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IMO Comments on Met Council's Thrive Plan

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Institute on Metropolitan Opportunity Comments on THRIVE MSP: Draft for Public Review and Comment

Three years ago, the Institute on Metropolitan Opportunity (IMO) published *Region: Planning the Future of the Twin Cities*. This book spoke directly to virtually all of the major planning issues addressed by *THRIVE MSP*. Since this work still represents IMO's opinions on these issues, its policy summary serves as the backbone of our comments on the *THRIVE* draft for public review and comment.

A lack of cooperation and planning has led to very serious problems in the region, many of which are caused by the Council's unwillingness to use its authority as intended by the legislature.

Racial segregation in schools and housing, once nearly eradicated by the actions of the Council and other state agencies, is now growing as fast here as anywhere in the nation. Segregation destroys lives. It disrupts individuals' education, health and economic security. It destroys the stability of neighborhoods, and saps the strength of the region's work force and economy. It forces the state to spend money on prisons and welfare that could be spent on education and economic growth. Rather than investing in a stronger future, cities must use scarce funding addressing the symptoms of a growing segregation.

In addition, poor planning and wasteful land use creates traffic congestion, stifles the economy, wastes fuel, and worsens the pollution of the air and water. The resulting sprawl puts excessive pressure on aquifers and lakes, while sustainable surface water systems are underutilized.

The Metropolitan Council (and the Land Use Planning Act) was created precisely to address these problems, and for the first two decades of its existence, it did so. However, since the mid-1980s, the Council's willingness to do this work has dwindled, even as the legislature has given it more legal authority and as many of the cities it regulates, the citizens it serves, and the editorial boards evaluating its programs have urged it to do more. For many years the lack of action was attributed to gubernatorial appointees who either misunderstood the council's mission and power or disagreed with the exercise of such authority. Under such leadership, staff initiative to do the Council's legitimate work was suppressed and talented planners and leaders left its employ.

Today, the principal barrier to the Council's addressing these problems is its own timidity and lack of confidence in its ability to meet the region's challenges.

These comments are divided into three sections. The first discusses the Met Council's expansive legal authority and how THRIVE fails to effectively deploy that authority. The second makes specific policy recommendations about regional issues. The third makes suggestions about how the Met Council's governance could be improved. We recognize that the Met Council's existing authority does not enable it to independently pursue all recommendations in the second and third section. However, the Council has significant lobbying powers in the state legislature – powers that we believe the Council should use to aggressively pursue policy objectives outlined here

The Legal Authority of the Council

Debates about governance and policy in metropolitan areas are highly contentious. A major reason for this is that metropolitan growth patterns have made the traditional distribution of governmental powers largely obsolete. American metropolitan areas have evolved from relatively simple city-suburb economies where most jobs were in the center of the region into extremely complex mosaics where jobs and housing are scattered across large areas governed (in most metros) by large numbers of local governments. Very few metropolitan residents now live, work, shop and play in a single municipality. As a result, policy decisions in individual municipalities have consequences well beyond their borders with impacts on many people with no power to affect those decisions.

Resolving the resulting mismatches is no simple matter. Governments guard their powers closely and proposals to increase the scale of existing entities (through consolidation or annexation) threaten existing prerogatives. Similarly, proposals to create alternative units that are properly scaled (regional governments) are criticized as “big government” or for adding to public sector complexity by “creating a new layer of government.”

The Council was created to address these problems and given immense legal authority to do so. The legislature gave the Council the broad authority:

To prepare and adopt, after appropriate study and such public hearings as may be necessary, *a comprehensive development guide for the metropolitan area*. It shall consist of a compilation of policy statements, goals, standards, program, and maps prescribing guides for *the orderly and economic development, public and private, of the metropolitan area*. The comprehensive development guide *shall recognize and encompass physical, social and economic needs of the metropolitan area and those future developments which will have an impact on the entire area* including but not limited to such matters *as land use, parks and open space land needs, the necessity for and location of airports, highways, transit facilities, public hospitals, libraries, schools and other public buildings*.¹

The plan must recognize and “encompass” the “physical, social and economic needs of the region.” To do this, the council must make a determination of the “physical,

¹ Minn. Stat. § 473.145

social and economic needs” of the region. Once determined, the council must create a plan that responds to these needs to ensure the orderly and economic development of the region, both in the public and private sphere.² It is hard to find a planning topic not included under such a broad grant of authority.

