

(b) (6)

25 October 2019

Delivered CERTIFIED MAIL: 7012 2920 0000 7125 8723

Mr. Carlos Braceras, Executive Director
% Utah Department of Transportation (UDOT)
4501 South 2700 West
Salt Lake City, UT 84119

**TITLE VI
VIOLATION**

Re: Salt Lake City Transportation Division (Sub-Recipient)

Dear Director Braceras,

On behalf of (b) (6) I submit the following **Title VI of the Civil Rights Act of 1964** complaint (Title VI).¹ This Title VI complaint is against the Salt Lake City Transportation Division (SLC) and the Wasatch Front Regional Council (WFRC) which acts as the federally designated Transportation Planning Metropolitan Planning Organization (MPO) for this region.² The Federal Transit Administration (FTA) has mandated that primary recipients “*monitor their subrecipients for compliance with the regulations,*” stating that “*if a subrecipient is not in compliance with Title VI requirements, then the primary recipient is also not in compliance.*”³ As you are aware, due to the tiered nature of transit planning, federal funding flows from WFRC and UDOT to SLC. As a regional entity, UDOT is responsible for ensuring SLC’s compliance with Title VI.⁴

¹ Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The U.S. Department of Transportation (USDOT) implemented its Title VI program in 49 CFR Part 21. Specific provisions regarding the investigation of complaints are found at 49 CFR §21.11. The FHWA follows the USDOT regulations. Further, FHWA’s regulations at 23 CFR §200.9(b)(3) direct State Departments of Transportation (State DOTs) to develop procedures for processing Title VI complaints filed with State DOTs against their Federal-aid highway Subrecipients.

² In accordance with 49 CFR Section 21.7(a), every application for financial assistance from FTA must be accompanied by an assurance that the applicant will carry out the program in compliance with DOT’s Title VI regulations. This requirement shall be fulfilled when the applicant/recipient submits its annual certifications and assurances to FTA. Primary recipients shall collect Title VI assurances from subrecipients prior to passing through FTA funds.

³ The Federal Transit Administration 2012 TITLE VI CIRCULAR to 4702.1B, supra note 136, at III (12)

⁴ Title 49 CFR Section 21.9(b) states that if “a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.”

BACKGROUND

(b) (6) we filed a complaint with WFRC alleging a Title VI violation against SLC.⁵ WFRC Title VI complaint process states “within (15) days, the WFRC shall confirm receipt of the complaint and inform the Complainant of the investigation process”.⁶

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(b) (6) we received an email from WFRC advising us that they will not initiate an investigation into our Title VI complaint. Incredibly, they advised us of the following:

*It seems that the appropriate entity with which you should raise your concerns on this matter is Salt Lake City itself.*⁷

It appears the MPO for this region, WFRC who is charged with overseeing SLC and the rest of the Wasatch front agencies – has played a critical role in SLC’s failure. In fact, WFRC abandonment of its oversight role with respect to SLC is not isolated, but pervasive, harming minority and low-income populations on SLC westside. WFRC is in fact charged by law with playing two distinct roles with respect to the civil rights compliance of transit operators in its region. As the region’s MPO, it is obliged to “certify . . . that the metropolitan transportation planning process is being carried out in accordance with . . . Title VI of the Civil Rights Act of 1964.”⁸

This duty encompasses the obligation to monitor the region’s transit projects, including SLC, to ensure they conduct their significant planning activities in compliance with Title VI. Separately, WFRC has the duty, as a recipient of federal funds that passes those funds through to subrecipients like SLC, to ensure Title VI compliance by those subrecipients. We submit, WFRC has breached its duties both as MPO and as federal recipient. It appears that WFRC does not require any level of detail from SLC as to their Title VI Plan. Moreover, nothing in the WFRC Guidelines specifically asks whether an agency has adopted a Limited English Proficiency (LEP) policy⁹ an inclusive public participation plan.¹⁰

As you are aware, FTA’s Title VI guidance notes that:

...since 1972, FTA has required applicants for and recipients and subrecipients of Federal assistance to certify compliance with the requirements of Title VI as part of the grant approval process.

Consequently, we maintain, not only did WFRC simply fail to monitor SLC’s compliance; it has demonstrated a willful disregard of its own obligations. WFRC’s disregard for the civil rights of low-income and minority communities does not end with its refusal to monitor the compliance of its subrecipients, but extends to its own direct compliance obligations, as well. Like all subrecipients within its jurisdiction, WFRC, too, has an obligation to “identify and address” the disproportionately high and adverse effects of its own programs, policies, and activities on minority populations and low-income populations.¹¹

(b) (6)

⁶ Title VI Plan for the Wasatch Front Regional Council Pg. 26

⁷ WFRC email to (b) (6) Decline to investigate Title VI Violation – 09/27/19

⁸ 23 C.F.R. § 450.334 (a) (3)

⁹ 70 Fed. Reg. 74,087, Dec. 14, 2005

¹⁰ DOT Order 5610.2, 62 Fed. Reg. 18,377, 18380, Apr. 15, 1997, and FHWA Order 6640.23, Dec. 2, 1998

¹¹ Exec. Order 12898, 59 Fed. Reg. 7626, § 1-101.

And it must:

*...have an analytic basis in place for certifying [its] compliance with Title VI,” by both developing “[a]n analytical process that identifies the benefits and burdens of metropolitan transportation system investments for different socioeconomic groups,” and “identifying imbalances and responding to the analyses produced.”*¹²

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Clearly, WFRC has failed to meet that obligation. In sum, WFRC has violated both its Title VI monitoring duties and its own direct obligation to ensure Title VI compliance in its own programs. As indicated in our Title VI complaint letter to WFRC, we noted that the racial makeup of the WFRC and sub-committees, are not in compliance with federal regulations.¹³ WFRC did not provide PGNA an explanation or response to this Title VI violation.

JURISDICTION

As per UDOT Title VI Complaint Process,¹⁴ we understand that the following will occur:

- *Upon receipt of a Title VI complaint, the Title VI Compliance Specialist immediately advises the UDOT Director of the complaint.*¹⁵
- *The Director confers with the appropriate UDOT Deputy Director, appropriate UDOT Office Director, and the Title VI Compliance Specialist to determine a course of action.*
- *Title VI complaints filed against UDOT sub-recipients (e.g., contractors, subcontractors, material and equipment suppliers, lessors, vendors, consultants, fee appraisers, universities, transit related services/programs or benefit programs, etc.) are processed by UDOT in accordance with the FHWA approved complaint procedures as required under 23 Code of Federal Regulations Part 200 and FTA approved procedure code FTA C 4702.1A. c.*
- *A copy of the complaint is forwarded to the FHWA Division Office or Federal Transit Administration (FTA), Region VIII Division within 60 days of the date the complaint was received by UDOT.*
- *The FHWA Headquarters Office or Federal Transit Administration (FTA), Region VIII Division of Civil Rights assigns a case number to the complaint and assigns it to the appropriate investigating department.*

We also understand that if an investigation is to be initiated on the allegations set forth in this complaint, the following will occur:

- *The UDOT Director designates a specific UDOT Deputy Director to whom the investigation team will report in order to facilitate communication with the Director.*

¹² Circular 4702.1A at p.VII-1.

