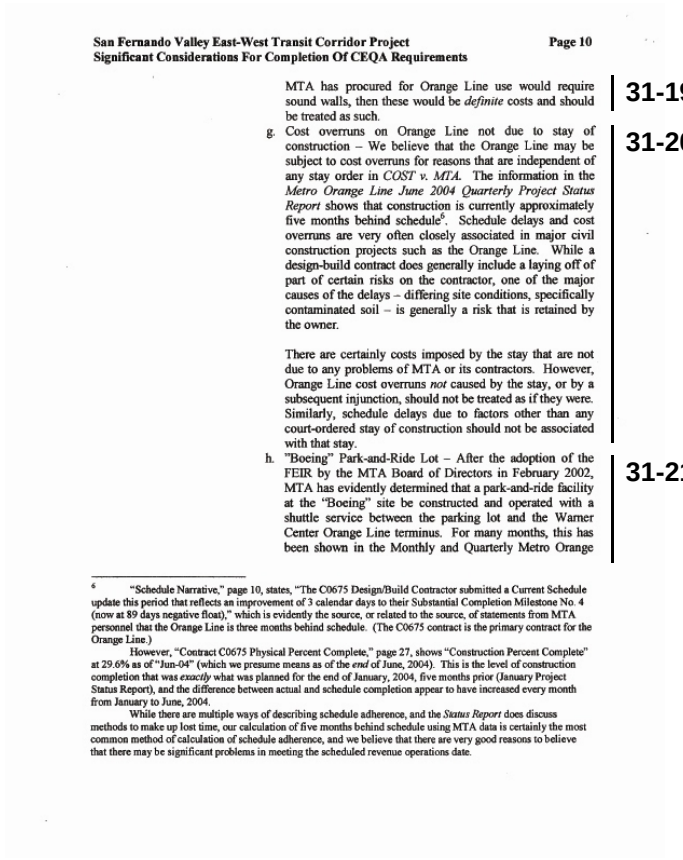
If it is not possible to make this determination at this time – in other words, if MTA intends to build the Orange Line without these sound walls, then test sound levels in full operation to determine if they are required – then we suggest that the costs of the sound walls be identified and shown as a "possible" cost in the new EIR. If, however, it can now be determined that the noise level of the buses that

31-18

31-19

Comment 31-19

Commenter is correct that the FEIR suggested that quieter buses could reduce or eliminate the need for soundwalls for certain points along the alignment. However, all soundwalls are being constructed at locations designated in the FEIR, and the cost of all soundwalls was included in the FEIR project budget. Meanwhile, MTA has worked diligently to procure a quieter bus, therefore implementing additional mitigation measures in advance of the BRT operation.



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MTA has procured for Orange Line use would require sound walls, then these would be *definite* costs and should be treated as such. 31-19

g. Cost overruns on Orange Line not due to stay of construction – We believe that the Orange Line may be subject to cost overruns for reasons that are independent of any stay order in *COST v. MTA*. The information in the *Metro Orange Line June 2004 Quarterly Project Status Report* shows that construction is currently approximately five months behind schedule[6]. Schedule delays and cost overruns are very often closely associated in major civil construction projects such as the Orange Line. While a design-build contract does generally include a laying off of part of certain risks on the contractor, one of the major causes of the delays – differing site conditions, specifically contaminated soil – is generally a risk that is retained by the owner. 31-20

There are certainly costs imposed by the stay that are not due to any problems of MTA or its contractors. However, Orange Line cost overruns *not* caused by the stay, or by a subsequent injunction, should not be treated as if they were. Similarly, schedule delays due to factors other than any court-ordered stay of construction should not be associated with that stay.

h. "Boeing" Park-and-Ride Lot – After the adoption of the FEIR by the MTA Board of Directors in February 2002, MTA has evidently determined that a park-and-ride facility at the "Boeing" site be constructed and operated with a shuttle service between the parking lot and the Warner Center Orange Line terminus. For many months, this has been shown in the Monthly and Quarterly Metro Orange 31-21

[6] "Schedule Narrative," page 10, states, "The C0675 Design/Build Contractor submitted a Current Schedule update this period that reflects an improvement of 3 calendar days to their Substantial Completion Milestone No. 4 (now at 89 days negative float)," which is evidently the source, or related to the source, of statements from MTA personnel that the Orange Line is three months behind schedule. (The C0675 contract is the primary contract for the Orange Line.)

