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October 1, 2015

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RE: *Metropolitan Council Certification Review*
Our File No. 1678-0002

Dear Mr. Secretary and Administrators:

We represent a coalition of suburban counties of the Twin Cities metropolitan area in Minnesota. We are writing to ask you to correct a significant oversight by the Minnesota Division of the FHWA and the FTA's Region V office. Specifically, on May 8, 2015, we informed the Minnesota Division and Region V that the Metropolitan Council was not properly constituted as a Metropolitan Planning Organization ("MPO") under 23 U.S.C. § 134(d) and, therefore, that they had erred in certifying the Metropolitan Council as the MPO for the Twin Cities metropolitan area. We received a response dated August 3, 2015. In their response, the FHWA Division Administrator and the FTA Regional Administrator (collectively the "Local Administrators") acknowledged that the FHWA and FTA erroneously considered members of an advisory board as part of the Metropolitan Council during its last Certification Review. They also agreed that the Metropolitan Council's "membership is not consistent with 23

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U.S.C. 134(d)(2)." Nevertheless, they concluded that the Metropolitan Council is a proper MPO.

The Local Administrators' conclusion is inconsistent with applicable law. Moreover, the August 3 letter denies local elected officials the opportunity to have meaningful input into metropolitan planning decisions affecting the Twin Cities region. Instead, all such decisions will continue to be made by political appointees who answer to only the Governor.

Copies of our May 8, 2015, letter and the Local Administrators' August 3, 2015, response are enclosed for your review. We request that you review those letters and the analysis contained herein, determine that the Metropolitan Council is not a properly constituted MPO, and take all appropriate action consistent with that determination.

I. It is Undisputed that the Metropolitan Council is out of Compliance With Section 134(d)(2).

The 2012 Certification Review Report dated June 25-28, 2012, identified the Metropolitan Council as the Twin Cities MPO "in conjunction with the Technical Advisory Board" ("TAB"). As the Local Administrators admitted in the August 3 letter, this statement is erroneous. Specifically, the FTA and FHWA now agree that:

> The Council is designated MPO for the Twin Cities Region, and the Council officials are responsible for carrying out the metropolitan planning process [MN Statute 473.146 subd. 4(a)]. The TAB is an advisory body to the Council [MN Statute 473.146 subd. 4(b)]. The TAB is not designated as the MPO, and its membership is not consistent with 23 U.S.C. 134(d)(2).

August 3 Letter at 1.

The recognition that the TAB is not part of the Twin Cities MPO is significant because there are no elected officials serving on the Metropolitan Council itself. *See Council Members & Districts.* [1] Instead of involving local elected officials in metropolitan planning decision-making as part of the Metropolitan Council, Minnesota relegated them to a subordinate advisory role on the TAB. Minn. Stat. § 473.146, subd. 4(b). As the FTA and FHWA admit, having elected officials serve on an advisory body – as opposed to the MPO policy board – does not satisfy the membership requirements in Section 134(d)(2). August 3 Letter at 1; *see also Policy Guidance on Metropolitan Planning Organization (MPO) Representation*, 79 Fed. Reg. 31215 (June 2, 2014).

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[1] Available online at http://www.metrocouncil.org/About-Us/TheCouncil/CouncilMembers.aspx (last accessed September 17, 2015).

II. The Local Administrators Improperly Concluded that Section 134 May Exclude Certain MPOs From its Membership Requirements.

The determination that the Metropolitan Council does not satisfy Section 134(d)(2) necessitates the conclusion that the Metropolitan Council is not a properly designated MPO. Instead of applying the unambiguous text of Section 134(d)(2) however, the Local Administrators determined that the Metropolitan Council was subject to a "grand fathering exemption" found in Section 134(d)(3) and (4). As discussed below, even if there were such an exemption, it would not apply to the Metropolitan Council. More significantly, however, the assertion that such an exemption exists is contrary to the text of Section 134 and the Department's previous guidance on this issue.

A. Congress Removed the only Exemption to Section 134(d)'s Membership Requirements in 2012.

In 1991, the membership Section of 134 stated that it "shall only apply to a metropolitan planning organization *which is redesignated after the date of the enactment of this section* [December 18, 1991)." 23 U.S.C. § 134(b)(2) (1992) (emphasis added). That language evolved in subsequent versions of the statute. For example, in 2001, Section 134 provided that its membership requirements applied to MPOs "designated or redesignated under this section." 23 U.S.C. § 134(b)(2) (2001). Similar language was also present in the 2011 statute. 23 U.S.C. § 134(d)(2) (2011). That law changed significantly in 2012. Specifically, the language making the membership requirements apply only to MPOs designated or redesignated after a certain time period was removed. Section 134 now *unambiguously* provides that:

> Not later than 2 years after the enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area *shall consist of*: (A) local elected officials; (B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and (C) appropriate state officials.

23 U.S.C. § 134(d)(2) (emphasis added). As used in federal statutes, the word "shall" designates mandatory obligations. *LeMay v. U.S. Postal Serv.*, 450 F.3d 797, 799 (8th Cir, 2006); *see also Anderson v. Yungkau*, 329 U.S. 482, 485 (1947), *Townsend v. Bayer Corp.*, 774 F.3d 446, 464 (8th Cir. 2014). Accordingly, Section 134(d)(2) required the Metropolitan Council's "policy board" to satisfy its specific membership requirements by October 1, 2014. 23 U.S.C. § 134(b)(2), (d)(2); *see also* 23 C.F.R. § 450.310(d).[2] There is no support for the Local Administrators' conclusion that this *membership* requirement is still limited to MPOs "designated" or "redesignated" on or after any particular date or under any particular statute.

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[2] The legislature identified MAP-21's effective date as October 1, 2012. P.L. 112-141, § 3(a).

The statutory language could not be clearer. Congress took out the language that limited the *membership* requirement to certain MPOs and replaced it with mandatory language applicable to all MPOs. After October 1, 2014, every MPO must consist of certain members, regardless of when they were designated. 23 U.S.C. § 134(d)(2). The Department, the FHWA, and the FTA even advised MPOs of this statutory change. Specifically, in June 2014, the Department of Transportation, the FHWA, and the FTA warned MPOs that Section 134(d) now "expressly provide[s] that MPOs serving TMAs *must alter* their board compositions, if necessary, in order to attain the statutorily required structure." 79 Fed. Reg. at 31215.

