



March 17, 2017

Secretary Elaine L. Chao
Office of the Secretary
US Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590
United States

via electronic and postal delivery

Dear Secretary Chao,

We, the undersigned legislators of the Majority Caucus in the Minnesota House and the undersigned senators of the Majority Caucus in the Minnesota Senate, urge you to review our request to deny a full-funding agreement from the New Starts program for the proposed Southwest Light Rail Transit (SWLRT) project in Minneapolis.

The Metropolitan Council, a wholly unelected Metropolitan Planning Organization (MPO) for our region, is currently awaiting approval of its full-funding grant agreement seeking \$895 million in federal funds to begin construction of SWLRT, the largest public works project in state history. Their application, filed in late 2016, followed two years in which SWLRT received neither capital funding from the 2015-16 Minnesota Legislature, nor legislative authorization to impose a 0.50 percent metro sales tax for operating costs.

The Metropolitan Council's response to the Legislature's opposition to SWLRT was to circumvent the legislature, and identify alternative capital funding in lieu of state funding. It threatened to issue a seldom-used debt instrument known as Certificates of Participation (COP) to skirt the traditional legislative appropriations process and avoid the statutory intent for state and local participation in funding capital transit projects. Furthermore, the potential use of this untraditional financing mechanism constitutes a breach of its promise to the Legislature in a letter dated July 22, 2015 which stated the Metropolitan Council would not resort to such a financing mechanism in the absence of legislative authorization. *Attachment A.*

The Metropolitan Council's source of funds for repayment of the COP bonds is not fully known, nor has it identified in the "financing sources" required under U.S. Code Title 49 Section 5309 to cover net operating, maintenance and recapitalization costs. It does not appear possible that the Council can continue to operate the current bus system and fund the debt service on the COP bonds putting the Council

in violation of the above U.S. Code which prohibits cannibalization of current bus service to fund new light rail.

The Council has publicly stated its expectation that the legislature will provide 50 percent of ongoing net operating subsidies in perpetuity as provided in statute; however, the legislature is currently considering legislation to repeal that law for projects not receiving state approval. In testimony before a joint Senate and House Transportation Committee on January 17, 2017, the Metropolitan Council confirmed that no continuity fund for replacement costs exists; neither are replacement costs reflected in their operating cost estimates. Furthermore, requests from Minnesota Governor Mark Dayton and the Council for a new 0.50 percent metro area sales tax to raise additional funding for the Council have little chance of legislative success this year.

Another factor in support of denying a full-funding agreement is an ongoing lawsuit from citizen groups scheduled to be heard in September 2017 in Federal District Court. The lawsuit, *Lakes and Parks Alliance v. The Metropolitan Council*, contains substantive claims that the Metropolitan Council's planning of SWLRT failed to comply with environmental statutes and asserts that alternative routes were given only cursory review. Chief U.S. District Judge John Tunheim was led to comment in an early stage of the proceeding that "*the Met Council has come dangerously close to impermissibly prejudicing the ongoing environmental review process.*"

An August 2, 2015 Minneapolis Star Tribune report stated, "*The Alliance claims the tunnels and bridges would compromise an environmentally sensitive area, and alleges that the Met Council refused to consider alternatives to reroute the project away from the corridor, a popular pedestrian and bicycling area. Tunheim appeared to agree, saying that in pursuing municipal consent for the current route before finishing the environmental review, the Met Council has 'not simply limited the number of options for the SWLRT project - [it has] narrowed the options down to one and reduced the ongoing environmental review to a meaningless formality.'*"

In spite of the foregoing funding and legal uncertainties, the Council has continued to move the project ahead. In late February, they posted bid requirements for a \$700 million civil construction bid package for the project.

The controversies over SWLRT have swirled since the Supplemental Draft Environmental Impact Statement (EIS) became public. SWLRT bypasses the most-densely populated, most transit-dependent, large minority populations in the metro area. SWLRT will do little to address the troubling racial disparities that exist in the Twin Cities area, and will instead result in missed opportunities for underserved populations to access jobs and important regional resources, as well as fewer dependable riders and lower fare box revenue.