The statute notes that the master plan will recognize and encompass those future developments which will have an impact on the entire region, including but not limited to:

- 1) Land use
- 2) Parks and open space,
- 3) Necessity for and location of airports,
- 4) Highways
- 5) Transit facilities,
- 6) Public hospitals,
- 7) Libraries,
- 8) Schools, and
- 9) Other public building.

If this list of specifically enumerated powers were not sufficiently impressive, the Council has discretionary authority to decide that any other additional developments could have “a regional impact.” It has broad legal authority to define what amounts to a “regional impact.” MLUPA also gives the Met Council the open-ended authority to “exercise *all powers which may be necessary or convenient* to enable it to perform and carry out the duties and responsibilities now existing or which may hereafter be imposed upon it by law.”³ Minnesota courts have repeatedly noted that this is extremely broad grant of power.⁴

The legislature granted the Metropolitan Council broad authority to require local governments to conform to the Metropolitan Development Guide. The Metropolitan Land Use Planning Act mandates that all local governments within the seven county metropolitan area prepare comprehensive plans. Under the Act, the Council’s policies provide the basic framework within which local governments should prepare their comprehensive plans.⁵ “While certain policies in the development guide have an elevated status under the act, *all Council policies provide the general plans for Metropolitan area development.*”⁶

Minn. Stat. § 473.175 provides the Council with the authority to ensure that the contents of the local comprehensive plan do not dramatically depart from the Council’s plan for the region. It provides that:

² Id.

³ Minn. Stat. §473.129 subd. 1 (emphasis added).

⁴ Arrowhead Regional Corrections Board v. Aitkin County, 534 N.W.2d 557 (Minn. App. 1995); City of Brooklyn Center v. Metropolitan Council, 243 N.W.2d 102 (Minn. 1975).

⁵ Minn. Stat. § 473.858; Ohm at 376.

⁶ Brian Ohm, Growth Management in Minnesota, The Metropolitan Land Planning Act, 16 Ham.L.Rev. 359, 376 (1993).

The Council shall review the comprehensive plans of local governmental units and the capital improvement programs of school districts... to determine their compatibility with each other and conformity with Metropolitan systems plans. The Council shall review and comment on the apparent consistency of the comprehensive plans and capital improvement plans with the head of it with the other adopted chapters of the Metropolitan development guide. The Council may require a local government unit to modify any comprehensive plan or part thereof which may have a substantial impact on or contain a substantial departure from a Metropolitan system plan.⁷

The Metropolitan Land Use Planning Act defines “metropolitan system plans” to mean “the transportation portion of the development guide and the policy plans and capital budgets for metropolitan wastewater service, transportation, and regional recreation and open space.”⁸ The systems plans, however, like all the Council’s policy plans, “must substantially conform to all the policy statements, purposes, goals, standards, and maps in the Metropolitan development guide.”⁹ A comprehensive review of the Council’s powers by Brian Ohm notes the “definition of metropolitan system plans does not explicitly limit the scope of the plans to the transportation and wastewater activities of the council and the regional operating agencies. On the contrary, “[i]n addition to the Metropolitan Development Investment Framework policies, Council policies which are not a “metropolitan system,” must be incorporated in the metropolitan systems policy to the extent there is a rational relationship between the policies in the Metropolitan systems.”¹⁰

The Council can use its authority to modify a comprehensive plan if it contains “a substantial departure” from, and “may have a substantial impact on,” a Metropolitan systems plan. The Council has broad discretionary power to make these determinations. It is required only to find that the comprehensive plan “may” have a substantial impact on a metropolitan system plan and the “exact definition as to what constitutes a substantial impact or a substantial departure is left to the discretion of the Council, as a legislative body, to either formally define and administratively codify or to determine a case-by-case basis as comprehensive plans or comprehensive plan amendments are reviewed by the Council.”¹¹

In *Lake Elmo v. Metropolitan Council*, the Minnesota Supreme Court affirmed an expansive construction of the Council’s powers under MLUPA. In that case, the City of Lake Elmo submitted a comprehensive plan to the Council that proposed accommodating the population and household growth forecasted for it by the Council through 2020 in mostly low-density development that would leave no reserve for growth the Council forecasted for the City between 2020 and 2040. The Council found that the plan contradicted the Metropolitan Development Guide and its metropolitan systems plans. In particular, the Council found that the City’s comprehensive plan would require it to shift

⁷ Minn. Stat. § 473.175 subd. 1

⁸ Minn. Stat. § 473.852 subd.8.

⁹ Minn. Stat. 473.146, subd. 1

¹⁰ See Ohm at 380.