¹³ Circular 4702.1B: *Recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar committees, the membership of which is selected by the recipient, must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees.*

¹⁴ Utah Department of Transportation Title VI Complaint Process

¹⁵ We have sent this complaint to the Director

- *The Deputy Director and UDOT Office Director confer with the Title VI Compliance Specialist and UDOT Legal Counsel to establish guidelines for the investigation team.*
- *The Title VI Compliance Specialist will be instructed to appoint a team leader and an on-call team member to conduct the investigation.*
- *The team leader apprises the Deputy Director of the team's progress throughout the investigation.*
- *The team leader determines the timeframe in which the investigation should be completed based on the date the complaint was filed.*
- *The entire investigation process, including the submission of the report of the investigation and recommendations to the FHWA Division Office or the FTA Region VIII Division, is to be carried out in a period not to exceed sixty (60) calendar days from the date the original complaint was received by UDOT.*
- *The Title VI Compliance Specialist acknowledges receipt of the allegation(s) within ten (10) working days.*
- *The complainant is notified of the proposed action to be taken to process the allegation(s).*
 - The notification letter contains:*
 - a. The basis for the complaint.*
 - b. A brief statement of the allegation(s) over which UDOT has jurisdiction.*
 - c. A brief statement of UDOT's jurisdiction over the recipient to investigate the complaint;*
 - d. An indication of when the parties will be contacted.*
 - e. Depending on the nature of the complaint, the complaint will be referred to the following for final decision:*
 - (1) Federal Highway Administration (FHWA)*
 - (2) FTA and USDOT*
 - (3) U. S. Department of Justice (USDOJ)*
- *The Title VI Compliance Specialist also notifies the FHWA Division Office or the FTA Region VIII Division Office within ten (10) calendar days of receipt of the allegations.*
- *The following information is included in the notification to the appropriate federal department:*
 - a. Name, address, and phone number of the complainant.*
 - b. Name(s) and address(es) of persons alleged to have been involved in the act.*
 - c. Basis of alleged discrimination (i.e., (FHWA) race, color, sex, age, national origin, disability). (i.e., (FTA) race, color and national origin)*
 - d. Date of alleged discriminatory act(s).*
 - e. Date complaint was received by UDOT.*
 - f. A brief statement concerning the nature of the complaint.*
 - g. Other agencies (federal, state, or local) with which the complaint has been filed.*
 - h. An explanation of the actions UDOT proposes to take to resolve the issues raised in the complaint.*

REMEDY

As set forth in this complaint, WFRC presents a particularly troubling matrix of civil rights and Environmental Justice failures that calls out for broad remediation. WFRC ignores its role as an MPO responsible to ensure and certify Title VI compliance in the metropolitan planning process and excuses itself by totally disregarding a complaint filed with their organization. And its lack of procedure, much less a practice, for monitoring SLC, Title VI compliance has adverse impacts that go far beyond SLC and its civil rights violations. It would be no exaggeration to conclude that WFRC itself set the tone with respect to the low priority of Title VI and Environmental Justice compliance along the Wasatch front that may well have contributed to SLC's lack of seriousness and its unmet need for a far-reaching program of corrective action. WFRC is of course, required to do the contrary, "*establish and manage a fair and impartial setting for effective regional decision-making in the metropolitan area.*" This complaint seeks redress for WFRC's failure to meet its duties: both its failure to monitor the Title VI and EJ compliance of City's within its region and its failure to comply with respect to its own actions. Page | 5 of 9

As a result of inadequate monitoring procedures and practices, WFRC breached its monitoring duty with respect to SLC and across the region. In addition to its duty to monitor the Title VI compliance of other agencies in its region, WFRC has also breached its own direct duties under Title VI and the Executive Order, by failing to the "*identify and address*" (Exec. Order 12898, § 1-101). As an MPO, WFRC was required to "*establish and manage a fair and impartial setting for effective regional decision-making in the metropolitan area.*" It has, instead, set an example and a tone throughout this region of disregard for the requirements of Title VI and Environmental Justice.

Indeed, it has fostered a setting in which SLC has failed to comply with basic Title VI requirements in numerous respects. The Federal Transit Administration's Office of Civil Rights (TCR) should investigate the full scope of the WFRC's Title VI and Environmental Justice shortcomings and require broad corrective action. That action is necessary to ensure that WFRC will acknowledge and carry out its responsibilities, so that failures like that which led WFRC to overlook numerous longstanding Title VI shortcomings at SLC will be cured and will not recur in the future. UDOT and FTA are fully empowered to meet this compelling need for corrective action. First, Title VI provides FTA with broad remedial powers in the event of non-compliance.¹⁶ At the stage of corrective action, the Department's Title VI implementing regulations expressly require "*affirmative action,*" providing that:

*Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.*¹⁷

In other words, a corrective action plan for remediating this violation must not only address the specific failure that brought the situation to light, but must now also affirmatively "*overcome the effects of [WFRC's] prior discriminatory practice*" and ensure that it will not be repeated in the future.

¹⁶ 42 U.S.C. § 2001d-1.

¹⁷ 49 C.F.R. § 21.5 (b) (7)

Moreover, the grant assurances that UDOT has executed, provide FTA with broad remedial powers, promising that the recipient of federal financial assistance will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.¹⁸ The corrective action required of WFRC must extend beyond the particular SLC violations, to ensure against similar failures by WFRC with respect to other SLC projects, and with respect to the actions of all of WFRC's subrecipients more generally. It must also extend to WFRC's own programs and activities, including its failure to respond to our initial complaint, which demonstrates that no meaningful procedures are in place to ensure Title VI compliance along the Wasatch front. Indeed, the void in WFRC's current program of monitoring Title VI compliance has left SLC with no implementing policies to meet its inclusive public participation, LEP and other crucial obligations. The scope of the corrective action plan should reflect and redress the scope of these shortcomings. Accordingly, we are requesting that UDOT and FTA investigate this broad pattern of violations by undertaking a discretionary Title VI compliance review and require WFRC to prepare, adopt and implement an appropriately broad and robust plan of corrective action. With respect to its monitoring of SLC and other City's compliance, that plan of corrective action should include:

- Adoption of an official Commission-level policy acknowledging WFRC's Title VI and Environmental Justice oversight and monitoring obligations with respect to City's within its region;
- Adoption of effective procedures for accomplishing those oversight and monitoring obligations;
- A plan to ensure robust implementation of those procedures; and
- A plan to evaluate and report on the successes and shortcomings of that implementation, including the appropriate use of an advisory committee process that adequately represents the voices of low-income and minority populations.

More specifically, WFRC's plan of corrective action should require it to ensure that SLC and other Cities adopt all policies and procedures required of them under applicable federal Title VI and Environmental Justice provisions, including:

- An inclusive public participation plan, and procedures for its implementation;
- A Limited English Proficiency (LEP) policy.

WFRC's plan should also commit it to ensuring that SLC and other Cities conduct an equity analysis of transit projects. And the plan should require WFRC to adopt its own procedures and standards for assuring that all of these policies and procedures are adopted in compliance with all federal requirements. With respect to WFRC's direct Title VI noncompliance, the plan of corrective action should require it to identify and address any program-level inequities as a whole, including its overwhelming emphasis on projects that benefits White affluent residents over ethnic minority residents in Salt Lake City. The plan should also ensure that WFRC conditions any award of funds on the satisfactory completion of a project-level equity analysis and the taking of appropriate steps to address any potential inequities in the project. Lastly, the affected public, and particularly low-income and minority populations, should be given the opportunity to participate in the crafting of WFRC's plan of corrective action.