The Local Administrators did not address the impact of this unambiguous statutory mandate in their August 3 letter. Because Section 134(d) expressly requires the Metropolitan Council to consist of certain members, and because the Local Administrators agree that it does not satisfy that requirement, the conclusion that the Metropolitan Council is a properly constituted MPO is erroneous and should be set aside.

B. Sections 134(d)(3) and (4) do Not Exempt the Metropolitan Council from the *Membership* Requirements Found in Section 134.

The Local Administrators found that there is a "grandfathering" clause for certain MPOs in Sections 134(d) (3) and (4). That conclusion is directly contrary to the express statutory language. Accordingly, the Local Administrators' finding that the Metropolitan Council is subject to such a clause exceeds the FTA's and FHWA's authority. *Utility Air Regulatory Group v. E.P.A.*, 134 S.Ct. 2427, 2445 (2014); *see also St. Mary's Hosp. of Rochester, Minnesota v. Leavitt*, 535 F.3d 802, 806 (8th Cir. 2008) (holding that the plain meaning of a statute controls, "regardless of an agency's interpretation").

Section 134(d)(3) provides that:

> Nothing in this subsection shall be construed to interfere with the authority of any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities –
>
> (A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and
>
> (B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

23 U.S.C. § 134(d)(3). In other words, Section 134(d)(3) says that certain pre-existing "public agenc[ies] with multimodal transportation responsibilities" can continue to carry on functions prescribed by State law. It does not make such entities into MPOs. To the contrary, this

provision expressly limits applicable agencies to developing "plans and TIPs *for adoption* ***by*** *a metropolitan planning organization.*" *Id* (emphasis added). It does not convert a non-conforming public agency into an MPO. In light of the unambiguous statutory language, there is no legal basis to construe Section 134(d)(3) as limiting the membership provision of Section 134(d)(2). *See, e.g., Utility Air*, 134 S.Ct. at 2445.

For similar reasons, the "continuing designation" clause in Section 134(d) does not excuse the failure to alter the Metropolitan Council "in order to attain the statutorily required structure." Regardless of whether it was *designated* as the MPO, the Metropolitan Council is out of compliance with the express *membership* requirements of Section 134(d). In fact, Section 134(d) plainly states that an MPO "may be restructured to meet the [new membership requirements] without undertaking a redesignation." 23 U.S.C. § 134(d)(5)(B). This language only underscores that the new membership requirements have nothing to do with when an MPO was "designated" – as is clear from the fact that Congress removed the references to MPOs "designated or redesignated under this section" from the membership requirement itself.

We provided this analysis to the Local Administrators. *See* May 8 Letter at 6-7. They did not address it. *See, generally,* August 3 letter. There is nothing in the current version of Section 134 that supports the conclusion that MPOs *designated* before December 18, 1991, are exempt from the *membership* requirements now found in Section 134(d)(2).

III. Even if the "State Powers" Clause of Section 134(d)(3) Exempted Certain MPOs From Compliance with Section 134(d)(2), that Clause Does Not Apply to the Metropolitan Council.

We are aware that the *Policy Guidance* published by the FTA and FHWA on June 2, 2014, states that MPOs "acting pursuant to authority created under State law that was in effect on December 18, 1991" continue to be exempt from the membership requirements in Section 134(d)(2) by operation of Section 134(d)(3). 79 Fed. Reg. at 31216. As discussed above, however, that contention is directly contrary to the unambiguous language of Section 134. Accordingly, the notion that there is an exemption for certain MPOs is erroneous and beyond the authority of the FTA and FHWA. *See, e.g., Utility Air*, 134 S.Ct. at 2445.

Even if there continued to be an exemption from the membership requirements of Section 134(d)(2), that exemption would not be applicable to the Metropolitan Council. In discussing the so-called exemption, the June 2, 2014, *Policy Guidance* expressly states that: "an exemption from the MPO structure requirements is *only appropriate* for an MPO where (1) the MPO operates pursuant to a State law that was in effect on or before December 18, 1991; (2) such State law has not been amended after December 18, 1991, as regards to the structure or organization of the MPO; *and* (3) the MPO has not been designated or re-designated after December 18, 1991." 79 Fed. Reg. at 31216 (emphasis added). The Metropolitan Council does not meet this standard. Thus, regardless of its validity, the Local Administrators' conclusion

that certain MPOs are exempt from the membership requirements in Section 134(d) is inapplicable to the Metropolitan Council.

The Local Administrators agreed that the Minnesota legislature made multiple changes to the State laws governing the Metropolitan Council since December 19, 1991. August 3 Letter at 2. They concluded, however, that the grandfathering analysis applied to the Metropolitan Council because those changes were not 'substantial' so as to require a redesignation." *Id.* That determination ignores the express language of the *Policy Guidance* and conflates the question of whether an MPO is exempt from the *membership* requirements with the issue of whether it should have been *redesignated* under a separate rule.

Most significantly, the Local Administrators appear to have imported the requirement that a change be "substantial" from the re-designation rule, 23 C.F.R. § 450.310(k), and applied to the so-called exemption under Section 134(d)(3) – which does not pertain to designations at all. There is no statutory or regulatory basis for doing so. Section 134(d)(3) does not contain the word "substantial."[3] Neither does the *Policy Guidance* discussion of the purported exemption to the membership requirements by MPOs operating under that Section. To the contrary, the *Policy Guidance* document broadly states that such an exemption *is only appropriate* if the State law regarding an MPO's "structure or organization" has "not been amended" after December 18, 1991. There have been many such changes to the statutes governing the Metropolitan Council's structure and organization.

The Metropolitan Council's structure and organization are dictated by Minnesota Statutes, Section 473.123. In 1990, that law simply read that a "metropolitan council with jurisdiction in the metropolitan area is created..." Minn. Stat. § 473.123, subd. 1 (1990). Another provision of the Metropolitan Council's governing statutes specifically referred to it as an "administrative agency." Minn. Stat. § 473.122 (1990). In 1994, the Minnesota Legislature repealed Section 473.122 amended Section 473.123 to provide that the "metropolitan council... *is established as a public corporation and a political subdivision of the state*..." Minn. Stat. § 473.123, subd. 1 (1994) (emphasis added); *see also* Minn. Laws 1994 c 628 art 3 s 209 (repealing Section 473.122). Converting an "administrative agency" into an independent political subdivision is a change, a substantial change, to the Metropolitan Council's "structure or organization."

