

FEDERAL TRANSIT ADMINISTRATION
Region V

Central Corridor Light Rail Transit Project in the Cities of Minneapolis (Hennepin County) and St. Paul (Ramsey County), Minnesota

National Environmental Policy Act Process Finding of No Significant Impact with Respect to Potential Construction-Related Impacts on Business Revenues

Introduction

This Finding of No Significant Impact concludes a Supplemental Environmental Assessment review process for the Central Corridor Light Rail Transit project pursuant to the National Environmental Policy Act of 1969, Section 102(2)(c), 42 U.S.C. 4332(2)(c) (NEPA). The final Supplemental Environmental Assessment is incorporated into this finding by reference. A Finding of No Significant Impact is an agency determination that a proposed action will not have a significant effect on the quality of the human environment and that preparation of an Environmental Impact Statement under NEPA is not necessary. This document was prepared pursuant to 49 Code of Federal Regulations (CFR) Section 771.130(c).

Background

The Central Corridor Light Rail Transit project (the “project”) is 10.9 miles long (9.7 miles of new alignment and 1.2 miles of shared alignment) and consists of 23 stations—18 new stations and five stations shared with the Hiawatha Light Rail Transit project. The Final Environmental Impact Statement (EIS) and Section 4(f) analysis, Department of Transportation Act evaluation for the project was published in June 2009. A Record of Decision was issued by the Federal Transit Administration (FTA) in August 2009.

Following issuance of the Record of Decision, a lawsuit was filed against the U.S. Department of Transportation, the FTA and the project sponsor, the Metropolitan Council, by a coalition of local businesses, residents and non-profit organizations. One of the allegations made in the lawsuit was that environmental review of the project violated the NEPA by failing to adequately analyze potential loss of business revenues caused during the construction phase of the project.

Focus of the Environmental Assessment

On January 26, 2011, the United States District Court for the District of Minnesota in *The Saint Paul Branch of the National Association for the Advancement of Colored People v. U.S. Department of Transportation* (Civil No. 10-147), ordered that the defendants (FTA specifically) supplement the Final Environmental Impact Statement on one discrete issue. In its decision, the court determined that, while “significant public benefits” are associated with the project, the final environmental impact statement was inadequate, but only “insofar as it fails to address the loss of business revenues as an adverse impact of the construction of the [project].” FTA’s regulation 23 CFR Section 771.130, titled “Supplemental environmental impact statements” provides a

number of options for supplementing an EIS. Section 771.130(c) states, "Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an Environmental Assessment to assess the impacts of the changes, new information, or new circumstances." Because the issue that FTA was evaluating was discrete and narrow in scope, FTA determined that a supplemental Environmental Assessment was the appropriate level of environmental review under NEPA. The Supplemental Environmental Assessment responds to the court's narrow order to supplement the Final Environmental Impact Statement with an analysis of the potential loss of business revenues during construction. This Finding of No Significant Impact does not alter or change the Record of Decision that was previously issued on the entire project, but only evaluates information provided during the Supplemental Environmental Assessment process.

The Public Process

Two town hall meetings were held on February 17, 2011, to consider the views of the general public and local merchants and to gather information in anticipation of the Supplemental Environmental Assessment. The town hall meetings were held in an open house format. Representatives of the FTA, the Metropolitan Council, City of St. Paul and Business Resource Collaborative members were available at the meetings to discuss the project and the supplemental environmental review process. Business owners, employees and citizens were provided the opportunity to discuss specific issues and provide written and verbal comments. The February 17, 2011 town hall meetings were not public hearings with respect to the NEPA process, thus formal responses were not generated for comments received at the meetings. However, the input collected at these meetings was considered during preparation of the draft and final Supplemental Environmental Assessment and in preparing the response to comments on the draft Supplemental Environmental Assessment. Moreover, the subjects raised in the comments received at the town hall meetings are similar to the comments raised in the NEPA comment period and are addressed in the final Supplemental Environmental Assessment.

The "Draft Construction-Related Potential Impacts on Business Revenues Supplemental Environmental Assessment" was made available for public review and comment on March 1, 2011. As part of the public review process, two public hearings were held on March 16, 2011. Notifications of the availability of the draft Supplemental Environmental Assessment and the notice of public hearings appeared in area newspapers and were sent to stakeholders in the project corridor, as well as local, regional and state agencies. The draft Supplemental Environmental Assessment was also made available for viewing online and at area libraries prior to the public hearings.