¹⁸ 74 Fed. Reg. 53544, 53550, Oct. 19, 2009

CONCLUSION

The federal guidelines advise us that in order to establish a Title VI liability under a disparate impact theory, a complainant must show that a recipient of federal funds used a facially neutral policy or practice (use of criteria or methods of administration) that had a disproportionate impact on a group protected by Title VI.¹⁹ A disproportionate impact is shown by comparing the effects of the policy or practice on members of the protected class relative to the effects on persons outside the protected class.²⁰ If the data shows a statistically significant adverse impact on members of a protected class, a recipient can avoid liability if it can articulate a "substantial legitimate justification" for the challenged policy or practice.²¹ A "substantial legitimate justification" means that the recipient's policy or practice was "necessary to meeting a goal that was legitimate, important, and integral to the recipient's institutional mission."²² If the recipient identifies a "substantial legitimate justification," the justification must be examined to determine whether it is merely a pretext for discrimination.²³ As set forth in our Title VI complaint:

*The City has demonstrated a consistent pattern and practice of excluding the voice of minority populations when implementing transit projects, including those funded with federal monies. This has resulted in a disproportionate share of Surface Transportation Program (STP), Congestion Mitigation Air Quality Program (CMAQ), Transportation Alternatives Program (TAP), Transportation and Land Use Connection Program (TLC) monies being spent on Salt Lake City's eastside to the exclusion of Salt Lake City's westside, communities of Color. Even programs labeled "city-wide" have no benefit to westside residents.*²⁴

As indicated in our complaint, SLC has refused to meet with (b) (6) to discuss transit projects in our community. Accordingly, we have no idea if SLC has "substantial legitimate justification" for favoring more affluent White, eastside residents over Salt Lake City's westside residents. The deployment of the 900 West Road Diet project is one of the "disparate treatment" examples we cite in our complaint:

Another example of excluding westside residents, is the 900 West, Road Diet project. In January 2017, The City announced that they were going to implement a lane reduction project on 900 West, from North Temple to 1700 South. Residents along 900 West were not aware of the project. I reached out to The City, asking them to meet with residents about their questions and concerns about the project. The City refused to meet with the residents...In contrast to how the City ignored westside residents on this issue, they allowed for broad input from eastside resident on the lane reduction project in Sugarhouse, the headline screamed:

Salt Lake City Wants Input on 2100 South Lane Reduction, Possible Bike Lane Addition

The following month the headline reads:

Salt Lake City Abandons Plan to Reduce Lanes on 2100 South

¹⁹ U.S. Department of Justice, Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes (Sept. 1998), at Part V.B.3.b.

²⁰ *Ibid*

²¹ *Ibid*

²² *Ibid*

²³ *Ibid*

The article goes on to state:

"This was the most successful public engagement Salt Lake City has had, perhaps, ever," Reberg said. "Hats off to the Transportation Division for really, in a tight time frame, getting a lot of people involved."

Another News article quoted the Mayor in the email that she sent to City Council members informing them that her Administration would not go forward with the 2100 South, Road Diet project:

I wanted to let you know that after careful consideration and based on the community input we received over the last month, the Administration has decided not to pursue a change in lane configuration on 2100 South at this time...The Transportation Division had recommended the changes be made to improve safety on the roadway...Respondents did identify safety as their second greatest concern, but were more concerned about congestion on neighborhood roads and bottlenecks—especially as the proposed reconfiguration would reduce traffic lanes...

It is significant to note, the disparity the City demonstrates, in the value they place on input from Salt Lake City's more affluent eastside residents. In contrast, the City refused to meet with concerned citizens living on 900 West and went forward with the Road Diet project on their street, completing it in the fall of 2017. Almost immediately, residents noticed an increase in accidents which was in stark contrast to what The City stated would occur, telling westside residents that travel on 900 West would be safer because accidents would be reduced by 19% to 29%. ³¹When residents began documenting the accidents and posting them on social media, The City challenged the observations of residents and tweeted:

Based on the crash data we have pulled from reported (to SLCPD) crashes, the numbers are lower than 2016 numbers, and the same as 2015 numbers. ²⁵

In addition to not meeting with us, about the establishment of the 900 West Road Diet, SLC actively fought our efforts to obtain data associated with the project, even after the State Records Committee ordered SLC to release the documents:

On December 13, 2018, we found ourselves before the State Records Committee, appealing The City's denial of our GRAMA request for data on the 900 West Road Diet. The State Records Committee granted our appeal and ordered The City to give us the data associated with the 900 West Road Diet project....In January of 2019, The City informed us that they were not going to comply with the State Records Committee's Order to release the data association with the 900 W. project. In response, we filed an appeal with the Committee in which we were informed that the Committee did not have the power to enforce their own Order.

In January of 2019, The City informed us that they were not going to comply with the State Records Committee's Order to release the data association with the 900 W. project.

On April 10, 2019, we filed an appeal in Third District Court.

On September 10, 2019, we had a hearing before Judge Faust. ⁴⁴ In the middle of the hearing, The City informed the judge that they would release the data associated with the 900 West Road Diet. ²⁶

²⁵ *Ibid*

²⁶ *Ibid*

The City's actions have a disparate impact on Hispanic/Latino populations.²⁷ WFRC's outright denial of responsibility for overseeing Title VI and Environmental Justice compliance along the Wasatch front runs contrary to its duties, both as an MPO and as a recipient that passes through federal funds. WFRC took no action to ensure SLC's compliance with respect to the Title VI complaint we filed with their agency. For all these reasons, the Office of Civil Rights for UDOT and FTA should initiate a complete agency review of WFRC's and SLC's Title VI and Environmental Justice program and require broad corrective action. As already indicated, it appears that SLC is expending transit funds on the basis of race, color, and national origin which is a Title VI violation. We believe that we have provided sufficient evidence to support our Title VI allegation that Hispanic/ Latinos have faced discriminatory impact as a result of the City's practices in relation to Transit projects. We are filing this complaint with your office because of your obligation to monitor Title VI compliance when governments within your jurisdiction expend federal transit funds.

Sincerely,

(b) (6)

Enclosures:

(b) (6) Title VI Complaint to the Wasatch Front Regional Council (twelve pages) 09/13/19
Wasatch Front Regional Council email to (b) (6) 09/27/19

cc: Commissioner Gochnour, Utah Department of Public Transportation
Commissioner Zeenati (Chair), Utah Department of Public Transportation
Mayor Jackie Biskupski, Salt Lake City
Councilman Andrew Johnston, Salt Lake City Council -District 2
Director Jon Larsen, Salt Lake City Transportation Division
Representative Angela Romero, Utah House of Representatives
Representative Sandra Hollins, Utah House of Representatives
Senator Luz Escamilla, Utah State Senate
Co-Chair Cathy Hernandez & Mike Harman, Poplar Grove Neighborhood Alliance
Crossroads Urban Center
Comunidades Unidas
Disability Law Center
Racially Just Utah
Salt Lake City Chapter of the NAACP
Utah Coalition of La Raza
Utah Pacific Island Civic Engagement

²⁷ 2010 Census showed City Council District 2, as a minority/majority district, with 68.9 % of the residents classified as ethnic minorities, accounting for 29.3 % of the city's total. Hispanics or Latinos were 76 percent of all minorities.

