

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

REGENTS OF THE UNIVERSITY OF MINNESOTA,)
on its behalf and in the name of the State of Minnesota,)

Plaintiff,)

Court File No. _____

v.)

SUMMONS

METROPOLITAN COUNCIL,)

Defendant.)

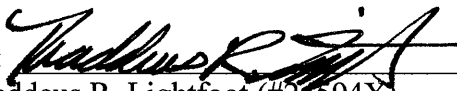
THE STATE OF MINNESOTA TO DEFENDANT METROPOLITAN COUNCIL:

PLEASE TAKE NOTICE that you are hereby summoned and required to serve upon Plaintiff's attorneys an Answer to the Complaint, which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the Complaint.

Rule 114 of the Minnesota General Rules of Practice for the District Court provides that all civil cases are subject to alternative dispute resolution (ADR) processes, except for those actions enumerated in Minn. Stat. § 484.76 and Rules 111.01 and 310.01 of the General Rules. This notice is provided in accordance with Minn. Stat. § 543.22.

Dated: September 22, 2009

ENVIRONMENTAL LAW GROUP, LTD

By: 
Thaddeus R. Lightfoot (#24594X)
133 First Avenue North
Minneapolis, MN 55401
Tel: (612) 623-2363
Fax: (612) 378-3737

GREENE ESPEL, P.L.L.P.

Clifford M. Greene (#37436)
Larry D. Espel (#27595)
200 S. Sixth Street, Suite 1200
Minneapolis, MN 55402
(612) 373-0830

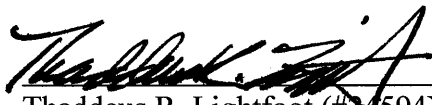
OFFICE OF THE GENERAL COUNSEL
UNIVERSITY OF MINNESOTA

Mark B. Rotenberg (#126263)
General Counsel
360 McNamara Alumni Center
200 Oak Street, S.E.
Minneapolis, MN 55455-2006
(612) 624-4100

**COUNSEL FOR PLAINTIFF REGENTS
OF THE UNIVERSITY OF MINNESOTA**

ACKNOWLEDGMENT

Plaintiff Regents of the University of Minnesota acknowledges through its undersigned counsel that sanctions may be imposed under Minn. Stat. § 549.211 if, after notice and a reasonable opportunity to respond, the Court determines that a party has violated Minn. Stat. § 549.211, subd. 2.



Thaddeus R. Lightfoot (#24594X)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

REGENTS OF THE UNIVERSITY OF MINNESOTA,)
on its behalf and in the name of the State of Minnesota,)

Plaintiff,)

v.)

METROPOLITAN COUNCIL,)

Defendant.)

Court File No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Regents of the University of Minnesota (“the University”) for its Complaint against Defendant Metropolitan Council (“Metropolitan Council” or “Defendant”) states and alleges as follows:

I. NATURE OF THE ACTION

1. This action arises as a result of the Metropolitan Council’s proposed construction and operation of the Central Corridor Light Rail Transit (“CCLRT”) Project. The CCLRT Project is an 11-mile light rail transit line that will connect downtown Minneapolis with downtown St. Paul, running through the University’s East Bank and West Bank Campuses. In 2008 the Metropolitan Council decided that the CCLRT Project would run at-grade on Washington Avenue, through the very heart of the University’s East Bank Campus research and discovery corridor.

2. The University brings this action for declaratory and injunctive relief to protect its campus from the adverse effects of the proposed CCLRT Project. Minnesota law requires Defendant Metropolitan Council to adequately address the serious adverse environmental effects of the proposed CCLRT Project and propose mitigation measures to protect the University. The

Metropolitan Council has failed to do so. Accordingly, the University is carrying out its fiduciary duty to the citizens of the State of Minnesota to protect its campus from these adverse effects and fulfill its mission of research and discovery, teaching and learning, and outreach and public service.

3. The University is a transit-oriented community, with two-thirds of its commuters using bus, bicycle, carpool, or walking options. The University has long supported transportation improvements on its campus, and for nearly a decade has been a key, committed partner in planning for the CCLRT Project. The University itself is expected to generate approximately 25 to 30 percent of the proposed CCLRT Project's daily riders.

4. Defendant Metropolitan Council has adopted a final environmental impact statement ("FEIS") for the proposed CCLRT Project and certified that the FEIS meets state law. In fact, the FEIS does not comply with the requirements of state law and is inadequate. The FEIS fails to comply with the Minnesota Environmental Policy Act ("MEPA") because it does not adequately evaluate the serious adverse environmental impacts of the proposed CCLRT Project on the University or the mitigation measures necessary to safeguard the University's campus environment and critical research functions.

5. In addition, the Metropolitan Council's proposal to construct and operate the CCLRT Project is likely to result in the pollution, impairment, or destruction of natural resources protected under the Minnesota Environmental Rights Act ("MERA"). The proposed CCLRT Project will impair natural resources on the University's East Bank Campus by interfering with valuable and sensitive research, increasing noise and vibration during CCLRT Project construction and operation, and detracting from the current setting and esthetic quality of the University's historical districts.

6. To protect its campus, the University seeks effective mitigation to address the following serious effects of the proposed CCLRT Project:

- the adverse impact of vibration, both construction-related and from ongoing operations;
- the adverse impact of electromagnetic interference;
- the adverse impact on historic resources; and
- other adverse construction impacts, including noise.

7. The Metropolitan Council is actively seeking temporary and permanent easements on property owned and used by the University for construction and operation of the proposed CCLRT Project. However, property owned by the University and already dedicated to University use is not subject to the exercise of eminent domain by the Metropolitan Council. Accordingly, the University seeks a judgment declaring that the Metropolitan Council may not, for purposes of construction or operation of the proposed CCLRT Project, exercise eminent domain over property already dedicated for use by the University.