The hearings were attended by approximately 66 individuals. The thirty (30) day public comment period extended from March 1 through March 31, 2011. During the public comment period, FTA received comments from 75 individuals and organizations/groups. Comments pertaining to the content of the draft Supplemental Environmental Assessment have been thoroughly considered and addressed, and verbatim copies of all comments, whether received in writing, via email or as testimony at the public hearings are included in Appendix H to the

Supplemental Environmental Assessment.¹ A Response to Comments is included in Appendix G² of the final Supplemental Environmental Assessment. A complete copy of all comments is included in Appendix H to the Supplemental Environmental Assessment.

Information Gleaned from the Supplemental Environmental Assessment Process

A technical report (*Technical Report on the Potential Impacts of Business Revenues during Construction of the Central Corridor Light Rail Project*, USDOT Volpe Center (the "Technical Report")) was developed and published in conjunction with the Supplemental Environmental Assessment.³ The Technical Report was developed in an attempt to predict the potential impacts to business revenues along the Central Corridor resulting from the construction phase of the project. The Technical Report developed a set of environmental impact categories with the potential to adversely affect businesses during construction and included an assessment of the potential environmental impacts of construction on business revenues.

The Technical Report relied heavily on a study of lost business revenue associated with construction of a transportation project in Houston, Texas. Based on the Houston study and the business make-up along the Central Corridor, the technical report concluded that the average loss to businesses along the Central Corridor would range from zero to 2.85%. This conclusion was widely criticized in comments on the draft Supplemental Environmental Assessment.

The Technical Report attempted, in part, to fill in the gap created by incomplete and unavailable information concerning the potential for lost business revenue during construction of the Central Corridor project. Although the Technical Report relies heavily on a credible study undertaken to ascertain construction effects on businesses in Houston, Texas, the applicability of the results of that study to the business situation in the Central Corridor may not be a fair comparison.

As raised by several of the people who commented on the draft Supplemental Environmental Assessment, drawing a direct comparison from the academically published studies in the Technical Report to the Central Corridor is difficult. The construction projects analyzed in the studies were all highway projects with measures taken to minimize disruption. Moreover, the highway projects varied significantly from the Central Corridor project in terms of construction complexity, duration, construction staging options, geographic constraints and construction seasons, all of which can contribute to the impact of construction on a given business' revenues.

In light of the numerous comments regarding the applicability of the methodology used in the Technical Report to provide any reliable estimate of prospective potential loss of revenues caused by the construction phase of the project, FTA has decided that to use a specific percentage to predict with any accuracy the total average business losses is not warranted here.

¹ Comments that were outside the scope of the Supplemental Environmental Assessment were not addressed in the Response to Comments, but are included in Appendix H of the Supplemental Environmental Assessment.

² A Commenter index is included in Appendix G to the Supplemental Environmental Assessment.

³ The "Draft Construction-Related Potential Impacts on Business Revenues Supplemental Environmental Assessment" contained a draft version of the Technical Report. Due to comments received on the draft Technical Report, additional information was incorporated into the final version of the Volpe Technical Report, which is referenced in the Supplemental Environmental Assessment and included as Appendix A of the Supplemental Environmental Assessment.

Moreover, since releasing the draft Supplemental Environmental Assessment for comment, a number of other reports looking at the impact of the construction phase of transportation projects on businesses have been brought to FTA's attention. These reports, although not put through the scientific rigor of a peer review, provide additional support for FTA's conclusion that providing any hard estimate of future lost revenues is not possible given the current state of knowledge, but would only be conjecture and speculation, and have the effect of understating the actual impacts some businesses may incur during the construction phase of the project.

While the loss of business revenue during project construction was not singled out for in-depth analysis in the Final Environmental Impact Statement, as it has been in the Supplemental Environmental Assessment process, the issue was not ignored. For its part, the Metropolitan Council has made a commitment in both the Environmental Impact Statement process and the Supplemental Environmental Assessment process to try to avoid business losses to the extent possible and to seek to mitigate losses that are experienced. The complete list of avoidance and mitigation measures that Metropolitan Council, along with its project partners and other stakeholders, intend to implement may be found in Attachment A of this Finding of No Significant Impact.

Findings

FTA has thoroughly considered the administrative record in this matter, including the Technical Report, as well as the rest of the Supplemental Environmental Assessment and the public comments received related to the draft Supplemental Environmental Assessment. While FTA does not adopt the percentage conclusions of the Technical Report, as applied to businesses in the Central Corridor, the agency did learn from that report that there are a number of external factors, other than construction activities, that can impact revenues of an individual business, including external economic factors, unemployment rates, and world events. Business revenue will be adversely affected during construction of the Central Corridor project, but the extent to which business revenue will be adversely affected as a result of construction activity is speculative in the extreme. As with the construction of any project of this magnitude, this impact will be felt by small businesses, including minority businesses.