However, "Contract C0675 Physical Percent Complete," page 27, shows "Construction Percent Complete" at 29.6% as of "Jun-04" (which we presume means as of the *end* of June, 2004). This is the level of construction completion that was *exactly* what was planned for the end of January, 2004, five months prior (January Project Status Report), and the difference between actual and schedule completion appear to have increased every month from January to June, 2004.

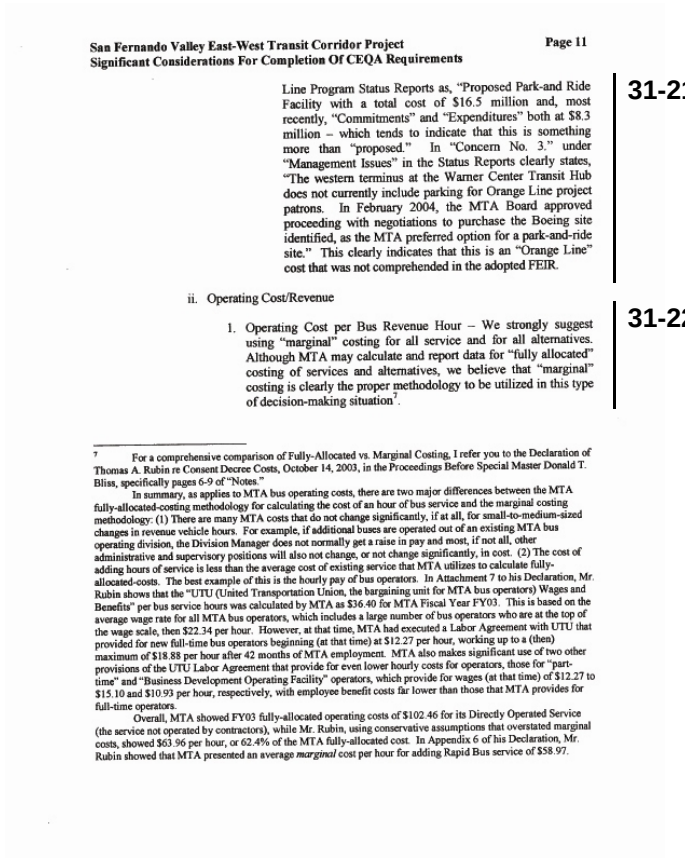
While there are multiple ways of describing schedule adherence, and the *Status Report* does discuss methods to make up lost time, our calculation of five months behind schedule using MTA data is certainly the most common method of calculation of schedule adherence, and we believe that there are very good reasons to believe that there may be significant problems in meeting the scheduled revenue operations date.

Comment 31-20

The comment is acknowledged for the record.

Comment 31-21

The Orange Line project budget contained an allocation of $16.5 million set aside for construction of additional parking in Warner Center. The construction of a station and park and ride lot on Canoga Avenue in Warner Center has been environmentally cleared by an addendum to the FEIR, certified by the MTA Board in February 2004.



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Line Program Status Reports as, "Proposed Park-and Ride Facility with a total cost of $16.5 million and, most recently, "Commitments" and "Expenditures" both at $8.3 million – which tends to indicate that this is something more than "proposed." In "Concern No. 3." under "Management Issues" in the Status Reports clearly states, "The western terminus at the Warner Center Transit Hub does not currently include parking for Orange Line project patrons. In February 2004, the MTA Board approved proceeding with negotiations to purchase the Boeing site identified, as the MTA preferred option for a park-and-ride site." This clearly indicates that this is an "Orange Line" cost that was not comprehended in the adopted FEIR.

31-21

ii. Operating Cost/Revenue

1. Operating Cost per Bus Revenue Hour – We strongly suggest using "marginal" costing for all service and for all alternatives. Although MTA may calculate and report data for "fully allocated" costing of services and alternatives, we believe that "marginal" costing is clearly the proper methodology to be utilized in this type of decision-making situation[7].

