



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

5th Floor – East Bldg, TCR
1200 New Jersey Ave, S.E.
Washington, D.C. 20590

April 22, 2011

Veronica Burt
Preserve and Benefit Historic Rondo Committee
c/o Aurora St. Anthony Neighborhood Development Corporation
774 University Avenue
St. Paul, MN 55104

Lysa Bui
Pam Thao
Concerned Asian Business Owners (CABO)
712 University Avenue W #105
St. Paul, MN 55104

RE: Title VI Determination for Complaint No. 2009-0272

Dear Ms. Burt, Ms. Bui and Ms. Thao,

The Federal Transit Administration (FTA) has reviewed the two administrative complaints filed against Metropolitan Council (Met Council) related to the Central Corridor Light Rail Transit project in Minneapolis, MN (the “Project”). This letter serves as FTA’s determination related to the complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI) as implemented by the Department of Transportation through its regulations found at 49 C.F.R. part 21.

On May 20, 2009, the Preserve and Benefit Historic Rondo Committee (PBHRC), the St. Paul Chapter of the National Association for the Advancement of Colored People (NAACP), and the Community Stabilization Project (CSP) filed an administrative complaint alleging that Met Council failed to comply with FTA’s regulations and guidance regarding compliance with both Title VI and the United States Department of Transportation’s final order on Environmental Justice (EJ) for the Project.

On September 21, 2009, the Concerned Asian Business Owners (CABO) filed an administrative complaint also alleging that Met Council failed to comply with the FTA’s regulations and guidance regarding compliance with both Title VI and EJ for the Project. The two complaints were consolidated because the allegations and issues were essentially the same.

FTA's Office of Civil Rights (TCR) works to ensure non-discriminatory, equitable, accessible, and safe public transportation in support of FTA's mission to enhance the social and economic quality of life for all Americans. This responsibility includes ensuring that recipients of FTA funds comply with Title VI.¹

When an individual or organization files a discrimination complaint under Title VI and related policies, FTA investigates the complaint and determines the merits of the allegations based on evidence collected and relevant to the U.S. Department of Transportation's applicable policy, guidance, and procedures.

The remainder of this letter summarizes the Title VI allegations, discusses the investigation, references the applicable regulations and guidance, analyzes the merits of the complaint, and states FTA's conclusions. FTA is only addressing Title VI allegations in this determination letter. EJ relates to the National Environmental Policy Act of 1969 (NEPA) and can only be addressed in the context of NEPA.

Subsequent to the filing of the administrative complaints, in January 2010, the NAACP filed a lawsuit related to the NEPA determination for the Project, *The Saint Paul Branch of the National Association for the Advancement of Colored People v. U.S. Department of Transportation* (Civil No. 10-147) in the U.S. District Court for the District of MN. Because of overlapping issues, FTA held the Title VI administrative complaints in abeyance pending the outcome of the litigation. On January 26, 2011, the Court ordered FTA to supplement the Final Environmental Impact Statement (FEIS) under NEPA for the Project on one discrete issue. FTA completed the NEPA process related to that issue on April 20, 2011, allowing FTA to proceed with its resolution of the Title VI complaints.

I. ALLEGATIONS

Complaint Allegations

PBHRC's complaint made the following allegations:²

- Met Council failed to provide a discussion on the adverse effects on the African-American community and any other minority community negatively impacted by the Project;

¹ Title VI states that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance." (42 U.S.C. § 2000(d)).

² As per DOJ's Title VI guidance, allegations are written exactly as the complainants have articulated each allegation of discrimination; however, FTA has made minor non-substantive changes to the allegations, (i.e., replacing "the Recipient" with "Met Council") for consistency throughout the document, as well as including abbreviations for terms to make the document more understandable. The changes do not alter the plain meaning of the allegations.

- Met Council has failed to accurately identify the adverse effects of the Project and failed to consider or implement meaningful mitigation measures;
- Met Council has also failed to address the impacts borne by the African-American community in the same manner that Met Council addressed the impacts borne by non-minority and non-low-income communities;
- Met Council, 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. Met Council has presented no documentation supporting its conclusion that the prospective Light Rail Transit (LRT) passengers along the central corridor will travel as far to ride a train as opposed to a bus. Moreover, Met Council has presented no support for its assumption that present bus riders along the central corridor travel only ¼ mile to their bus stops. Further, Met Council 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 ¼ mile or ½ mile) to their transportation. Without this analysis, it is clear that Met Council has failed to perform any meaningful analysis with respect to the impact of the Project on the affected minority community;
- 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 (UofM) raised objects to the Project’s impacts. In response, Met Council agreed to indemnify the UofM for the cost of any impacts realized as a result of the Project. Further, Met Council has already agreed to provide the UofM with \$27 million in mitigation funding, including \$11.1 million for a transit and pedestrian mall along Washington Avenue. Similarly, Minnesota Public Radio (“MPR”) raised objections to the noise created by the Project. Within three months of MPR’s objections, Met Council 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, Met Council 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 great impact on the predominately minority community that resides along the planned rail route;

- PBHRC has identified adverse effects disproportionately borne by predominately low-income and predominately minority neighborhoods including: interruption of minority owned business during construction, increased property values and rents in predominately minority neighborhoods, dislocation of existing African-American community by gentrification, physical division and isolation of the African-American community to the construction of the line down the middle of the community's main artery, cumulative impacts of the Project in conjunction with the destruction of the African-American community by the construction of I-94, and cumulative impacts of the Project in conjunction with gentrification or "urban renewal" undertaken by the government during the late 1970s; and
- Station spacing for the stops without the full build out of the three stops at Western, Victoria and Hamline was discriminatory.