(b) (6)

Delivered CERTIFIED MAIL:7012 2920 0000 7125 8693

Andrea Pearson, Title VI Administrator
Wasatch Front Regional Council
295 North Jimmy Doolittle Road
Salt Lake City, UT 84116

**Re: Environmental Justice Complaint Against
Salt Lake City Transportation Division**

Dear Administrator Pearson,

(b) (6)¹ respectfully submits this complaint, alleging violations of Title VI of the Civil Rights Act of 1964² and its implementing regulations.³ This complaint is against the Salt Lake City Transportation Division (The City) and submitted to your office, Wasatch Front Regional Council (WFRC) which acts as the federally designated Transportation Planning Metropolitan Planning Organization (MPO) for this region.⁴ These civil rights violations stem from The City's refusal to meet with (b) (6) about traffic safety concerns in the community.⁵ We believe that The City's refusal (even after being placed on notice) in this matter is an act of "Environmental Racism" because it results in disparate and severe environmental impacts on the predominantly community of Color in Salt Lake City, Utah.⁶

(b) (6) Salt Lake City, Utah

² See Title VI of the Civil Rights Act of 1964: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

³ See 42 U.S.C. §§ 2000d to 2000d-7, and U.S. Department of Transportation's (USDOT) implementing regulations, 49 C.F.R. pt. 21.

⁴ See 49 CFR Section 21.7(a), every application for financial assistance from FTA must be accompanied by an assurance that the applicant will carry out the program in compliance with DOT's Title VI regulations. This requirement shall be fulfilled when the applicant/recipient submits its annual certifications and assurances to FTA.

⁵ See Kevin Young, Deputy Director -Transportation Division email to Mike Harman, Co-Chair -Poplar Grove Neighborhood Alliance 09/03/19

⁶ See 2010 Census showed City Council District 2, as a minority/majority district, with 68.9% of the residents classified as ethnic minorities, accounting for 29.3 % of the city's total. Hispanics or Latinos were 76 percent of all minorities.

FEDERAL REGULATIONS

Title VI of the Civil Rights Act of 1964 and Environmental Justice Requirements declare that communities of Color enjoy two-fold protection against unlawful discrimination in federally funded transportation activities and programs. Intentional discrimination against minority populations is prohibited under Title VI, which provides:

*No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.*⁷

The United States Department of Transportation's (DOT) Title VI regulations further prohibit actions by recipients of DOT financial assistance that have an impermissible discriminatory impact on minority populations. Specifically, DOT regulations provide:

*A recipient, in determining the types of services . . . or other benefits . . . which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program . . . may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect, of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.*⁸

In addition, Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, provides:

*To the greatest extent practicable and permitted by law, . . . each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States*⁹

Moreover, the Presidential memorandum accompanying EO 12898 identified Title VI of the Civil Rights Act of 1964 as one of several Federal laws that should be applied:

...to prevent minority communities and low-income communities from being subject to disproportionately high and adverse environmental effects.

JURISDICTION: Wasatch Front Regional Council

Consequently, WFRC is in fact charged by law with playing two distinct roles with respect to the civil rights compliance of transportation funding in its region. As the region's MPO, it is obliged to:

*certify . . . that the metropolitan transportation planning process is being carried out in accordance with . . . Title VI of the Civil Rights Act of 1964."*¹⁰

⁷ See 42 U.S.C. § 2000d.

⁸ See 49 CFR 21.5(b)(2)(i), (iv)

⁹ See 59 F.R. 7626.

¹⁰ See 23 C.F.R. § 450.334 (a) (3)

This duty encompasses the obligation to monitor the City, to ensure they conduct their significant planning activities in compliance with Title VI. Specifically, WFRC has the duty, as a recipient of federal funds that passes those funds through to subrecipients like The City, to ensure Title VI compliance by those subrecipients. Accordingly, WFRC should require a level of detail from the City as to their Title VI Plan. As already noted, FTA's Title VI guidance states that:

...since 1972, FTA has required applicants for and recipients and subrecipients of Federal assistance to certify compliance with the requirements of Title VI as part of the grant approval process.

Accordingly, the City has an obligation to “identify and address” the disproportionately high and adverse effects of its own programs, policies, and activities on minority populations and low-income populations. (Exec. Order 12898, 59 Fed. Reg. 7626, § 1-101.) And it must:

...have an analytic basis in place for certifying [its] compliance with Title VI,” by both developing “[a]n analytical process that identifies the benefits and burdens of metropolitan transportation system investments for different socioeconomic groups,” and “identifying imbalances and responding to the analyses produced.”¹¹

In fact, WFRC has published, under the heading of Public Involvement – Equal Access:

Title VI of the Civil Rights Act states that “no person in the United States, shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Wasatch Front Regional Council (WFRC), as the Metropolitan Planning Organization for the Wasatch Front region, serves as the primary forum where the state department of transportation, transit provider, local agencies, and the public work together to develop local transportation plans and programs that address the region’s needs. To meet the requirements of Title VI, WFRC must complete the following.

Fully utilize its analytical capabilities to ensure that the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) comply with Title VI.

Identify the transportation needs of minority populations so that their needs may be addressed, and the benefits and burdens of transportation can be fairly distributed.

Evaluate and, where necessary, update the public involvement process to eliminate barriers in order to successfully engage minority populations in regional decision-making.¹²

COMPLAINT: Salt Lake City Transportation Division

In contradiction to the aforementioned regulations and statues, The City has demonstrated a consistent pattern and practice of excluding the voice of minority populations when implementing transit projects, including those funded with federal monies.¹³ This has resulted in a disproportionate share of Surface Transportation Program (STP),¹⁴ Congestion Mitigation Air Quality Program (CMAQ),¹⁵

¹¹ See Circular 4702.1A at p. VII VII I.

¹² See Wasatch Front Regional Council Web Page -Public Involvement -Equal Opportunity and Access

¹³ Ignoring the voice of minority populations results in spending fewer federal dollars in Communities of Color.

¹⁴ STP, provides funding that may be used for projects on federal-aid highways and bridges, transit capital improvements and projects, and active transportation projects

¹⁵ CMAQ, provides funding for transportation projects that improve air quality

Transportation Alternatives Program (TAP),¹⁶ Transportation and Land Use Connection Program (TLC)¹⁷ monies being spent on Salt Lake City's eastside to the exclusion of Salt Lake City's westside, communities of Color.¹⁸ Even programs labeled "city-wide" have no benefit to westside residents. We present the following three examples for your consideration:

GREENbike Share Program

On May 16, 2019, the Deseret News ran a story titled: Salt Lake Mayor Jackie Biskupski Bikes to Work to Promote "Renaissance" Along Jordan River Trail". Although the Jordan River is in the heart of Salt Lake City's westside, photos in the article appear to show, only White people riding bikes. Another observation of interest, although most people in the photos are riding the so-called "Green Bikes",¹⁹ the article fails to mention that there are no Green Bike stations west of I-15.²⁰ A recent Tribune article states:

*The bike-share system has added 50 of those e-bikes...adding e-bikes to our fleet makes our system accessible to new types of users', GREENbike Vice Chairwoman Amanda Smith said in a news release.*²¹

This is significant, in that westside residents have been excluded from this program, as all of the established stations are east of I-15. Moreover, current plan calls for an additional \$600,000.00 in funding from the Wasatch Front Regional Council so that that expansion of the program will result in 75 stations bringing the total of bikes to 700.²² The proposal for more funding states:

*GREENbike works to improve the community's health and reduce carbon emissions and vehicle miles travels by providing alternatives to automobile trips and is the most successful bike share program in the country.*²³

Apparently, The City does not believe that westside residents should enjoy the benefits of this program, we are only included when the Mayor needs a photo-op and rides the green bikes through our community.²⁴

900 West – Road Diet Debacle

Another example of excluding westside residents, is the 900 West, Road Diet project. In January 2017, The City announced that they were going to implement a lane reduction project on 900 West, from North Temple to 1700 South. Residents along 900 West were not aware of the project. I reached out to The City, asking them to meet with residents about their questions and concerns about the project.