Also in 1994, the Minnesota legislature amended the statutory provisions governing the terms of Metropolitan Council members. In 1991, the law provided fixed terms for current Metropolitan Council members; terms that expired either in years ending with the numeral "7" or "5," depending on the district they represented. Future members' terms were fixed at four years from the date of appointment. Minn. Stat. § 473.123, subd. 2a (1990). In 1994, the statute was amended to provide that Metropolitan Council members' terms "end with the term

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[3] Although there is no requirement in the statute at issue that the changes be substantial, as you can see, the amendments to the statutes governing the Metropolitan Council clearly were substantial.

of the governor" or at the effective date of the next appointment. Minn. Stat. § 473.123, subd. 2a (1994). Starting in 1994, the Section 473.123 also provides that each Metropolitan Council member "serves at the pleasure of the governor." *Id.*

This statutory change deeply affected the Metropolitan Council's structure and organization. In 1991, Council members were appointed to a fixed term that potentially spanned multiple gubernatorial administrations. After 1994, Metropolitan Council members only serve as long as the governor who appointed them. In 1991, there was no express statutory provision for removing Met Council members. After 1994, the statute clearly provides that members can be removed by the governor. Where there was some stability in the Metropolitan Council's membership in 1991, the Council's organization is now dependent on the four year election cycle and the will of the governor. This was not only a change to the structure, but a substantial change.

The 1994 statutory amendments also allowed, for the first time, the Metropolitan Council to independently "hold, use, and dispose of" grants and other financial contributions. Before that date, Minnesota law required the Metropolitan Council to deposit all money it received "in the state treasury." *Compare* Minn. Stat. § 473.129, subd. 4 (1990) *and* Minn. Stat. § 473.129, subd. 4 (1994). Granting the Metropolitan Council independent authority over funds is a significant expansion of the Metropolitan Councils' power and a modification of its structure, constituting a substantial change.

Over the past 23 years, the statutory provisions regarding the Metropolitan Council's districts have also changed significantly. *Compare* Minn. Stat. § 473.123, subd. 3b (1991) *and* Minn. Stat. § 473.123, subd. 3c (1994) *with* Minn. Stat. § 473.123, subd. 3e (2014). For example, the 1991 statute provided that the City of St. Paul comprised Districts 1, 2, and part of 15. Minn. Stat. § 473.123, subd. 3b (1), (2), and (15) (1992). Today, the statute is silent as to which municipalities fall into which districts. Minn. Stat. § 473.123 (2014). Moreover, the City of St. Paul is now only represented by two of the Met Council districts (13 and 14), one of which it continues to share with other communities.[4] These amendments to the State statute governing the Metropolitan Council affected its structure and organization.

The Minnesota legislature amended the State laws governing the Metropolitan Council several times since December 18, 1991. Many of those changes affected the Metropolitan Council's "structure or organization." Even if there were "an exemption from the MPO structure requirements" in Section 134, The Local Administrators' conclusion that that exemption applies to the Metropolitan Council is erroneous. *See* 79 Fed. Reg. at 31216.

[4] The foregoing list of statutory changes is not necessarily exhaustive. Additional changes, including changes to the by-laws, since 1991 affected the structure, organization, and decision-making authority of the Metropolitan Council.

IV. The Metropolitan Council Should Have Been Redesignated Under Previous Versions of 23 U.S.C. § 134.

The Local Administrators also erred by determining that the statutory amendments regarding the Metropolitan Council's organization did not require the Metropolitan Council to redesignate as an MPO. As early as 2007, the Department's regulations provided that:

> Redesignation of an MPO (in accordance with the provisions of this section) *is required* whenever the existing MPO proposes to make:
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> (1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the state(s); or
>
> (2) A substantial change in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under MPO bylaws.

23 C.F.R. § 450.310(k) (2007) (emphasis added).[5] As discussed above, there have been a number of changes to the Minnesota laws governing the Metropolitan Council since December 18, 1991. Those changes substantially altered its decision-making responsibility. Consequently, the Metropolitan Council should have been redesignated as the MPO after December 18, 1991. As a result of the redesignation that should have occurred, the Metropolitan Council should have been subject to the express membership requirements identified in Section 134(d) long before the 2012 statutory amendment that unequivocally required it to comply with those provisions.

Despite acknowledging the numerous changes to the laws governing the Metropolitan Council, the Local Administrators concluded that those changes did not necessitate re-designation because they were not "substantial." *See* August 3 Letter at 2-3. That conclusion greatly underestimates the impact that the statutory amendments had on the Metropolitan Council and the practical implications of those amendments. Even standing alone, the 1994 amendment that converted the Metropolitan Council from an "administrative agency" into an independent political subdivision greatly impacted its decision-making authority.

As just one example, in 1990, the Metropolitan Council was an "administrative agency" and its rule-making authority was subject to the Minnesota Administrative Procedures Act, Minnesota Statutes, Chapter 14. *See* Minn. Stat. 473.123, subd. 5 (1990). When the legislature made the Metropolitan Council into an independent political subdivision in 1994, it

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[5] This requirement exists in the current Regulation as well. 23 C.F.R. § 450.310(k) (2014).

repealed that restriction. Minn. Laws. 1994 c 628 art 1 s 10.[6] Relieving the Metropolitan Council of the obligation to comply with the Administrative Procedures Act when promulgating rules is a substantial change to its decision-making authority.

The other statutory amendments discussed above also had substantial and practical impacts on the Metropolitan Council's decision-making authority. Allowing the Metropolitan Council to "hold, use, and dispose of" its own funds, limiting its members to the term of the governor who appointed them, and altering the distribution of communities in the Metropolitan Council's districts all affected the manner in which the Metropolitan Council and its members make decisions and their basis for doing so. Any of these statutory changes should have resulted in a re-designation of the Metropolitan Council. The Local Administrators' conclusion that these changes, either individually or taken as a whole, did not result in a "substantial" change to the Metropolitan Council's decision-making authority is untenable.