¹¹ Olm 16 Ham.L.Rev at 381; Minn. Stat. §473.175.

its investments in wastewater treatment and transportation in order to accommodate growth in other communities that it had forecast for the City. The Court held that the City's comprehensive plan substantially departed from the metropolitan systems plans because it "ignore[d] the Council's desired density levels and fail[ed] to preserve land for future development." In addition, the Supreme Court agreed with the Council's determination that Lake Elmo's comprehensive plan would have a substantial impact on the Council's plans for the metropolitan systems by causing inefficient utilization of existing and planned metropolitan systems and requiring the Council to make changes at considerable cost to accommodate the City's forecasted growth in other communities of the region.¹²

In sum, MLUPA and the Courts have given the Council broad powers and discretion. Despite this, the Council has been much less aggressive in the use of its planning powers in recent years.

The evolution of how the Council defines and enforces the Metropolitan Urban Services Area (MUSA) clearly illustrate the Council's reluctance to use its own authority. First, the way the Council defines the MUSA shifted from a clearly delineated line to "MUSA Cities." Originally, the MUSA was a distinct line, beyond which metropolitan services (transportation, waste water collection and treatment) were not provided, even if the line split a jurisdiction.

In recent years, the Council changed the way the MUSA is defined to allow municipalities that are split by the MUSA to receive metropolitan services in new developments on non-contiguous tracts within the jurisdiction as long as they stay within an overall limit for urbanized land. Not only is this more expensive for regional taxpayers, but it also makes it much more difficult for the Council to limit the total amount of land added to the MUSA in the future. If a municipality later wishes to develop the land between the current, continuous MUSA and non-contiguous development added to the MUSA under the new guidelines, the Council would find it politically very difficult to resist pressure to provide services to the new development. In effect, individual municipalities can increase the total amount of their land receiving metropolitan services by staging development in strategic ways, weakening the Council's ability to regulate the total amount (and location) of urbanized land in the region.

Although THRIVE spells out several community types with separate analyses of the policy priorities in each type, it has little to say about the MUSA. (The MUSA is mentioned only twice in the entire document – on pages 50 and 65 – and then only in a very general way.) The new community designations embody the priorities of the MUSA, but only to a limited extent. This failing is illustrated by THRIVE's flimsy efforts to discourage the growth of the "rural residential" community designation. THRIVE in effect accepts existing 1-2.5 acre lot development in these areas, despite the fact that they are outside the MUSA, making lots in that size range entirely inappropriate from a regional point of view. Although THRIVE limits this recognition to areas where this development pattern already exists (Table 1 on p. 64), the document does little to make one believe that the Council will truly eliminate this type of land use in these areas in the

¹² City of Lake Elmo v. Metropolitan Council, 685 N.W.2d 1 (Minn. 2004).

future. In the subsequent policy discussion about rural residential areas, the described Council role is to “encourage rural development patterns that will protect natural resources” and “discourage future development of rural residential patterns (unsewered lots 2.5 acres or less).”

Given the very strong incentives local officials in these areas have to zone for high-end resident development, “encouraging” one type of behavior and “discouraging” another can hardly be expected to be the determining factors in how these areas develop. The Council should commit to do all that it can to eliminate this type of development in these areas – including using its full powers to reject local plans.

The policy discussions in THRIVE are replete with this type of passive language – language that can only be interpreted to reflect a continuing timidity on the Council’s part when it comes to enforcing regional priorities in the face of local resistance.

The long-term actual pattern of urbanization in the region shows the effects of the Council’s weakening resolve. In 1986, just 22 percent of urbanized land in the Metropolitan Council’s seven counties was outside the MUSA as it then was defined. During the next 16 years, however, 47 percent of newly urbanized land occurred outside the MUSA as it was defined in 2002. During this time, the Council was clearly exercising less control over development patterns outside the MUSA and the spread of urbanized land in the region became much more “scatter-shot.” Although there are some recent indications of strong growth in the core of the region, a variety of short-term factors – spiking gas prices, the housing crisis and the recession – almost certainly contributed as much to this as longer term, more sustainable factors like a permanent re-structuring of living preferences.

If the Council truly wants to meet the more ambitious objectives of THRIVE (few as they are), it must first and foremost strengthen its resolve and become much more aggressive about exercising the powers that it has.

Policy Areas

Land-use Planning

A region’s land use planning system affects all of the policy areas covered in previous chapters and more. Local decisions about where to put development, how much of it to allow, and what types to pursue affect how much the region sprawls, social and racial diversity in regional housing markets and schools, the location of and access to job centers, and the region’s ability to conserve sensitive natural resources. Obviously, planning policies alone cannot fully address all of these needs, but the planning system should and can be designed to complement direct initiatives in each of these areas.