¹⁶ TAP, funds construction and planning of bicycle and pedestrian facilities.

¹⁷ TLC, supports local governments with technical assistance to integrate land use planning and regional transportation, implementing the Wasatch Choice Vision. The TLC program is made available through a partnership with Salt Lake County, the Utah Transit Authority, and the Utah Department of Transportation.

¹⁸ See WFRC Budget Overview

¹⁹ See Green Bike – SLC Bike Share Program at greenbikeslc.org

²⁰ See Green Bike Station Map at greenbikes.org

²¹ See Salt Lake City GREENbike now rents electric-assist Cycles at No Extra Cost, Salt Lake Tribune 08/15/19

²² See 2018-2023 Comprehensive Economic Development Strategy -Wasatch Front Regional Council

²³ *Ibid*

²⁴ See Salt Lake Mayor Jackie Biskupski Bikes to Work to Promote "Renaissance" Along Jordan River Trail, Deseret News 05/16/19

The City refused to meet with (b) (6) and instead suggested that they attend a February 22, 2017 Community Council meeting.²⁵ (b) (6) held a meeting on February 8, 2017, about the 900 West project, no one from the Salt Lake City Transportation Division attended.

In advance of the February 22, 2017, Community Council meeting, the leadership of the council used social media to attack their very own neighbors for raising questions about the 900 West street project.²⁶ This resulted in 900 West residents not attending the community council meeting as not to subject themselves to further abuse. In contrast to how The City ignored westside residents on this issue, they allowed for broad input from eastside resident on the lane reduction project in Sugarhouse, the headline screamed:

*Salt Lake City Wants Input on 2100 South Lane Reduction, Possible Bike Lane Addition*²⁷

The following month the headline reads:

*Salt Lake City Abandons Plan to Reduce Lanes on 2100 South*²⁸

The article goes on to state:

*"This was the most successful public engagement Salt Lake City has had, perhaps, ever," Reberg said. "Hats off to the Transportation Division for really, in a tight time frame, getting a lot of people involved."*²⁹

Another News article quoted the Mayor in the email that she sent to City Council members informing them that her Administration would not go forward with the 2100 South, Road Diet project:

*I wanted to let you know that after careful consideration and based on the community input we received over the last month, the Administration has decided not to pursue a change in lane configuration on 2100 South at this time...The Transportation Division had recommended the changes be made to improve safety on the roadway...Respondents did identify safety as their second greatest concern, but were more concerned about congestion on neighborhood roads and bottlenecks—especially as the proposed reconfiguration would reduce traffic lanes...*³⁰

It is significant to note, the disparity The City demonstrates, in the value they place on input from Salt Lake City's more affluent eastside residents. In contrast, The City refused to meet with concerned citizens living on 900 West and went forward with the Road Diet project on their street, completing it in the fall of 2017. Almost immediately, residents noticed an increase in accidents which was in stark contrast to what The City stated would occur, telling westside residents that travel on 900 West would be safer because accidents would be reduced by 19% to 29%.³¹

²⁵ (b) (6) Salt Lake City Transportation Division 02/01/17

²⁶ (b) (6) -GRAMA Notice of Appeal to the State Records Committee 08/22/18

²⁷ See Salt Lake City Wants Input on 2100 South Lane Reduction, Possible Bike Lane Addition, Salt Lake Tribune 06/09/17

²⁸ See Salt Lake City Abandons Plan to Reduce Lanes on 2100 South 07/13/17

²⁹ *Ibid*

³⁰ See Salt Lake City Mayor Biskupski Decrees – No Bike Lanes on 2100 S between 1700 E and 2300 E, Cycling Utah 07/13/19

³¹ See Salt Lake City Transportation web page

When residents began documenting the accidents and posting them on social media, The City challenged the observations of residents and tweeted:

*Based on the crash data we have pulled from reported (to SLCPD) crashes, the numbers are lower than 2016 numbers, and the same as 2015 numbers.*³²

In January 2018, in response to a Government Records Access Management Act (GRAMA) request, we determine that The City was being dishonest when they claimed on social media that accidents were down.³³ Residents continued to document accidents on 900 West.

(b) (6) meeting and invited The City transportation division, who replied that they would attend.³⁴ They ended up being a “no-show” although City Council member, Andrew Johnston was in attendance.³⁵

(b) (6) sent the following email to The City:

I am disappointed that you did not attend the meeting of the (b) (6). However, more than that, I am frustrated that you did not have the courtesy to even acknowledge the invitation. Many residents in my neighborhood feel disenfranchised by the “community engagement” process within Salt Lake City. That feeling is further spread when we are ignored. As I watch community engagement activities throughout the City, there does appear to be a different process based on the neighborhood you live in.

Your response, or lack thereof, sends a strong message to me, that you do not want to hear from people in my neighborhood, which I shared with those in attendance at the meeting.

It’s ironic to me that the Office of the Mayor has a Community Empowerment Director, that works to engage citizens and empower communities. Your decision to not even acknowledge the invitation, was not “empowering” to me and my neighbors, but it helped us clearly see the uphill battle we face to engage the employees of Salt Lake City with the issues that we are dealing with in our neighborhood. You may feel as though you know what is best for our neighborhood, but to not even pretend to care about our perspective is not acceptable.

(b) (6) has been meeting for the past year. We are fortunate to have had the following individuals attend one of our monthly meetings: Mayor Biskupski, Speaker of the House Greg Hughes, Councilman Andrew Johnson, Senator Luz Escamilla, Representative Sandra Hollins, Representative Angela Romero, Police Chief Mike Brown, Director of Community Empowerment Jennifer Seelig, as well as representatives of the RDA.

*Please help me understand why I was not afforded the common courtesy of a response to my request.*³⁶

³² See Salt Lake City Transportation Division tweet 12/21/17

³³ See Poplar Grove Neighborhood Alliance Fact Sheet: 900 West Road Diet Debate

³⁴ Verbally informing Councilman Johnston that a representative would attend. Although they did not respond to the email sent by Mike Harman, Co-Chair of the (b) (6)

³⁵ See (b) (6) Facebook Group Page and Road Diet Disaster Fact Sheet

³⁶ See (b) (6) to Scott Vaterlaus and Jeff Gulden, Salt Lake City Transportation Division 01/26/18

On April 4, 2018, (b) (6) meeting with Dr. Seelig of the Mayor's office, where we shared our frustration with the manner in which the Transportation Division was excluding us from participating in the how street projects were initiated and implemented in our community.³⁷

On June 28, 2018, we submitted another GRAMA request for data associated with the implementation of the 900 West Road Diet.³⁸

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The City denied our GRAMA request and we appealed. Our appeal was in part granted and in part denied. In response to our GRAMA request, The City published crashed data for the Road Diet showing that accidents on 900 West had increased by over 200%.³⁹

On December 13, 2018, we found ourselves before the State Records Committee, appealing The City's denial of our GRAMA request for data on the 900 West Road Diet. The State Records Committee granted our appeal and ordered The City to give us the data associated with the 900 West Road Diet project.⁴⁰

On December 30, 2018 the following article about the 900 West Road Diet was published and the leadership of the Community Council was quoted as follows:

*Glendale resident, Billy Palmer, who...serves as an officer in the Glendale Community Council, feels differently. "The notion that there was not community outreach and that the community did not have input in making 900 West safer, could not be farther from the truth. I understand that some don't like [the changes], but it makes it safer for us and our kids to cross 900 West. Some people are newer to this conversation, but many of us who are involved in our community have been talking about this for over a decade," said Palmer.*⁴¹

In spite of the fact that The City still refused to meet with the (b) (6) about the Road Diet, choosing instead to put out false data, (later publishing accurate numbers after we called them out).⁴² Consequently, the revised numbers confirmed that the lane reduction made travel on 900 West unsafe by increasing the amount of accidents by over 200%. Nevertheless, the self-appointed gate keepers continued to discount the voice of their neighbors while shielding The City from accepting accountability for their actions.

