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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Community Members for Environmental Justice and Minnesota Center for Environmental Advocacy,

Plaintiffs,

v.

City of Minneapolis,

Defendant.

Court File No. _____

Case Type: Civil — Appeal from Administrative Action

COMPLAINT

INTRODUCTION

Plaintiffs Community Members for Environmental Justice ("CMEJ") and Minnesota Center for Environmental Advocacy ("MCEA") challenge a final decision of Defendant City of Minneapolis (the "City") to approve an Alternative Urban Areawide Review ("AUAR") for the redevelopment of the Upper Harbor Terminal (the "Proposed Project") under the Minnesota Environmental Policy Act ("MEPA"). Plaintiffs seek declaratory and injunctive relief, costs, attorney fees, and an order prohibiting the City from implementing the Proposed Project until it completes an adequate AUAR.

PARTIES

1. Plaintiff CMEJ is an unincorporated association of Minneapolis residents. CMEJ is a coalition of caring community members, mothers, and youth who are committed to addressing the environmental injustices occurring disproportionately in pollution-burdened neighborhoods of North Minneapolis. CMEJ advocates for clean air and water and fights to eliminate the inequitable and disparate impact of toxic pollution and unsustainable development on their community.

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2. CMEJ members live, work, and recreate in the City of Minneapolis. Many CMEJ members live or work in areas heavily impacted by the legacy of pollution. CMEJ members' recreational, economic, aesthetic, and environmental interests are threatened by the City's failure to conduct adequate environmental review before moving forward on the Proposed Project.

3. Plaintiff MCEA is a Minnesota-based nonprofit organization. MCEA's mission is to use law and science to protect Minnesota's environment, natural resources, and the health of its people. MCEA counts among its members nearly 300 households that live near the Proposed Project who will also be affected by the City's failure to conduct adequate environmental review. In addition to representing CMEJ, MCEA brings this action on behalf of itself and its members.

4. Defendant City is a municipal corporation under the Minnesota Constitution, article XII, section 4. The City owns several parcels of land that compose the Upper Harbor Terminal and is the Responsible Government Unit ("RGU") required to conduct environmental review under MEPA before deciding whether to proceed with the Proposed Project.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted under Minn. Stat. § 484.01, subd. 1; Minn. Stat. §§ 555.01-.16; and Minn. Stat. § 116D.04, subd. 13.

6. Venue is proper in this Court because the Upper Harbor Terminal, Plaintiff CMEJ, members of Plaintiff MCEA, and the City are all located in Hennepin County. *See* Minn. Stat. § 116D.04, subd. 13; Minn. R. 4410.0400, subp. 4; *see also* Minn. Stat. § 484.01, subd. 1.

FACTUAL BACKGROUND

The Geography Of The Upper Harbor Terminal

7. The Upper Harbor Terminal (the "Site") is located on the west bank of the Mississippi River in the present-day City of Minneapolis, on Dakota homelands. For decades it

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served as a loading, unloading, and storage facility for barge traffic. Today, the Site consists of 48 acres of City-owned land, including nearly one mile of riverfront.

8. The Site is generally located in North Minneapolis (or the "Northside"). The majority of Northside residents are people of color, and much of the land area consists of concentrated poverty. The construction of Interstate 94 through the Northside, a history of predatory lending and racially restrictive covenants, and the presence of polluting industries have caused residents to disproportionately suffer poor health, environmental, and socioeconomic outcomes.

9. Specifically, the Site is located within the McKinley neighborhood and adjacent to the Hawthorne and Weber-Camden neighborhoods.

10. The Minnesota Pollution Control Agency recognizes these neighborhoods as "areas of environmental justice concern," which means these areas are of specific importance to eradicate community-wide disproportionate impacts from air pollution. These communities are also part of the Northside Green Zone, an area formally recognized as overburdened by environmental conditions such as traffic and stationary pollution sources. The census tract that encompasses the Site has an air pollution score that ranks among the highest 10% in Minnesota. Unsurprisingly, these neighborhoods experience elevated rates of asthma.

11. These neighborhoods also face heightened risk of climate-change impacts. For example, the "heat island" effect in urban neighborhoods intensifies climate-change induced heat waves. According to a recent study, summer temperatures differentials in Minneapolis can exceed ten degrees Fahrenheit between historically redlined neighborhoods and wealthier areas. Additionally, climate change will exacerbate underlying respiratory conditions already prevalent in these neighborhoods. For example, as the Hennepin County Climate Action Plan explains,

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increasing humidity from higher precipitation and frequent flooding will cause more mold and bacterial growth in buildings, especially in those kept in disrepair by absentee landlords. This mold and bacteria growth will disproportionately harm those community members already suffering from respiratory conditions due to poor air quality.

