

Top Ten Questions About the Purple Line -- And A Better Alternative

March 20, 2015

Arguments against the Purple Line can be sorted into two categories: One is that it is a bad idea, period. The second is that the manner in which this huge project has been moved ahead has over-ridden legitimate public concerns, regulations, and laws. The following covers both in a brief summary of ten of these issues that, at the very least, should be resolved before Governor Hogan approves the Purple Line.¹

1. Montgomery County's most recent Mobility Assessment Report does not place the Purple Line rail within the top 10 congestion relief needs of the County. Resources are scarce and the County and State must prioritize solutions for its serious congestion problems. To borrow an argument from Purple Line supporters, good transit supports growth and productivity. Productivity, however, can be more effectively enhanced through other projects. The top ten most congested roadways in Montgomery County are on the north-south axis (see table 5 page 26 of the Montgomery County 2014 Mobility Assessment Report [http://www.montgomeryplanning.org/transportation/documents/Mobility%20Assessment%20Report%202014%20-%20\(6-3-2014\).pdf](http://www.montgomeryplanning.org/transportation/documents/Mobility%20Assessment%20Report%202014%20-%20(6-3-2014).pdf))
The proposed Purple Line project runs East-West and therefore does not address these congestion priorities.

The opportunity cost of diverting resources away from priority congestion relief to a costly rail line with questionable ridership is very high. In addition, The Purple Line may make north-south traffic congestion even worse as buses and cars deliver passengers to PL stations rather than more directly to their destinations.

2. Opponents of the Purple Line do not oppose public transit, they propose a win-win solution to save money and conserve a priceless natural asset. The Purple Line will cause irreparable harm to a forested trail that provides irreplaceable public health and environmental benefits. The Capital Crescent Trail/Georgetown Branch Trail connects two of the most important Parks in the

¹ Not directly included here in any detail are the several elements of a lawsuit filed in Federal Court by Friends of the Capital Crescent Trail (<http://www.savethetrail.org>) and local citizens, including myself or the several economic and policy analyses available in the publications of David Lublin (<http://www.theseventhstate.com/?cat=37>), Frank Lysy or Randal O'Toole of the Maryland Public Policy Institute. We may add these to a new version of this memo soon.

National Capital Region (the C&O Canal National Park that starts in Georgetown, DC, to Rock Creek park between Bethesda and Silver Spring, Md.). Therefore the Trail should be properly conserved for bicycle and pedestrian commuting, recreation and wildlife habitat. This should include its forested buffer that protects habitat that is essential for the recovery of endangered species. If the Trail were overrun by the Purple Line it would leave little room for wildlife or for pleasant, safe enjoyment by commuters, residents, birdwatchers or other visitors.

From DC's reclaimed bridge over the Anacostia River to New York's High Line and Queens Way to linear parks in Seoul and Singapore, cities are spending hundreds of millions to *tear up* tracks and roads to restore green space that attracts visitors, small businesses and residents and provides the unique, and now verified public health benefits of shaded, tree-lined recreation. Montgomery County and the state of Maryland can expand these benefits and save billions by not cutting 48 acres of trees and by using environmentally friendly, safer, pervious and resilient surfacing such as recycled rubber-based "Flexi-pave²" instead laying down expensive train tracks on the popular forested trail from Bethesda to Silver Spring. That would be a fitting clasp to complete the emerald necklace by joining Rock Creek Park designed by Frederick Law Olmstead and opened 125 years ago and the C&O Canal National Park, saved by Justice William O. Douglas's hike with the Washington Press Corps 50 years ago.

Placing trains that run at relatively high speeds every several minutes twenty hours a day immediately between a large high school and a parochial school and half of the student bodies they serves is a recipe for disaster as a very large percentage of the hundreds of people killed by trains each year are young people. With only four-foot high walls where heavily used "citizen paths" cross the trail to get to the schools today, the PL would be a classic "attractive nuisance", that is, a harmful tort, waiting to happen.

3) To save billions building rail, spend thousands marketing buses. A well-documented counter-proposal to the Purple Line has been to create more robust and flexible bus routes at much lower cost. Much of the projected Purple Line ridership will be diverted from existing bus routes. **One of Federal Transit Administration's own studies shows that a positive public affairs campaign costing only thousands of dollars would efficiently move passengers from cars to modern bus lines.** Buses can provide the same transit service as a much lower cost. This study and similar findings should have better informed the FTA's own Final Environmental Impact Statement and Record of Decision.