To meet needs in all of these areas, the Met Council should use its power to require development practices that:

- Cluster development on a regional scale. This conserves land at the fringes of the region, relieving pressures (in most metropolitan areas) on environmentally sensitive areas and farm land. It also concentrates demand for transportation

infrastructure, takes advantage of economies of scale, and facilitates transit and other non-automobile modes of transportation. In particular, the council should return to the practice of supporting the intensification of existing job centers and actively discourage the fragmented growth of unclustered employment.

- Require that new development on previously undeveloped land occurs at reasonable densities on land adjacent to already developed land. This conserves land and resources while lowering the costs of providing regional services.
- Regulate land-use outside of the developed area to maintain densities low enough to allow higher density in-fill when these lands are required for future growth. Moderate density development (such as one housing unit per two acres) in areas just beyond the developed core of the region can make it very difficult to increase densities later as the urbanized core expands.

In the Twin Cities, these general guidelines imply a set of policies, including:

- Refocus on growing within the limits of the MUSA. Recent trends include dramatic increases in the amount of scattered-site development outside the MUSA.
- Enforcement of density limits outside the MUSA. The Metropolitan Council currently takes its planning responsibilities outside the MUSA much less seriously than inside the MUSA.
- Serious review of local plans for consistency with regional objectives.
- Greater interactions between the Council and the four collar counties. This should be pursued within the context of a reinvigorated state planning system that manages how the metropolitan area (and other urbanized areas in the state) interact with nearby rural areas. This interface is more important now than ever, as the region's influence spreads beyond the official 11-county metropolitan area.

Schools and Housing

Schools and housing policy are closely related. On the one hand, housing patterns determine the make-up of neighborhood schools. On the other, school characteristics are an important determinate of location decisions for many households. This two way causation exacerbates vicious cycles in housing markets that result in segregation and rapid transition in neighborhoods and schools. If poverty rates increase in a neighborhood's schools, nearby housing becomes less and less attractive to middle income families. At some point, middle class households will exclude the neighborhood from consideration. Even, without active flight by middle class families, normal turnover in the housing market will lower average incomes in nearby neighborhoods, which, in turn, increases poverty rates in schools, beginning the cycle again. ***This means that maintaining economic diversity in schools cannot be achieved in the absence of a housing strategy that emphasizes distributing affordable housing evenly across the region, rather than concentrating it in a few places.***

As in most metropolitan areas, the problem in the Twin Cities is not simply one of passively maintaining diversity in schools and neighborhoods. Many neighborhoods and schools in the central cities and inner suburbs have *already* made the transition to concentrated poverty and grossly disproportionate shares of the region's non-white population attend schools and live in these areas. More proactive policies are needed to overcome vicious cycles in local housing markets and the incentives facing local officials in growing areas to limit housing development to housing that "pays its way."

All of these factors imply that coordinated housing and school policies are needed to achieve integrated schools and neighborhoods. ***Council policies should be focused on affordable housing strategies that require that all parts of the region provide their fair share of affordable housing and that ensure that current residents in neighborhoods of concentrated poverty have schooling options beyond all-poor, all-minority schools in their neighborhoods.***

School Policy. The starting point for the Council on school policy is the recognition that ***the council is required by state and federal law to help local schools stay racially integrated.***

In *Swann v. Charlotte-Mecklenburg*, the Supreme Court held that once a school district, as an agent of the state, was found to have committed an act of de jure segregation, federal courts must enjoin school construction policies that would foster further segregation.¹³ At the time of the drafting of MLUPA, Minneapolis, as an agent of the state, was declared a de jure segregated, which it remains to this day.

Professor Robert Freilich, who drafted the Land Use Planning Act, was also an expert on school desegregation law. He stated that one of the most important reasons that he insisted that schools be included in the Act, and that school construction specifically be under the supervision of the Met Council, was in order to help the state avoid a possible constitutional violation that would result in a metro-wide school desegregation order. According to statute, the Met Council "shall adopt a development guide" that "will encompass the physical, social and economic needs of the metropolitan area and those future developments which will have an impact on the entire area" including "the location of *schools*."¹⁴ The law further mandates that the Council "construct an inventory" of all schools in the metropolitan area and the unused space within each school.¹⁵ The council may submit its comments to the commissioner of education on any school district facility that is proposed in the metropolitan area. MLUPA requires that a local government unit's comprehensive plans shall contain a statement on "the effect of the plan on affected school districts"¹⁶ and these comprehensive plans must be submitted to the affected school district for review and comment six months prior to their submission to the Council.¹⁷ Finally, it suggests that these comprehensive plans contain an intergovernmental coordination process for cooperation with school districts generally

¹³ *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 401 U.S. 1 (1971).