CABO's complaint alleges the following:

- The Final Environmental Impact Statement (FEIS) fails to express even a general intention to establish a compensatory program to support or sustain businesses or services that are adversely impact by the project. Nor does the FEIS propose any method to assure that whatever mitigation resources are eventually available will be equitably directed to address those most in need- in the absence of an analysis of such need it is virtually assured that those with existing access or leverage will receive the greatest attention and support;
- Allege additional specific violations of the federal law relating to the future of the Met Council to provide adequate and accurate analyses of the disparate adverse impact of the project on minority communities and businesses along the corridor and in particular in the Rondo and Frogtown neighborhoods and failure in turn to mitigate those foreseeable adverse and discriminatory impacts;
- The Central Corridor light rail line will be built directly through historic communities home to thousands of the primarily African, Asian, and Latino American residents and the center for the region's highest concentrations of minority businesses. The high concentration of racial minorities in these neighborhoods should compel a heightened sensitivity to the adverse impacts of the project. Given the nature of these communities, adverse but avoidable impacts-particularly if those impacts result in displacement—should be closely scrutinized as potentially discriminatory in treatment or effect;
- Met Council fails to address evidence of likely adverse impact on minority businesses. The FEIS and EJ analysis omits critical information gathered both through third party research presented to the Met Council and through public comment. The description of the circumstances of small and minority businesses should have put the Met Council on notice of the need for closer analysis and for mitigation or project alternatives that address these concerns;

- According to the Met Council’s own assessment, one significant impact of the Control Corridor project will be the permanent loss of 85% of the street parking on University Avenue in the so-called Midway East and West sections of the project; and
- While the Met Council acknowledges “major short term impacts to adjacent communities,” it offers only conclusory statements absolving the project of discriminatory effects. Such statements are not only logically flawed, they lack critical factual support.

II. INVESTIGATION

As early as November 19, 2008, PBHRC began discussions with Met Council regarding their concerns surrounding the Project. Those concerns were subsequently forwarded to FTA, and the agency was aware of PBHRC’s concerns related to the Project in advance of its filing of the Title VI complaint. The Title VI complaint was filed on May 20, 2009. On May 27, 2009, FTA acknowledged receipt of the complaint.

On May 29, 2009, FTA requested specific information from Met Council regarding the allegations. The following consists of the questions and data requested:

- Met Council’s point of contact for developing their EJ methodology;
- Station area planning methods used to determine the location of stations;
- An overview of mitigation measures afforded to the University of Minnesota, the Minnesota Public Radio or others of significance along the alignment;
- Using Geographic Information System (GIS) technology conduct a demographic analysis comparing these mitigation measures overlaid along the alignment;
- A description of public involvement strategies targeting minority communities during the scoping phase of the project;
- An overview of meetings and contacts with the concerned EJ community where the project sponsor provided an overview of proposed mitigation measures;
- Four GIS maps overlaying the proposed alignment and specific ethnic groups: African Americans, Hispanics, Asian Pacific Islanders, and non-minorities;
- An overview of construction mitigation measures proposed effecting businesses along the alignment and indicating if any different measures by reach (construction segment phases) would be implemented; and
- Provide a response to other adverse effects listed in the complaint, including any mitigation measures.

On June 25, 2009, FTA received Met Council’s response to the request for information.

During the months of June and July 2009, FTA received over 20 letters from different organizations supporting the PBHRC’s complaint allegations. FTA contacted a number of these organizations, including the District Councils Collaborative, the NAACP, the

Capital City Business Council, ISIAH, Asian Economic Development Association (AEDA), and others to understand the breadth of the communities concerns.

In June 2009, the FEIS for the Project was completed. The FEIS addressed a number of the EJ comments in the Response to Comments section. On August 18, 2009, the FTA issued the Project Record of Decision that determined that the Project satisfied the NEPA.

On August 11th, PBHRC sent additional comments, which was followed by a conference call. Subsequently, FTA staff interviewed members of the District Council's Collaborative (DCC) of Saint Paul & Minneapolis pertaining to their comments in support of the PBHRC complaint.

On September 15th, TCR staff and FTA Administrator Peter Rogoff traveled the proposed Central Corridor alignment to examine the impacts on the proposed community and met with complainants to hear their concerns.³

On September 21, 2009, CABO sent a letter to FTA filing a separate Title VI complaint that joined in support of the PBHRC complaint and raised additional allegations surrounding the impacts of the minority business along the alignment. It was formally processed on October 1, 2009. The two complaints were consolidated because of the overlap of issues.

Several conversations through the month of October were held with Va-Megn Thoj the executive director of AEDA who was a member of CABO. FTA was also contacted by Gen Fujioka from the National Coalition for Asian Pacific American Community Development. On November 4, 2009, FTA and the Departmental Office of Civil Rights met with Va-Megn and Gen Fujioka to hear their concerns and review a study entitled, *"Light Rail Transit Construction Impact Mitigation Strategies: Case Studies and Recommendations for the Central Corridor."*

On November 23, 2009, FTA made a second request for information to Met Council including:

- Estimate of distance between each station (as identified in the Met Council's Central Corridor Light Rail Transit (LRT) Preferred Alternative (Met Council Resolution No. 2008-26)) and between the proposed infill stations of Hamline Avenue, Victoria Street, and Western Avenue;
- Percent minority population within ½-mile and ¼-mile radius of each station and proposed infill station;
- Population within ½-mile and ¼-mile radius of each station and proposed infill stations;
- Projected ridership at each station and proposed infill station. Ridership was projected for the following station and infill station scenarios:

³ Representatives of the community consisted of PBHRC, CABO representatives, the Executive Director of AEDA, DCC, NAACP, St. Anthony Neighborhood Development Corporation, former City Council Member Deborah Montgomery, and others.