See,

http://www.nytimes.com/2015/02/10/business/to-save-on-rail-lines-market-the-bus-line.html?_r=0

² E.g., <http://capitolflexipave.com/learn/what-is-flexi-pave>

Governor Hogan should not let the Maryland Transit Administration (MTA) be like some other Transit agencies that, as the *New York Times* concluded, "are spending millions of dollars on new rail infrastructure that is no faster than existing bus service, simply because riders perceive a train as better than a bus."

Frank Lysy, a respected retired World Bank economist who lives in Washington, D.C. and wouldn't be affected by the Purple Line, has published his comparison of the costs and benefits of a comparable capital investment in Bus Rapid Transit using Montgomery County's own studies. Lysy's title is an apt summary:

"The High Cost of the Purple Line Light Rail Transit Project: Free Bus Service Would Be Cheaper For Everyone, and Provide a Better Service"
<http://aneconomicssense.com/2014/09/28/the-high-cost-of-the-purple-line-light-rail-transit-project-free-bus-service-would-be-cheaper-for-everyone-and-provide-a-better-service/>

4) Hazardous materials that would be dug up during Purple Line construction pose high risks to humans and wildlife. No serious work has been done to understand or control the impact of disturbing these sites --

As shown in the FEIS there are 573 sites in the Limits of Disturbance that pose serious risks, of which over 200 are thought to contain PCBs and other very hazardous materials, yet there is apparently neither a cost estimate for dealing with these nor any specific plan. The FEIS notes that some will be diluted and discharged into the stormwater system. Such highly hazardous substances require extreme care to prevent the contamination of surrounding areas and watersheds, and in this case, Rock Creek Park. Specific plans to control these threats are not included in the Record of Decision so the safest precautions may be shortcut by the private concessionaires in order to lower their costs.

See,

http://www.purplelinemd.com/images/studies_reports/feis/volume_01/08_PL_FEIS_Vol-I_Ch_4_Environmental_Resources.pdf

4.0 Environmental Resources, Impacts, and Mitigation
Purple Line Final Environmental Impact Statement and Draft Section 4(f)
Evaluation, page 4-137,
Figure 4-29. Properties with Medium/High Potential for Concern

5) Stormwater runoff, from the loss of 48 acres of forest along the Purple Line rail and from increases in impervious surfaces, will be too large to be contained on site according to the Purple Line FEIS. The MTA will not comply with Montgomery County (or probably PG County) regulations and so far have not demonstrated how they will comply with State or Federal requirements, besides alluding to unspecified "offsite" mitigation, or what that compliance would cost. According to a letter from the head of the Montgomery County

Department of the Environment³ and a review of the Purple Line's Concept Stormwater Management report of November 2013, over half of the stormwater will not be retained on site but will be discharged onto others' property or into streams resulting in higher volumes and pollution levels, and would significantly add to the strain on an already-overtaxed regional sewer and drainage system. **Further attempts now being considered to cut Purple Line Rail costs may result in even worse failure to prevent or mitigate stormwater runoff.**

At a time when Montgomery County was declared by a Maryland State Court in December, 2013 to be in violation of the Federal Clean Water Act's stormwater requirements⁴, when the "rain-tax" imposed by the O'Malley Administration is the subject of considerable controversy, and when local jurisdictions and private builders are wrestling with increasingly saturated soils, the Purple Line would greatly exacerbate the problem. The Purple Line Concept Stormwater Management report admits that it would require **variance after variance** at dozens of discharge points along its path, and an estimated 27.34 acres of "offsite" mitigation.

See,

http://www.purplelinemd.com/images/studies_reports/feis/volume_03/012_PL-Tech-Report_Water_Resources_August_2013.pdf

6) Questionable Ridership Projections and Potential Conflicts of Interest may have tainted both Federal and State Decisions to Build the Purple Line, according to the *Wall Street Journal* -- Maryland's Incredible Purple People Mover--How the state's proposed \$2.4 billion light rail could take taxpayers for a ride. ⁵ Follow the promotions to the Maryland and Federal Transit Administrations and home to Parsons Brinkerhoff of the man most responsible for driving the purple line under the radar, over the heads of citizens, around public laws and into his pocket.

7) Governor Hogan should halt payments pending resolution of questions posed by virtue of the recent Audit by the Maryland State Office of Legislative Services uncovering questionable payments of contractors for the Purple Line. The State audit raises legal questions about whether these irregularities rise to the level of negligence or malfeasance, and poses practical questions as to how well funding for a full Purple Line project would be managed.

³ Letter to Rolf Sinclair, July 30, 2014.