¹⁴ MINN. STAT. § 473.145 (2013) (emphasis added).

¹⁵ *Id.* § 473.23(1).

¹⁶ *Id.* § 473.859(1).

¹⁷ *Id.* § 473.858(2).

and the siting of public schools in particular.¹⁸ There are six additional references to schools in MLUPA.¹⁹

When the legislature authorized a metropolitan school desegregation rule, it required the Department of Education to “consult with the Metropolitan Council to coordinate school desegregation efforts with the housing, social, economic, and infrastructure needs of the metropolitan area.”²⁰ The Minnesota Legislature has also facilitated the creation of three large city-suburban integration school districts to facilitate and coordinate, in consultation with the Metropolitan Council, more integrated schools on a metropolitan basis.²¹

The Fair Housing Act requires HUD and its grantees like the Met Council to consider the racial balance of schools attended by government-supported housing recipients. This legal requirement is grounded in the insight that stably racially integrated schools are a central component of fair housing policy.

School data for the Twin Cities shows a dramatic increase in racial isolation. In 1995, there were only fifteen elementary schools and twenty middle/high schools with more than seventy-five percent of their students nonwhite. By 2011, the number had increased six times for elementary schools (to ninety percent) and by more than three times for middle/high schools (to seventy-one percent). The Council has contributed to this trend by essentially ignoring its obligations to school planning.

Housing Policy. The starting point for housing policy is the Council’s own analysis of equity in the region – *Choice, Place and Opportunity* (CPO). The CPO concluded that “[l]iving in areas of concentrated poverty hurts people in many ways” and that “households of color are more likely to live in areas of concentrated poverty than white households at rates beyond those explained by income alone.”²² It also concluded that people of color and low income residents face barriers to housing choice. A clear contributing factor to this pattern is that fact that subsidized housing is currently disproportionately located in high-poverty areas that are also often predominantly non-white.²³ Fifty-one percent of the region’s subsidized housing – but only 15 percent of overall housing – is located in the opportunity cluster characterized by high poverty rates, high non-white shares and the region’s poorest performing. In contrast, the opportunity

¹⁸ *Id.*

¹⁹ MINN. STAT. § 473.3875 prioritizes transit for livable communities grants to evaluate projects coordinating school and public transportation. Minn. Stat. §473.625 discusses the process of detaching airport land from school districts, MINN. STAT. §473.629 addresses proper valuation of property for bond issues by school districts and MINN. STAT. §473.661 covers airport noise mitigation resources for school districts.

²⁰ MINN. R. 3535; *See also* 1994 Minn. Laws, Ch. 647, Art. 8(2)(1)(c).

²¹ For information on the three integration school districts, *see* West Metro Education Program (WMEP) at <http://sites.google.com/a/wmep.k12.mn.us/wmep-k12-mn-us/>; East Metro Integration District (EMID) at <http://www.emid6067.net/>; and Northwest Suburban Integration District (NWSID) at http://www.nws.k12.mn.us/About_NWSISD.html.

²² Metropolitan Council, *Choice, Place and Opportunity: An Equity Assessment of the Twin Cities Region*, p. ii.

²³ CPO, Section 7, p. 7.

cluster with the highest performing schools had 50 percent of all housing units, but only 22 percent of subsidized units.

These findings make it clear that the Council needs to focus much more aggressively on ensuring that all parts of the region provide their fair shares of affordable housing. Policy priorities should include:

- Creating *and enforcing* serious affordable housing goals, especially in growing areas with good schools, should be a priority in the Council's housing policies. In addition to traditional criteria, like access to jobs, housing targets should be used to promote integration by income and race in neighborhoods and schools.
- Performance on these goals should be among the most important criteria used by the Met Council when reviewing of local comprehensive plans and plan approval should be linked to spending in other policy areas to give the review process teeth.
- Funding under existing affordable housing programs--the Low Income Housing Tax Credit and HUD's Section 8 programs--should be distributed based on overall population proportions, the distribution of school age population, and integration goals, deemphasizing the current focus on the core of the region.

