

BONNER & BORHART LLP

May 13, 2009

Dwight B. Sinks
Regional Civil Rights Officer
Federal Transit Administration
200 West Adams Street, Suite 320
Chicago, Illinois 60606

Re: Preserve and Benefit Historic Rondo Committee's Title VI/Environmental Justice
Complaint

Dear Mr. Sinks:

I am writing in support of Preserve and Benefit Historic Rondo Committee's Title VI/Environmental Justice complaint regarding the contemplated Central Corridor light rail project in Saint Paul, Minnesota (the "Project"). The Central Corridor is both a predominantly minority area and a predominantly low-income area. This fact is graphically illustrated by the maps provided by the Metropolitan Council as part of its own Title VI analysis.

The Title VI analysis performed by the Metropolitan Council ("Recipient") is deficient. Specifically, the Recipient has failed to comply with the Federal Transit Authority's ("FTA's") regulations and guidance regarding compliance with both Title VI and the United States Department of Transportation's ("DOT's") Final Order on Environmental Justice.

In order to comply with 49 CFR § 21.5(b)(3) and the DOT Final Order on Environmental Justice, the Recipient must prepare an environmental justice analysis of new construction such as the Project. In order to perform this analysis, the Recipient must provide a discussion on the adverse effects on the African-American community and any other minority community negatively impacted by the Project. The Recipient has failed to comply with this requirement. Specifically, and as discussed in greater detail herein, the Recipient has failed to accurately identify the adverse effects of the Project and failed to consider or implement meaningful mitigation measures. The Recipient has also failed to address the impacts borne by the African-American community in the same manner that the Recipient addressed the impacts borne by non-minority and non-low-income communities. Finally, it appears that the Recipient has misconstrued the DOT's Final Order on Environmental Justice and, as a result, failed to perform mandated analysis.

The transportation related impacts of the Project are disproportionately borne by the minority

community. If the Project is constructed in accord with the Locally Preferred Alternative (“LPA”), the minority community residing and working along the central corridor will likely realize a decrease in available transportation “trips” due the curtailing of bus routes and stops along the central corridor and the spacing of the planned LRT stops which leaves gaps in predominately minority communities.

The Recipient, however, has concluded instead that nearly every neighborhood along the central corridor will realize an increase in available transportation “trips”. This conclusion was reached by assuming that a bus rider will travel ¼ mile to his or her bus stop while a light rail passenger will travel ½ mile to his or her train station. The Recipient has presented no documentation supporting its conclusion that the prospective LRT passengers along the central corridor will travel twice as far to ride a train as opposed to a bus. Moreover, the Recipient has presented no support for its assumption that present bus riders along the central corridor travel only 1/4 mile to their bus stops.

Further, the Recipient neglected to present any analysis regarding the impact on transportation benefits if one assume all riders, LRT and bus, travel the same distance (be it 1/4 mile or ½ mile) to their transportation. Without this analysis, it is clear that Recipient has failed to perform any meaningful analysis with respect to the impact of the Project on the affected minority community.

This history of the Project’s development is replete with instances where the non-minority and non-low-income communities were provided with enhancement actions and mitigation not offered (or even discussed) with the African-American community. For example, the University of Minnesota raised objections to the Project’s impacts. In response, the Recipient agreed to indemnify the University of Minnesota for the cost of any impacts realized as a result of the Project. Further, the Recipient has already agreed to provide the University with \$27 million in mitigation funding, including \$11.1 million for a transit and pedestrian mall along Washington Avenue. The total benefits provided to the University approximate \$44 million - and the Recipient has also offered the University additional indemnification for any costs incurred by the University as a result of the Project.

Similarly, Minnesota Public Radio (“MPR”) raised objections to the noise created by the Project. Within three months of MPR’s objections, the Recipient agreed in writing to a mitigation plan to address the offending impact. The agreement calls for the Central Corridor project to install a 700-foot-long floating slab along the length of MPR’s building to mitigate vibration and noise. The Met Council will also pay for modifications to three MPR studios to ensure they won’t be affected by noise from LRT. The Met Council also agreed to monitor noise and vibration during the LRT’s construction, testing and first year of operation.