12. CMEJ and other Northside residents have worked for years to address these disparities and improve the environmental, social, and economic health of their community. At the same time, nearby development and market conditions are driving up the cost of living in these neighborhoods, where many current residents are already struggling to keep up.

13. The census tract surrounding the Site is already experiencing early stages of gentrification. If planning fails to accurately account for community needs, residents who have worked hard to improve the environmental and social health of their community may be priced out. Development that leads to dispersal does not ultimately benefit the community.

14. In the fall of 2021, the Minneapolis Park and Recreation Board stated that there is a "real and profound threat" that the Proposed Project will exacerbate existing disparities.

The Proposed Project

15. The City formulated this Proposed Project in partnership with private developers. In the summer of 2016, the City released a Request for Qualifications through which the City would select a development team to create a Coordinated Plan for redevelopment of the Site. United Properties Development, LLC, submitted the only full proposal, which the City selected.

16. The keystone of the Proposed Project would be a large music and performing-arts amphitheater. The Proposed Project would also include residential, hospitality, retail, office, light industrial, and recreational land uses.

17. After significant criticism of the planning process, the City appointed a Collaborative Planning Committee ("CPC") to advise on the development concept. Some members

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of the CPC resigned after being labeled as obstructionists for voicing concerns about Proposed Project.

18. The Minneapolis City Council planned to vote on the Final Coordinated Plan for the Proposed Project in February 2021, before it had conducted environmental review. Plaintiffs sent a demand letter notifying the City that final approval of the project without information from environmental review would violate MEPA. The City Council ultimately delayed its vote.

19. The City contracted an out-of-state firm to draft an AUAR for the Proposed Project pursuant to MEPA.

STATUTORY AND REGULATORY BACKGROUND

20. MEPA requires the preparation of an environmental impact statement ("EIS") prior to any major governmental action that may result in the potential for "significant environmental effects." Minn. Stat. § 116D.04, subd. 2a(a).

21. MEPA allows for "alternative forms of environmental review" that may be implemented "in lieu of an environmental impact statement." *Id.* subd. 4a. Alternative forms of review must "address the same issues . . . as an environmental impact statement." *Id.*

22. An AUAR is an accepted alternative form of environmental review for certain kinds of projects. Minn. R. 4410.3610.

23. An AUAR "must provide for a level of analysis comparable to that of an EIS for direct, indirect, and cumulative potential effects typical of urban residential, commercial, warehousing, and light industrial development and associated infrastructure." *Id.* subp. 4.

24. An EIS (and therefore, an AUAR) must "describe[] the proposed action in detail, analyze[] its significant environmental impacts, discuss[] appropriate alternatives to the proposed action and their impacts, and explore[] methods by which adverse environmental impacts of an action could be mitigated." Minn. Stat. § 116D.04, subd. 2a(a); *see* Minn. R. 4410.3610, subp. 4.

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25. An EIS (and AUAR) must analyze environmental, "economic, employment, and sociological effects." Minn. Stat. § 116D.04, subd. 2a(a); *see* Minn. R. 4410.3610, subp. 4.

26. An AUAR must analyze direct, indirect, and cumulative potential effects. Minn. R. 4410.3610, subp. 4. "The geographic extent of the analyses of direct, indirect, and cumulative potential effects conducted in preparing the document is not to be limited by the boundaries set in the order [that specifies the geographic area for review]." *Id.* subp. 5(A).

27. Although implementing rules and guidance describe some content that is commonly included in environmental-review documents, there is no exhaustive list of required content. Rather, the responsible government unit must follow MEPA's broad mandate to consider any significant environmental, sociological, and economic effects. Minn. Stat. § 116D.04, subd. 2a(a); *see, e.g.*, *In re Enbridge Energy, Ltd. Partnership*, 930 N.W.2d 12, 29 (Minn. Ct. App. 2019) (considering whether an EIS adequately analyzed climate impacts); *In re Determination of Need for Environmental Impact Statement for Mankato Motorsports Park*, No. A20-0952, 2021 WL 1604359, at *7-8, 11 (Minn. Ct. App. Apr. 26, 2021) (remanding an environmental assessment worksheet for failing to consider impacts to wildlife and climate change).

28. When a government action may have a disproportionate effect on an environmental-justice community, the RGU has an obligation to analyze those disproportionate effects during environmental review. *See Communities Against Runway Expansion, Inc. v. F.A.A.*, 355 F.3d 678, 688-89 (D.C. Cir. 2004) (analyzing an environmental-justice claim under the federal equivalent of MEPA). Such an analysis requires more than an acknowledgement that an environmental-justice population exists; rather, the RGU must undertake a reasonable analysis of