- Construction of the Central Corridor LRT Preferred Alternative (below-grade infrastructure only at Hamline Avenue, Victoria Street, and Western Avenue);
- Construction of a station at Hamline Avenue;
- Construction of a station at Victoria Street;
- Construction of a station at Western Avenue;
- Construction of three stations, at Hamline Avenue, Victoria Street, and Western Avenue; and
- Construction of two stations at Victoria Street and Western Avenue.
- Anticipated number of transfers for riders under the station and infill station scenarios described above. For this request, an additional scenario is provided looking at a “No Build” condition for comparison purposes;
- Travel time lost or saved for each station and infill station scenario described above;
- Analysis of Origin and Destination survey on Route 16 to determine travel patterns, trip purpose, transit dependency for work and non-work travel, weekday originating rides, length of trip and time of day.
- Narrative description, including maps and travel-time information, that explains how the Central Corridor LRT project’s Preferred Alternative will result in future transit system usage.
- Information on meetings held where a criteria for participants to agree to “on-time and on-budget” project delivery was used as a pre-condition to meet with Chair Bell.
- Listing of total number of ROW [right-of-way] acquisitions, permanent easements, and temporary easements with an indication of the number that is minority owned/occupied.
- Requesting information on changes in bus service and average travel time;
- Analysis of businesses located along the alignment relative to loss of on-street parking resulting from Central Corridor LRT project construction and operations, including an identification of whether the affected business is minority-owned or occupied or not, as well as a description of mitigation measures.

FTA received Met Council’s response to the second information request on January 11, 2010.

In early 2010, the Met Council added three infill stations to the Project, which were evaluated in a Supplemental Environmental Assessment. FTA signed a Finding of No Significant Impact (FONSI) for the three infill stations in February 2010. The Project was approved into final design in May 2010.

FTA has conducted a complete review of all the information provided by the Complainants and both responses from Met Council. Additionally, FTA reviewed all relevant Project related documents and the District Court’s order.

III. DOT TITLE VI REGULATIONS

The U.S. DOT Title VI regulations, at 49 CFR part 21, prohibit recipients of FTA funds from intentionally discriminating against persons on the basis of race, color, or national origin or undertaking activities that have the effect of denying benefits to, excluding persons from participating in, or discriminating against persons on these bases. 49 CFR § 21.5(b) states, in relevant part:

(b) Specific discriminatory actions prohibited.

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or under any program to which this regulation applies, on the grounds of race, color, or national origin; or which the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

IV. PBHRC COMPLAINT ANALYSIS

For Title VI complaints, FTA examines the allegations by Complainants to determine whether there has been a violation. In this instance, FTA examined whether the programs, as administered, will result in a disparate impact on minority populations along the proposed alignment. Also, FTA's analysis encompasses the totality of impacts, mitigation measures and benefits to determine whether they are spread throughout the alignment of the Project or only benefit a discrete group or population.

1. **Allegation:** Met Council failed to provide a discussion of adverse effects on the African-American community and other minority communities negatively impacted by the Project.

Analysis: In order to make a determination of adverse effects on a particular community Met Council needs to analyze the impacts of the various environmental indicators relative to the minority populations. Throughout the FEIS, Met Council did measure adverse environmental impacts along the Project to determine whether the impacts were disproportionately borne by African-Americans and other minority populations. A detailed discussion pertaining to this issue will be provided in more detail in the following sections.

2. **Allegation:** Met Council has failed to accurately identify the adverse effects of the Project and failed to consider or implement meaningful mitigation measures.

Analysis: This allegation is not a Title VI issue because it is not an allegation regarding discrimination pertaining to minority populations, race, color or national origin.

3. **Allegation:** Met Council failed to address impacts borne by the African-American community in the same manner that Met Council addressed impacts borne by non-minority and non-low-income communities. (*See*, discussion below on traffic and transit access, Electromagnetic Imaging (EMI), and station location and spacing sections.)

Analysis: Met Council used the same techniques to analyze environmental indicators throughout the study area, but added an additional analysis to assess whether minority populations were experiencing more severe adverse effects. FTA examined whether Met Council's approach to addressing impacts borne by African-Americans and non-minority communities was different. In order to determine whether Met Council addressed the impacts FTA analyzed the impacts; determined whether Met Council engaged the population upon examination of those impacts; and whether Met Council proposed betterments or mitigation as a result of the first two issues. Based on Met Council's response to FTA's first information request, it appears that Met Council did analyze the impacts and proposed mitigation measures or betterments as a result of public engagement. As a result of community concerns, the City of St. Paul, in conjunction with Met Council, analyzed the development planning and created grants in the Mideast section of the alignment conducted a service equity analysis in the Rondo community, and added full buildout for three stations. The number and proportion of these mitigation measures and betterments⁴ is depicted in the map located on page 9 of this document.⁵

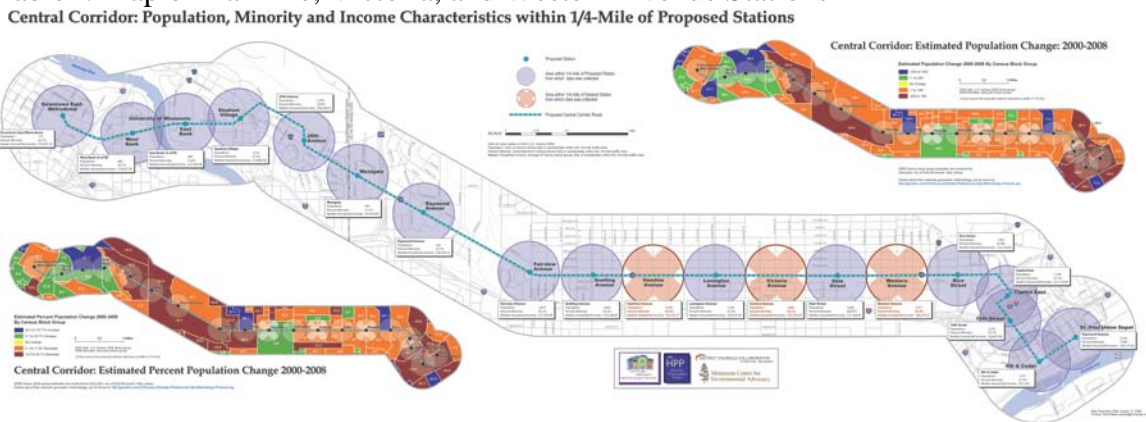
⁴ Mitigation measures are required as part of the NEPA process. Betterments are measures that a Project Sponsor may voluntarily agree to to address community concerns even though the measures are not required by FTA. Met Council has agreed to a number of betterments to address community concerns.

