

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.

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

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,

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

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.

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

data to determine whether that population will be disproportionately affected. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 140 (D.D.C. 2017).<sup>1</sup>

### THE AUAR FOR THE PROPOSED PROJECT

29. On May 25, 2021, the City published the Draft AUAR for the Proposed Project.

30. The Draft AUAR was deficient in multiple respects.

#### Social, Economic, and Environmental Justice Impacts

31. The Draft AUAR failed to include an analysis of the disproportionate environmental, health, social, and economic burdens of the Proposed Project on low-income communities of color.

32. The Draft AUAR did not consider the effect of the Proposed Project on gentrification in relevant parts of North Minneapolis or estimate the number of jobs created that might be filled by local residents. Instead, the AUAR relied on vague references to strategies “aimed” to prevent displacement.

33. The Draft AUAR did not consider the disproportionate impacts of pollution faced by these neighborhoods, such as respiratory-health impacts, in the context of the Proposed Project combined with past and planned future projects.

34. The City did not add any analysis to the Final AUAR in response to Plaintiffs’ comment regarding these impacts. Instead, the City simply responded that the project plans had identified “development solutions *intended* to benefit residents of color.” (Emphasis added.) These solutions, according to the AUAR, “include[d] strategies aimed at providing economic opportunities for residents in the neighborhood, disrupting gentrification and displacement,

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<sup>1</sup> Because MEPA is patterned after the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, et seq., Minnesota courts are guided by federal NEPA caselaw. *No Power Line, Inc. v. Minnesota Environmental Quality Council*, 262 N.W.2d 312, 323-27 (Minn. 1977).

creating a diverse housing stock in the neighborhood, repairing environmental injustices, and creating inclusive public spaces in the Northside.”

35. The AUAR failed to start with a concrete idea of the anticipated social, economic, and environmental-justice impacts of the Proposed Project, let alone the specific metrics that would be necessary to assess any progress toward mitigating those impacts. Without metrics or any attempt to gather relevant, available data, the City deprives itself of the opportunity to understand whether its proposed strategies would mitigate the effects of the Proposed Project.

#### **Cumulative Potential Effects on Air Quality**

36. The AUAR’s only analysis of air quality data consisted of a reference to a single set of air quality measurements on a specific date. An air-quality measurement taken on a single date does not provide an accurate picture of air-quality trends in a particular location.

37. Other than that snapshot, there was no analysis or summary of air-quality trends in the area, how a new project might affect air quality, or the incremental effects of the Proposed Project when combined with past and planned future projects.

38. The AUAR discusses a single existing stationary source of air emissions: the GAF Manufacturing Facility (“GAF Facility”), located directly south of the AUAR study area. The AUAR did not quantify emissions from the GAF Facility or analyze the cumulative potential effects of adding emissions from the Proposed Project to existing emissions.

39. Rather, the AUAR simply stated that the GAF facility is currently complying with permits and is *investigating* whether the installation of equipment would reduce emissions. The AUAR vaguely alluded to existing “neighborhood concerns” about air pollution. Instead of describing those concerns, the AUAR merely stated that the GAF Facility “continues to work with the City.”



40. In its analysis of traffic impacts on air quality, the AUAR discussed the current state of attainment of federal air quality standards but did not attempt to analyze the effects of increased traffic likely to be created by the Proposed Project.

41. Rather, the AUAR summarily concluded: “For the foreseeable future the trend of lower per vehicle emissions is expected to at least offset growth in vehicle volumes. Therefore, the AUAR study area is expected to continue meeting [federal air quality standards], with or without implementation of the development scenarios.”

42. The AUAR did not consider the volume of traffic that would be generated as a result of the Proposed Project or actual projections of the future “trend of lower per vehicle emissions.”

43. Plaintiffs’ comment pointed out that the Draft AUAR did not account for the cumulative potential effects of the Proposed Project on air quality.

44. In response, the City argued that the “No Build” scenario considered in the AUAR was a sufficient cumulative-potential-effects analysis.

45. But the AUAR does not describe existing air pollution as part of the “No Build Scenario.” Rather, the AUAR’s description of the “No Build Scenario” simply provides the current square footage of office space and acreage of industrial storage space on the Site.

46. The Draft and Final AUAR failed to adequately discuss the cumulative potential effects of the Proposed Project on air quality when combined with past and future development. Instead, the air-quality analysis relied on summary conclusions and incomplete data, despite historical air-quality issues in the vicinity of the Proposed Project.

### Climate Change

47. The Draft AUAR omitted any analysis of the Proposed Project's contributions to greenhouse-gas emissions, mitigation measures that could reduce those emissions, or the potential effects of climate change on this riverfront property.

48. Climate change caused by greenhouse-gas emissions is a "significant environmental impact" that requires analysis during environmental review. *In re Enbridge Energy*, 930 N.W.2d at 29; *see also Mankato Motorsports Park*, 2021 WL 1604359, at \*7-8; *In re Denial of a Contested Case Hearing Request & Modification of a Notice of Coverage Under Individual National Pollution Discharge Elimination System Feedlot Permit No. MN0067652*, No. A19-0207, 2019 WL 5106666, at \*10-11 (Minn. Ct. App. Oct. 14, 2019).

49. As discussed in Plaintiffs' comment, the Draft AUAR failed to mention climate change or climate-harming emissions.

50. The Final AUAR also failed to discuss the Proposed Project's contributions to climate change or the impacts of climate change on the Proposed Project.

51. The Mitigation Plan does not include any measures to reduce or offset the greenhouse-gas emissions from the Proposed Project.

52. In response to Plaintiffs' comment on this issue, the City merely noted that the EQB is considering new guidance on climate-change analysis but that the guidance has not been finalized.