Moreover, their finding that the 1994 statutory change to the terms of Metropolitan Council members was a "[p]eriodic rotation of members representing units of general-purpose local government," that did not require re-designation is unfounded. *See* August 3 letter at 3 (citing 23 C.F.R. 450.310(l)(4)). Changing the Metropolitan Council members' terms to match that of the governor and providing that they serve at the pleasure of the governor is not a "periodic rotation" of the Metropolitan Council's membership. It is a fundamental change to the structure of the Metropolitan Council itself. While the governor's decision to appoint a specific member to represent a specific unit of general-purpose local government might not trigger a re-designation, a legislative amendment that directly affects how those representatives make their decisions undoubtedly does.

The Local Administrators also framed the internal changes to the Metropolitan Council's districts as "rebalancing" that did not necessitate re-designation. *See* August 3 letter at 3 (citing 23 C.F.R. § 450.310(l)(1) and (2)). This was an inaccurate characterization. The statute was not changed to reflect the "identification of a new urbanized area" as required to fall within 23 C.F.R. § 450.310(l)(1). Nor was it amended to add "members to the MPO that represent new units of general purpose local government," as required by 23 C.F.R. § 450.310(l)(2). To the contrary, the Metropolitan Council has had seventeen members since at least 1990. *Compare* Minn. Stat. § 473.123, subd. 1 (1990) *with* Minn. Stat. § 473.123, subd. 1 (2015). It has consisted of sixteen districts during that time period as well. *Compare* Minn. Stat. § 473.123, subd. 2 (1990) *with* Minn. Stat. § 473.123, subd. 2 (2015). The changes to the boundaries of those districts did not add "members to the MPO." Nor did they result from "identification of a new urbanized area." As it resulted in a substantial change to the Metropolitan Council's decision-making authority and structure, the statutory "rebalancing" of the districts should have resulted in a re-designation of the Metropolitan Council.

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[6] Some of the Metropolitan Council's hearing procedures must be consistent with Chapter 14. *See* Minn. Stat. §§ 473.175, 473.5111, 473.866

V. Its Improper Membership Prevents the FTA and FHWA from Approving TIPs and Other Plans and Proposals Created by the Metropolitan Council.

Because it is not a properly constituted MPO, the Metropolitan Council lacks the authority to perform many of the functions of an MPO. For example, only a properly constituted MPO can approve Transportation Improvement Programs ("TIPs"). *See* 23 U.S.C. § 134(b)(6) (2014) (defining a TIP as a program "developed by a metropolitan planning organization"). The statutory provision regarding authority granted by State law in effect on December 18, 1991, does not alter this conclusion. In relevant part, that statute provides that entities acting pursuant to statute existing on December 18, 1991, may only "develop the plans and TIPs *for adoption by a metropolitan planning organization*." 23 U.S.C. § 134(d)(3)(A) (emphasis added). Even that clause delineates between a properly constituted MPO and other organizations. While an entity that had authority to *develop* a TIP on December 18, 1991, may continue to do so, only a properly constituted MPO can *adopt* the TIP. The same is true of any plans, grant applications, or other submissions that require action by an MPO.

VI. Conclusion

Despite a two year period in which to come into compliance, Minnesota has not altered the Metropolitan Council's membership "to attain the statutorily required structure" identified in Section 134(d)(2). The Local Administrators' conclusion that the Metropolitan Council is exempt from that mandate is contrary to law and inconsistent with the Department's own past guidance. That conclusion also allows the Minnesota Governor to continue to deny local communities a voice in the metropolitan planning decision-making process. For all of the foregoing reasons, we request that you correct the oversights made by the Local Administrators, find that the Metropolitan Council is not currently a properly constituted MPO, and take all other necessary actions consistent with that finding.

We would appreciate a prompt response to this request in order for this issue to be addressed by the Minnesota Legislature at its next session. We also ask that you indicate whether your response to this request is a "final agency action" for purposes of the Administrative Procedures Act.

Sincerely,

~~Ann R. Goering~~
Christian R. Shafer

Enclosures

cc: Governor Mark Dayton
Mr. Gary Shelton, Scott County Administrator
Mr. Brandt Richardson, Dakota County Manager
Mr. David Hemze, Carver County Administrator
Mr. Jerry Soma, Anoka County Administrator
Ms. Molly O'Rourke, Washington County Administrator
Mr. Adam Duininck, Metropolitan Council

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May 8, 2015

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RE: Metropolitan Council Certification Review
Our File No. 5019-0004

Dear Ms. Simon and Mr. Scott:

We represent a coalition of suburban counties of the Twin Cities metropolitan area. We are writing to draw your attention to significant inaccuracies in the Transportation Planning Certification Review Report for the Minneapolis-St. Paul Metropolitan Area dated June 25-28, 2012 ("2012 Report"). Based on those inaccuracies, we request that the FTA and FHWA determine that the Metropolitan Council is not a properly constituted Metropolitan Planning Organization ("MPO"), refrain from approving any submissions that require action by a properly constituted MPO submitted by the Metropolitan Council until such time as it becomes properly constituted, and take other appropriate actions based on the finding that the Metropolitan Council is not a properly constituted MPO. Our analysis is as follows:

I. The 2012 Report Erroneously Concluded that the Metropolitan Council's Advisory Board is Part of the Twin Cities MPO.

In relevant part, the 2012 Report contains a finding that the "Metropolitan Council in conjunction with the Transportation Advisory Board (TAB) is the designated MPO for the

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Twin Cities region." 2012 Report at 9. That finding is legally and factually incorrect. Minnesota law specifically provides that the Metropolitan Council alone is the MPO:

> The *Metropolitan Council is the designated planning agency* for any long-range comprehensive transportation planning required by section 134 of the Federal Highway Act of 1962, Section 4 of [the] Urban Mass Transportation Act of 1963, and Section 112 of [the] Federal Aid Highway Act of 1973 and other federal transportation laws.

Minn. Stat. § 473.146, subd. 4(a) (emphasis added). Nothing in Minnesota law designates the TAB as the MPO, "in conjunction with" the Metropolitan Council or otherwise.