Rather than speculate on the potential for loss of business revenue in the Central Corridor during construction of the project, it is more appropriate to try to avoid business losses to the extent reasonable and feasible, and to seek to mitigate any actual losses. Metropolitan Council, along with its project partners and other community stakeholders, have proposed a number of mitigation measures and financial commitments designed to either avoid impacts during construction or provide mitigation of impacts. These commitments total \$14,782,670 providing a range of mitigation measures that include nearly \$6,000,000 in business assistance programs – an increase of nearly \$4,000,000 (more than double what had been previously proposed) from the measures proposed in the draft Supplemental Environmental Assessment. Also since the release of the draft Supplemental Environmental Assessment, financial commitments of \$1,875,000 for improved street lighting and other improvements, business façade improvements, neighborhood commercial parking program, alley improvements program, purchase of variable message signs, transit fare passes, and implementation of a cooperative advertising program. A complete list of avoidance and mitigation measures is set forth in more detail in Attachment A and is incorporated by reference into this finding.

As a condition of the Finding of No Significant Impact, FTA is further requiring the Metropolitan Council to immediately begin providing monthly status reports to FTA on the business mitigation measures it has agreed to implement as set forth in Attachment A. These status reports will include, at a minimum, the following information: (1) Funds expended to date; (2) Details regarding pending requests for mitigation and disposition of mitigation requests; (3) Number of openings and closings of businesses along the alignment; and (4) Complaints regarding construction activities and the response and/or resolution of those complaints. As construction of the project progresses, FTA reserves the right to require additional information in the monthly reports. Monthly status reports are due to the Region V office on the 10th of every month with the first report due by May 10, 2011.

Based on the complete administrative record, FTA finds that while some businesses may be adversely impacted during the construction of the project, the avoidance and mitigation strategies set forth in Attachment A will provide an adequate measure of financial security for businesses, including minority-owned and small businesses adversely affected during the construction of the Central Corridor project. The mitigation program is designed to target businesses that may require financial assistance. Based on the Supplemental Environmental Assessment, it is clear that not all businesses will need assistance or suffer revenue losses; those that do will likely not be severe and prolonged; and that with the mitigation program the impacts are not expected to be significant in the aggregate. The additional condition in this Finding of No Significant Impact will allow FTA to monitor the success of the mitigation measures that Metropolitan Council has agreed to implement to address impacts on business revenues. This Finding of No Significant Impact applies only to the economic impacts to businesses during project construction as evaluated in the Supplemental Environmental Assessment. No new significant impacts related to those not previously identified in the Final Environmental Impact Statement and Record of Decision for the entire project were identified.



Marisol R. Simon, FTA Regional Administrator

4-20-2011
Date

Attachment A: List of Project Mitigation Commitments

ATTACHMENT A

**SUMMARY TABLE OF
MITIGATION MEASURES AND FINANCIAL COMMITMENTS**

Mitigation Measures		Financial Commitment	Responsible Agency
Construction Contract	Construction Access Plan	\$200,000	Metropolitan Council
	Contractor Incentive Program	\$850,000	Metropolitan Council
Project Communications	Community Outreach Coordinators	\$4,000,000	Metropolitan Council
	Construction Communication Plan (Special Signage)	\$200,000	Metropolitan Council
Parking Assistance	Neighborhood Commercial Parking Program	\$2,100,000	City of St. Paul
	Alley Improvements Program	\$350,000	City of St. Paul
Business Assistance Programs	Business Support Fund	\$4,000,000	City of St. Paul
	Business Improvement / Expansion Assistance	\$850,000	Neighborhood Development Center
	Business Resources Collaborative	\$240,000	N/A
	University Avenue Business Preparation Collaborative	\$675,000	N/A
	Great Streets and Business Association Assistance Program	\$210,000	City of Minneapolis
	Other	\$7,670	N/A
University Avenue / Cedar Riverside Betterments	Improved Street Lighting / Trees / Street Furniture	\$650,000	City of St. Paul / Metropolitan Council
	Business Facade Improvements	\$150,000	City of Minneapolis
Promoting Business Access	Additional Business Signage	\$50,000	Metropolitan Council
	Transit Fare Passes and Cooperative Advertising	\$250,000	Metro Transit
TOTAL		\$14,782,670	

**Summary Mitigation Measures: Staffing and Contract Commitments
(Non-Direct Financial Commitments)**

Mitigation Measures		Responsible Agency
Construction Contract	Special Events Plans	Metropolitan Council/ Contractor
	Best Management Practices (BMPs)	Metropolitan Council/ Contractor
Project Communications	Contractor Community Relations Leader	Contractor
	Construction Communication Plan	Metropolitan Council
	Construction Information Packet	Metropolitan Council
	Construction Signage	Metropolitan Council/ Contractor
Parking Assistance	Construction Employee Parking Plan	Metropolitan Council/ Contractor