The Metropolitan Council has a distinguished history of using its powers over federal funding to steer affordable housing funds toward the parts of the region where affordable housing is most needed. The Council's Policy 13/39 did this very effectively during the 1970s and early 1980s. Compared to other parts of the country, the Council has also done reasonably well steering LIHTC and HUD Section 8 funding toward suburban areas. However, simulations described in Chapter 4 of *Region* make it clear that more could be done. Indeed, existing funding streams could be used to significantly reduce segregation by race and income in the region's schools.

The incentives facing local officials in these policy areas make it very unlikely that local areas will pursue these goals on their own. The vicious cycles associated with income and racial transition in neighborhoods and schools are well known and local officials are very wary of them. This means that the Council must be vigilant in enforcing fair housing goals, and treat non-compliance with fair housing targets as grounds for rejecting local comprehensive plans. In addition, the Council needs to be aware of the potential for individual schools and neighborhoods to reach "tipping points" and undergo rapid economic and racial transitions. This means that existing, "naturally occurring" market rate affordable housing should be included in decisions regarding future affordable housing targets and the location of new subsidized housing.

Economic Development and Transportation

Economic development and transportation policy are also closely related. On the one hand, location decisions by businesses and residents are strongly affected by the existing (and planned) transportation system. People and firms want easy access to other parts of the region and the rest of the world. On the other hand, decisions about where to locate transportation infrastructure and what type of infrastructure to emphasize are

affected by where jobs and residents are currently located. For instance, congestion relief is unquestionably the dominant factor raised in public discussions of transportation issues in most metropolitan areas.

As with schools and housing, policy should recognize this two-way relationship. Economic development planning should reflect both the current transportation system and objectives about how we want the transportation system to work in the future. Transportation decisions should be conditioned both by current settlement and job patterns and by objectives about how we want future growth to occur.

The overall objectives of development and transportation policies follow directly from the planning, housing and schools goals described above. Planning priorities mean that ***economic development policy should encourage growth parts of the region that are already developed, and immediately adjacent areas, to conserve land and infrastructure.*** Housing and school objectives imply that development policy should foster access to jobs across the income spectrum by promoting growth in areas with the greatest access by transit and the existing road system. Finally, there is widespread agreement that devoting local government resources to attract firms and high income households to one part of the region from another is inefficient from the point of view of the region as a whole. Reducing incentives for this wasteful competition is therefore another legitimate concern on the regional scale.

Taken together, these objectives imply regional economic development policies that emphasize:

- Clustered development to conserve land and infrastructure. The implied strategy is to focus development efforts along existing transportation corridors or at the intersection of current major highways.
- Infill and new development near the core of the region to enhance access to opportunity for the disadvantaged populations disproportionately residing there.
- Reduced incentives for inter-local competition for commercial and high-end residential development.

In the Twin Cities, the first two objectives correspond to long-standing goals of the Met Council. However, both the urbanized land data and the job growth data²⁴ show that regional growth is happening more and more on scattered sites beyond the urbanized core and away from major transportation infrastructure. The Council clearly could do more. One way would be to put greater emphasis on transportation improvements that complement these goals.

The final objective – incentives to reduce inter-local competition – is one of the primary motivations for the Twin Cities unique tax-base sharing system, the Fiscal Disparities Program. This program both reduces the incentives for inter-local competition, by reducing the fiscal windfalls for municipalities that accompany many types of commercial-industrial development, and promotes regional cooperation, by sharing the fiscal benefits among all participating communities. However, the program covers only the seven core counties of the region, leaving out the rapidly growing collar

²⁴ See Chapters 1 and 5 of *Region*.

counties (Chisago, Isanti, Sherburne and Wright). The program also excludes another portion of the tax base that can provide equally enticing fiscal windfalls--high-end residential development.

Environment

Much of the region's sensitive natural are threatened by growth.²⁵ We must find new ways to grow—ways that consume less land and allow us to both grow and conserve the region's valuable natural assets. New development on undeveloped land must be at greater densities than in the past and we must find ways to channel more growth to already developed areas. This will require actions at the state, regional and local levels. However, because of the fiscal and development incentives they face, local governments are not particularly well-suited to regulate or protect sensitive natural areas in many cases. This means that state and regional decision-makers must take the lead. This logic also applies to climate change mitigation and adaptation, and natural resource protection.