⁵ See analysis on Station Location Spacing and the map with overall mitigation measures located at Table II.

Station Location Spacing

Ramsey County, the project sponsor during scoping of the Project, developed the station area alternatives and published the document in the *Federal Register*. During the Alternative Analysis/Draft EIS (DEIS) phase, numerous comments were received expressing concern about station spacing on University Avenue in St. Paul. PBHRC, DCC, CABO and others commented that the station spacing for the 16 stations resulted in a disparate impact because the original Project called for these to be built out as infill stations, but not fully constructed. This resulted in African-American and Asian residents and surrounding businesses not receiving the benefits of these stations and their access to the transit improvement because they would be forced to walk farther to access stations. The coalitions made numerous comments at public hearings, through the environmental process and to FTA, directly. In response to comments received from PBHRC, DCC, AEDA, CABO and others, Met Council analyzed the potential ridership impacts and costs associated with the construction of additional stations at Hamline Avenue, Victoria, Street, and Western Avenue.

Table I. Map of Hamline, Victoria, and Western Avenue Stations



Map provided by Minnesota Center for Environmental Advocacy

Benefits of the Three Stations⁶

As a result of community input, Met Council added the construction of these three stations to the Project in early March 2010. The construction of these three stations as part of the overall project is a significant benefit to the surrounding communities who are primarily minorities. FTA conducted multiple types of analysis on these stations using GIS technology.

Analysis of the original 15 stations yielded the following analysis:

⁶ The cost for constructing these three stations is approximately \$15 million, which is benefiting predominately minority populations.

- Of the 15 original stations built, four are in areas with less than a 17% minority population;
- Another five stations are in areas with minority populations between 17.1 to 40%; and
- The remaining six stations are in areas where the minority population exceeds 61%.

As a result of community input, the scope includes construction of 18 stations by Met Council yielding the following results:

- Of 18 stations, the minority population surrounding 9 stations will be higher than 61%;
- The three stations that were added to the Project are in areas that have minority populations at 69% (Hamline), 84% (Victoria) and 85 % (Western) respectively; and
- Additionally, the station spacing is now approximately .5 miles.

Negative Impacts of the Three Stations Overall

FTA did an analysis of the ridership gains/losses by adding one, two or all three stations. Analysis showed a net increase in the Project operating time, loss in overall corridor ridership and user benefits and an overall increase in the project's cost effectiveness index.⁷ In spite of these negative impacts to the overall project, Met Council mitigated the communities' concerns by adding the stations to the overall Project scope to construct stations at Hamline, Victoria and Western. This negative impact will not only be borne by the diverse communities in which the three stations were added, but to the entire Project as a whole.⁸

Additionally, the City of St. Paul has engaged the community in station area plans, similar to what they have done with all the other stations. The station area planning is meant to guide land use, which could mitigate and temper land development in this area.

Traffic and Transit Access

PBHRC raised issues around transit access and the fact that African-Americans disproportionately use bus Route 16. Over 120 comments were received related to bus

⁷ See, Met Council's first response to FTA's request for information which included a study conducted by DJM Harris/AECOM entitled, "Central Corridor Light Rail Transit, Evaluation of Western, Victoria, and Hamline Station Options" December 2007.

⁸ Each additional station would reduce the station spacing along University Avenue from approximately 1-mile to .5-miles apart; however, this would increase the Project's operating run times between 26 to 37 seconds depending upon the station. Each additional station reduces the Project's average weekday boardings by approximately 400 riders due to increased travel times; the Western and Victoria stations would have lower ridership in comparison to all other stations on the line. The reason for the phenomenon of ridership "loss" with the addition of one or more stations is that the increase in overall LRT travel time resulting from the additional dwell time required at each new station has a correspondingly negative effect on the desire of riders to use the Project.

service, with 24 of them related to the proposed reduction in frequency of Route 16 along University Avenue. Bus Route 16 on the Project alignment has 10-minute all-day service frequency which, due to the Project traversing through the same area, will be modified to 20-minute frequencies during peak periods, 30-minute frequencies during midday periods, evening, and weekends. Over 260 comments were received during the public comment period for the Supplemental Draft EIS (SDEIS) regarding station location and spacing. Approximately 150 of those comments were specifically proposing to add stations between the Snelling and Rice Street stations where stations are spaced about one-mile apart. FTA Circular 4702.1A (“Title VI and Title VI- Dependent Guidelines for Federal Transit Administration Recipients” dated May 13, 2007) requires FTA grant recipients to conduct a service and fare equity analysis whenever the recipient makes a major service change. During development of the SDEIS, Met Council conducted a service equity analysis. The analysis determined that the construction and operation of the Project would lead to increased access to transit services for most of the Census blocks within the identified minority communities.⁹ However, 10 Census blocks within Project would experience a decrease in transit access. And three of these Census blocks are located in minority areas: Western Avenue, and north and south of University Avenue. The decrease in service is considered an adverse impact that would be disproportionately borne by the identified minority populations. Met Council committed to prepare a targeted transit service plan for the minority community identified in this analysis (benefiting predominantly African-American and Asian populations). The service plan will be developed using regional transit service standards and accepted quantitative methods and will provide for community input into the process and measures of need as expressed by and tailored for this transit-dependent community.¹⁰

4. Allegation: Met Council concluded 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. Met Council has presented no documentation supporting its conclusion that the prospective Light Rail Transit (LRT) passengers along the central corridor will travel as far to ride a train as opposed to a bus. Moreover, Met Council has presented no support for its assumption that present bus riders along the central corridor travel only ¼ mile to their bus stops. Further, Met Council 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 ¼ mile or ½ mile) to their transportation. Without this analysis, it is clear that Met Council has failed to perform any meaningful analysis with respect to the impact of the Project on the affected minority community.

Analysis: This issue is not a Title VI issue.