53. There was no EQB Guidance regarding climate-change analysis in place when the Minnesota Court of Appeals issued the decisions in paragraph 48.

54. EQB Guidance is not dispositive of the analyses required under MEPA.

55. Plaintiffs' comment on the Draft AUAR pointed out that there are numerous mitigation measures available to reduce greenhouse-gas emissions, including cost-saving

efficiency measures, onsite renewable energy generation, and construction using recycled materials.

56. The Final AUAR did not acknowledge or respond to Plaintiffs' comment on greenhouse-gas mitigation measures.

57. Plaintiffs' comment on the Draft AUAR pointed out that the City had failed to consider potential impacts of climate change on the Proposed Project.

58. The Final AUAR did not acknowledge or respond to Plaintiffs' comment the impacts of climate change on the Proposed Project.

#### **Plaintiffs' Comment And The City's Response**

59. On June 24, 2021, CMEJ and MCEA submitted a timely public comment pointing out the above-described deficiencies in the Draft AUAR.

60. In July 2021, the City published the Final AUAR for the Proposed Project.

61. The City did not make any material changes to the AUAR in response to Plaintiffs' comment.

62. On September 28, 2021, the City published notice of its final decision approving the AUAR in the *EQB Monitor*.

63. On October 8, 2021, the City approved the Final Coordinated Development Plan for the Proposed Project.

### **CLAIMS FOR RELIEF**

#### **COUNT 1**

#### **Declaratory Judgment That The AUAR Is Inadequate Under MEPA Because It Fails To Analyze Significant Potential Socioeconomic Impacts.**

64. Plaintiffs reallege and incorporate by reference the allegations set forth in all previous paragraphs of this Complaint.

65. An AUAR must discuss significant potential sociological and economic impacts.

66. The Proposed Project would have significant sociological and economic impacts not analyzed in the AUAR.

67. The City did not add any analysis to the Final AUAR in response to Plaintiffs' comments regarding sociological and economic impacts.

68. Plaintiffs respectfully ask this Court to declare that the AUAR for this Proposed Project is inadequate for failure to analyze sociological and economic impacts, enjoin the City from proceeding with the Proposed Project until it completes an adequate AUAR, and remand the AUAR to the City.

## COUNT 2

### **Declaratory Judgment That The AUAR Is Inadequate Under MEPA Because It Fails To Analyze Disproportionate Health Impacts on Environmental Justice Communities.**

69. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 63.

70. An AUAR must discuss disproportionate impacts to environmental-justice communities.

71. The Proposed Project has the potential for significant environmental-justice impacts not analyzed in the AUAR.

72. The City did not add any analysis to the Final AUAR in response to Plaintiffs' comments regarding environmental-justice impacts.

73. Plaintiffs respectfully ask this Court to declare that the AUAR for this Proposed Project is inadequate because it fails to analyze environmental-justice impacts, enjoin the City from proceeding with the Proposed Project until it completes an adequate AUAR, and remand the AUAR to the City.

**COUNT 3****Declaratory Judgment That The AUAR Is Inadequate Under MEPA Because It Fails To Analyze Cumulative Potential Effects On Air Quality.**

74. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 63.

75. An AUAR must analyze cumulative potential effects of a proposal on air quality when combined with past and known future projects.

76. The Final AUAR failed to adequately respond to Plaintiffs' comment or to consider the cumulative potential air-quality effects of past projects, existing sources of environmental impacts, and foreseeable future projects in conjunction with the Proposed Project.

77. Plaintiffs respectfully ask this Court to declare that the AUAR for this Proposed Project is inadequate because it failed to analyze cumulative potential effects on air quality, enjoin the City from proceeding with the Proposed Project until it completes an adequate AUAR, and remand the AUAR to the City.

**COUNT 4****Declaratory Judgment That The AUAR Is Inadequate Under MEPA Because It Fails To Analyze Climate-Change Impacts And Mitigation.**

78. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 63.

79. Climate change is a significant environmental impact that requires analysis in an AUAR.

80. The Proposed Project has the potential for greenhouse-gas emissions that would contribute to climate change. Further, there are methods by which the City could mitigate emissions, but neither the emissions or potential mitigation are considered in the AUAR. As the

Proposed Project is sited on riverfront property and will rely on effective stormwater management, the Site and the Proposed Project may also be impacted by the effects of climate change.

81. The City did not add any analysis to the Final AUAR in response to Plaintiffs' comments regarding greenhouse-gas contributions, mitigation, or the effects of climate change on the Site and the Proposed Project.

82. Plaintiffs request the Court to declare that the AUAR for this Proposed Project is inadequate because it fails to analyze greenhouse-gas emissions, mitigation, and climate impacts, enjoin the City from proceeding with the Proposed Project until it completes an adequate AUAR, and remand the AUAR to the City.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that the City must not take any further action or expend further funds related to the Proposed Project until the AUAR process is complete and the AUAR analysis is deemed adequate,
- b. Enjoin the City from taking any action that would prejudice the ultimate decision on the Proposed Project until it completes adequate environmental review,
- c. Award Plaintiffs their costs, expenses, expert-witness fees, and reasonable attorney fees, and
- d. Grant Plaintiffs such other and further relief as this Court deems just and equitable.

Dated: October 28, 2021

/s/ Melissa Lorentz

Melissa Lorentz, #397314

Evan Mulholland, #399072

Minnesota Center for Environmental Advocacy

1919 University Avenue West, Suite 515

Saint Paul, Minnesota 55104

(651) 223-5969

mlorentz@mncenter.org

emulholland@mncenter.org

*Attorneys for Community Members for  
Environmental Justice and the Minnesota Center  
for Environmental Advocacy*