About the ill-placed route, the late Congressman Martin Sabo said in a 2014 press conference: "*For Minneapolis, the results would be particularly meager. This is because Minneapolis was handed not only a*

bait-and-switch proposal but a proposal that keeps morphing... The current proposal does very little for the mobility of the people in Minneapolis. The Penn, Van White and Royalston stations all have hardly any people living near them. In fact, the Met Council's own projections, for as far in the future as 2030, show very low ridership there."

The SWLRT line's overlap with a freight rail corridor has raised alarms that the Supplemental Environmental Impact Statement (EIS) failed to adequately assess the costs and the risks inherent in co-location of ethanol and oil-bearing freight trains with passenger rail in a shockingly narrow corridor. In addition, the current SWLRT plan proposes spending \$260 million dollars for private freight rail right-of-way acquisitions and new freight rail infrastructure, and would result in expanding the Met Council's mission into freight rail operations while raising unanswered questions about liability.

Numerous environmental concerns remain inadequately addressed. If built, the SWLRT will adversely affect the quality of the Minneapolis Chain of Lakes, a nationally recognized and lauded public amenity that is part of the National Scenic Byway that serves and delights citizens from all parts of the State of Minnesota, visitors from around the nation and the world.

Unfortunately, the Minneapolis Park and Recreation Board, despite its expressions of grave concern and reservation about SWLRT's intrusion into the Chain of Lakes, was prevented from discharging its legal obligation to protect this fragile resource under Section 4(f) of the Federal Transportation Act when the governor threatened to withhold essential state financial support from the Park Board's budget. Underscoring its environmental disregard, the Metropolitan Council's Final EIS concluded that SWLRT would actually *add* 2,000 metric tons of greenhouse gases per year over and above the No-Build option.

Ridership forecasts for SWLRT are less than impressive. The Metropolitan Council estimates 34,000 rides will be taken per workday using SWLRT, but because most rides are round trips, we know that to be 17,000 riders. Of that, the "new-to-transit riders" are just one-third of the total, or 6,500 riders, with the remaining two-thirds currently using the existing express bus (South West Transit), a very popular public-private line into downtown. Needless to say, legislators are appalled at the paltry mobility numbers resulting from such a staggering public investment of nearly \$2 billion.

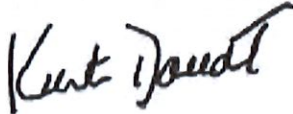
As legislators who support public investment in transportation and transit infrastructure that is cost effective, sustainable, and adjustable as transportation needs change, we are extremely concerned that this grossly wasteful project falls so far short of these criteria. We concur with citizen groups that the SWLRT process has been opaque, rushed and flawed.

In conclusion, it is our belief that further investment in SWLRT as planned would be counter-productive to the State of Minnesota's transportation and environmental interests, and would recklessly consume scarce transit resources well into the future for a project

that fails on so many counts. We remain opposed to the continued funding and construction of SWLRT as planned and are calling for a halt to the project until a full financial projection and plan are prepared showing the sources of capital, operations, maintenance and replacement funds, and a cost-effectiveness that does not unduly burden the taxpayers of Minnesota.

Thank you for your attention to this extremely important matter.

Sincerely,



The Honorable Kurt Daudt
Speaker of the Minnesota House



The Honorable Michelle Fischbach
President of the Minnesota Senate



The Honorable Joyce Peppin
Majority Leader of the Minnesota House of Representatives



Chair Paul Torkelson
House Transportation Finance Committee




Chair Linda Runbeck
House Transportation and Regional Governance Policy Committee





Chair Scott Newman
Senate Transportation Finance and Policy Committee




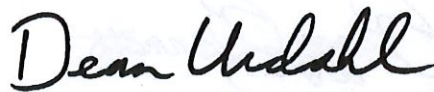
Chair David Osmek
Senate Energy & Utilities Finance and Policy Committee