⁹ See, page 3.8-18 of FEIS dated June 2009. The analysis from the FEIS was included in the FEIS based on a memorandum from Metro Transit (submitted on September 17, 2008, from John Levin, Jason Podany, Scott Thompson to Brian Lamb, Mark Buhrmann, Wanda KirkPatrick) to FTA. The memo presents a Title VI review of the impacts of the Central Corridor service plan, as identified in the SDEIS on low-income and minority populations in accordance with FTA guidelines on Title VI service and fare equity analysis.

¹⁰ *Id.*

5. Allegation: 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 UofM raised objections to the Project's impacts. In response, Met Council agreed to indemnify the UofM for the cost of any impacts realized as a result of the Project. Further, Met Council 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. Similarly, Minnesota Public Radio ("MPR") raised objections to the noise created by the Project. Within three months of MPR's objections, Met Council 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.

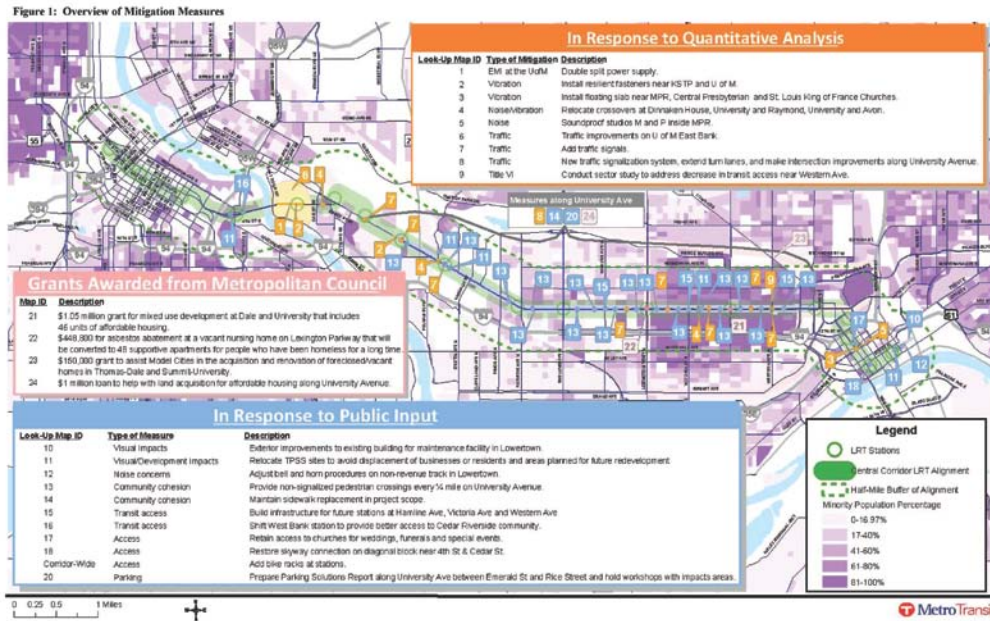
Analysis: FTA analyzed the mitigation measures for the UofM, MPR and the other major mitigation measures throughout the alignment. DOT's Title VI regulations require that should a disparate impact be found-a Recipient may only implement a policy that results in a disparate impact if the policy meets a substantial, legitimate need that is in the public's interest. Further, the disparate impact cannot proceed if there is a lesser discriminatory alternative. FTA's Title VI Circular, 4702.1A, "Title VI and Title VI-Dependent Guidelines to Federal Transit Recipients," provides guidance on inclusion of environmental justice and mitigation into environmental impact statements as part of NEPA. Below is a detailed discussion of analysis pertaining to the mitigation measures for the UofM, MPR and those impacted by the Project.

EMI, Noise and Vibration

FTA analyzed the noise, vibration and EMI impacts on minority populations, which are explained in detail in Sections 4.7 and 4.10 of the FEIS.

FTA required Met Council to provide a GIS analysis of the mitigation measures relative to the percent minority along the alignment. Table II shows the distribution of mitigation measures broken into three groups. Mitigation measures are required to respond to the results of quantitative analysis including EMI, vibration, noise, etc. (Shown in orange on the map) Mitigation measures that are the result of public engagement include changes in the corridor design intended to respond to concerns regarding visual impacts, development impacts, community cohesion, pedestrian access and parking (Shown in blue). Finally, grant awards from Met Council, which are not strictly mitigation measures, but rather betterments, and not part of the project budget, have been made to address the needs of the community to promote the sustainable, affordable development along University Avenue of the corridor in anticipation of the Project (Shown in pink on the map).

Table II. Map of Overall Mitigation Measures Relative to the Percent Minority



As is evident from the map, numerous mitigation measures have been proposed along the entire course of the alignment. While PBHRC and CABO were concerned about the mitigation measures that focused on the areas around the UofM and MPR that received substantial media attention, the map above depicts other mitigation measures beyond the mitigation measures implemented for the UofM and MPR. This distinction can be seen visually on the map in the distribution of orange and blue mitigation locations relative to the percent minority.

Finally, analysis shows that the EMI mitigation measures are distributed throughout the project as follows:

- Of the 19 significant EMI, noise, vibration, traffic and transit access impacts and mitigation measures, 10 are in areas where the percent minority population is less than 16.97%.
- The remaining 9 are in areas whose minority population exceeds 41%. The environmental burdens are borne slightly more by populations with fewer minorities and the mitigation measures to offset these impacts are almost equal.

6. Allegation: Met Council 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 greater impact on the predominately minority community that resides along the planned rail route.

Analysis: The scoping phase of the project was not conducted by Met Council. Rather, in 2001 Ramsey County served as the project sponsor responsible for the Project's scoping phase.

7. Allegation: PBHRC identified adverse effects disproportionately borne by predominately low-income and predominately minority neighborhoods, i.e. increased property values and rents in predominately minority neighborhoods, dislocation of existing African-American community by gentrification, physical division and isolation of the communities main artery, cumulative impacts of the Project in conjunction with the destruction of the African-American community by the construction of I-94, and cumulative impacts of the Project in conjunction with gentrification or "urban renewal" undertaken by the government during the late 1970's.