Moreover, federal law expressly defines the term "metropolitan planning organization" as an entity's "policy board." 23 U.S.C. § 134(b)(2).[1] By statute, the TAB is only an "advisory body." Minn. Stat. § 473.146, subd. 4(b). It does not have any independent policy-making authority. The Met Council has not delegated any such authority to the TAB, nor does it have the statutory authority to do so. The TAB's By-laws expressly provide that it is to perform duties prescribed by the Metropolitan Council, that its own procedures must be approved by the Metropolitan Council, and that its vote "precedes" final action by the Metropolitan Council. TAB By-laws, Art. VII.[2] In the absence of any independent authority, much less policy-making authority, the TAB does not meet the definition of an MPO.

The Metropolitan Council's frequent assertions that the TAB is the MPO "in conjunction with" the Metropolitan Council does not alter this conclusion. Federal law provides that MPOs are designated in one of two ways: (1) "by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population;" or (2) "in accordance with procedures established by applicable State or local law." 23 U.S.C. § 134(d)(1). The Minnesota Legislature unequivocally designated the Metropolitan Council, not any of its advisory bodies, as the MPO. Minn. Stat. § 473.146, subd. 4(a). The Metropolitan Council lacks the authority to alter that designation to include the TAB. 23 U.S.C. § 134(d)(1). There is no factual or legal basis for the 2012 Report's finding that the TAB is the MPO "in conjunction with" the Metropolitan Council.

In fact, the FHWA and the FTA have specifically rejected the contention that an MPO can satisfy Section 134(d)(2) by including statutorily required members on an advisory board or technical committee. *Policy Guidance on Metropolitan Planning Organization (MPO) Representation*, 79 Fed. Reg. 31215 (June 2, 2014). In doing so, the agencies have recognized

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[1] The Metropolitan Council's website identifies the Council itself as the "policy-making board." http://www.metrocouncil.org/About-Us/The-Council-Who-We-Are.aspx (accessed April 2, 2015).

[2] The Metropolitan Council's organizational charts similarly show the TAB as an inferior body to the Metropolitan Council itself. *See* 2013 Transportation Planning and Programming Guide at 6, 8.

that "[C]ongress also made clear that the term metropolitan planning organization refers to the "policy board" of the organization, *not its advisory or non-decision making elements.*" *Id.* (emphasis added). As the agencies themselves acknowledge, there is no legal basis for concluding that the inclusion of elected officials in the TAB satisfies federal MPO membership requirements.

The TAB does not even satisfy the intent of Section 134(d). As the Metropolitan Council admits, federal law requires MPOs to include elected officials "as part of the decision making process." 2013 Transportation Planning and Programming Guide at 7. The Metropolitan Council is the only decision-making body. TAB members, including the elected officials, have no voice in the actual decision-making process. Indeed, Metropolitan Council staff often bypass the TAB altogether by taking issues directly to the Metropolitan Council. TAB members do not even get to make a non-binding recommendation on those issues.

For similar reasons, the finding that "[t]ogether, the Council and the TAB are responsible for the governance and transportation policy making for the Twin Cities region" is incorrect. *See* 2012 Report at 9. The Metropolitan Council, not the TAB, has the policy-making authority on all policy decisions. While the Metropolitan Council may consider the TAB's input from time to time, it is not required to do so by law.

II. The Metropolitan Council Should Have Been Redesignated Under Previous Versions of 23 U.S.C. § 134.

Metropolitan areas have been required to designate an MPO since the passage of the Federal-Aid Highway Act of 1962. In 1991, the federal scheme of transportation planning was significantly altered with the passage of the Intermodal Surface Transportation Efficiency Act of 1991("ISTEA"). The ISTEA, specifically 23 U.S.C. § 134, required each metropolitan area to designate an MPO, and that each MPO that serves a TMA, an urbanized area with a population greater than 200,000, be structured in a particular way. In regard to the required structure of MPOs, the ISTEA stated:

> **Membership of Certain MPOs**—In a metropolitan area designated as a transportation management area, the metropolitan planning organization designated for such area shall include local elected officials, officials of agencies which administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization on June 1, 1991) and appropriate state officials. This paragraph shall only apply to a metropolitan planning organization *which is redesignated* after the date of the enactment of this section

23 U.S.C. § 134(b)(2) (1992) (emphasis added). Applying the membership language, the Department of Transportation subsequently issued regulations providing that:

> Redesignation of an MPO (in accordance with the provisions of this section) *is required* whenever the existing MPO proposes to make:
>
> (1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the state(s); or
>
> (2) A substantial change in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under MPO bylaws.

23 C.F.R. § 450.310(k) (2007) (emphasis added). As discussed in Section IV, *infra.*, there have been a number of changes to Minnesota law since December 18, 1991, that substantially altered the Metropolitan Council's decision-making authority, including, but not limited to amendments that resulted in substantial changes in the proportion of voting members representing the City of St. Paul. Consequently, the Metropolitan Council should have been redesignated as the MPO after December 18, 1991. As a result of the redesignation that should have occurred, the Metropolitan Council should have been subject to the express membership requirements identified in Section 134(d) long before the 2012 Report was issued.

III. 2012 Amendments to 23 U.S.C. § 134(d) Unequivocally Provide that the Metropolitan Council is not a Properly Constituted Metropolitan Planning Organization.

As discussed above, Section 134(d) originally provided that only MPOs designated or redesignated after December 18, 1991, had to include elected officials on their policy boards. *See, e.g.*, 23 U.S.C. § 134(b)(2) (1992). That law changed significantly in 2012. Section 134 now expressly provides that:

> Not later than 2 years after the enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area *shall consist of*: (A) local elected officials; (B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and (C) appropriate state officials.

23 U.S.C. § 134(d)(2) (emphasis added). As used in federal statutes, the word "shall" designates mandatory obligations. *LeMay v. U.S. Postal Serv.*, 450 F.3d 797, 799 (8th Cir. 2006); *see also Anderson v. Yungkau*, 329 U.S. 482, 485 (1947), *Townsend v. Bayer Corp.*, 774 F.3d 446, 464 (8th Cir. 2014). Accordingly, Section 134(d)(2) required the Metropolitan

Council's "policy board" to satisfy its specific membership requirements by October 1, 2014. 23 U.S.C. § 134(b)(2), (d)(2); *see also* 23 C.F.R. § 450.310(d).[3] To date, the composition of the Metropolitan Council is not in compliance with the express provisions of the federal statute.