By comparison, the Recipient failed to involve the affected minority community in the vital scoping phase of the Project. This is important because the route chosen - University Avenue alignment - for the LRT is the one alignment that will have the greatest impact on the predominately minority community that resides along the planned rail route. Further, the African-American

community has identified numerous impacts of the Project that will be disproportionately borne by predominately minority neighborhoods. These disproportionate impacts include, but are not limited to:

1. Interruption of minority owned and operated businesses during the construction phase;
2. Increased property values and attendant increased rents in predominately minority neighborhoods;
3. Increased property values and attendant increased property taxes in predominately minority neighborhoods;
4. Dislocation of the existing African-American community by “gentrification”;
5. Physical division and isolation of the African-American community due to the construction of a light rail line directly down the middle of the community’s main artery;
6. The cumulative impacts of the Project in conjunction with the previous destruction of the Rondo Community - an historic African-American community that was physically divided and isolated by the construction of I-94 directly through the Rondo neighborhood during the late 1950s - early 1960s;
7. The cumulative impacts of the Project in conjunction with gentrification or “urban renewal” undertaken by the government during the late 1970s - early 1980s that again displaced St. Paul’s African-American community. After this displacement, the African-American community relocated yet again - this time to its present location along University Avenue as well as in areas of east Saint Paul.

The Project’s negative impacts with respect to economic development are disproportionately borne by the minority community. Again, the Recipient has failed to recognize even that there are negative impacts that will be caused by the Project as it is presently proposed. Instead, the Recipient appears to have concluded that any economic development is a good thing. This “analysis” ignores the fact that the Project’s construction will increase property tax rates, result in substantial business interruption, eliminate parking for existing businesses and increase property values and attendant rates. Each of these impacts will be borne disproportionately by the minority community. Without the proper identification of these impacts, it is not possible for the Recipient to perform an adequate Title VI analysis.

The Recipient also appears to have misconstrued the DOT Final Order. The DOT Final Order mandates that the Operating Administration and shall determine whether programs, policies, and activities for which they are responsible will have an adverse impact on minority and low-income populations and whether that adverse impact will be disproportionately high. The Final Order states that "disproportionately high and adverse effect on minority and low-income populations" means that either the effects are

- (1) predominately borne by a minority population and/or a low-income population, *or*
- (2) will be suffered by the minority population and/or low-income population and is

appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population. See 62 F.R. 18380.

In this case, the Recipient has failed to recognize that environmental justice requirements are triggered so long as the Project's impacts are "predominately borne by a minority population and/or low-income population." This failure appears to be based on the Recipient's misunderstanding of the Final Order (and misquote of the Final Order) that is set forth on page 3-138 of the SDEIS. There, under section 3.8.2, it defines disproportionate or adverse impacts to minority or low-income populations as those impacts that are predominantly borne by a minority or low-income population **AND** are more severe or greater in magnitude than the impact felt by the community at-large." (Emphasis added). The addition of the conjunctive in lieu of the disjunctive "or" has resulted in the erroneous conclusion that simply because the benefits of the project are borne by all communities along the corridor, no special mitigation measures beyond those already proposed are necessary. See Summary of Key Findings 3.8.1.

There is no dispute in this case that in fact the Central Corridor is a predominately minority community. In fact, based upon independent research, my clients have determined that within a quarter mile radius of the proposed stations, approximately 40% of the population is of color. Further, within a quarter mile radius of those corridor areas that are not intended to have a station, approximately 80% of the population is of color. Moreover, both the DEIS and SDEIS contain ample proof that in fact the impacted communities are disproportionately minority and/or low-income. Accordingly, your conclusion that this project does not trigger Environmental Justice requirements is clearly erroneous.

In conclusion, it is obvious that the Project will have a disproportionate impact on minorities. The Recipient has side-stepped this issue by concluding that all of the impacts of the project are positive. In fact, there are many negative impacts that disproportionately impact the minority communities in the central corridor. Accordingly, an audit review of the Recipient's Title VI "program" and environmental justice analysis is necessary.

Very truly yours,


Thomas F. DeVincke