Analysis: The Rondo, DCC and Asian communities expressed their concern that property values will rise, affordable housing will disappear and that low-income and minority populations will be gentrified. Given the history of this community and the unique makeup of the Hmong and Somali populations, FTA understands this concern.

The Rondo community has provided TCR with historical brochures and documents where in the 1970's, the Rondo community was a thriving African-American community full of businesses, shops and residents. FTA's meeting with members of PBHRC and CABO and seeing first-hand the types of culturally unique businesses along the alignment, FTA understood the gentrification concern. If Asian or African-American businesses left, the residences that rely on the services of those businesses for their daily lives would be forced to look elsewhere. FTA reviewed the information that PBHRC provided including information authored by the Minnesota Center for Environmental Advocacy, and other scholarly articles. One unique data set consisted of a map entitled, "*Housing Vacancy in the Central Corridor: January 2008-November 2009.*" This map and data set showed a change in housing vacancies within ¼ mile of the three stations with the highest concentrations of communities of color. Unfortunately, this data set lacked all the data points necessary to allow for meaningful analysis to be able to single out a specific cause as opposed to being the result of increased occupancy of units.

Displacement and Relocations

Operation of the Project requires a mix of permanent acquisition of portions of both public and private properties, utility easements, and property access closures. Three privately owned properties would be taken in their entirety. Permanent private takings on 63 parcels and permanent use of existing public property would impact 42 parcels. Three utility easements and the Met Council would need to acquire access to twenty-four properties during project construction. The Project will not displace any occupied residences or businesses in the minority communities. More housing opportunities will be available for current residents in the corridor and new residents will move into the neighborhoods to take advantage of transit, along the alignment as a whole. Due to PBHRC's concerns the City of St. Paul and Met Council created a Central Corridor Development strategy to include land use policies to preserve the residential areas of the

city, discourage land assembly for large scale redevelopment projects in the areas, and promote mixed use development, provision of affordable housing and creation of jobs in redevelopment of the areas of change. The City and Met Council have provided grants for affordable housing and redevelopment along the Corridor.¹¹

Streetscape Impacts Potentially Dividing the Community

The streetscape will be impacted throughout the alignment during the construction of the Project. Met Council worked with the City of St. Paul and other stakeholders to develop streetscaping plans along University Avenue. As part of the Project, all pedestrian crossings will be designed in accordance with current design standards and Americans with Disabilities Act requirements to ensure access and mobility for all. These mitigation measures will benefit the entire alignment. The City of St. Paul invested local resources into the Project to reduce the cost of improvements such as street-lighting, trees and sidewalk improvements to enhance the character of University Avenue. Due to the impact of the Project, Met Council plans to reconstruct University Avenue, including replacement and reconstruction of all sidewalks along the street.

¹¹The following is a summary of Met Council's funding to support affordable housing activities in the corridor:

- In 2007, the Met Council awarded a \$1.05 million grant for a mixed use development at the intersection of Dale and University Avenues that will include 46 units of affordable housing. The project will be developed by a collaboration that includes the Aurora Saint Anthony Neighborhood Development Corp.
- In 2008, the Met Council awarded a \$150,000 grant to assist Model Cities in the acquisition and renovation of foreclosed/vacant homes in Thomas-Dale and Summit-University.
- In 2008, the Met Council authorized a \$1 million loan to help the City of St. Paul with land acquisition for affordable housing near the Central Corridor LRT route along University Avenue.
- In 2009, the Met Council approved \$448,800 for asbestos abatement at a vacant nursing home on Lexington Parkway North near the future Central Corridor LRT line. The building will be converted into 48 supportive apartments for people who have been homeless for a long time.

The City of St. Paul has also provided funding assistance for affordable housing in the Corridor:

- 808 Berry (267 rental); financing closed in 2002;
- Episcopal Homes (47 units for the elderly) - University and Fairview; financing closed in 2003;
- Emerald Gardens (211 ownership) - University and Emerald; financing closed in 2003/2004;
- Model Cities, Phase II (6 rental) - 849 University Avenue, financing closed in 2004;
- University and Dale Apartments (98 rental) - University and Dale, financing closed in 2005;
- Carleton Place Lofts (169 rental) - University and Carleton; financing closed in 2005;
- The Metro (67 ownership) - 2650 University; financing closed in 2005;
- Dale Street Townhomes (16 units; some with Habitat for Humanity) - 636-674 North Dale; financing closed in 2006;
- Carty Heights (50 units for the elderly; Episcopal Homes) - University and Lexington; financing closed in 2006;
- 2700 University Avenue (97 units); financing not yet closed; and
- Frogtown Square (46 units for the elderly) - University and Dale.

7. **Allegation:** PBHRC identified adverse effects disproportionately borne by predominately low-income and predominately minority neighborhoods including: interruptions of minority owned business during construction.

Analysis: First, FTA previously discussed this issue under allegation #3 regarding the business impacts on minority owned businesses as a result of the inclusion of three LRT stations at Hamline Avenue, Victoria Street, and Western Avenue, the inclusion and build-out of such stations was greatly influenced by the African-American community and other coalition members. Second, FTA further discusses this issue in responding to the CABO allegations.

V. CABO COMPLAINT ANALYSIS

For Title VI complaints, TCR examines the allegations by Complainants to determine whether there has been a violation. In this instance, TCR examined whether the programs, as administered, will result in a disparate impact on minority populations along the proposed alignment. Also, FTA's analysis encompasses the totality of impacts, mitigation measures and benefits to determine whether they are spread throughout the alignment of the Project or only benefit a discrete group or population.

1. **Allegation:** The Final Environmental Impact Statement (FEIS) fails to express even a general intention to establish a compensatory program to support or sustain businesses or services that are adversely impact by the project. Nor does the FEIS propose any method to assure that whatever mitigation resources are eventually available will be equitably directed to address those most in need- in the absence of an analysis of such need it is virtually assured that those with existing access or leverage will receive the greatest attention and support.