In January of 2019, The City informed us that they were not going to comply with the State Records Committee's Order to release the data association with the 900 W. project. In response, we filed an appeal with the Committee in which we were informed that the Committee did not have the power to enforce their own Order.

On April 10, 2019, we filed an appeal in Third District Court.⁴³ Over the past months, The City has deployed a series of intimidation tactics designed to get us to drop the appeal we filed in court.

³⁷ *Ibid*

³⁸ See (b) (6) GRAMA Request to Salt Lake City 06/28/18

³⁹ See Salt Lake City Transportation Division web page

⁴⁰ See State Records Committee Decision and Orders 12/13/18

⁴¹ See Changes to 900 West Remain Contentious Topic in the Community, Westvieww 12/30/18

⁴² See Salt Lake City Transportation Division web page – Lane Reduction Projects

⁴³ See (b) (6) v Salt Lake City Mayor & State Records Committee \Case Number 190902861

(b) (6)

⁴⁴ In the middle of the hearing, The City informed the judge that they would release the data associated with the 900 West Road Diet.

On September 13, 2019, The City's ORDER GRANTING STIPULATED MOTION TO DISMISS was granted:

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Pursuant to...Utah Rules of Civil Procedure, Petitioner Michael Clara, Respondent State Records Committee ("SRC") and Respondent Salt Lake City Mayor's Office1 (the "City") have resolved all claims asserted, or which could have been asserted, by the Petitioner and/or the SRC and/or the City in this civil action, the Petitioner and the SRC and the City hereby stipulate to the entry of an Order dismissing this civil action. ⁴⁵

The aforementioned actions (on the 900 West, Rod Diet) demonstrates the resolve of The City, to exclude westside residents from participating in projects even within their own communities.

Let's Improve This Corner

The Poplar Grove Neighborhood Alliance is hosting a community meeting this evening. ⁴⁶ In advance of that meeting, co-chair Mike Harman sent out an invitation to City representatives asking them to attend tonight's community meeting. ⁴⁷ The purpose of tonight's meeting was to discuss with City officials, way to improve all modes of transportation through and around this intersection (next to Franklin Elementary) and the adjacent empty lot. In response to the invitation, we received the following reply from Kevin Young, Deputy Director -Transportation Division:

Due to limited staffing and staff workloads, Transportation will be unable to have a staff member attend your meeting. However, with adequate notice, we would be able to attend a future Poplar Grove Community Council meeting where 300 S or other transportation issues are on the agenda. It is our standard practice city-wide to work with community organizations that are recognized by the city since it becomes difficult to engage with numerous and varied community organizations. ⁴⁸

We reject Mr. Young's explanation for not attending tonight's community meeting. Over the past two years, (b) (6) has held monthly community meetings. Our meetings have been attended by a multitude of public officials: Utah Speaker of the House, Utah State Legislators Commissioner of Public Safety, Colonel of the Utah Highway Patrol, Deputy Director of Utah Adult Probation & Parole, Utah Department of Transportation, Salt Lake County Council members, Salt Lake County Health Department, Deputy Director, Salt Lake City Mayor, City Council members, Salt Lake City Chief of Police, Salt Lake City Deputy Chief, Salt Lake City Police Officers, Mayors Staff, Mayoral & City Council candidates etc. ⁴⁹

⁴⁴ Third District Court

⁴⁵ See Stipulate Motion to Dismiss \Case Number 190902861 – Judge Faust \Third District Court

⁴⁶ See Let's Improve This Corner \Community Event 09/12/19

⁴⁷ See Mike Harman email to City Officials – You're Invited 08/27/19

⁴⁸ See Kevin Young, Deputy Director -Salt Lake City Transportation Division email to Mike Harman 09/03/19

⁴⁹ See (b) (6) Facebook Group Page

To further give context to our disbelief of Mr. Young's explanation (for not attending tonight's community meeting), a look at the Transportation Division's social media will show numerous instances of Transportation employees engaging with White, eastside residents outside of the confines of the community council i.e. Beans & Brew, Street Corner, Park, School, door to door.⁵⁰ In contrast, you will find no such engagement with westside residents of Color. While it is a well-established fact, that The City (transportation Division) has a pattern and practice of disparate treatment towards communities of Color, Federal regulations makes such acts illegal.

REMEDY

As you are aware, the DOT Order 5610.2(a), Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,⁵¹ describes the process the Department and its modal administrations, including WFRC will use to incorporate Environmental Justice principles into programs, policies, and activities:

...the core tenet of environmental justice—that development and urban renewal benefitting a community as a whole not be unjustifiably purchased through the disproportionate allocation of its adverse environmental and health burdens on the community's minority—flows directly from the underlying principle of Title VI itself.⁵²

Federal Transit Administration (FTA) Circular 4702.A provides recipients of FTA financial assistance with:

...guidance and instructions necessary to carry out the U.S. Department of Transportation's . . . Title VI regulations . . . and to integrate into their programs and activities considerations expressed in the Department's Order on Environmental Justice.⁵³

FTA C 4702.1A. points out that the purposes of these requirements and guidance include helping FTA recipients and subrecipients to:

- a. Ensure that the level and quality of transportation services is provided without regard to race, color, or national origin;*
- b. Identify and address, as appropriate, disproportionately high and adverse human health and environmental effects, including the social and economic effect of programs and activities on minority populations and low-income populations;*
- c. Promote the full and fair participation of all affected populations in transportation decision making;*
- d. Prevent the denial, reduction, or delay in benefits related to programs and activities that benefit minority populations or low-income populations;*
- e. Ensure meaningful access to programs and activities by persons with limited English proficiency.*

⁵⁰ See Salt Lake City Transportation Division Social media

⁵¹ See 77 FR 27534, May 10, 2012

⁵² See Title VI Legal Manual, U.S. Department of Justice Civil Rights Division (2001), page 59.

⁵³ See Order 5610.2

As set forth in this complaint, a particularly troubling matrix of civil rights and Environmental Justice failures, calls out for broad remediation. As already outlined, the WFRC as MPO has responsible to ensure and certify Title VI compliance in the metropolitan planning process, it would be no exaggeration to conclude that The City itself set the tone with respect to the low priority of Title VI and Environmental Justice compliance that may well have contributed to their lack of seriousness when ignoring those in communities of Color. In contrast, the WFRC is of course required:

...[to] establish and manage a fair and impartial setting for effective regional decision-making in the metropolitan area.