⁴ Anacostia Riverkeeper, et. al v. Maryland DEP and Montgomery County, Circuit Court for Montgomery County, December 4, 2013, <http://earthjustice.org/sites/default/files/files/montgomerycountystormwaterorder.pdf>

⁵ <http://www.wsj.com/articles/mary-anastasia-ogrady-marylands-incredible-purple-people-mover-1403910560>, also posted at <http://savethetrail.org/news/media-clips>

"The findings pertain to nearly \$233 million in contract payments, according to the report dated Feb. 13," wrote Katie Shaver of the *Washington Post* -- <http://www.washingtonpost.com/blogs/dr-gridlock/wp/2015/02/25/state-audit-finds-md-transit-agency-didnt-verify-purple-line-design-firm-payments/>
Now that an expected and regularly scheduled audit, rather than a surprise or undercover investigation, has documented several serious questions about the State funds already provided to Purple Line contractors, further work should be halted until the irregularities are resolved and corrective and preventative measures put in place. After that, a series of more detailed and unannounced audits of the MTA and its contractors should be conducted **before** any actual construction or final design contracts are awarded.

8) The Army Corps of Engineers has not provided the Dredge and Fill Permits required for the Purple Line under Section 404 of the Clean Water Act. Lacking this, it would be unwise and fiscally irresponsible to proceed with major work on or investment in the project. The "Final Environmental Impact Statement" (FEIS) for the Purple Line admits that the PL still requires at least one permit from the Army Corps of Engineers, which has not yet been granted. Such a permit usually requires a more thorough and precise assessment and environmental compliance plan than can yet be produced given the continuing changes in design since the "Final" EIS of 2013. Whether the permit will be granted is in serious doubt given the likely harm and significant risks and the lack of any specific plan or budget to control them.

9) New rules ordering Federal Agencies in general not to subsidize or permit building in a wider and higher flood plain than had been recognized before January 2015 need to be incorporated in Purple Line planning. The President amended Executive Order 11988 at the end of January 2015, after a long interagency process following up on his June 2013 Climate Adaptation initiative. This amendment was promulgated to protect the nations' infrastructure and the environment from increasingly intense storms, floods and hurricanes, despite the objections of bridge and transit builders. This may affect the ability of the USDOT/FTA to subsidize projects like the PL that are in and affect flood plains, such as that of Rock Creek. Further investment by the State or County would be imprudent until the new regulations implementing this order are issued and the questions about its application to the Purple Line are settled. See, <http://www.whitehouse.gov/the-press-office/2015/01/30/executive-order-establishing-federal-flood-risk-management-standard-and->

10) The Purple Line puts endangered species and other wildlife at severe risk--for no clear benefit to the economy--and may be in violation of federal law requiring a full and fair assessment of its costs and of alternatives.

There are two Maryland-listed endangered species, one federal endangered species, dozens of migratory bird species, and many other kinds of wildlife that depend on clean water and forested habitat and are known to exist **within or downstream from the route of the Purple Line**. Along the proposed route more than 200 serious hazardous waste sites would be disturbed and forty-eight acres of forest bulldozed as the Purple Line is built and operated. Meanwhile state and county authorities are preparing to waive normal water pollution and other rules and procedures for the Purple Line via new County laws and Memoranda of Agreement between environmental agencies and the Transit Administration.

Friends of the Capital Crescent Trail and individuals nearby are suing the Federal Transit Administration to require a more careful assessment of the likely impacts and environmental and financial costs of the Purple Line and (better) alternatives to it. The head of the Maryland Transit Authority who remains in place despite a new Governor has sought to intervene to stop the new public impact assessment.

A better way --

The safer, less expensive, and more beneficial alternative to the Purple Line Rail is to devote some of the money earmarked for it to higher priority projects to support a much wiser version of smart growth that provides the high quality of life sought and expected of Maryland and the National Capital Area, and not spend the rest. That wiser approach would include a combination of:

a) An expanded and well-publicized fleet of nimble, quiet, clean, internet-connected buses that use existing roads and can connect with waiting passengers and coordinate traffic lights. Such a system could be easily updated and rerouted as demands and technologies change;

b) Fee-for-use Bus Rapid Transit lanes that can serve buses and expedite commercial deliveries, emergency vehicles, and other high value traffic;

c) A modern regulatory system for Uber, Lyft, Lyft-Line, and other current and future app-driven, flexible taxi and jitney services to augment transit systems; and

d) Full and permanent Park status with both bikeway and biological integrity for the Capital Crescent Trail/Georgetown Branch Trail and its neighborhood green spaces.

By John Fitzgerald, attorney and plaintiff in the lawsuit by individual citizens and the Friends of the Capital Crescent Trail challenging the failure of federal agencies to comply with the law in their support of the Purple Line "preferred alternative."