Analysis: DOT's Title VI regulations require mitigation measures once the Project sponsor or FTA has made a determination that a program, policy or activity results in discrimination on the basis of race, color or national origin, i.e. resulting in either disparate impact or disparate treatment.¹² Also, while many use the term "equity" in cases surrounding civil rights, when a disparate impact is found, DOT's Title VI regulations require Project Sponsors to demonstrate that the action meets a substantial need that is in the public interest and demonstrate that alternatives would have more severe adverse effects than the preferred alternative.

The Court addressed the issue pertaining to the need for an evaluation of potential impacts on the loss of revenue during construction. Because of the Court ruling, FTA was able to evaluate the previously missing information which was included in the Supplemental EA. FTA's Title VI analysis focused on whether the construction resulted in a disparate impact on minority businesses.

¹² Disparate treatment is where actions result in circumstances where similarly situated persons are treated differently because of their race, color, or national origin. Disparate impact (unintentional discrimination) is when Met Council's procedure or practice while neutral on its face has the effect of disproportionately impacting an individual because of their race, color, or national origin.

2. Allegation: Concerns about the future of the Met Council to provide adequate and accurate analyses of the disparate adverse impact of the project on minority communities and businesses along the corridor and in particular in the Rondo and Frogtown neighborhoods and failure in turn to mitigate those foreseeable adverse and discriminatory impacts.

Analysis: FTA reviewed documents submitted from CABO including an independent study of businesses surveyed along the alignment, interviews with the Complainants, members of ISIAH, and NEPA documents. The Court ruling indicated that the FEIS under NEPA prepared in June 2009, failed to evaluate potential impacts on the loss of business revenue during construction and that the FEIS should be supplemented to evaluate those impacts. In response to the Court's order, FTA undertook a Supplemental EA on this discrete issue. The Title VI analysis of this issue was informed by the SEA.

3. Allegation: The Central Corridor light rail line will be built directly through historic communities home to thousands of the primarily African, Asian, and Latino American residents and the center for the region's highest concentrations of minority businesses. The high concentration of racial minorities in these neighborhoods should compel a heightened sensitivity to the adverse impacts of the project. Given the nature of these communities, adverse but avoidable impacts—particularly if those impacts result in displacement—should be closely scrutinized as potentially discriminatory in treatment or effect.

Analysis: The Court ruled that the FEIS failed to evaluate potential impacts on the loss of business revenue during construction and that it should be evaluated. The Supplemental EA examined various economic conditions; business establishments by zip codes in Minneapolis and St. Paul, potential impacts on businesses, etc. Even so, Met Council proposed mitigation strategies for all businesses along the alignment.

Business Mitigation Fund

The Metropolitan Council contributed \$4 million to a low or interest-free loan program to help small businesses during construction. The loan program grew out of initial discussions with the Asian Economic Development Association, the Title VI complainant representing the Asian business along the alignment. Grants with no obligation to repay them will be provided to small businesses that may experience construction related disruptions. The City of St. Paul Housing and Redevelopment Authority is administering the program:

- \$3.5 million out of \$4 million of the funds will be available as forgivable loans;
- \$500,00 of the fund will be used towards grants;
- \$10,000 total per business (up to 1/3 grant to 2/3 a loan ratio);
- Targeted to businesses with less than \$2 million in gross sales and retail and service providers along the alignment.

Construction Staging

Given the concerns raised by the community Met Council employed strategies to have the least impact on minority communities on the alignment. Met Council worked with the contractor to stage construction in the areas with the highest concentration of minority and low-income populations at the last possible phase in the construction (March 2011 to November 2012).

The importance of staging the construction in this area later in the construction season is an important strategy that was implemented to allow businesses in this area to access the overall business support programs prior to the construction impacting the area. By staging construction in this manner, businesses can apply for assistance prior to construction impacting them. Additionally, the following strategies were created as a result of the Asian businesses input:

- Requiring contractors to restore the street in front of any business within 150 days and the sidewalk within 15 days.
- A \$1,050,000 incentive program developed with the community for contractors and construction access plans in Construction Contracts. The program includes:
 - A requirement that contractors restore the street in front of any business within 150 days and the sidewalk within 15 days.
 - Encourages responsiveness, creates a partnership between contractors and the community and promotes cooperation.
 - Evaluation criteria will include conformance with notification requirements, timely response to public concerns, limiting contractors' vehicle access, citing of port-a-potties in areas that do not detract from retail frontage, accessible pedestrian routes, and cleanliness of construction sites.
- Issuing weekly construction updates to provide the public with advance notice of routes that are closed and alternate routes.
- Setting up a construction hotline and posting the number in prominent locations throughout a work zone.
- Promoting small businesses in the construction zone through directional signage and photos in the weekly construction updates, monthly newsletter and on the project webpage.¹³

¹³ Additional strategies include:
Business Resources Collaborative (BRC)

One of the Title VI complainants (the Central Funders Collaborative) has hired a business consultant to create a grassroots campaign to bring people in the Twin Cities to the alignment to spend money at local shops and restaurants. The BRT received \$230,000 in grants in support of its operations. Strategies include:

- Holding large public events with local celebrities to draw people to the area to spend money with the stores along the alignment;
- Coordinate people to go to lunch at restaurants along the alignment; and

-
- Hold breakfast and happy hour events along the alignment.

Ride to Rewards Campaign

This program is a marketing campaign that assists small businesses in preparing for construction of the rail line. Strategies include a Ride to Rewards swipe card similar to frequent flyer cards. Businesses along the alignment sign up and provide a list of their customers for a database. The swipe card is given out by Met Council and for those that ride to a business along the alignment they obtain points. After a certain number of points the individuals receive free bus fare on the system. Additionally, the program provides market data on target markets to each individual business owner and assists with marketing strategies.