31-22

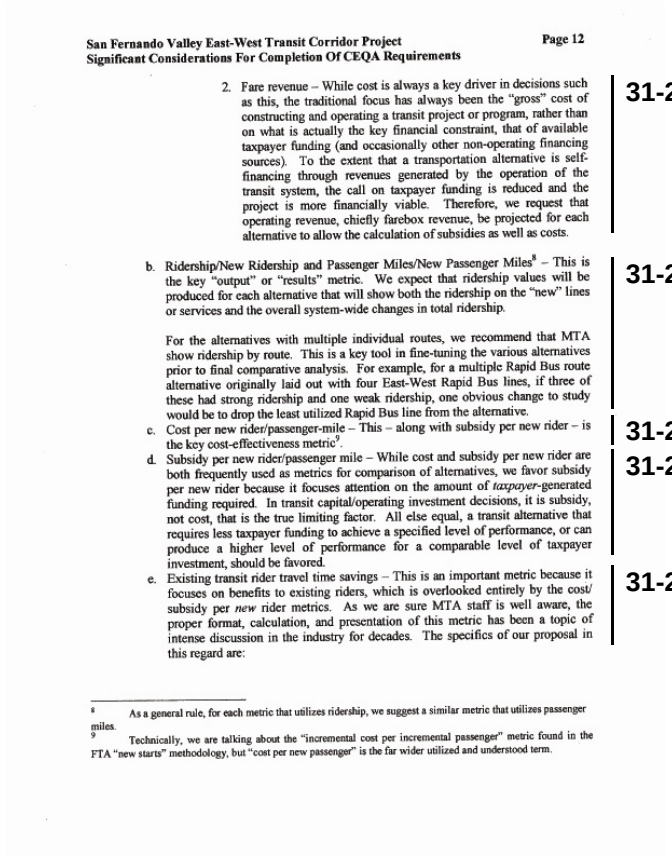
[7] For a comprehensive comparison of Fully-Allocated vs. Marginal Costing, I refer you to the Declaration of Thomas A. Rubin re Consent Decree Costs, October 14, 2003, in the Proceedings Before Special Master Donald T. Bliss, specifically pages 6-9 of "Notes."

In summary, as applies to MTA bus operating costs, there are two major differences between the MTA fully-allocated-costing methodology for calculating the cost of an hour of bus service and the marginal costing methodology: (1) There are many MTA costs that do not change significantly, if at all, for small-to-medium-sized changes in revenue vehicle hours. For example, if additional buses are operated out of an existing MTA bus operating division, the Division Manager does not normally get a raise in pay and most, if not all, other administrative and supervisory positions will also not change, or not change significantly, in cost. (2) The cost of adding hours of service is less than the average cost of existing service that MTA utilizes to calculate fully-allocated-costs. The best example of this is the hourly pay of bus operators. In Attachment 7 to his Declaration, Mr. Rubin shows that the "UTU (United Transportation Union, the bargaining unit for MTA bus operators) Wages and Benefits" per bus service hours was calculated by MTA as $36.40 for MTA Fiscal Year FY03. This is based on the average wage rate for all MTA bus operators, which includes a large number of bus operators who are at the top of the wage scale, then $22.34 per hour. However, at that time, MTA had executed a Labor Agreement with UTU that provided for new full-time bus operators beginning (at that time) at $12.27 per hour, working up to a (then) maximum of $18.88 per hour after 42 months of MTA employment. MTA also makes significant use of two other provisions of the UTU Labor Agreement that provide for even lower hourly costs for operators, those for "part-time" and "Business Development Operating Facility" operators, which provide for wages (at that time) of $12.27 to $15.10 and $10.93 per hour, respectively, with employee benefit costs far lower than those that MTA provides for full-time operators.