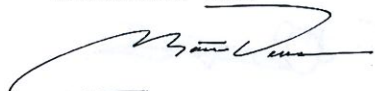

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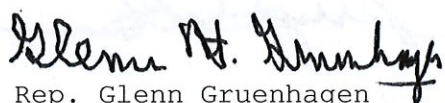

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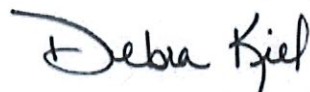

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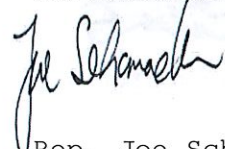

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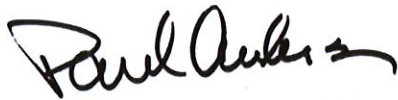

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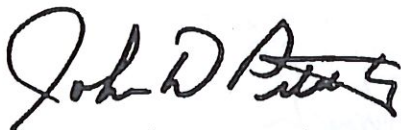
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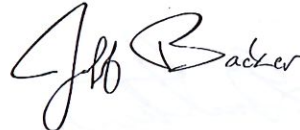
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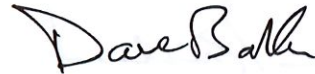
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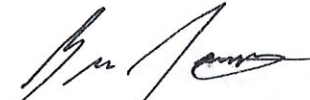
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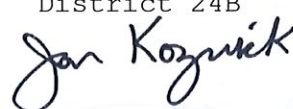
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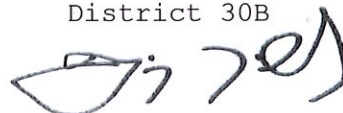
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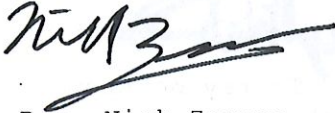
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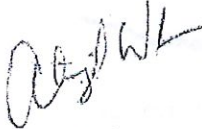
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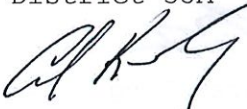
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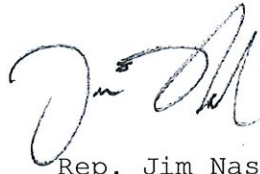
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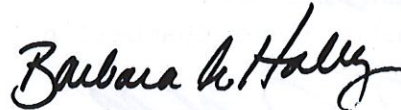
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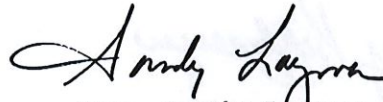
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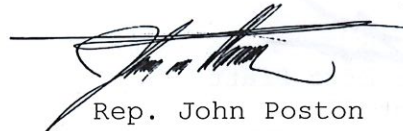
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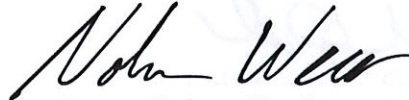
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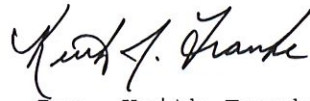
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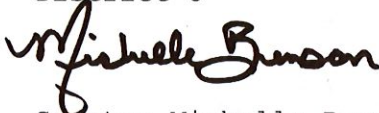
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Senator Torrey Westrom
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Senator Rich Draheim
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Senator Roger Chamberlin
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Senator Justin Eichorn
District 5



Senator Dan Hall
District 56



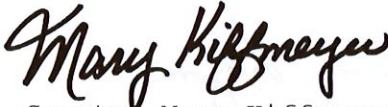
Senator John Jasinski
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Senator Bruce Anderson
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Senator Scott Jensen
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Senator Bill Weber
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Senator Andrew Lang
District 17



Senator Andrew Mathews
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Senator Jerry Relph
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District 2

Copies (by electronic delivery):

The Honorable Mark Dayton, Governor of the State of Minnesota

The Honorable Erik Paulsen, Congressman from Minnesota's 3rd
District

The Honorable Tom Emmer, Congressman from Minnesota's 6th
District

The Honorable Jason Lewis, Congressman from Minnesota's 2nd
District

The Honorable Scott Dibble, State Senator for Minnesota's Senate
District 61

The Honorable Frank Hornstein, State Representative for
Minnesota's House District 61A