This complaint seeks redress for The City's failure to meet its duties: both its failure to monitor the Title VI and Environmental Justice compliance of transit projects within the city limits and its failure to comply with respect to its own actions. As a result of inadequate monitoring procedures and practices, The City breached its monitoring duty with respect to its own citizens. In addition to WFRC duty to monitor the Title VI compliance of other agencies in its region, we urge WFRC exercise their direct duties under Title VI and the Executive Order, and "identify and address" the City's violations. As an MPO, WFRC is required to:

*...establish and manage a fair and impartial setting for effective regional decision-making in the metropolitan area.*⁵⁴

We must insist that you put an end to The City's practice of fostering a setting in which they continue in their noncompliance with basic Title VI requirements in numerous respects. We urge the WFRC to investigate the full scope of The City's Title VI and Environmental Justice shortcomings and require broad corrective action. That action is necessary to ensure that The City will acknowledge and carry out its responsibilities, so that failures like that which led to The City to overlook numerous longstanding Title VI shortcomings will be cured and will not recur in the future.

The WFRC is fully empowered to meet this compelling need for corrective action. First, Title VI provides WFRC with broad remedial powers in the event of non-compliance.⁵⁵ At the stage of corrective action, the Department's Title VI implementing regulations expressly require "affirmative action," providing that:

*Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.*⁵⁶

We strongly believe that the affected public, and particularly low-income and minority populations on Salt Lake City's westside should be given the opportunity to participate in the crafting of the City's plan of corrective action. In other words, a corrective action plan for remediating this violation must not only address the specific failure that brought the situation to light, but must now also affirmatively "overcome the effects of [the City's] prior discriminatory practice" and ensure that it will not be repeated in the future.

⁵⁴ See Exec. Order 12898, § 1-101

⁵⁵ See 42 U.S.C. § 2001d-1.

⁵⁶ See 49 C.F.R. § 21.5 (b) (7)

Moreover, the grant assurances that WFRC has executed, provide WFRC with broad remedial powers, promising that the recipient of federal financial assistance will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements.⁵⁷

The corrective action required of The City must extend beyond their particular violations, to ensure against similar failures with respect to other transit projects, and with respect to the actions of all of WFRC's subrecipients more generally. Consequently, we are of the belief that these corrective actions should also extend to WFRC's own programs and activities. For example, while in the process of filing this complaint with the WFRC, we noted that the racial makeup of the WFRC sub-committees, are not in compliance with federal regulations.

As already noted, Title 49 CFR Section 21.5(b)(1)(vii) states that a recipient may not, on the grounds of race, color, or national origin:

...deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

Recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar committees, the membership of which is selected by the recipient, must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees. Indeed, the void in the WFRC current program of monitoring Title VI compliance has left The City with no implementing policies to meet its inclusive public participation, LEP and other crucial obligations. The scope of the corrective action plan should reflect and redress the scope of these shortcomings.

Accordingly, we are requesting that the WFRC investigate this broad pattern of violations by undertaking a discretionary Title VI compliance review of The City, and require them to prepare, adopt and implement an appropriately broad and robust plan of corrective action. With respect to monitoring improvement of The City's compliance, we believe that a plan of corrective action should include:

- Adoption of an official policy acknowledging the WFRC, Title VI and Environmental Justice oversight and monitoring obligations with respect to transit funding in its region;
- Adoption of effective procedures for accomplishing those oversight and monitoring obligations;
- A plan to ensure robust implementation of those procedures; and
- A plan to evaluate and report on the successes and shortcomings of that implementation, including the appropriate use of an advisory committee process that adequately represents the voices of low-income and minority populations.

With respect to the City's direct Title VI noncompliance, the plan of corrective action should require it to identify and address any program-level inequities as a whole, including its overwhelming emphasis on projects that benefits Salt Lake City's more affluent, eastside residents.

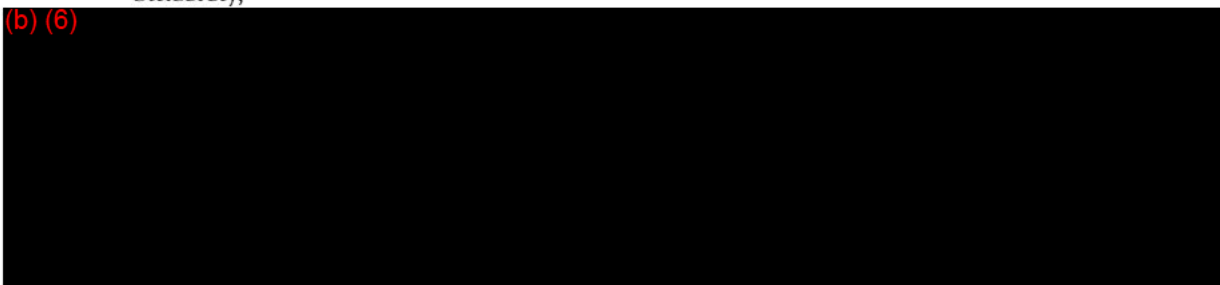
⁵⁷ See 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21. (74 Fed. Reg. 53544, 53550, Oct. 19, 2009.)

More specifically, The City's plan of corrective action should require it to ensure transit spending of federal funds will comply with all policies and procedures required of them under applicable federal Title VI and Environmental Justice provisions. In closing, it is significant to note the observation of a reporter covering a recent Mayoral Candidate forum:

*While the Poverty Summit and debate Saturday focused largely on affordable housing and homelessness, both candidates also addressed what they see as a general lack of engagement with the west side as one of the major challenges facing the next mayor of Salt Lake City...*⁵⁸

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Sincerely,



cc: Open Letter

⁵⁸ See Escamilla, Mendenhall Express Support for Spreading Micro-Apartments Across Salt Lake City, Tribune 08/24/19



(b) (6)

RE: your Title VI Complaint Against Salt Lake City Transportation Division

1 message

Andrea Pearson <apearson@wfrfc.org>

To: (b) (6)

(b) (6)

Dear (b) (6)

This email is in response to the complaint against Salt Lake City that you submitted to Wasatch Front Regional Council (WFRC) via email on September 12, 2019, and the updated version of that complaint, dated September 13 and received by our office via postal mail on September 26, 2019.

In your letter you indicated that Salt Lake City is a "sub-recipient" of federal funding that passes through WFRC. However, Salt Lake City is not a sub-recipient of WFRC. In the development of our programs, project proposals are identified and submitted by cities, counties, UDOT, and UTA. WFRC does not determine which project proposals these entities choose to submit for consideration. While WFRC has a role in selecting projects to be funded with federal transportation funds from certain federal programs, those funds do not pass through WFRC. They are granted by the U.S. Department of Transportation (USDOT) – through its modal agencies the Federal Highway Administration (FHWA) and Federal Transportation Administration (FTA) – to the Utah Department of Transportation (UDOT), which then enters into a project-specific agreement with individual local governments, such as Salt Lake City.

Therefore, without making any comment on the substance of your complaint, it seems that the appropriate entity with which you should raise your concerns on this matter is Salt Lake City itself. You can also contact UDOT as the contracting entity, and/or the USDOT (or FHWA or FTA) as the funding entity.