Overall, MTA showed FY03 fully-allocated operating costs of $102.46 for its Directly Operated Service (the service not operated by contractors), while Mr. Rubin, using conservative assumptions that overstated marginal costs, showed $63.96 per hour, or 62.4% of the MTA fully-allocated cost. In Appendix 6 of his Declaration, Mr. Rubin showed that MTA presented an average *marginal* cost per hour for adding Rapid Bus service of $58.97.

Comment 31-22

The MTA O&M cost model is a resource cost build-up model that is typically used for MTA planning studies. FTA guidelines state a preference for use of a resource cost build-up model (see *Guidance for Transit Financial Plans*, Federal Transit Administration, Office of Planning, Office of Program Management, June 2000, section 2.4.2). The MTA O&M cost model provides a valid tool for understanding cost comparisons between alternatives.



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2. Fare revenue – While cost is always a key driver in decisions such as this, the traditional focus has always been the "gross" cost of constructing and operating a transit project or program, rather than on what is actually the key financial constraint, that of available taxpayer funding (and occasionally other non-operating financing sources). To the extent that a transportation alternative is self-financing through revenues generated by the operation of the transit system, the call on taxpayer funding is reduced and the project is more financially viable. Therefore, we request that operating revenue, chiefly farebox revenue, be projected for each alternative to allow the calculation of subsidies as well as costs.

31-23

b. Ridership/New Ridership and Passenger Miles/New Passenger Miles[8] – This is the key "output" or "results" metric. We expect that ridership values will be produced for each alternative that will show both the ridership on the "new" lines or services and the overall system-wide changes in total ridership.

For the alternatives with multiple individual routes, we recommend that MTA show ridership by route. This is a key tool in fine-tuning the various alternatives prior to final comparative analysis. For example, for a multiple Rapid Bus route alternative originally laid out with four East-West Rapid Bus lines, if three of these had strong ridership and one weak ridership, one obvious change to study would be to drop the least utilized Rapid Bus line from the alternative.

31-24

c. Cost per new rider/passenger-mile – This – along with subsidy per new rider – is the key cost-effectiveness metric[9].

31-25

d. Subsidy per new rider/passenger mile – While cost and subsidy per new rider are both frequently used as metrics for comparison of alternatives, we favor subsidy per new rider because it focuses attention on the amount of *taxpayer*-generated funding required. In transit capital/operating investment decisions, it is subsidy, not cost, that is the true limiting factor. All else equal, a transit alternative that requires less taxpayer funding to achieve a specified level of performance, or can produce a higher level of performance for a comparable level of taxpayer investment, should be favored.

31-26

e. Existing transit rider travel time savings – This is an important metric because it focuses on benefits to existing riders, which is overlooked entirely by the cost/subsidy per *new* rider metrics. As we are sure MTA staff is well aware, the proper format, calculation, and presentation of this metric has been a topic of intense discussion in the industry for decades. The specifics of our proposal in this regard are:

31-27

[8] As a general rule, for each metric that utilizes ridership, we suggest a similar metric that utilizes passenger miles.

[9] Technically, we are talking about the "incremental cost per incremental passenger" metric found in the FTA "new starts" methodology, but "cost per new passenger" is the far wider utilized and understood term.

Comment 31-23

We typically do not account for project-specific fare revenue. Capture of fare revenues is not an environmental impact-related issue.

Comment 31-24

Boardings for each rapid bus route have been provided in Table 8-6.5.

Comment 31-25

Cost per new rider (new daily transit trip) is provided in Table 8-6.10. Operating cost per passenger mile is provided in Table 8-6.11.

Comment 31-26

Please see Response 31-23.

Comment 31-27

Travel time savings continues to use the metric employed in the DEIR and FEIR. Please see Response 10-4.

i. The current FTA metric for cost-effectiveness – incremental cost divided by transportation system benefit[10] – should be utilized. Although there is no Federal "new starts" funding proposed for this project, this metric is the new national standard and its use will provide comparison data to other projects around the U.S.[11]

ii. In addition to the new FTA metric, the other key metrics utilized should be total, and average, origin-to-destination time change for all existing riders and a specified subset thereof. While we would prefer that total time be the metric, the obvious problem is that, with the changes in the transportation system from the various alternatives, there will undoubtedly be different numbers of existing riders choosing to remain or not remain as transit users. The use of the average will allow valid comparisons. (The net change in existing riders by alternative is itself an interesting statistic which may be utilized to show that "greatest good for the greatest number"-driven decisions sometimes have significant downsides for minorities.)