As specifically recognized in the 2012 Report, the Governor of Minnesota appoints the members of the Metropolitan Council. Minn. Stat. § 473.123, subd. 3; *see also* 2012 Report at 9. None of the individuals currently serving on the Metropolitan Council is a current "local elected official." *See Council Members & Districts*.[4] As discussed above, the presence of elected officials on the TAB does not satisfy the membership requirements of Section 134(d). 79 Fed. Reg. at 31215. Thus, the Metropolitan Council does not meet the express and unequivocal requirements set forth in 23 U.S.C. § 134(d)(2).[5]

The 2012 amendments to Section 134 gave MPOs two years to come into compliance with its membership requirements. 23 U.S.C. § 134(d)(2). In June 2014, the Department of Transportation, the FHWA, and the FTA warned MPOs that Section 134(d) now "expressly provide[s] that MPOs serving TMAs *must alter* their board compositions, if necessary, in order to attain the statutorily required structure." 79 Fed. Reg. at 31215. In light of the unequivocal statutory language and express federal guidance, there is no valid reason for the failure to modify the composition of the Metropolitan Council to comply with federal law.

IV. The Metropolitan Council is not Exempt from the Membership Requirements.

We anticipate that an argument might be made that the Metropolitan Council is grandfathered from the membership requirements found in Section 134(d) because it existed pursuant to Minnesota law before December 18, 1991. Such a contention would be inconsistent with law and unsupported by fact or contemporaneous federal guidance.

A. The Current 23 U.S.C. 134(d) Does Not Contain a Grandfathering Provision.

The FTA and FHWA have taken the position that an "exemption [for MPOs acting pursuant to state law that was in effect on December 18, 1991] has existed in statute in some form since 1991." 79 Fed. Reg. at 31216. A review of the statutory history, however, belies that contention.

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[3] The legislature identified MAP-21's effective date as October 1, 2012. P.L. 112-141, § 3(a).

[4] Available online at http://www.metrocouncil.org/About-Us/TheCouncil/CouncilMembers.aspx (last accessed April 9, 2015)

[5] The Metropolitan Council also includes additional members not provided for by federal law in violation of the "shall consist of" provision.

1. *Congress actively removed the exemption for MPOs certified before December 18, 1991.*

In 1991, the membership Section of 134 specifically stated that it "shall only apply to a metropolitan planning organization *which is redesignated after the date of the enactment of this section* [December 18, 1991)." 23 U.S.C. § 134(b)(2) (1992) (emphasis added). That language evolved in subsequent versions of the statute. For example, in 2001, Section 134 provided that its membership requirements applied to MPOs "designated or redesignated under this section." 23 U.S.C. § 134(b)(2) (2001). Similar language was also present in the 2011 statute. 23 U.S.C. § 134(d)(2) (2011). Currently, however, the statutory language regarding membership in an MPO is not expressly limited to MPOs "designated" or "redesignated" on or after any particular date or under any particular statute. Instead, it broadly requires *each* MPO to consist of certain members by October 1, 2014. 23 U.S.C. § 134(d)(2). There is no support for the proposition that the *membership* requirement currently identified in Section 134(d)(2) is now limited to MPOs designated or redesignated after 1991.

In fact, the changes to the MPO membership requirements could not have been clearer. Before October 1, 2014, only certain MPOs had to have elected officials on their policy boards. As admitted in the June 2, 2014 *Policy Guidance* however, Section 134(d) now "expressly provide[s] that MPOs serving TMAs *must alter* their board compositions, if necessary, in order to attain the statutorily required structure." 79 Fed. Reg. at 31215 (emphasis added).

2. *There is no other language in Section 134 that exempts previously certified MPOs from the new membership requirements.*

We anticipate that an assertion might be made that Section 134(d)(3) excuses the Metropolitan Council from the membership requirements in Section 134(d)(2). 79 Fed Reg. at 31216. Such a position, however, is directly contrary to the express statutory language. Thus, it would exceed the FTA's and FHWA's authority to make such a finding. *Utility Air Regulatory Group v. E.P.A.*, 134 S.Ct. 2427, 2445 (2014); *see also St. Mary's Hosp. of Rochester, Minnesota v. Leavitt*, 535 F.3d 802, 806 (8th Cir. 2008) (holding that the plain meaning of a statute controls, "regardless of an agency's interpretation").

Section 134(d)(3) provides that:

> Nothing in this subsection shall be construed to interfere with the authority of any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities –
>
> (A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and

> (B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

23 U.S.C. § 134(d)(3). In other words, Section 134(d)(3) says that certain pre-existing "public agenc[ies] with multimodal transportation responsibilities" can continue to carry on functions prescribed by State law. It does not make such entities into MPOs. To the contrary, this provision expressly limits applicable agencies to developing "plans and TIPs *for adoption <u>by</u> a metropolitan planning organization.*" *Id* (emphasis added). It does not grandfather a public agency *<u>as</u>* an MPO when it no longer meets the requirements of federal law. In light of the unambiguous statutory language, there is no legal basis to construe Section 134(d)(3) as limiting the membership provision of Section 134(d)(2). *See, e.g., Utility Air*, 134 S.Ct. at 2445.

For similar reasons, the "continuing designation" clause in Section 134(d) does not excuse the failure to alter the Metropolitan Council "in order to attain the statutorily required structure." Regardless of whether it was *designated* as the MPO, the Metropolitan Council is out of compliance with the express *membership* requirements of Section 134(d). In fact, Section 134(d) plainly states that an MPO "may be restructured to meet the [new membership requirements] without undertaking a redesignation." 23 U.S.C. § 134(d)(5)(B). As this language indicates, the designation process is completely divorced from the new membership requirements.

The restructuring clause in Section 134(d)(5)(B) makes the Metropolitan Council's current composition that much more intolerable. Minnesota has the express statutory authority to alter the structure of the Metropolitan Council to comply with Section 134(d). It had two years in which to exercise that authority. It failed to do so.