The Council could use its authority to adopt an action plan for climate change mitigation and adaptation, and establish regional goals for reducing greenhouse gas emissions. If the climate action plan assumed that certain forms of land use and transportation would be needed to meet the regional goals, the Council could include the assumptions in its plans for the metropolitan systems, which would translate into local requirements through the metropolitan systems statements under Minn. Stat. §473.856. Similarly, the Council could adopt a plan to protect the region's remaining natural areas and areas where aquifers are recharged. The Council could create protections for these areas in its plans for transportation and wastewater. Communities would have to respond or confront an order for modification. In the absence of this kind of intentional use of integration and alignment, the Council will not meaningfully move forward on its goals for prosperity, livability, and sustainability as presently set out in draft form for Thrive MSP 2040.

First steps should include:

- Increasing state-level leadership and guidelines for growth in the metropolitan area and in the exurbs just beyond the region's official boundaries. Reconstituting the state planning agency would be a good first step. Council lobbying efforts in the state legislature should emphasize these objectives.
- Integrating environmental issues into local plan reviews and elevating environment to a "system" in the Met Council review process. This would effectively integrate environmental issues into Met Council planning for transportation, economic development, and housing.
- Lobbying to expand the Met Council's planning powers and services into the four collar counties, which contain nearly half of the metropolitan area's sensitive natural areas. In the interim, the Council should work more closely with these counties to coordinate policies.

²⁵ See Chapter 5 of *Region* and "Growth Pressures on Sensitive Natural Areas in DNR's Central Region," Ameregis, 2006.

- Using the potential expansion of the Fiscal Disparities Tax Base Sharing into the four collar counties as a bargaining chip in negotiations with the collar counties to expand the Council's authority.
- Strategic use of Met Council infrastructure decisions – waste water collection and treatment, transportation planning and MUSA expansions – to support environmental goals.

Governance

The preceding sections describe a wide variety of proposals across several policy areas. Many metropolitan areas are ill-equipped to deal with these recommendations. The most glaring shortcoming in most cases is the lack of region-wide institutions with the needed powers. The Twin Cities is one of the few regions where this is not an issue--the Metropolitan Council has the statutory powers needed to fill this void. However, the Council operates above highly fragmented local governments, where many local authorities resist regional approaches to many of the problems described above. As a result, the Council's actions often fall short of its powers.

THRIVE promises to continue this trend by consistently underplaying the Council's legal authority to pursue and influence policymaking in the Twin Cities. The policy recommendations in THRIVE regarding Council interactions with local governments are particularly timid. In light of the fact that the incentives facing local authorities in many of the policy areas under discussion in THRIVE – affordable housing, equity, transportation, the environment, economic development – push them toward actions that are clearly not optimal from the point of view of the entire region, the Council's power to review and require changes to local plans is an extremely important function. Indeed, it was this function that the Met Council was created to perform. The Council should embrace its planning powers, rather than running from them, as it does in much of THRIVE.

The rest of this section addresses the question: What sort of governance structure could best address all of the issues raised by our earlier comments. Put another way, what distribution of responsibilities to the various levels of government provides the best way to meet these objectives at the lowest possible cost while remaining responsive to voters?

Regional Government

There several areas where the Met Council should work to expand its powers and a few others where the Council should use its current powers more aggressively.

Boundaries. The Council's current boundaries include only the seven core counties of the metropolitan. In 1972 this area represented the full metropolitan economy. Since then, the four collar counties--Chisago, Isanti, Sherburne and Wright--have become fully integrated into the region's housing and labor markets. Housing and labor markets are the major engines that spread the costs and benefits of local actions across the

metropolitan landscape and effective regional policy making implies that the collar counties should be added to the Council's territory.

Such an expansion would likely meet resistance in the collar counties. From their point of view, they would be taking on costs (in the form of potential limitations on how they could grow) without receiving commensurate benefits (which would be spread across the region over the long term). One way to reduce the opposition would be to couple expansion of the Metropolitan Council's planning powers with expansion of the Fiscal Disparities Program--the region's tax base sharing system. Such an expansion would clearly provide financial benefits in the collar counties. Simulations by the Minnesota House of Representatives Research Office show that the collar counties would receive substantial financial benefits from the program if they were now in the program. This is because of they have relatively small amounts of commercial-industrial tax base (the source of contributions to the regional pool of tax base) and relatively low total tax base per capita (the primary determinant of distributions from the pool). According to the simulation, the overwhelming majority of municipalities in the collar counties – 77 out of 88, representing 80 percent of population would benefit. In many cases the benefits would be substantial.²⁶

Representation. Although the sixteen members that sit on the Metropolitan Council ostensibly represent specific districts, they are not currently elected by voters in those districts--they are instead appointed by the Governor. Since 1994 the Council has produced four separate long run plans, each with significant differences from its predecessor. In large measure this reflects the fact that the Council's make-up can change very dramatically from one gubernatorial election to the next. Indeed, since Governors normally appoint members of their own party to the Council, it could change from 16 Republicans and no Democrats to 16 Democrats and no Republicans and back again in just four years. The reality has been almost this bad. The Council has shifted from 100 percent Republican during most of the 1990s (largely moderate Republicans appointed by Governor Carlson) to eight Democrats, four Independents and four Republicans (during Governor Ventura's single four-year term), to 100 percent Republican (more conservative Republicans, for the most part, appointed by Governor Pawlenty) from 2002 to 2010 and to 100 percent Democrats since Governor Dayton's election.