8. The Metropolitan Council has ignored or failed to offer adequate responses to concerns the University has raised repeatedly regarding the proposed CCLRT Project. Without intervention by this Court to require implementation of effective environmental mitigation measures, the CCLRT Project may destroy the public's enormous investment in the University's research facilities and constrain the University's future use of those facilities and other University property, thereby jeopardizing one of the State's most important economic engines.

II. PARTIES

9. Plaintiff, the University, is an institution of higher education and a constitutional corporation of the State of Minnesota, Minn. Const., Art. XIII, § 3, with its principal place of business at 202 Morrill Hall, 100 Church Street S.E., Minneapolis, Minnesota 55455.

10. Defendant, Metropolitan Council, is a political subdivision of the State of Minnesota created by Minn. Stat. § 473.123, with its principal place of business at 390 Robert Street North, St. Paul, Minnesota 55101. The Metropolitan Council is a regional planning agency serving the Twin Cities metropolitan area and intends to build and operate the CCLRT Project.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over the claims against the Metropolitan Council that arise under the Minnesota Constitution and laws of the State of Minnesota, specifically MEPA, Minn. Stat. § 116D.04, subds. 10 and 13; MERA, Minn. Stat. § 116B.03; and the Minnesota Declaratory Judgment Act, Minn. Stat. §§ 555.01-.02, .12.

12. Venue lies in this district under MEPA, Minn. Stat. § 116D.04, subds. 10 and 13, and the Minnesota Declaratory Judgment Act, Minn. Stat. ch. 555, because part of the proposed CCLRT Project would be undertaken in this district.

13. Venue lies in this district under MERA, Minn. Stat. § 116B.03, subd. 4, because the conduct of the Metropolitan Council that is likely to cause pollution, impairment, or destruction of the natural resources of the State of Minnesota will occur, in part, in this district.

IV. ALLEGATIONS COMMON TO ALL CLAIMS

A. THE UNIVERSITY'S LONGSTANDING SUPPORT FOR A CCLRT PROJECT THAT DOES NOT DAMAGE THE UNIVERSITY

14. For more than two decades, the University has been an active partner with Metro Transit and others to develop and implement an integrated transportation system that serves not only the University, but the entire metropolitan area. The University itself is a transit-oriented community, with two-thirds of its commuters using bus, bicycle, carpool, or walking options to reach the Minneapolis Campus. As a result, the University has long supported the development

of reasonable and creative transportation solutions that will best serve the more than 80,000 students, faculty, staff, patients, and guests that visit the Minneapolis Campus every day.

15. The University alone is expected to generate approximately 25 to 30 percent of the proposed CCLRT Project's daily riders.

16. For nearly a decade, the University has been a constructive partner in the planning process for the proposed CCLRT Project. The University's support for the CCLRT Project dates to at least 2001, when the Board of Regents passed a resolution advocating the proposed CCLRT Project. An active participant in the Central Corridor Management Committee, the University has committed substantial human and financial resources over the past decade to the proposed CCLRT Project planning effort. To date, those resources total approximately \$2 million and include thousands of hours of University professional staff time, faculty time, and other expenditures.

17. Although the University remains fully committed to effective public transit and to the proposed CCLRT Project in particular, the University's primary obligation and responsibility must be to advance its public mission of research and discovery, teaching and learning, and outreach and public service, as well as to protect the academic activities and safety of its faculty, staff, and students. The CCLRT Project must not degrade the University's mission.

B. THE METROPOLITAN COUNCIL'S ENVIRONMENTAL REVIEW PROCESS FOR THE CCLRT PROJECT

18. Study of light rail as a possible transit option connecting downtown Minneapolis and downtown St. Paul began in the early 1990s.

19. In or about July 2001 the University Board of Regents unanimously and expressly rejected any Washington Avenue at-grade alignment on the East Bank Campus for the proposed CCLRT Project. Any proposed CCLRT Project alignment along Washington Avenue on the

East Bank Campus, the Board of Regents stated, must be below grade in a tunnel. The Board of Regents recommended that if CCLRT Project planners decided to study an at-grade alignment on the East Bank Campus, such an alignment should not travel along Washington Avenue but should serve the northern portion of the campus.

20. In or about April 2006 Defendant Metropolitan Council, the Ramsey County Railroad Authority, and the Federal Transit Administration (“FTA”) jointly prepared a single Alternatives Analysis and Draft Environmental Impact Statement (“DEIS”) for the proposed CCLRT Project. Defendant Metropolitan Council prepared the joint DEIS in an attempt to satisfy the requirements of MEPA. FTA prepared the joint DEIS in an attempt to satisfy the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h. The DEIS evaluated several alternatives, including a light rail transit option along an 11-mile corridor connecting downtown Minneapolis and downtown St. Paul. The light rail transit option that the DEIS evaluated became known as the proposed CCLRT Project. The proposed CCLRT Project that the DEIS evaluated included a tunnel under Washington Avenue on the University’s East Bank Campus, not an at-grade alignment.

21. In or about June 2006 the University submitted extensive comments on the DEIS to Defendant Metropolitan Council and FTA. Consistent with the Board of Regents’ action in or about July 2001, the University’s comments on the DEIS supported a tunnel under Washington Avenue or an at-grade alternative that served the northern portion of the East Bank Campus. Even assuming a tunnel under Washington Avenue, the University’s comments expressly stated that vibration from construction and operation of the proposed CCLRT Project would adversely affect the University’s research facilities located adjacent to or in the vicinity of Washington Avenue on the East Bank Campus. The comments also stated that the DEIS did not explore