Discover Campaign

The Discover Central Corridor Campaign is a corridor wide "buy local" initiative that helps connect the community to businesses impacted by light rail construction. Both businesses and consumers can access and download a variety of materials that can easily be used to promote and support corridor businesses. The program was developed and coordinated through both Title VI complainants (Rondo plaintiffs and Asian Economic Development Association).

The Discover campaign aims to create awareness and excitement concerning the Central Corridor Business District while offsetting the negative financial impact of light rail construction. Businesses register for the program to assist them with marketing. Strategies include the following:

- A loyalty card is created for each business's customers; emails are distributed to customers enrolled. Emails include notifications about a business's lunch specials and two-for-one specials.
- Each business determines how it wishes to use the marketing techniques.
- Cards will be distributed to construction employees for lunches
- The St. Paul Chamber of Commerce has distributed cards to its 10,000 membership. And the Midway Chamber has distributed cards to their 2,000 membership to entice members to buy locally along the alignment.

Small Business Consultant

A small business consultant is also providing free assistance to small businesses. Marketing strategies include developing individualized websites for businesses, marketing, finance classes, and other business classes.

Communication Committees

Committees meet twice monthly to discuss issues regarding construction impacts along the alignment. Both the Rondo and Asian Economic Development Association are participants.

Mandatory Cultural Competency Training

Met Council is requiring cultural competency training for those employees and/or contractors, i.e., field inspectors to attend cultural competency training. To ensure that those that interact with the public understand the unique cultural perspectives that members along the alignment bring to the Project, the training is mandatory. The cultural competency training is being given by the following organizations:

- African Development Center;
- Hmong Cultural Center;
- Vietnamese Social Services;
- Americans with Disabilities Committee; and
- Rondo community.

4. **Allegation:** Met Council fails to address evidence of likely adverse impact on minority businesses. The FEIS and EJ analysis omits critical information gathered both through third party research presented to the Council and through public comment. The description of situation of small and minority serving businesses should have put the Met Council of the need for closer analysis and for mitigation or project alternatives that address these concerns

Analysis: FTA reviewed documents provided by PBHRC and CABO including a document entitled, “Impact Mitigation Strategies-Case Study,” by Reuben R. Collins as part of his Master of Urban and Regional Planning Degree Requirements, and “Outreach, Construction Mitigation and Assistance Strategies for Small Businesses Along University Avenue from Lexington to Rice, produced for Saint Paul Department of Planning and Economic Development. Many of the business mitigation programs were created as a result of public engagement.

5. **Allegation:** According to Met Council’s assessment, the Project will result in a permanent loss of 85% of the street parking on University Avenue in the so-called Midway East and West sections of the Project.

Analysis: FTA analyzed the loss of parking indicated in the environmental documents and specific data of businesses on the alignment.

On-Street Parking

The DEIS forecasted the loss of 65% loss of on-street parking spaces; in 2008 the SDEIS documented an 85% loss. This percentage equates to an elimination of 975 parking spaces (or an 85% reduction) out of the current existing total of 1150 parking spaces along the alignment as a result of the Project.

- The loss of parking spaces in the minority communities between Lexington Avenue and Rice accounts for a reduction of 339 spaces.
- When examining the total number of minority businesses that will lose parking that are directly on the alignment that accounts for 133 Asian, African American or African-American, Native American, Hispanic or Latino businesses.

Parking Grants

Grants are available for businesses impacted by the loss of on-street parking. The grants will be used to take existing parking and make improvements to provide the best use of the existing space. The goal is to implement the improvements early in the process to mitigate construction impacts on minority populations.

- \$2.45 million in Parking Assistance programs, with parking loans for improvements to off-street parking and alley improvements.

- \$800,000 in Corridor Betterment programs, for improved streetscape and lighting and building façade improvements.

6. **Allegation:** While Met Council acknowledges “major short term impacts to adjacent communities, it offers only conclusory statements absolving the project of discriminatory effects. Such statements are not only logically flawed, they lack critical factual support.”

Analysis: Although the Court ruled that the FEIS had not adequately analyzed the impact on business revenues potentially caused by construction of the Project, the Court did not find any disparate impact.

VI. FINDINGS

FTA, having examined the allegations and the law, finds that PBHRC and CABO have provided insufficient evidence to support their Title VI allegations that the communities they represent would be subjected to separate treatment related to the receipt of services from the Project, or are restricted in any way from the enjoyment of the Project, or are otherwise denied the opportunity to participate in planning and advising Met Council regarding the Project.

FTA finds that Met Council’s actions are consistent with DOT’s Title VI regulations (49 C.F.R. section 21.5(b)(3)). Specifically, Met Council’s Project will not provide a benefit to non-minorities which is different or provided in a different manner to minority populations along the alignment. In addition, FTA finds that Met Council’s actions do not restrict minority populations from receiving the benefits from the Project. Finally, in determining the site or location of facilities, Met Council did not make the selection with the purpose or effect of excluding persons from the Project on the grounds of race, color, or national origin. Rather, as noted in this decision, Met Council has provided mitigation measures or betterments to lessen the impact of the project on surrounding communities.

FTA has, however, created a monitoring program in the context of the Finding of No Significant Impact (FONSI) in order to track progress on the implementation of the various mitigation measures and betterments developed for business entities along the Central Corridor alignment. It is FTA’s expectation that Met Council will take steps to ensure continuous public engagement to all affected parties, including minority communities, in a non-discriminatory manner, and ensure limited English proficient populations receive appropriate access to vital documents and meetings. As part of this monitoring program, Met Council has been directed to provide monthly status reports to FTA, as further described in the FONSI released on April 20, 2011.

If you have any questions regarding this decision, please contact Amber Ontiveros of my staff. Ms.Ontiveros is the Title VI, EEO, and DBE Team Leader and can be reached at amber.ontiveros@dot.gov or 202-366-5130,

Sincerely,

Linda Ford
Acting Director, Office of Civil Rights

CC: FTA Administrator, Peter Rogoff,
Marisol Simon, Regional Administrator, Region V
Metropolitan Council