Thank you,

Andrea Pearson

Senior Executive Assistant

Compliance Administrator

Wasatch Front Regional Council

41 North Rio Grande Street, Suite 103

Salt Lake City, UT 84101

801-363-4250 ext. 1100



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Avenue, SE.
Washington, DC 20590

In Reply Refer To: HCR-20
DOT# 2020-0028

May 14, 2021

(b) (6)

Salt Lake City, UT 84104

Subject: Acceptance of Complaint DOT# 2020-0028

Dear (b) (6),

On November 25, 2019, the Federal Highway Administration's (FHWA) Office of Civil Rights received the complaint of discrimination that you filed against the Wasatch Front Regional Council, Salt Lake City Transportation Division, and the GREENbike program, alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by the United States Department of Transportation (49 C.F.R. Part 21) and the Federal Highway Administration (23 C.F.R. Part 200).

Your complaint contained several allegations of discrimination. Upon review and consideration, FHWA has accepted for investigation the following allegation:

1. Whether GREENbike, Salt Lake City's non-profit bike share program, violated Title VI by denying benefits of its program to residents of predominately Hispanic neighborhoods where bike rental stations are not located.

The complaint has been assigned to Erik Lacayo, FHWA Title VI Program Analyst – Office of Civil Rights, for investigation. Mr. Lacayo will keep you informed regarding the investigation of your complaint. You may contact him at 202-913-3926 or via e-mail at erik.lacayo@dot.gov.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. Any individual alleging such harassment or intimidation may file a complaint with the FHWA. Any questions or concerns that you have regarding the investigative process and your rights can be discussed with the investigator.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. Therefore, enclosed for your information are the "Complainant Consent/Release Form" and the "Notice of Investigatory Uses of Personal

Information” fact sheet. Please sign and date the “Complainant Consent/Release Form” and return to this office electronically to erik.lacayo@dot.gov.

In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy.

Sincerely,

Nichole McWhorter

Nichole McWhorter
Title VI Team Leader
Office of Civil Rights

Enclosures:

Complainant Consent/Release Form
Notice of Investigatory Uses of Personal Information

cc: Ivan Marrero, Division Administrator, FHWA Utah Division Office
Brigitte Mandel, Deputy Division Administrator, FHWA Utah Division Office
Russell Robertson, Civil Rights Program Manager, FHWA Utah Division Office
Irene Rico, Associate Administrator, FHWA Office of Civil Rights
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel
Irene Marion, Director, Departmental Office of Civil Rights
Yvette Rivera, Associate Director, Equity and Access Division, Departmental Office of Civil Rights
Barbara Dougherty, Deputy Director, Departmental Office of Civil Rights

COMPLAINANT CONSENT/RELEASE FORM

Name: (b) (6)
Address: (b) (6) Salt Lake City, UT 84104
Complaint number(s): DOT # 2020-0028

Please read the information below, check the appropriate box, and sign this form.

I have read the Notice of Investigatory Uses of Personal Information by the Federal Highway Administration (FHWA). As a complainant, I understand that in the course of an investigation it may become necessary for FHWA to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of FHWA to honor requests under the Freedom of Information Act. I understand that it may be necessary for FHWA to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by FHWA's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by FHWA.

CONSENT/RELEASE

- CONSENT - I have read and understand the above information and authorize FHWA to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the FHWA to receive material and information about me pertinent to the investigation of my complaint. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.
- CONSENT DENIED - I have read and understand the above information and do not want FHWA to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

SIGNATURE _____ DATE _____

SIGNATURE _____ DATE _____

NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION

NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES

Complainants and individuals who cooperate in an investigation, proceeding or hearing conducted by FHWA are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

- A recipient may not force its employees to be represented by the recipient's counsel nor may it intimidate, threaten, coerce or discriminate against any employee who refuses to reveal to the recipient the content of an interview. An employee does, however, have the right to representation during an interview with FHWA. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

- The laws and regulations which govern FHWA's compliance and enforcement authority provide that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual because he/she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under DOJ's jurisdiction, or has asserted rights protected by statutes DOJ enforces.

- Information obtained from the complainant or other individual which is maintained in FHWA's investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act if release of such information would constitute an unwarranted invasion of personal privacy.

There are two laws governing personal information submitted to any Federal agency, including the Federal Highway Administration (FHWA): The Privacy Act of 1974 (5 U.S.C. ' 552a), and the Freedom of Information Act (5 U.S.C. ' 552).

THE PRIVACY ACT protects individuals from misuse of personal information held by the Federal Government. The law applies to records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the government should know that:

- FHWA is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against recipients of Federal financial assistance. FHWA also is authorized to conduct reviews of federally funded recipients to assess their compliance with civil rights laws.

- Information that FHWA collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. FHWA staff may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. FHWA also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act. (See below)

- Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. Except in the instances

defined in FHWA's regulation at 28 C.F.R. Part 16, FHWA will not release the information to any other agency or individual unless the person who supplied the information submits a written consent. One of these exceptions is when release is required under the Freedom of Information Act. (See below)

- No law requires a complainant to give personal information to FHWA, and no sanctions will be imposed on complainants or other individuals who deny FHWA's request. However, if FHWA fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

- The Privacy Act permits certain types of systems of records to be exempt from some of its requirements, including the access provisions. It is the policy of FHWA to exercise authority to exempt systems of records only in compelling cases. FHWA may deny a complainant access to the files compiled during the agency investigation of his or her civil rights complaint against a recipient of Federal financial assistance. Complaint files are exempt in order to aid negotiations between recipients and FHWA in resolving civil rights issues and to encourage recipients to furnish information essential to the investigation.

- FHWA does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under FOIA or the Privacy Act. FHWA will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under FOIA, the Privacy Act, or otherwise required by law.

THE FREEDOM OF INFORMATION ACT gives the public access to certain files and records of the Federal Government. Individuals can obtain items from many categories of records of the Government --not just materials that apply to them personally. FHWA must honor requests under the Freedom of Information Act, with some exceptions. FHWA generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy."



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Avenue, SE.

Washington, DC 20590

In Reply Refer to: HCR-20
DOT# 2020-0028

NOV 19 2019

(b) (6)

Salt Lake City, UT 84104

Subject: Acknowledgment of Complaint #2020-0028

Dear (b) (6)

This letter acknowledges the Federal Highway Administration (FHWA) Office of Civil Rights received your complaint against the Salt Lake City Transportation Division (SLC) and the Wasatch Front Regional Council (WFRC), which alleged that SLC and WFRC violated Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by the United States Department of Transportation (49 C.F.R. Part 21) and the Federal Highway Administration (23 C.F.R. Part 200). Your complaint was received by this office by email on November 14, 2019.

This complaint has been assigned to Erik Lacayo, FHWA Title VI Analyst – Office of Civil Rights. Mr. Lacayo will keep you informed regarding the status of your complaint. You may contact him at 202-913-3926 or via e-mail at erik.lacayo@dot.gov.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. Any individual alleging such harassment or intimidation may file a complaint with the FHWA. Any questions or concerns that you have regarding the complaint process and your rights can be discussed with Mr. Lacayo.

Sincerely,

Nichole McWhorter
Title VI Team Leader
Office of Civil Rights

cc: Ivan Marrero, Division Administrator, FHWA Utah Division Office
Brigitte Mandel, Assistant Division Administrator, FHWA Utah Division Office
Russell Robertson, Civil Program Manager, FHWA Utah Division Office
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division,
Departmental Office of Civil Rights
Kevin Resler, National Title VI Program Coordinator, FHWA Office of Civil Rights