Adam Duininck, Chair of the Metropolitan Council

Tonya Gross, Director of Governmental Affairs at the U.S.
Department of Transportation

July 22, 2015

Rep. Tim Kelly

Chair, House Transportation Policy and Finance Committee

559 State Office Building

100 Rev. Dr. Martin Luther King Jr. Blvd.

St. Paul, MN 55155-1298

Dear Chair Kelly,

I am writing today to respond to your June 23, 2015 letter regarding the Metropolitan Council's cash flow financing plan for Southwest Light Rail Transit (Southwest LRT).

You expressed concerns that the Southwest LRT Project should be delayed because it does not have support. I want to be clear that Governor Dayton and Metropolitan Council support keeping the project on track, as do the locally elected officials on the SWLRT Corridor Management Committee who voted July 1, 2015 to reduce the project cost by \$250 million and to contribute their own local funds to keep the project moving forward.

However, the Metropolitan Council will not commit the 10% state share for the project without approval from the Legislature. The Governor has proposed and the Senate voted for a funding mechanism to pay for the state share of Southwest LRT and make other transit investments. The House GOP chose instead to reduce state investment in metropolitan area transit. Unfortunately, there was not an opportunity to address the long-term funding needs for our transit system in the 2015 legislative session, but the Governor and Metropolitan Council remains committed to addressing this issue in the 2016 session.

In your letter, you raised several questions about the Metropolitan Council's recent action to use some of existing MVST reserves to cash flow the proposed Southwest LRT project. This action was the direct result of the Legislature's decision to cancel previously appropriated funds for Southwest LRT. The financing plan addressed challenging short-term project cash flow demands created when the Legislature canceled \$29.7 million previously appropriated and committed to Southwest LRT project and re-appropriated those funds to transit operations in state fiscal years 2016-'17. The SWLRT project office had planned to use \$13 million of the \$29.7 million funds in calendar year 2015; so the legislature's actions created an immediate shortfall for the project office.

To address this immediate cash flow issue and allow the SWLRT Corridor Management Committee to complete its work, the Council is drawing on its Motor Vehicle Sales Tax (MVST) reserves to fund the \$13 million needed by the project office in calendar year 2015. This action occurred on June 24 and resolved our short-term budget issue, but it was not a commitment to overall project financing. Our MVST reserve is a cash reserve necessary to mitigate the volatility of this revenue source in our operating budget. The Council

will replace the MVST reserve funds in its calendar 2016 operating budget with the general fund dollars that were redirected and appropriated by the legislature for State Fiscal Years 2016-17. These are the same general funds that were appropriated in 2013 to the project.

Project Development efforts must also continue in order for the project to maintain its ranking through the federal funding process. Additionally, the work must continue in order to avoid potential delays that could cost the project \$50 million per year of delay. To date, the region has committed over \$750 million in local funds and we are seeking a federal match of \$872 million. The only local money that has not been committed is the remaining \$151 million state share.

Because the Legislature has not committed the state share for the Southwest LRT project, the Metropolitan Council has begun researching other possible financing options. The Certificates of Participation (COP) financing plan is an option to keep the project on schedule with current timeframes for federal funding. Using COPs as a temporary placeholder would also allow for future consideration by the Legislature of the state's funding share.

If COP financing becomes necessary to cover cash flow needs of the project prior to receiving final go-ahead and funding from the state and federal government, the Council would issue only the amount necessary to cover those cash flows. While using this authority would provide the Council with a mechanism to keep the federal process moving without delay and would save taxpayers \$50 million for every year of delay avoided, it is not the Council's preference to fund the project in this manner. Should the Legislature ultimately choose not to fund the Southwest LRT project in a future legislative session, the project will not go forward.

Attached is information directly responding to the questions posed in your letter. The Metropolitan Council will be required to commit the 10% state share for Southwest LRT by June 2016 in order to keep the project in the federal funding pipeline and not increase the project cost due to delay. I look forward to working with you over the next year to secure the needed investments in Southwest LRT and our entire transit system to retain Minnesota's economic competitiveness.