iii. The "specified subset" of the existing riders mentioned above is the riders that will actually be directly impacted by each individual alternative. Very likely, for each EIR alternative, there will be a very large number of Valley transit users that will see no change at all in their travel patterns. For each alternative, we believe the public should know the number of existing riders that will see their transit travel changed and the net change in travel time, both in total and in average.

iv. In all cases where transit passenger travel time is being produced, we recommend two metrics:

1. Actual "clock" time
2. Perceived time

It is well understood in transportation modeling that travelers tend to make their travel decisions, to a large extent, not on actual "clock" time, but on perceived time. Time spent not in motion – in transit travel, waiting for the first transit vehicle and waiting for transfers – is weighted far more heavily than time in motion, commonly at least double actual clock time, with 250% being common being a common factor (in other words, if a traveler has to wait ten minutes for a transfer to the second transit vehicle, the traveler may base decisions on which transportation modes to utilize by considering this wait time as twenty-five minutes, or more, depending upon the factors utilized by each modeler in each model run). In such

31-27

[10] Often, but not exactly properly, called "cost per travel hour saved."

[11] The *Major Transit Capital Investment Projects Final Rule*, referred to as the *New Starts Final Rule*, was published in the Federal Register on December 7, 2000 and became effective on April 6, 2001. The *New Starts Final Rule*, 49 CFR Part 611, establishes the methodology FTA will apply in the evaluation and rating of proposed New Starts projects as required by 49 U.S.C. 5309(e).

31-27

models, there may be different weightings for the "first" vs. "subsequent" transit trips, or not, as well as different weighting factors for "walk" access times (with a 150% clock time weighting for the type of walk time being common in transportation modeling).

We ask for the presentation of the travel times for *both* of the above – actual "clock" time and traveler-perceived time – in order to allow decision-makers to actually see how the users of the transit system view the utility of the various alternatives.

We also recommend that the various factors – such as "wait time weightings" – utilized in MTA's transportation models be specified. We also wish to know of any "modal preference" factors utilized in the model runs – such as assumptions that riders will have a preference for utilizing a mode such as Bus Rapid Transit over other bus modes specified[12]. If such modal preference(s) is/are utilized in the MTA modeling process, the analysis should justify it/them, along with the required acceptance of the analysis(es) by the Federal Transit Administration[13].

In making this request, we bear in mind that, while speed of travel is often one of *the* most important factors in travelers' decisions as to how to complete their trips, this is a far broader factor that the travel speed of transit vehicles – a simple fact of life that many proponents of higher speed transit often either do not realize or choose to overlook because it interferes with gaining acceptance of their proposals. Vehicle travel speed is a factor in travel time decisions, but only one of many, and often not a very important one, particularly when the travel distance on a particular mode – such as the Orange Line – is short, or the access time to the favored higher-speed mode is such that the favored mode is simply not useful to many travelers.

The "other" factors that go into total travel time calculations include access time at both ends of the trip and for any required transfers between transit vehicles and wait times for each transit vehicle (which, as is discussed above, are weighted far higher than actual clock time, as is "walk" time). The network of Rapid Bus lines that we request MTA to

[12] To be clear, we are discussing preferences based on the mode *itself*, not the *attributes* of the various modes. We are *not* discussing preferences based on valid differences in attributes, such as a preference for heavy rail over bus because the speed of heavy rail is higher than that of bus for a specific traveler's transit trip. We are talking about riders or potential riders, for example, who might state, "I will ride a subway to get to work, but nothing in the world will get me on a bus" – and then demonstrate revealed preference comparable to – or not – to the stated preference.

[13] While the information discussed above appears to be a major data set that would require substantial work to produce, our understanding of the MTA transportation model and modeling process is that everything we have specified is routinely produced in its normal operation; in fact, the models could not be run without producing these data.