B. The FTA and FHWA Grandfathering Analysis Does Not Apply to the Metropolitan Council.

Even according to the June 2, 2014, *Policy Guidance*, "an exemption from the MPO structure requirements is *only appropriate* for an MPO where (1) the MPO operates pursuant to a State law that was in effect on or before December 18, 1991; (2) such State law has not been amended after December 18, 1991, as regards to the structure or organization of the MPO; *and* (3) the MPO has not been designated or re-designated after December 18, 1991." 79 Fed. Reg. at 31216 (emphasis added). The Metropolitan Council does not meet this standard. Thus, regardless of its validity, the FTA and FHWA position that certain MPOs are exempt from Section 134(d)'s membership requirements is inapplicable to the Metropolitan Council.

The Metropolitan Council's structure is dictated by Minnesota Statutes, Section 473.123. In 1990, that law simply read that a "metropolitan council with jurisdiction in the

metropolitan area is created..." Minn. Stat. § 473.123, subd. 1 (1990). In 1994, the Minnesota Legislature amended Section 473.123 to provide that the "metropolitan council... *is established as a public corporation and a political subdivision of the state...*" Minn. Stat. § 473.123, subd. 1 (1994) (emphasis added). Separating the Metropolitan Council from the State and establishing it as an independent political subdivision is certainly a significant change to its "structure."

Also in 1994, the Minnesota legislature amended the statutory provisions governing the terms of Metropolitan Council members. In 1991, the law provided fixed terms for current Metropolitan Council members; terms that expired either in years ending with the numeral "7" or "5," depending on the district they represented. Future members' terms were fixed at four years from the date of appointment. Minn. Stat. § 473.123, subd. 2a (1990). In 1994, the statute was amended to provide that Metropolitan Council members' terms "end with the term of the governor" or at the effective date of the next appointment. Minn. Stat. § 473.123, subd. 2a (1994). Starting in 1994, the Section 473.123 also provides that each Metropolitan Council member "serves at the pleasure of the governor." *Id.*

This statutory change deeply affected the Metropolitan Council's organization. In 1991, Council members were appointed to a fixed term that potentially spanned multiple gubernatorial administrations. After 1994, Metropolitan Council members only serve as long as the governor who appointed them. In 1991, there was no express statutory provision for removing Met Council members. After 1994, the statute clearly provides that members can be removed by the governor. Where there was some stability in the Metropolitan Council's membership in 1991, the Council's organization is now dependent on the four year election cycle and the whim of the governor.

The 1994 statutory amendments also allowed, for the first time, the Metropolitan Council to independently "hold, use, and dispose of" grants and other financial contributions. Before that date, Minnesota law required the Metropolitan Council to deposit all money it received "in the state treasury." *Compare* Minn. Stat. § 473.129, subd. 4 (1990) *and* Minn. Stat. § 473.129, subd. 4 (1994). Granting the Metropolitan Council independent authority over funds is a significant expansion of the Metropolitan Councils' power and a modification of its structure.

Over the past 23 years, the statutory provisions regarding the Metropolitan Council's districts have also changed significantly. *Compare* Minn. Stat. § 473.123, subd. 3b (1991) *and* Minn. Stat. § 473.123, subd. 3c (1994) *with* Minn. Stat. § 473.123, subd. 3e (2014). For example, the 1991 statute provided that the City of St. Paul comprised Districts 1, 2, and part of 15. Minn. Stat. § 473.123, subd. 3b (1), (2), and (15) (1992). Today, the statute is silent as to which municipalities fall into which districts. Minn. Stat. § 473.123 (2014). Moreover, the

City of St. Paul is now only represented by two of the Met Council districts (13 and 14), one of which it continues to share with other communities.[6]

As the Department of Transportation, the FTA, and the FHWA stated in the June 2, 2014, *Policy Guidance*, an exemption to the MPO membership requirements is "only appropriate" if the relevant State law has not been amended since December 18, 1991. All of the statutory changes discussed above, however, affected the organization and structure of the Metropolitan Council and occurred after December 18, 1991. Accordingly, even applying the test outlined in the June 2, 2014, *Policy Guidance*, the Metropolitan Council is not exempt from the membership requirements expressly set forth in Section 134(d).

V. Its Improper Membership Prevents the FTA and FHWA from Approving TIPs and Other Plans and Proposals Created by the Metropolitan Council.

Because it is not a properly constituted MPO, the Metropolitan Council lacks the authority to perform some of the basic functions described in the 2012 Report. For example, only a properly constituted MPO can approve Transportation Improvement Programs ("TIPs"). *See* 23 U.S.C. § 134(b)(6) (2014) (defining a TIP as a program "developed by a metropolitan planning organization").

The statutory provision regarding authority granted by State law in effect on December 18, 1991, does not alter this conclusion. In relevant part, that statute provides that entities acting pursuant to statute existing on December 18, 1991, may only "develop the plans and TIPs *for adoption by a metropolitan planning organization*." 23 U.S.C. § 134(d)(3)(A) (emphasis added). Even that clause delineates between a properly constituted MPO and other organizations. While an entity that had authority to *develop* a TIP on December 18, 1991, may continue to do so, only a properly constituted MPO can *adopt* the TIP. The same is true of any plans, grant applications, or other submissions that require action by an MPO.

VI. Conclusion

The TAB is not, and never has been, the designated MPO for the Twin Cities region. Starting in 1994, the Metropolitan Council should have been in compliance with the membership requirements in Section 134(d). The 2012 amendments to that Section make it unequivocally clear: the Metropolitan Council is not a properly constituted MPO.

Despite a two year period in which to come into compliance, the membership of the Metropolitan Council has not been altered "to attain the statutorily required structure" identified in Section 134(d)(2). As your agencies have recognized in published guidance contained in the Federal Register, the presence of elected officials on the TAB, an advisory

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[6] The foregoing list of statutory changes is not necessarily exhaustive. There are or may have been other statutory changes since 1991 that affected the structure or decision-making authority of the Metropolitan Council.

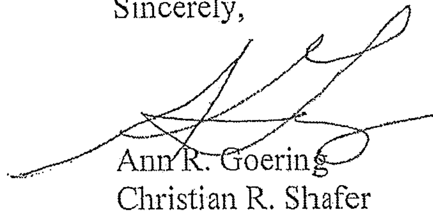
body, does not mitigate the failure to have elected officials on the Metropolitan Council – the statutorily designated MPO.