These dramatic partisan shifts lead to significant philosophical shifts, which make long run planning more difficult and expensive. Most of the Council's service responsibilities involve capital intensive activities where current decisions can have very long run consequences--transportation, transit, waste water collection and treatment. If the planning philosophy underlying decisions in these areas frequently changes from one extreme to another, long run planning will clearly suffer. Further, in a region that has been split fairly evenly on partisan lines during the last two decades, these shifts are fundamentally undemocratic. Virtually every critique of the Council these days (from either end of the political spectrum) begins with the accusation that because it is unelected, its powers should be curtailed.

Simulations from *Region* show that, if the Council were elected, it would almost certainly have been much more stable during the last 20 years. They show that if it had

²⁶ See Map 6.1 and the accompanying discussion in *Region*, pp. 266-267.

been elected, control of the Council would almost certainly been tightly contested during the entire period. Democrats would have controlled the Council in five elections and Republicans would have won control in three.²⁷ More importantly, each part of the region would have had a voice representing its interests during the entire period.

Regional land-use planning and the Metropolitan Urban Services Area (MUSA). As discussed in the introduction to these comments, the Council has been much less aggressive in the use of its planning powers in recent years, particularly with regard to land use planning and the MUSA. This issue is most apparent in the chapter entitled “Strategies for Community Designations” where THRIVE discusses how to address issues specific to different types of communities. The bullets listed under the “Council Role” for each of the community groups are replete with passive verbs like “encourage,” “coordinate,” and “identify” or non-threatening actions like “provide technical assistance,” and “partner with” rather than the kinds of assertive actions that will be needed to overcome strong incentives for local actors to discount the regional consequences of local development policies (like lot-size regulations). Similar concerns arise with respect to virtually all policies associated with equity issues such as the regional distribution of affordable housing. If the Council is truly concerned about equity and (regionally) efficient development patterns, then it must show a greater willingness to enforce regional objectives, especially when reviewing local comprehensive plans and making regional infrastructure investments.

Cities and Townships

Regardless of how aggressively a region pursues a regional governance strategy, cities and townships will still fill important functions--building and maintaining local infrastructure like streets and sewers; providing local police and fire protection; regulating new development. Ideally, municipalities should be large enough to provide these services at efficient scales. In sparsely settled areas, this may be impractical and in these areas county governments often provide local services. However, very small municipalities are not uncommon even in relatively densely settled or developing areas. For instance, in 2005 roughly half of the cities and townships in the 11-county Twin Cities metropolitan area (129 out of 270) had fewer than 2,500 residents. Even in the mostly developed seven core counties, there were 78 such places--more than 40 percent of cities and townships. There were another 53 municipalities with between 2,500 and 5,000 residents – 33 in the seven core counties and 20 in the collar counties.

There are no hard and fast estimates of the optimum size for local governments but it is difficult to defend a system in a large metropolitan area where two-thirds (182 of 270) of the cities and townships have fewer than 5,000 residents. The extreme degree of fragmentation clearly implies that policies should be designed to encourage localities to take advantage of any opportunities to reduce fragmentation through consolidation or annexation. In the Twin Cities, the most likely opportunities for this involve cases where cities border on townships. The State’s Office of Administrative Hearings handles a steady stream of annexation cases but they are disproportionately outside of the

²⁷ See Figure 6.1 and the accompanying discussion in *Region*, pp. 267-268.

metropolitan area and rarely involve large tracts of land. For instance, in September 2007 there were 144 pending boundary change cases and just 28 of them were in the Twin Cities metropolitan area. (This represents 20 percent of cases, while the metro houses 60 percent of the state's population.) Of these 28 cases, only four involved annexations of more than 100 acres of land.

Although the Council has few direct powers in this area, it could do much to encourage local areas to pursue cooperative strategies or consolidations by incenting this behavior when it makes its own funding and infrastructure decisions.