Sincerely,



Adam Duininck

Chair, Metropolitan Council

1) Is there statutory authority allowing the Met Council to issue COPs?

Yes. Attached to this letter you will find an opinion from our bond counsel providing statutory authority for issuing COPs for a transit project and using MVST to make scheduled payments under a financing agreement.

Specifically, the statutory authority is contained within the Council's general authority provided pursuant to Minnesota Statutes, Section 473.129 subd. 7 to "acquire, own, hold, use, improve, operate, lease, exchange,

transfer, sell, or otherwise dispose of personal or real property, franchises, easements, or property rights or interests of any kind.”

Additionally, Minnesota Statutes, Section 16A.88, subd. 2 provides that the Motor Vehicle Sales Tax money in the metropolitan area transit account must be used by “the Metropolitan Council for the funding of transit systems with the metropolitan area under sections 473.384, 473.386, 473.387, 473.888, and 473.405 to 473.449.” Pursuant to Minnesota Statutes, Section 473.405, subd. 4, the Metropolitan Council “may engineer, construct, equip, and operate transit and paratransit systems, projects, or any parts thereof, including road lanes or rights-of-way, terminal facilities, maintenance and garage facilities, ramps, parking areas, and any other facilities useful for or related to any public transit or paratransit system or project.” Since Motor Vehicle Sales Tax Revenues are authorized to be used for capital purposes, it is the opinion of our bond counsel that the Metropolitan Council is authorized to enter into a revenue agreement to finance such capital projects and appropriate legally available funds, including but not limited to MVST revenues, to scheduled payments under such agreement.

2) What is the legal basis for being allowed to use COPs as a funding source for transit projects? Is there a precedent?

The first part of this question (legal basis) is answered in question #1. As to whether there is a precedent, the Council has not used COP financing for transit projects in the past but has issued COPs to reconstruct, renovate, improve and equip the Council’s central office headquarters at 390 Robert Street North.

3) Who would issue these COPs?

If the determination is made to continue the SWLRT project by financing the state’s share of the project through COPs, the Metropolitan Council can be the issuer.

4) What terms and debt service would be required to pay these obligations off?

Certificates of Participation are not a general obligation of the Council and the full faith and credit and ad valorem taxing powers of the Council are not pledged to make scheduled payments.

If the Council were to issue COPs, the Council would agree to make scheduled payments from legally available funds (in this case our intent would be to use Motor Vehicle Sales Tax Revenues) subject to a right to choose not to budget those funds in any year. In exchange, a third party would obtain those funds by offering to the financing market a certificate of participation in the revenue stream from the Council’s agreement to make those scheduled payments. The third party retains no rights or interest with respect to any property and investors would be relying primarily on the expectation that the Council would continue to make scheduled payments under the agreement.

COP financing terms are subject to market conditions at the time of issuance. The most likely scenario would be to issue over a 20 year term.

5) What transit projects will not be funded now because of the use of MVST funds being reserved to pay off these COPs?

There are no projects that will not be funded should COPs be issued for Southwest LRT project activities.

6) For what other projects, or elements of projects, does the Met Council envision COPs as proper and legitimate funding source?

In 2004, the Council issued \$13.5 million Certificates of Participation to provide funds to reconstruct, renovate, improve and equip the Council's central office headquarters at 390 Robert Street North. The COPs had a True Interest Cost (TIC) of 4.189%.

Net present value savings of \$14.5 million are estimated to be achieved over the life of the renovated office space as compared to our lease and operating costs for our previous location.

In 2014, the Council refunded the original COPs for interest rate savings. The refunding COPs (\$8.6 million) have a TIC of 2.129% and mature in 2024.

7) What precedent would be set by committing the use of funds from a state dedicated constitutional revenue stream for bonding without any legislative approval?

The Metropolitan Council will not commit the 10% state share for the project without support from the Legislature.

8) How would this impact state debt guidelines?

We do not anticipate there would be an impact on state debt guidelines.