The current language of Section 134(d) does not contain any grandfathering provision that exempts the Metropolitan Council from its membership requirements. Nor would the Metropolitan Council be eligible for such an exemption, even if one existed. In short, there is nothing to excuse the Metropolitan Council from having the appropriate, federally mandated membership as set forth in Section 134(d)(2).

In light of the foregoing, we request that you find that the Metropolitan Council is not a properly constituted MPO. We request that you take action consistent with that finding, and require that an MPO, with membership that conforms to the requirements of section 134(d)(2), be established promptly, but in no event later than the end of the 2016 Minnesota legislative session and prior to the 2016 review process by your agencies.

Please feel free to contact the undersigned with any questions. We look forward to your response.

Sincerely,



Ann R. Goering
Christian R. Shafer

cc: Governor Mark Dayton
Mr. Gary Shelton, Scott County Administrator
Mr. Brandt Richardson, Dakota County Manager
Mr. David Hemze, Carver County Administrator
Mr. Jerry Soma, Anoka County Administrator
Ms. Molly O'Rourke, Washington County Administrator
Mr. Adam Duininck, Metropolitan Council

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U.S. Department of Transportation

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August 3, 2015

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Dear Ms. Goering:

This letter is in response to your letter dated May 8, 2015, which claims there were significant inaccuracies in the 2012 Transportation Management Area (TMA) certification review report pertaining to the Metropolitan Planning Organization (MPO) designation of the Metropolitan Council (Council) for the Minneapolis-St. Paul Metropolitan Area. You assert that the 2012 Report erroneously concluded that the Council's Advisory Board is part of the Twin Cities MPO. Additionally, you assert that Council is not in compliance with 23 U.S.C. §134, requiring that the MPO be redesignated.

The wording used in the last TMA certification review, describing the MPO as the Council and the Transportation Advisory Board (TAB), was inaccurate. The TMA certification review report section covering the MPO designation will be changed to more accurately describe the designation and responsibilities in the next certification review.

The Council is the designated MPO for the Twin Cities Region, and the Council officials are responsible for carrying out the metropolitan transportation planning process [MN Statute 473.146 subd. 4(a)]. The TAB is an advisory body to the Council [MN Statute 473.146 subd. 4(b)]. The TAB is not designated as the MPO, and its membership is not consistent with 23 U.S.C. 134(d)(2).

That said, the Council is the properly designated MPO, in compliance with 23 U.S.C. §134. The limitation on statutory construction, known as the grandfathering exemption, continues to apply to the Council. Specifically, 23 U.S.C. §134 states in relevant part:

> (3) Limitation on statutory construction.-Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities-
>
> (A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and
>
> (B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

> (4) Continuing designation.-A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

See 23 U.S.C. 134(d)(3) & (4).

The Minnesota State Law, that provided the Council with multimodal transportation responsibilities, was in effect on December 18, 1991. The exemption from the MPO structural requirements contained in 23 U.S.C. 134(d)(2) has been continued in law under 23 U.S.C. 134(d)(4) until such time as the MPO is redesignated.

While the Council has been altered by State Statute a few times over the years, the changes were not 'substantial' so as to require a redesignation. 23 C.F.R. 450.310(k) sets forth those instances when redesignation of a MPO would be required. It states:

> Redesignation of an MPO (in accordance with the provisions of this section) is required whenever the existing MPO proposes to make:
>
> (1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or
>
> (2) A substantial change in the decision making authority or responsibility of the MPO, or in decision making procedures established under MPO by-laws.

23 C.F.R. 450.310(l) sets forth those instances when redesignation of a MPO would **not** be required. It states:

> The following changes to an MPO do not require a redesignation (as long as they do not trigger a substantial change as described in paragraph (k) of the section):
>
> (1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;
>
> (2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;
>
> (3) Adding members to satisfy the specific membership requirements for an MPO that serves a TMA; or
>
> (4) Periodic rotation of members representing units of general-purpose local government, as established under MPO by-laws.

While you claim the Council has changed over the years, requiring redesignation, a review of those changes does not support your position. Specifically:

- The Council became a public corporation and political subdivision of the state. This change does not result in a substantial change to the proportion of voting members or decision-making authority [23 C.F.R. 450.310(k)].

- The appointment terms of the Council members was changed, but the proportion of voting members was sustained [23 C.F.R. 450.310(k)(1)]. Changes related to the periodic rotation of the members does not require redesignation [23 C.F.R. 450.310(l)(4)].

- The Council became able to manage the grant funding without depositing the money into the State Treasury. This change does not result in a substantial change to the proportion of voting members or decision-making authority [23 C.F.R. 450.310(k)].

- The Council membership districts were altered to represent the population changes from the census. This change does not result in a substantial change to the proportion of voting members [23 C.F.R. 450.310(k)(1)], and changes to the urbanized area within the metropolitan planning area do not require redesignation [23 C.F.R. 450.310(l)(1)].

- The Twin Cities urbanized area now extends into Wisconsin (St. Croix County) and two 2 MN counties (Wright and Sherburne) outside of the designated seven (7) counties. The Council can rebalance its representation because of the expansion of the urbanized area, and the rebalancing does not require redesignation [23 C.F.R. 450.310(l)(2)].

The Council may restructure, at any time, to meet the requirements of 23 U.S.C. 134(d)(2) for the policy board to be comprised of local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and appropriate State officials without redesignation [23 U.S.C. 134(d)(5)(B)]. While we would encourage the Council to move toward the structure described in 23 U.S.C. 134(d)(2) in order to make the MPO more directly accountable to its public, it remains their decision, because restructuring is not required until a substantial change necessitates redesignation.

FHWA and FTA have concluded the 1973 designation of the Council as the MPO for the Twin Cities by then Governor Anderson was in conformance with both the Federal law and regulations and that the existing structure remains compliant. If you have any questions or would like to discuss the matter further, please feel free to contact our offices.

Sincerely,

Arlene K. Kocher, P.E.
Division Administrator
Federal Highway Administration

Marisol R. Simón
Regional Administrator
Federal Transit Administration

Cc: Adam Duininck, Metropolitan Council
Charlie Zelle, MnDOT